THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2015-001230

Town of Sullivan's Island Board of Zoning Appeals and Town of Sullivan's Island, ...Appellant

vs.

Paul Boehm, ...Respondent

RESPONDENT'S INITIAL BRIEF

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October 26, 2015

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STATEMENT OF THE CASE

Respondent Paul Boehm ("Boehm") initiated this process when he filed three appeals to the Town of Sullivan's Island Board of Zoning Appeals ("BZA") from decisions of the Sullivan's Island Zoning Administrator concerning improvements that he wanted to make to an existing second principal building located on a lot zoned single family residential at 2720B Goldbug Avenue. On March 13, 2014, the BZA heard the appeals. On April 10, 2014, the BZA issued a written order stating that the permit requests were "for existing nonconforming garage (structure)," and denied all three of Boehm's appeals without any factual findings or legal conclusions.

Boehm filed a timely Notice of Appeal and Petition in the Circuit Court on April 23, 2014. The Circuit Court heard the appeal on September 2, 2014, determined that the BZA failed to make any factual findings and 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."[1]

On January 8, 2015, the BZA went into executive session with its counsel and returned to public session to make six findings of fact, all of which found that the structure in question contained a residence/dwelling over a garage. These factual findings, as well as the transcript from the first BZA meeting procured by Boehm, were incorporated in the BZA's Order, dated February 2, 2015.

Boehm filed a second timely Notice of Appeal and Petition from the BZA's Order. The Circuit Court heard this appeal on April 7, 2015. By written Order, dated May 4, 2015, the Court concluded that the building in question was a principal building as defined by the Sullivan's Island Zoning Ordinance (hereinafter "Z.O."), § 21-203, because it was a "building in which the principal use [residential] of the lot is conducted." May 4, 2015 Order, p. 5. The Court further concluded that the structure was a nonconforming principal building, its nonconformity being the fact that it is a second residence on the lot. May 4, 2015 Order, p. 5. As such, the Court held that Boehm could make the requested improvements in accordance with the Z.O., because those improvements would not increase the extent of the nonconformity. May 4, 2015 Order, p. 6.

Appellants appealed the Circuit Court's Order.

FACTS

[1] Appellant's Brief states that the Order instructed the BZA to "make additional findings of fact to support its decision that Unit B was an accessory structure with a nonconforming residential use on the second floor." There was no mention by either the BZA or Judge Dennis that this was an accessory structure with a nonconforming residential use on the second floor as the BZA specifically found that the structure was a "garage."

Boehm bought 2720 Goldbug Avenue in 2001. At that time, there were three structures on the property: the main house; a smaller building containing a two bedroom residence on the second floor above an enclosed unheated parking/storage area; and a carport. Transcript of 3/13/14 BZA Hearing (hereinafter "T.R."), pp. 9-10. Prior to purchasing the property, Mr. Boehm met with Kent Prause, the then Zoning Administrator, and asked him "what it meant to have these two separate dwellings on the property, and he explained to me that the larger of the two dwellings would be the conforming dwelling, and the smaller of the two dwellings ... would be the nonconforming dwelling." T.R., pp. 10-11.[2] Mr. Boehm relied on what Mr. Prause told him and made the purchase. He would not have bought the property if the second dwelling was an "accessory structure" or a "garage" under Sullivan's Island Zoning Ordinance. T.R., pp. 11-12. In 2003, Mr. Boehm divided 2720 Goldbug into two condominiums: the main house and the smaller dwelling, which was designated as 2720B Goldbug. T.R., p. 10. Mr. Boehm conveyed the main house to his son but continues to own the smaller dwelling known as 2720B Goldbug Avenue.

Mr. Boehm obtained the Town's records regarding the two structures at the time that he bought the house. The Town had a Certificate of Occupancy for "apartment above garage" as to 2720B. T.R., pp. 12-13. Only residential dwellings are required to have a Certificate of Occupancy. There is no requirement that a garage have a certificate of occupancy, because it will not be occupied.

In 2001, after purchasing the property, Mr. Boehm went to Mr. Prause and asked him if he could build a deck off of the rear of the second dwelling. Mr. Prause told him

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[2] Mr. Prause was not a witness at the hearing, and Mr. Boehm's recollection of his conversation with him was not disputed by any admissible evidence.

that he could not do that, but that he could construct an accessory building, known as a slat house, adjacent to the existing deck, and that would serve the same purpose.[3] Mr. Boehm asked Mr. Prause what he meant by a slat house, and he told him that it was an accessory garden structure and that if he built it the same height as the existing walkway at the rear of the second dwelling and immediately adjacent thereto, that it would serve the purpose of a deck. Mr. Boehm obtained a building permit and built a slat house adjacent to the second dwelling as an accessory structure to the second dwelling.[4] The roof of the slat house abuts the rear walkway of the second dwelling. T.R., pp. 18-20. Because the Town would not let him put a safety rail around the slat house roof, which the Town knew he was using as a deck, Mr. Boehm installed furniture on the perimeter as a safety precaution. T.R., pp. 20-21.

In 2009, Mr. Boehm applied for a variance to connect the slat house roof to the deck of the second dwelling. T.R. 18-19. The Board of Zoning Appeals denied this variance request, relying on the Z.O. § 21-150(B) and (F)(3), the latter of which applies to "Two or more Principal Buildings on one lot." T.R., pp. 13-14; T.R. at Exhibits 2 and 3. At no time did the then Zoning Administrator or the Board of Zoning Appeals consider the second dwelling a "garage" or an accessory structure.[5]

During the years of his ownership, Mr. Boehm has rented out 2720B, and he has had a rental license for the dwelling for each of the last fourteen years. T.R., pp. 14-15. The dwelling located on 2720B has a separate electric meter and is connected to the City

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[3] Appellant now believes that Mr. Prause was not correct when he said that he could not build a deck off of this dwelling, because a deck is a permitted accessory use/structure under Z.O.§ 21-137.

[4] Accessory structures are only allowed as accessories to a principal building. Z.O. § 21-203 ("Accessory use or structure defined as "a use or structure subordinate to the Principal Building on a lot and used for purposes customarily incidental to the main or principal use or building and located on the same lot.").

[5] At the hearing, the Zoning Administrator introduced as an exhibit a photograph of the roof of the slat house on which he had labeled the roof as a "deck." TOSI-BZA 0023.

sewer system. T.R., p. 15. The building has never been used as a garage for the larger dwelling on 2720 Goldbug. T.R., p. 15. He received a permit in January of 2013 to construct a utility building as an accessory structure to 2720B.[6] T.R. at Exhibit 4.

In 2013, Mr. Boehm asked Randy Robinson, the then Zoning Administrator, if the Zoning Ordinance allowed him to elevate the roof of 2720B by two (2') feet, and Robinson told him that he could elevate the ceiling/roof. Prior to getting the plans drawn up, the Town hired a new Zoning Administrator, Joe Henderson. T.R., pp. 21-22. When Mr. Boehm presented the plans to Mr. Henderson, he denied Mr. Boehm's request, stating that the building was an accessory structure and could not be elevated further, because it was already taller than the Zoning Ordinance allowed for an accessory structure. T.R., pp. 22-23; T.R. at Exhibit 8. Mr. Boehm appealed Mr. Henderson's denial of that permit to the BZA.

In a review of other properties on Sullivan's Island containing two or more dwellings, the Town has routinely allowed property owners of secondary dwellings to increase the heated square footage, porches and decks, as well as to elevate them, even allowing owners to add a loft or a 2nd floor where there had only been one floor. T.R., pp. 27-43. The Zoning Ordinance clearly allows secondary dwellings to be enlarged, elevated, etc., so long as the "nonconforming use" is not expanded. Z.O. § 21-150(B).

Boehm also requested that the Zoning Administrator allow him to extend the existing roof of 2720B Goldbug to cover the exterior stairway and walkways. The Town initially granted Boehm a building permit and inspected and approved the posts that were installed but subsequently issued a Stop Work Order when Mr. Henderson claimed that the posts for the roof extension were outside what he determined was the "existing

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[6] *See, supra*, footnote 4.

footprint" of the building.[7] T.R., p. 44. Mr. Boehm appealed Mr. Henderson's determination to the BZA.

While inspecting the roof over the stairway and walkways, Mr. Henderson saw the furniture on the slat house roof and issued an order requiring Boehm to remove that furniture. Boehm appealed that decision of Mr. Henderson.

On March 13, 2014, the BZA heard Mr. Boehm's appeals of the three decisions of the Zoning Administrator.

Mr. Henderson, the Zoning Administrator, admitted that the use of the structure located on 2720B was "residential," a "legal nonconforming residential use." T.R., pp. 67-70. However, he contended that the building was still an "accessory structure" – a garage – because it looked like a garage. Ignored was the fact that the Z.O. does not allow for an accessory structure to contain a dwelling or residence, a separate electric meter, a sewer hookup, or its own accessory buildings such as the slat house which was specifically approved by the Town.

At the end of the hearing, the BZA determined that the controlling decision to be made was whether the structure located at 2720B was a "principal building" or a "garage." T.R., pp. 98-99. The BZA members ignored the plain language of the Zoning Ordinance which clearly states that the two are not mutually exclusive in that a garage may be either an accessory structure or a portion of a principal building. Instead, the BZA members stated that they had been by the property, and the building in question looked like a garage, so they unanimously decided that the structure was a garage and not a

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[7] At the hearing, Mr. Henderson admitted that he made a mistake, because the building footprint does not include exterior porches and decks and exterior stairs. T.R., p. 75. But he took the position that he was still correct in not allowing Mr. Boehm to proceed with his roof under the nonconforming structure section of the Z.O. T.R., p. 76.

principal building. Based on their finding that this was a garage, the BZA then determined that it was a nonconforming accessory structure rather than a principal building, and the BZA denied all three appeals. T.R., pp. 98-103.

Subsequently, the BZA issued its Order, stating that the three appeals were denied because they were not permitted by Z.O. § 21-150, "Nonconforming Uses," and Z.O. § 21-151, "Nonconforming Structures" and attached the transcript of the hearing "as an accurate representation of the public meeting held on March 13, 2014."

The Circuit Court considered the appeal, determined that the BZA had made no findings of fact to support its decision and remanded the matter to the BZA to make findings of fact. At its February 8, 2015, meeting, the BZA went into executive session with its lawyer and reconvened to make the following "findings of fact."

1. The certificate of occupancy for the upstairs living quarters issued November 20, 1989 classified the apartment as an apartment above garage. This certificate of occupancy refers to the structure as a garage and the apartment as being above the garage. [Deleted statements that this finding supports the BZA's decision that the building was an "accessory structure."]
2. The inspection ticket issued November 20, 1991 approved the use of apartment over garage. [Deleted statements that this finding supports the BZA's decision that the building was an "accessory structure."]
3. The May 15, 2001 survey of 2720 Goldbug Avenue issued by John E. Wade, Jr., RLS, identifies the structure as garage with apartment. The survey identified the owner of the property at the time of the survey as Paul Boehm, the applicant. [Deleted statements that this finding supports the BZA's decision that the building was an "accessory structure."]
4. The design of the structure, which can be readily observed by reference to the photographs, drawings, documents and testimony in the record, is that of a garage that has an apartment on top. There are two garage doors on the front of the structure, which open to the bays. The only entrance to the apartment above the garage is the staircase on the exterior right side of the structure. The structure is designed for the private

storage of cars, boats, trailers, lawn equipment or other recreational items. [Deleted statements that the design structure supports the decision of the BZA that the building is a "garage.']

5. The applicant agreed in his testimony before the Board that the structure is comprised of a garage on the first floor and an apartment on the second floor. The applicant characterized the structure as a dwelling with a garage below it, but did not dispute that the first floor was indeed a garage. [Deleted statements that applicant's testimony supported BZA's decision that the building is an "accessory structure."]
6. The Board finds that the structure at issue and use of the structure as a garage with a non-conforming apartment on the second story is customarily incidental to the principal use in building located on the lot, a principal building used as a residence. The Board recognizes the structures on the lot are now part of a condo regime, but finds that the establishment of the condo regime does not convert an accessory structure into a second principal building.

BZA Order, February 12, 2015. What the BZA ignored when making these "findings of fact" is that they all require a legal determination that the building in question is a "principal building" under the Z.O., which states that a building in which the principal use of the lot is carried out, i.e., residential, is a "principal building."

The Circuit Court agreed with Boehm that 2720B Goldbug Avenue is a principal building and that he could make the requested improvements, because they did not expand the nonconforming use, which is residential. Order, May 4, 2015.

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.

Because the BZA decision was not based on the application of the Zoning Ordinance to the facts and evidence in the record, its decision not to allow Appellant to make the requested improvements to his residential building was arbitrary and capricious, had no reasonable relation to any lawful purpose and was an abuse of discretion.

ARGUMENTS

I. BECAUSE THE BZA FOUND THAT 2720B GOLDBUG AVENUE CONTAINS A RESIDENCE, IT IS A PRINCIPAL BUILDING UNDER SULLIVAN'S ISLAND ZONING ORDINANCE, AND THE BZA COMMITTED AN ERROR OF LAW WHEN IT CONCLUDED THAT THE BUILDING WAS AN ACCESSORY STRUCTURE.

As the BZA found in each of its findings, 2720B Goldbug contains an apartment, a dwelling, a residence. The definition of "principal building" does not require that the building be used only as a residence. It simply states that any building in which the principal use of the lot is conducted is a principal building. Z.O. § 21-203. The principal use of the lot, residential, is conducted in the apartment located at 2720B, and the Circuit Court correctly determined that it was therefore a principal building.

The BZA based its erroneous conclusion that 2720B is an accessory structure, a garage, on the admitted fact that there is a "garage" area on the ground floor. The BZA totally disregarded the Zoning Ordinance, which defines "Garage, private" as "[a]n accessory building or ***portion of a Principal Building*** used only for the private storage of

motor vehicles, campers, boats, boat trailers and lawn mowers, as an accessory use." Z.O. § 21-203 (emphasis added). Pursuant to the definition, in the case of 2720B, the "garage" area is a "portion of a Principal Building." Its existence does not transform the entirety of 2720B, which is located on a residential lot and used primarily as a residence, into an accessory structure.

As additional basis for the structure being a "principal building," accessory structures are not permitted to have separate electric meters or be connected to the sanitary sewer system. Z.O. § 21-138(7). However, because it is a principal building, 2720B has a separate electric meter and is connected to the sanitary sewer system.[8]

That 2720B is, and has always previously been considered, a principal building is further evidenced by the fact that it has its own accessory structures – the slat house and the utility building. Pursuant to the Zoning Ordinance, certain structures and uses, delineated at Z.O. § 21-137(A), are permitted as accessory structures and uses if they are subordinate to a "Principal Building on a lot and [are] used for purposes customarily incidental to the main or principal use or building and located on the same lot" and "would not exist independent of the principal use." Z.O.§ 21-136. In the Zoning Ordinance in effect as of 2001 when Mr. Boehm constructed his "slat house," a "slat house" was listed as a permissible accessory structure. T.R., pp. 18-20. The slat house would not have been permitted if 2720B were not a principal building as it is an accessory structure only to 2720B.

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[8] The recused BZA member's argument for its being an accessory structure was based on 2720B not having a separate water meter, but that is not a requirement of the Zoning Ordinance. Z.O. § 21-138(A)(7); T.R., pp. 21-22.

The findings of fact discuss ways that the 2720B building have been described. None of these "descriptions" or the subjective opinions of the members of the BZA with no basis in fact override the provisions of the Zoning Ordinance, which clearly provide that any structure that is used even partially for the principal use of the lot is a principal building. There is no provision that allows the BZA to draw the conclusion that if a structure used as a residence also has a garage, the entire structure may be classified as a garage and as an accessory structure.

The BZA's findings of fact on remand imply that, because the word "apartment" is used to describe the residential use of the building in question, it is somehow not a "dwelling" or "residence." Even the Zoning Administrator admitted in his testimony that "an apartment is a dwelling." T.R., p. 62. There is no definition of "apartment" in the Zoning Ordinance. However, "dwelling" is defined as "[a] building or portion of a building arranged or designed to provide living quarters for one family. The terms 'dwelling' and 'residence' shall be interchangeable." Z.O.§ 21-3. The Zoning Ordinance goes on to discuss "uses customarily accessory to dwelling" in Z.O.§ 21-31(A), and one of those uses is a garage. Under any interpretation of the Zoning Ordinance, the building located at 2720B Goldbug Avenue is a principal building, and the BZA's decision that it was instead an accessory structure was clearly erroneous as a matter of law. The Circuit Court did not substitute its opinion for that of the BZA members. Rather, it took the BZA's own findings of fact and applied them to the applicable provisions of the Zoning Ordinance and determined that the BZA's decision that the structure is an accessory structure is clearly erroneous.

As an additional basis for affirming the Circuit Court's Order, Appellants are estopped from taking a position that is contrary to the position taken by Kent Prause, the Town's Zoning Administrator, at the time that Boehm was contemplating the purchase of the property and upon which he relied in making the purchase. This position was also adopted in 2009 when a variance request was made to, and denied by, the Board of Zoning Appeals. See Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979) (city was estopped from denying building permit on basis of a corrected zoning to medium density residential after discovering that official zoning map had been made up defectively).

II. BECAUSE BOEHM'S PROPOSED IMPROVEMENTS TO 2720B GOLDBUG WILL NOT EXPAND THE NONCONFORMING RESIDENTIAL USE OF THE PROPERTY, BOEHM IS ENTITLED TO PROCEED WITH THE IMPROVEMENTS AS REQUESTED.

Sullivan's Island Zoning Administrator sent an email to Boehm when his requests were pending stating that he could make the requested improvements if 2720B is a principal building. T.R. at Exhibit 8. Now that the Circuit Court has ruled that 2720B is a principal building, Appellants take the position that, even if the building is a principal building, it cannot be enlarged or its interior volume expanded. However, the Zoning Ordinance does not prohibit Boehm from making improvements to this building. The only prohibition is the expansion of the nonconforming use. Here, the nonconforming use is the fact that there are two principal buildings on a single lot.

The Sullivan's Island Z.O. § 21-150(F) discusses "two or more Principal Buildings on one lot," which is the situation before this Court, and states, in pertinent part:

In 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 under the following procedure:

(1) If a request to improve the property is received, the Zoning Administrator shall designate the Principal Building with the greatest livable square footage, including porches, as a conforming use and the other Principal Buildings as non-conforming.

(2) The designation of conforming and non-conforming Principal Buildings shall be recorded on the Certificate of Occupancy that is on file in the Town Hall.

(3) A Building Permit for improvements to the designated conforming Principal Building may be considered favorably, provided all other requirements of the Town Ordinances are met. **The non-conforming structure(s) shall be regulated in accordance with Subsections A-E.** [Emphasis added.]

Thus, the Zoning Ordinance states that requests for improvements to a non-conforming principal building like 2720B Goldbug are governed by Z.O. § 21-150 (A)-(E). (A) and (B) are pertinent to Boehm's requests for improvements:

A. Definition

A Nonconforming Use is a land use that was legally established but that is no longer allowed by the use regulations of the Zoning District in which it is located.

B. Expansion.

A Nonconforming Use shall not be expanded except to eliminate or reduce the nonconforming aspects.

Sec. 21-151, which is cited by Appellants as precluding the improvements to 2720B Goldbug even if it is a principal building, is not applicable as evidenced by the fact that "Nonconforming Structure" is defined as "any building or structure that was legally established but no longer complies with the density, lot coverage, floor area, height and dimensional standards of this Zoning Ordinance." 2720B Goldbug complies with the density, lot coverage, floor area, height and dimensional standards for a principal

building, so it does not fall within that section. However, even if it is applicable, it states at (B)(1) that "[s]tructural alterations, **including enlargements**, are permitted if the structural alteration does not increase the extent of nonconformity." In our case, the nonconformity is the residential use of 2720B. Even an enlargement of the structure will not increase the nonconformity unless additional residences are added. Boehm's requests do not contemplate the addition of another residence, and the structure will continue to contain only one residence, so there is no increase in the extent of the nonconformity.

Appellants cite to the case of Christy v. Harleston, 266 S.C. 439, 223 S.E.2d 861 (1976), in which the Supreme Court determined that the County of Charleston Zoning Ordinance, which was very different from the Town of Sullivan's Island Zoning Ordinance, prohibited a landowner from demolishing a building containing a nonconforming use and replacing it with a new building. The Town's Zoning Ordinance at § 21-150(D) expressly allows a landowner to rebuild a structure containing a nonconforming use if damaged or destroyed by anything other than intent or neglect. That case has no precedential value with regard to the Zoning Ordinance at issue in this matter.

Appellants also cite Historic Charleston Foundation v. Krawcheck, 313 S.C. 500, 443 S.E.2d 401 (Ct.App. 1994), as supporting their position that nonconforming uses should not be improved, expanded, or rebuilt. That case held that "[a]lthough the policy of the law is to restrict and gradually eliminate nonconforming uses, a municipality may by ordinance provide for the replacing of one nonconforming use with another nonconforming use." 313 S.C. at 505, 443 S.E.2d at 404. That case does not support

Appellants' position and, instead, supports Boehm who wants the Town to follow its Zoning Ordinance.

Under the terms of the Zoning Ordinance, Boehm is entitled to the issuance of building permits needed to make his requested improvements.

III. AS AN ALTERNATIVE SUSTAINING GROUND, THE ZONING ORDINANCE PROVISIONS RELATING TO EXPANSIONS OF NONCONFORMING STRUCTURE ARE VOID FOR VAGUENESS.

Appellants claim that the BZA decided "that the proposed structure alterations would expand the extent of the non-conformity." Appellants' Brief, p. 15. However, the BZA never issued any Order making such a decision. In both of its Orders, the BZA determined only that the structure was an accessory structure, a garage. BZA Orders of 4/10/14 and 2/2/15. As even the Zoning Administrator opined before Boehm appealed his decision:

> Paul,
> If you were requesting to modify a non-conforming principal building you could make an expansion of the roof only in compliance with Section 21-151.B (Nonconforming Structures-Structural Alterations). This would allow you to raise the roof only if you did not exceed the height limitation for a principal building, which is 38 feet in RS zoning. Thus, the structural alterations would only be allowed for a nonconforming principal building, including enlargements, provided they don't increase the degree of nonconformity (say if you only were deemed nonconforming only by way of setback encroachment).

T.R. at Exhibit 8.

As Mr. Boehm testified during the hearing, he has located many examples of allowed expansions of nonconforming secondary principal buildings on single family residential lots on Sullivan's Island. T.R., pp. 27-43. There appears to be much confusion as to the meaning of these provisions of the Zoning Ordinance.

If the Zoning Ordinance is vague with regard to whether a landowner may expand, raise the roof, extend the roof over an existing stairway, or attach a slat house deck to nonconforming secondary principal buildings, then the applicable provisions are void for vagueness. As the United States Supreme Court has stated in two different cases:

> A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Connally v. Gen. Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126 (1925).

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application....

Grayned v. City of Rockford, 408 U.S. 104, 108-109, S.Ct. 2294, 2298-99 (1972).

If the Court determines that the Zoning Ordinance is vague, then the vague provisions should be struck, and Boehm should be granted the relief that he requests.

CONCLUSION

As set forth above, the Town of Sullivan's Island Zoning Administrator and Board of Zoning Appeals misapplied, and largely ignored, the applicable provisions of the Town of Sullivan's Island Zoning Ordinance when passing on Boehm's requests for improvements to his structure located at 2720B Goldbug Avenue. Under the terms of the

Zoning Ordinance, that structure is, and can only be, a principal building. As such, the structure may be improved and expanded so long as the nonconforming use is not expanded. The nonconforming use is residential, and none of the requested improvements call for an expansion of the residential use.

Therefore, Boehm is entitled to an order affirming the Circuit Court and directing the Town of Sullivan's Island to issue the requested building permits.

Respectfully submitted,

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PROOF OF SERVICE

I do hereby certify that I have served all counsel of record in this action with a copy of the **Appellant's Initial Brief and Designation of Matter** specified by mailing a copy of the same by United States mail, postage prepaid, to the following addresses:

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