

22286

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

Trial Court Case No. 2015-CP-20-1103

Appellate Case No. 2015-001230

Paul Boehm..... Respondent,

v.

Town of Sullivan's Island Board of Zoning Appeals
And Town of Sullivan's Island.....Appellants.

RECORD ON APPEAL

VOLUME II

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COPY

TOWN OF SULLIVANS ISLAND
BOARD OF ZONING APPEALS
MARCH 13, 2014

DATE: March 13, 2014
TIME: 6 P.M.
LOCATION: TOWN OF SULLIVANS ISLAND
SULLIVANS ISLAND, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
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TOSI-BZA 0317

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APPEARANCES

BOARD MEMBERS PRESENT:

Carlin Timmons
Delores Schweitzer
Bachman Smith, IV
Elizabeth Tezza
Jimmy Hiers

STAFF MEMBERS PRESENT:

Randy Robinson
Joe Henderson
Ellen Miller

ON BEHALF OF THE LANDOWNER:

ROSEN HAGOOD, LLC
BY: ALICE F. PAYLOR, ESQ.
151 Meeting Street, Suite 400
Charleston, SC 29401

TOSI-BZA 0318

PROCEEDINGS

MS. TEZZA: Would anyone who was going to speak before the Board please stand and raise your right hand, if you're going to speak.

(Witnesses are sworn.)

MS. TEZZA: Thank you. Okay. We -- the variance request for 3001 Marshall Boulevard has been deferred to the next meeting.

MR. HENDERSON: That's correct.

MS. TEZZA: So we will work on Item E. Joe Henderson to present.

MR. HENDERSON: Okay. Very good. Thank you members of the Board. Our one and only agenda item is the administrative appeal.

This is regarding an appeal of several staff decisions as they relate to 2720-B Goldbug Avenue. The property owner, Paul Boehm, is the applicant.

What I would like to do is go through some of the site conditions, the existing site conditions, and then move on to staff position. Currently you have two structures on the property. You have 2720 and then 2720-B.

If you look at this photograph, you have a single-family detached home on the

1 right-hand side; and then on the left-hand side
 2 you have a detached garage, what staff perceives
 3 to be a detached garage. Here's a closer
 4 photograph of that. (Indicating.)

5 Within this detached garage, we have a
 6 legal but nonconforming apartment unit; and we
 7 have made this determination because we have two
 8 documents that were drafted, one in 1989, and
 9 then another one in 1991 that established that
 10 this is a garage with an apartment on top, which
 11 is what it states.

12 Apartment above garage, and then an
 13 inspection ticket from 1991 that states
 14 "apartment over garage." So these are signed by
 15 David Canty and Frank Tymco.

16 So because we made this determination
 17 that this structure, the garage, was an accessory
 18 structure, we made several determinations about
 19 Mr. Boehm's permit request. His first request
 20 when I first met him -- and that was October of
 21 2013, Mr. Boehm requested to raise the roof of
 22 this garage structure by 2 feet.

23 And so because this is in conflict of
 24 our zoning ordinance, Section 21-150 and 21-151,
 25 which addresses nonconforming structures and

1 that the folks living in the nonconforming
 2 apartment needed some cover when they go up
 3 steps carrying groceries, and it's raining. It's
 4 a reasonable sort of permit to issue.

5 When we went out on site to do an
 6 inspection, we realized that he put the posts
 7 outside of that building footprint so we issued a
 8 stop work order. In addition to that we noticed
 9 that there was several alterations made to the
 10 back deck. This alteration was the removal of
 11 handrails and actually structures, benches and
 12 planters; and you can see here's a grill was
 13 placed on top of what we permitted to be an arbor
 14 or a slat house.

15 And so none of these things had permits
 16 issued for it, and I can pass these around.
 17 (Indicating.)

18 MS. TEZZA: 'Cause I saw the copy.

19 MR. HENDERSON: So, again, recap, the
 20 staff position is very simple here. What
 21 Mr. Boehm has asked to do is to modify a
 22 nonconforming use by raising the roof, expanding
 23 the usable square footage of this legal and
 24 nonconforming use which is prohibited by our
 25 Zoning Ordinance; and he's also expanded the rc

1 nonconforming uses -- and I have a copy of this.
 2 That permit request was denied.

3 MS. PAYLOR: What was the section? I'm
 4 sorry.

5 MR. HENDERSON: 21-150 and 21-151. So
 6 that's 21-150 is actually nonconforming uses, and
 7 21-151 is nonconforming structures. So by
 8 raising the roof, he would be expanding the
 9 nonconforming use and also expanding the
 10 nonconforming structure. Again, this is an
 11 accessory structure garage.

12 Mr. Boehm also requested to expand his
 13 building footprint. In February of 2013 our
 14 staff issued a permit to establish a roof
 15 overhang to come over the steps that come up the
 16 side and then around the back of this structure.

17 What Mr. Boehm did when he constructed
 18 this is he actually placed the posts outside of
 19 the area that he showed on his plans. The only
 20 reason that we issued these permits to Mr. Boehm
 21 was so that -- was in, I guess, with the
 22 condition that he not expand beyond the existing
 23 building footprint.

24 So this is something that Randy wanted
 25 to offer a little flexibility for. He understood

1 overhang, and he's gone beyond the scope of those
 2 plans. He's also expanded the original footprint
 3 for the deck onto this slat house.

4 Now, we also required him to put up
 5 those handrails and keep them there because we
 6 don't think that the slat house has been
 7 engineered to withstand the weight of folks
 8 walking around on it; and there's some big open
 9 gaps underneath the -- the benches that were
 10 constructed, and we think that that's a safety
 11 hazard as well.

12 So in a nutshell, that's why we denied
 13 permits; and I'll defer to you, Madam Chair.

14 MS. TEZZA: Before we go further, I
 15 have a recusal statement from Jim Hiers because
 16 he lives contiguous to the property that we're
 17 discussing so he says he's -- he lives directly
 18 next door so I will accept this recusal, and
 19 Jimmy will step to the audience.

20 MR. HIERS: I -- I -- in researching
 21 this recusal, I asked the Town if -- if I could
 22 recuse myself and if I could also speak as a
 23 citizen. They got a ruling from the South
 24 Carolina Ethics Board that, in fact, I could
 25 recuse myself and speak as a citizen. So I'm

1 going to reserve the right to -- to speak as a --
2 as a citizen.

3 MS. TEZZA: And I will note that even
4 with that recusal, we do still have a quorum
5 present.

6 MR. SMITH: I'd like -- before we
7 continue just so it's all on the table, I had no
8 intention of recusing myself; but I do live
9 immediately across the street from this property.
10 I don't think it's going to affect my decision
11 one way or the other but -- and would let us know
12 where I stand and where we live.

13 MS. TEZZA: Thanks, Bachman. We will
14 now hear from the applicant.

15 MS. PAYLOR: Thank you. I'm Alice
16 Paylor. I'm here representing the owner of
17 2720-B, which is the dwelling that is above a
18 storage area; and this is an appeal. It's not a
19 variance request. So we are here appealing the
20 three rulings made by the Zoning Administrator
21 because they are not in accordance with the
22 Zoning Ordinance itself.

23 And it's our position that the Zoning
24 Ordinance controls, and that's what we're going
25 to do. And I do have a court reporter here

1 A. The main house, the next door structure,
2 which is a dwelling, and a car port.

3 Q. Okay. And -- and I believe that this is
4 a picture that the Town put in. On the right, is
5 that the main house? (Indicating.)

6 A. That's -- that's the main house on the
7 right.

8 Q. And on the second, is that another
9 dwelling? (Indicating.)

10 A. Another dwelling, yes.

11 Q. Okay. And main house, dwelling right
12 there. (Indicating.) Or secondary dwelling.

13 Did you talk to the Town of Sullivan's
14 Island regarding the impact of its Zoning
15 Ordinance on your ability to use this property
16 prior to your actually purchasing it?

17 A. Yes. I came to see Kent Prause, who at
18 the time was the Zoning Administrator; and I
19 asked Kent what it meant to have these two
20 separate dwellings on the property, and he
21 explained to me that the larger of the two
22 dwellings would be the conforming dwelling, and
23 the smaller of the two dwellings, which is the
24 called the garage apartment on the CO or
25 apartment above garage, would be the

1 'cause we're going to make a record; and if
2 there's an appeal, then we'll have a transcript
3 of exactly what was presented.

4 I'm going to call my first witness,
5 Mr. Paul Boehm, and he's already sworn in.

6 PAUL BOEHM,
7 having been first duly sworn, was examined and
8 testified as follows:
9

10 EXAMINATION

11 BY MS. PAYLOR:

12 Q. Paul, will you tell the Board who you
13 are. You can sit down.

14 A. I'm Paul Boehm. I live at 3209 Middle
15 Street; and I own 2720-B Goldbug next door to my
16 son, Ashley Haynes.

17 Q. Okay. And is that property part of a
18 condominium regime?

19 A. It is.

20 Q. And when did you condo it?

21 A. 2003.

22 Q. Okay. When did you buy the property?

23 A. In 2001.

24 Q. And what was on the lot that -- at the
25 time that you were considering purchasing it?

1 nonconforming dwelling.

2 Q. And would you have bought this if this
3 was an accessory structure, the second building?

4 A. I wouldn't.

5 Q. Would not.

6 A. I would not.

7 Q. Did you rely on what Mr. Prause told you
8 when you made your purchase?

9 A. Yes.

10 Q. And I'm going to hand you a notebook
11 that's got our exhibits in it, and these are the
12 originals which we'll provide. And in front of
13 y'all are two notebooks that I hope I can share
14 because that's all I have, but I'm going to refer
15 to the exhibits in there.

16 Look at Exhibit 1 in the notebook.

17 A. (Complies with request.)

18 Q. Can you tell -- did you get that out of
19 the files of the Town of Sullivan's Island?

20 A. Yes. Kent gave me this document when I
21 came to see him about the two structures.

22 Q. And one of them is a Certificate of
23 Occupancy; is that correct?

24 A. Correct.

25 Q. And it says, "apartment above garage";

1 correct?

2 A. Correct.

3 Q. Prior to Mr. Henderson's recently taking
4 the position that the second building was an
5 accessory structure, a garage, had anyone with
6 the Town ever told you that it was not a
7 principal building?

8 A. Never.

9 Q. Had you applied for a variance -- did you
10 apply for a variance in 2009?

11 A. Yes.

12 Q. And what -- and I've got that Exhibit 2
13 in there is the order that was in the file here;
14 and did Mr. Robinson make the presentation to the
15 Board at that hearing?

16 A. Yes.

17 Q. And did he rely on Section 21-151 when he
18 asked the Board to turn down your variance
19 request?

20 A. Yes.

21 Q. Did he rely on Section 21-150(f) when he
22 asked the Board to deny your variance request?

23 A. Yes.

24 Q. Okay. And I'm going to go to that
25 section of the Zoning Ordinance, and what is the

1 Q. Do you have a rental license to rent this
2 structure as a dwelling?

3 A. I do.

4 Q. Have you had one every year that you've
5 owned it?

6 A. I have.

7 MS. PAYLOR: Okay. And he brought them
8 with you if you have any questions about that.

9 A. 14 years.

10 Q. Does that structure have a separate
11 electric meter on it?

12 A. It does.

13 Q. Does this structure have a separate sewer
14 system? Tied into the sewer?

15 A. Tied into the city sewer.

16 Q. Is it used only for the storage of motor
17 vehicles and that type of thing?

18 A. It is not. It actually is used for
19 storage of my junk, furniture, et cetera.

20 Q. Okay. And has it ever -- to your
21 knowledge, has it ever been used as a garage for
22 the principal building, the other principal
23 building on the lot?

24 A. It has not.

25 Q. Have you made improvements to Building

1 title -- I'm going to hand it to you -- what is
2 the title of Section 21-150(f)?

3 A. Two or more principal buildings on one
4 lot.

5 Q. Okay. Does that discuss having a
6 principal building and an accessory structure on
7 a lot?

8 A. It does not.

9 Q. And was your variance request denied?

10 A. It was.

11 Q. And that's Exhibit 2. I'm going to move
12 all these into evidence.

13 Look at Exhibit 3.

14 A. (Complies with request.)

15 Q. Is that a picture of the structure?

16 A. Yes.

17 Q. Have you ever considered this to be a
18 garage?

19 A. Not just a garage. Obviously, a dwelling
20 over a garage.

21 Q. Okay. And do you -- what do you do with
22 the dwelling?

23 A. I rent it out. It's been rented by -- by
24 my sons initially for about five years and by
25 regular tenants for the last nine years.

1 this building, over the years of your ownership?

2 A. Yes, numerous improvements.

3 Q. Okay. And Exhibit 4 has got a stop work
4 order there which we'll talk about, but are these
5 some of the permits that you've had to do work on
6 2720-B?

7 A. Yes.

8 Q. How many construction permits have you
9 received for improvements to this nonconforming
10 principal building?

11 A. I've gotten seven. The next door
12 dwelling where Ashley lives now and owns has
13 gotten four or five; and then there's a couple of
14 permits that were issued for the overall
15 property, the dock, and the fence.

16 Q. If this were an accessory structure,
17 would you have received those permits?

18 A. I don't think so.

19 Q. If this were a garage, would you have
20 been entitled to a rental permit?

21 A. I would not.

22 Q. As the owner of the larger -- pardon me.

23 Did the Town ever issue a Certificate of
24 Occupancy providing that Building B was the
25 nonconforming principal building when the permits

1 were requested as the Zoning Ordinance requires
2 in Section 20-150?

3 A. They were not.

4 Q. Did you have -- was that because of
5 anything that you did?

6 A. Absolutely not.

7 Q. Did you ever prevent them from performing
8 their job under the Zoning Ordinance?

9 A. No.

10 Q. And I'll ask y'all to look at the Zoning
11 Ordinance, 20-150(f), says, "In the event that
12 two or more principal buildings occupy a single
13 lot, said occupancy shall constitute a
14 nonconforming use. One structure shall be
15 designated conforming and the other shall be
16 nonconforming under the following procedure: If
17 a request to improve the property is received,
18 the Zoning Administrator shall," it's mandatory,
19 "designate the principal building, the greatest
20 liveable square footage, including porches as a
21 conforming use and the other principal building
22 as nonconforming."

23 So which building had the most liveable
24 square footage?

25 A. Where Ashley lives now.

1 And he said it was not, but he said I
2 have a suggestion for something that you can do.
3 And that is you could construct a slat house
4 adjacent to the existing deck, and that would
5 serve the same purpose.

6 Q. Did you know what a slat house was?

7 A. Had no idea what a slat house was.

8 Q. Did you ask Mr. Prause what a slat house
9 was?

10 A. I did. And he told me it was a garden
11 structure that if I built it the same height as
12 the existing walkway/deck, that it would serve
13 the purpose of a deck.

14 Q. Okay. And so did you do that?

15 A. I did.

16 Q. Did you get a building permit for that?

17 A. I did.

18 Q. And did they inspect it and do all the
19 stuff that they had to do?

20 A. Yes. Randy inspected it.

21 Q. Okay. And that was an accessory
22 structure to what building?

23 A. To the Building B.

24 Q. Okay. And it's not used at all by the
25 primary building; correct?

1 Q. All right. Which is the building on the
2 right in that picture? (Indicating.)

3 A. Correct.

4 Q. Have you ever gotten another Certificate
5 of Occupancy other than the one saying it's an
6 apartment over garage?

7 A. I have not.

8 Q. Has -- when -- when the owner of 2720,
9 the main building, has applied, has there ever
10 been a -- have they ever been given a Certificate
11 of Occupancy?

12 A. Not to my knowledge.

13 Q. In 2001 did you build an accessory
14 structure adjacent to the rear deck on
15 Building B?

16 A. I did.

17 Q. Tell the Board how that occurred.

18 A. Well, Ashley had moved into the
19 apartment; and we spent some time there and
20 pretty well determined that that -- the back
21 walkway -- there was a walkway that came up
22 alongside the house and turned around to the back
23 and went down some back steps. Really wasn't
24 adequate to sit outside so I came to Kent to ask
25 him if it was possible to add onto the deck.

1 A. It is not.

2 Q. So let's look at Exhibit 5.

3 A. (Complies with request.)

4 Q. There's a plat, the first document, and
5 does it show the slat house back there?

6 A. It does.

7 Q. Okay. And it's -- it's adjacent to that
8 building, and it abuts to your walkway; is that
9 correct?

10 A. Correct, correct.

11 Q. And what was your purpose in building
12 that slat house?

13 A. For someone to use it as a deck.

14 Q. Okay. And how did the occupants get
15 access to it?

16 A. They actually climbed over the rail.

17 Q. Have you had discussions with Randy
18 Robinson about the slat house over the years?

19 A. Yes.

20 Q. Did he give you permission to screen in
21 the slat house?

22 A. He did. In 2010.

23 Q. Now, have you installed furniture on the
24 slat house roof?

25 A. Yes. It's treated, for lack of a better

1 word, garden furniture, something you could leave
2 outside.

3 Q. And why did you do that?

4 A. For people to be able to sit outside for
5 one; but also it occurred to me that we needed
6 some kind of protection around the perimeter of
7 the slat house deck, slat house roof to keep
8 someone from getting too close to the edge.

9 Q. So it was basically a safety rail?

10 A. It was.

11 Q. And have they told you you could not put
12 a railing around that slat house roof?

13 A. They have, yes.

14 Q. And what was the basis for that? Did
15 they ever tell you what that was?

16 A. No.

17 Q. So they told you you could put up a slat
18 house, and they could use it as a deck; but you
19 couldn't have a safety railing around it. Is
20 that correct?

21 A. Correct, that's correct.

22 Q. Has the Town ever provided any basis in
23 the Zoning Ordinance for your not being allowed
24 to have furniture on the slat house roof?

25 A. No.

1 A. He did. He said it was a garage, and I
2 couldn't elevate it any further.

3 Q. Okay. Did you contact Sullivans Island's
4 former building official, Frank Tymco, who issued
5 the Certificate of Occupancy in 1989?

6 A. I did.

7 Q. And did he send the letter to
8 Mr. Henderson?

9 A. He did.

10 Q. And is that Exhibit 7?

11 A. Yes.

12 Q. Okay. And in this letter, did he -- did
13 he say that there were two principal buildings
14 on -- at 2720 Goldbug?

15 A. He did. He said that.

16 Q. Okay. Did the Town -- did Mr. Henderson
17 change his mind about whether or not this was an
18 accessory structure or a principal building?

19 A. He did not.

20 Q. Now, has Mr. Henderson told you that if
21 Building B is a principal building, you would be
22 allowed to raise the roof under the Zoning
23 Ordinance?

24 A. He did tell me that.

25 Q. And did he do that in an e-mail?

1 Q. In early 2013 did you meet with
2 Mr. Robinson about elevating the roof of
3 Building B?

4 A. I did.

5 Q. And was he the Zoning Administrator at
6 the time?

7 A. He was.

8 Q. Okay. And what did he tell you?

9 A. He told me that I could elevate the
10 ceiling/roof by 2 feet. He suggested that I
11 contact Rusty Shumpert at Carolina House Movers
12 to get a quote to do it. He told me that he had
13 considered doing exactly the same thing at his
14 house in Mount Pleasant and had decided not to do
15 it, but I did contact Rusty. He came over,
16 looked at the dwelling, gave me an estimate; and,
17 unfortunately, I had not gotten the plans drawn
18 up in time before Joe became the new Zoning
19 Administrator.

20 Q. And then did you apply -- did you make
21 application with him?

22 A. I did make the application with Joe with
23 a set of plans, and he refused me.

24 Q. And was that because he said this was a
25 garage?

1 A. He did.

2 Q. And is that found in Exhibit 8?

3 A. Yes.

4 Q. Have you reviewed the Zoning Ordinance,
5 Mr. Boehm?

6 A. Yes.

7 Q. Is there a definition of "garage" in
8 there?

9 A. There is.

10 Q. Okay. And I think it's -- it's at the
11 very back, although exactly under several places;
12 but I'm going to show you it's page 98 and
13 Section 21-203.

14 But I want to read the preamble of 21.
15 This says, "Except as specifically defined
16 herein, all words used in the Zoning Ordinance
17 have their customary definitions. For the
18 purpose of this Zoning Ordinance, certain words
19 or terms herein are defined as follows:" And one
20 of them is "garage private." Can you read the
21 definition of "garage private" there?

22 A. "Accessory building or portion of a
23 principal building used only for the private
24 storage of motor vehicles, campers, boats, boat
25 trailers, and lawn mowers as an accessory use."

1 Q. Okay. Is Building B only used for the
 2 private storage of motor vehicles, campers,
 boats, boat trailers, and lawn mowers?
 4 A. No.
 5 Q. To your knowledge, has Building B ever
 6 been used as an accessory building for the
 7 conforming principal building on 2027 Goldbug?
 8 A. No.
 9 Q. Have you reviewed the prior versions of
 10 the Zoning Ordinance?
 11 A. Yes.
 12 Q. Do they all define "garage" in the same
 13 way?
 14 A. They do.
 15 Q. Do you rent out Building B?
 16 A. Yes.
 17 Q. And you have a building -- you have a
 18 business license; correct?
 19 A. Correct.
 20 Q. Would you be allowed to rent a garage to
 21 tenants to use as a dwelling?
 22 A. I would not.
 23 Q. Look at Section 21-138 of the code.
 24 A. (Complies with request.)
 25 MR. HENDERSON: I'm sorry. Could you

1 Q. So is that the nonconforming use?
 2 A. It is.
 3 Q. Have you ever proposed to expand the
 4 nonconforming use?
 5 A. No.
 6 Q. Have you ever requested that you be
 7 allowed to add another dwelling in this building?
 8 A. No.
 9 Q. Are there other properties on Sullivans
 10 Island that have more than one dwelling located
 11 on a single lot?
 12 A. Yes. Quite a few.
 13 Q. Has the Town allowed some of those
 14 property owners to increase the size of their
 15 nonconforming uses without obtaining a variance?
 16 A. They have.
 17 Q. Has the Town allowed some of those
 18 property owners to add onto the existing
 19 footprint?
 20 A. Yes.
 21 Q. All right. I'm going to ask you to look
 22 at Exhibit 9.
 23 A. (Complies with request.)
 24 Q. Did you -- this has to do with 2805
 25 Atlantic Avenue. Did you get a copy of the

1 repeat that?
 2 MS. PAYLOR: 21-138.
 3 Q. Okay. And this is in Article 15 entitled
 4 "Accessory Uses and Structures." Okay. That's
 5 21-138. And does this section that I just gave
 6 you, does that discuss accessory structures?
 7 A. It does.
 8 Q. Are accessory structures allowed to have
 9 a separate electric meter?
 10 A. They are not.
 11 Q. Does Building B have a separate electric
 12 meter?
 13 A. It does.
 14 Q. Are accessory structures allowed to be
 15 connected to the sanitary sewer system?
 16 A. They are not.
 17 Q. Is Building B connected to the sanitary
 18 sewer system?
 19 A. It is.
 20 Q. What is the nonconforming use with regard
 21 to Building B? What is its use?
 22 A. It's a dwelling.
 23 Q. Okay. And you're not supposed to have
 24 more than one dwelling on a lot; correct?
 25 A. Correct, correct.

1 Town's file regarding this property?
 2 A. I did.
 3 Q. Go through what we've got. Were there
 4 two dwellings on this single-family lot?
 5 A. There were two dwellings on the property,
 6 one the conforming dwelling, the other the
 7 nonconforming dwelling.
 8 Q. Okay. And at some point, I believe it
 9 was 1998, was a variance request presented to the
 10 Board of Zoning Appeals?
 11 A. It was.
 12 Q. And did the Board of Zoning Appeals
 13 determine that they didn't need a variance in
 14 order to elevate, add on, and improve this
 15 nonconforming use?
 16 A. That's correct.
 17 Q. Now, in here there's some pictures. I'd
 18 like you to kind of go through those. There's --
 19 there's a drawing that shows the house before.
 20 A. There's a drawing of the original
 21 structure, a before drawing. That was obtained
 22 from the Town.
 23 MS. PAYLOR: Go right to the next page.
 24 Go right to the next page, and you'll be -- no.
 25 I'll show you. I'm sorry. It's right after the

1 minutes. Okay. Certificate of Occupancy.
 2 Q. Okay. This is a plat showing -- or
 3 drawing showing the house before; right?
 4 A. Before, correct.
 5 Q. And there are some pictures also that
 6 are -- that are in here.
 7 A. There's some elevations that were done by
 8 the architect, although they don't show the house
 9 elevated as high as it is today; and there's a
 10 new layout plan approved by Kent, and then there
 11 are photographs of the structure being elevated
 12 and added onto. And then there's some
 13 photographs of the finished structure as well.
 14 Q. Do you know what the square -- the heated
 15 square footage of the original house was?
 16 A. It was, according to the County, 198
 17 square feet. Basically 10 by 20 so 200 square
 18 feet.
 19 Q. And do you know how many heated square
 20 feet there are in the house now?
 21 A. According to the County it is 485 square
 22 feet.
 23 Q. Okay. And was that house elevated?
 24 A. It was elevated above the required flood
 25 elevation in order to provide for parking and

1 A. No.
 2 Q. You're actually not asking for what they
 3 got.
 4 A. They actually got more heated square
 5 footage, and I'm not asking for that.
 6 Q. Okay. Let's look at 1851 Flag Street,
 7 which is Exhibit 10.
 8 A. (Complies with request.)
 9 Q. Did you get copies of the County's and
 10 the Town's files on this property?
 11 A. I did.
 12 Q. And is the first sheet there kind of your
 13 summary of what you found?
 14 A. Yes.
 15 Q. Okay. Tell the -- tell the Board about
 16 this -- is this another property that had two
 17 dwellings on it?
 18 A. It is. And this is the nonconforming
 19 structure. The -- the property was condoed in
 20 1987; and as a result of that, there was a file
 21 with the County for what the structure looked
 22 exactly like, the size of it, the elevation of
 23 it, in 1987 before Hurricane Hugo, the property
 24 was damaged in Hugo and was subsequently
 25 demolished and a new house was built.

1 storage underneath.
 2 Q. And if you look at the minutes of the
 3 Board of Zoning Appeals, they determined that
 4 because the footprint was not going to change,
 5 the number of bedrooms was not going to change,
 6 the size and quote enclosed space was not going
 7 to change, there was no variance needed.
 8 A. That's correct.
 9 Q. Do you -- with regard to your request, is
 10 your footprint as defined in the Zoning Ordinance
 11 rather than as defined by Mr. Henderson, is that
 12 going to change?
 13 A. It is not.
 14 Q. Is the number of bedrooms going to
 15 change?
 16 A. They are not.
 17 Q. Is the size and enclosed space going to
 18 change?
 19 A. Only the interior volume.
 20 Q. And what do you mean by "volume"?
 21 A. Going up 2 more feet would increase the
 22 cubic feet inside the dwelling.
 23 Q. Is your request any different than what
 24 the owners of 2805 Atlantic Avenue were allowed
 25 to do?

1 Q. And how -- and so -- I believe in all of
 2 this, Building A is the smaller of the two; is
 3 that correct? They call it Building A?
 4 A. Building A is the smaller of the two,
 5 correct.
 6 Q. How many stories was Building A in 1985?
 7 A. It was a single story.
 8 Q. Was it elevated off the ground?
 9 A. It was elevated a few feet.
 10 Q. In your review of the Town files, did you
 11 find any variance allowing the owners to increase
 12 the footprint of that nonconforming use?
 13 A. I did not.
 14 Q. Was there a variance allowing the house
 15 to be moved away from the property line?
 16 A. There was.
 17 Q. Did it address anything about any other
 18 changes?
 19 A. It did not.
 20 Q. And is that included in what was provided
 21 here, Exhibit 10?
 22 A. Yes.
 23 Q. How many square feet was Building A in
 24 1985?
 25 A. 804 square feet.

1 Q. And in 1990 a Certificate of Occupancy
2 was issued, which is in there. Did it provide
3 that the living area could not be expanded beyond
4 1,080 square feet?

5 A. It did.

6 Q. Was there any variance with regard to
7 allowing that expansion?

8 A. No.

9 Q. Did that Certificate of Occupancy allow
10 for a two-story frame house?

11 A. There is a two-story frame house there.
12 The Certificate of Occupancy doesn't address
13 whether it's two stories or not.

14 Q. Okay. Did you locate a variance allowing
15 the house to be elevated so that it would have
16 two stories?

17 A. No.

18 Q. Did you see any variance allowing the
19 square footage to be increased?

20 A. No.

21 Q. Have you found a plat from 2004, or did
22 you find an additional plat recently that showed
23 the much greater square footage than the 1,080?

24 A. Well, according to the County records --
25 I thought there was a plat here somewhere, isn't

1 property was condoed in 1987. So there's a set
2 of documents that exists that show the square
3 footage as it was in 1987. It was a single-story
4 dwelling, had 1139 square feet of heated
5 footprint, which is the total square footage.
6 Had a 213 square foot porch and a 160 square foot
7 deck.

8 Q. Was there a variance allowing these
9 increases?

10 A. Well, it's increased from that; but there
11 is no variance allowing it to be increased.

12 Q. Okay. So what -- so what has it been
13 increased to?

14 A. The current square footage is about 2200
15 square feet. It has a roof deck of 800 square
16 feet, covered porch of 192 square feet, and
17 additional deck of 133 square feet.

18 Q. Okay. And does -- and there's a picture
19 in here. Does that --

20 A. No, that's not it.

21 Q. Okay. And you could find no variance for
22 that; is that correct?

23 A. There's no variance for it.

24 Q. Okay. Let's go to Exhibit 12 which is
25 1121 Middle Street, Unit 5.

1 there? Yes, I'm sorry. Here it is.

2 The 2004 plat calls for Building A to
3 have 1456 square feet heated.

4 Q. Did you ever find a variance allowing the
5 increase from the 1,080 square feet from 1990?

6 A. No. And by the way, on this plat it does
7 call it existing two-story frame house.

8 Q. Okay. Have the decks and porches
9 changed?

10 A. They have increased.

11 Q. Any variances allowing those?

12 A. No.

13 Q. Do you know when those changes were made?

14 A. The roof deck was put on the property
15 with a new construction. The screened porch was
16 expanded with the new construction, and the last
17 deck that was added was done in 2006.

18 Q. Is this structure subject to the same
19 provisions of the Zoning Ordinance as is 2720-B?

20 A. It is.

21 Q. Let's go to Exhibit 11.

22 A. (Complies with request.)

23 Q. This is 956 Middle Street. Can you go
24 through that for us.

25 A. (Complies with request.) Again, the

1 A. (Complies with request.) Yes.

2 Q. Okay. What did you discover about this
3 dwelling? Is this also -- are there two
4 principal buildings on that one?

5 A. There are two buildings on the lot. This
6 is the nonconforming dwelling constructed pre
7 1977, pre Town Zoning Ordinances being passed.
8 It was damaged in Hugo but not destroyed. It was
9 condoed in 1987. So, again, there are drawings
10 that exist of the -- of the structure before it
11 was elevated above parking and expanded.

12 Q. And were -- was a second floor added?

13 A. There was already a second floor, but the
14 useable square footage was significantly
15 diminished because of the design of the house;
16 and I actually have some drawings here I could
17 show.

18 Q. Well, just tell them what happened.
19 They -- they added on --

20 A. They were allowed to increase the side
21 walls from about 2-and-a-half feet of height up
22 to 8 feet 9 inches. As a result of that, the
23 useable square footage approximately doubled.
24 The volume of the second floor completely
25 doubled.

1 Q. Was there a variance given for that?
 2 A. There was not.
 3 Q. And did the Town attorney work out a --
 4 basically a deal which is set forth in the letter
 5 in here that allowed this owner to do that?
 6 A. That's correct.
 7 Q. Has the owner also put a roof deck up?
 8 A. Yes. As part of the new construction
 9 when it was elevated, there was a roof deck added
 10 above the porch that's accessed from the second
 11 floor; and then there's an additional roof deck
 12 on top of the house that was also added.
 13 Q. Okay. And there's a brochure in here,
 14 apparently was on the market; and it shows the
 15 back with these decks and the spiral up to the
 16 other roof deck. Correct?
 17 A. Correct. It also shows the elevation of
 18 the second floor roof or ceiling so you can see
 19 what happened.
 20 Q. Was there a variance ever given for any
 21 of these changes to this nonconforming structure?
 22 A. There was not.
 23 Q. Let's go to Exhibit 13.
 24 A. (Complies with request.)
 25 Q. This is 2102 I'On Street. Can you tell

1 511 square feet of heated footprint and that
 2 after hurricane -- it was, again, damaged in
 3 Hugo. Demolished. After Hurricane Hugo, it was
 4 allowed to be increased to 620 square feet.
 5 Q. Okay. Was -- are you aware of any
 6 variance that was given?
 7 A. There was not one.
 8 Q. And let's look at the picture which is
 9 the second page of that. Does that look somewhat
 10 like your --
 11 A. Looks a lot like it to me.
 12 Q. Like an apartment over a garage?
 13 A. It sure does.
 14 Q. And that's a nonconforming dwelling;
 15 correct?
 16 A. It is, yes.
 17 Q. Okay. Let's look at Exhibit 15.
 18 A. (Complies with request.)
 19 Q. Which is 2523 --
 20 A. Myrtle.
 21 Q. -- Myrtle. Okay. Can you tell the Board
 22 about this property that has two dwellings
 23 located on it?
 24 A. Yes. This is the nonconforming secondary
 25 dwelling; and the only thing that they did

1 the Board what you found about this property that
 2 had two dwellings located on it?
 3 A. It started out in 1979 according to the
 4 County records as 254 square feet with a screened
 5 porch of 124 square feet and a sun deck of 41
 6 square feet. It was renovated in 1986 before
 7 Hurricane Hugo. It was also low to the ground,
 8 by the way.
 9 Renovated in '86 and expanded to a heated
 10 footprint of 510 square feet and had a sun deck
 11 of 59 square feet added to the property. Then
 12 after Hurricane Hugo, it was elevated well above
 13 the required flood elevation to allow for storage
 14 underneath; and the deck was expanded to 214
 15 square feet.
 16 Q. Was there a variance allowing any of this
 17 work?
 18 A. No.
 19 Q. All right. Let's go to Exhibit 14.
 20 A. (Complies with request.)
 21 Q. This is 2263 I'On. Tell the Board what
 22 you found about this property that had two
 23 dwellings located on it.
 24 A. The only records I found were from the
 25 County that showed that the original dwelling was

1 according to the County was add two small decks,
 2 front and rear, in 1990-'91, a four by eight size
 3 for an increase of the deck of 64 square feet.
 4 Q. Okay. And are you aware of any variance
 5 that they got to do that?
 6 A. They did not.
 7 Q. In your review of the Zoning Ordinance,
 8 have you found anything that would prohibit an
 9 owner from putting a deck onto an -- a
 10 nonconforming structure?
 11 A. I have not.
 12 Q. Let's look at Exhibit 17.
 13 A. (Complies with request.)
 14 Q. There's no Exhibit 16, by the way. This
 15 is 1820 Central Avenue. Tell the Board about
 16 this property that has two dwellings located on
 17 it.
 18 A. The original structure that became the
 19 secondary dwelling, nonconforming dwelling, was
 20 originally a commercial building that sat up on
 21 the front of the property. In 1983 the owner
 22 asked for permission to move it to the back of
 23 the lot and elevate it and make it a dwelling.
 24 So there was a variance request for the
 25 ability to move it to the back of the lot and

1 elevate it and make it into a dwelling. But it
2 started life as 800 square feet, was not to be
3 expanded, and since then the -- the property --
4 the heated footprint has expanded to 1176 square
5 feet, and a very large porch was added to the
6 front of the house of 520 square feet; and an
7 additional 100 square feet of deck was added to
8 the side of the house so it significantly
9 increased in size.

10 Q. So are there pictures in here? Is this
11 the way it looks now? (Indicating.)

12 A. That's the way it looks now, yes.

13 Q. And before it had no porches or decks on
14 it?

15 A. Had no porch or decks at all.

16 Q. Okay. Did you see any variance that was
17 granted to allow that?

18 A. No.

19 Q. Let's go to Exhibit 18, which is 1857
20 Flag Street.

21 A. (Complies with request.)

22 Q. Explain to the Board about this property
23 that has two dwellings located on it.

24 A. Well, this property is -- was a
25 nonconforming dwelling on the lot. It was

1 concrete blocks for storage.

2 In 1973 there was a Certificate of
3 Occupancy issued by the Town that referenced the
4 fact that it was a rental cottage behind the main
5 house. By March of 1979, according to Charleston
6 County, the ground floor had become living area.
7 The structure had become a duplex so basically it
8 doubled in size, and somewhere over the years a
9 second electric meter has been added to it. In
10 addition to that, a deck has expanded and a
11 screened porch was added underneath.

12 Q. And what is the total square footage of
13 the two-story dwelling now?

14 A. According to the County, it's 1860 square
15 feet; and the deck was enlarged by 138 square
16 feet.

17 Q. Okay. Did you see any evidence of a
18 variance allowing that?

19 A. There was not one.

20 Q. Did you get permission from the Town to
21 extend the existing roof on your Building B over
22 the existing stairs and walkways?

23 A. Yes.

24 Q. And is that Exhibit 20? Well, this is
25 the permit.

1 damaged in Hurricane Hugo so it was replaced. It
2 was a few feet off the ground initially and had
3 about 850 square feet of heated space.

4 The new dwelling was elevated above
5 parking. Approximately the same size; however,
6 the roof was allowed to be elevated so that you
7 could -- you could have a loft inside the
8 structure. So it increased in size. Overall
9 square footage increased by 410 square feet.

10 Q. And it's also got a loft in it, correct?

11 A. Has a loft.

12 Q. And did you see any evidence of a
13 variance with regard to this?

14 A. There was not one.

15 Q. Okay. And the last one we're going to
16 look at is Exhibit 19. 1856 I'On. Is this
17 another property on which two dwellings are
18 located?

19 A. It is.

20 Q. Tell the Board about this one.

21 A. Well, this structure in 1976, according
22 to Charleston County, was a -- a single-story
23 elevated structure, had a heated footprint
24 according to Charleston County of 940 square
25 feet. The ground floor was enclosed with

1 A. That's the permit, yes.

2 Q. So what has happened with regard to that?
3 Did you start building it?

4 A. We started building it. The footers were
5 put in last summer. They were inspected by Randy
6 and approved. I should say the side 6 footers
7 were put in, inspected by Randy, and approved.
8 Then in January the posts were installed for the
9 side 6 footers, and the 4 footers in the back
10 were dug. And Randy came and inspected the
11 existing six posts and their connection to the
12 footer and inspected the footers, the 4 footers
13 in the back.

14 Q. And did he approve those?

15 A. He did.

16 Q. What has happened since then?

17 A. Well, he approved them on Thursday, that
18 Thursday in January. We poured the footers the
19 next day. We installed the posts, the four
20 posts, in the back on Saturday; and then by
21 Monday, Randy posted a stop work order.

22 Q. Okay. And is that Exhibit 6? Did you
23 get a letter also from Mr. Henderson?

24 A. Yes.

25 Q. And there are -- and at this point he

1 also pointed out that the connection has been
2 made to the slat house, which was originally
3 denied by the Board of Zoning Appeals. A portion
4 of the handrail was removed from the second story
5 rear walkway. Wooden benches were constructed
6 and anchored. Wooden planters were installed.
7 Additional wood plank slats were installed onto
8 the roof of the slat house, which is now
9 illegally being used as a deck surface.

10 Does he cite any code section for that
11 being a violation of the Zoning Ordinance?

12 A. He does not.

13 Q. Did you subsequently obtain a letter from
14 architect Ron Denton to address the placement of
15 the roof posts?

16 A. Yes.

17 Q. And is that -- that's in Exhibit 20? The
18 last two pages of that?

19 A. Yes.

20 Q. And did he say in here that it was needed
21 for the structural integrity of the existing deck
22 walkway?

23 A. He did.

24 Q. And have you -- and that was submitted to
25 Mr. Robinson; correct?

1 the -- in the definitions it says "building
2 footprint," and it refers you to "building
3 coverage area principal."

4 Can you read that? It's the very first
5 one at the top of the page.

6 A. The lot area covered by the principal
7 building measured vertically downward from the
8 principal building's exterior walls to the ground
9 but excludes, one, accessory structures not
10 readily useable as living space; two, exterior
11 portions and decks; and, three, exterior stairs.

12 Q. So the footprint is from the walls of the
13 house, not from the -- the stairs and the
14 walkway; correct?

15 A. Correct, correct.

16 Q. Are you aware of any other definition of
17 "footprint" in there?

18 A. No.

19 Q. And I understand that you're appealing
20 basically three rulings. First of all, that
21 Building B, which is an apartment, which has a
22 storage area underneath, is a garage. That's not
23 true, is it?

24 A. That is not correct.

25 Q. You're also appealing and because it's a

1 A. Correct.

2 Q. And has anyone said that you can go
3 forward with your --

4 A. No, as a matter of fact.

5 Q. -- extension, roof extension?

6 A. As a matter of fact, I requested a review
7 of the new drawing that was provided by
8 Mr. Denton and was, again, turned down.

9 Q. Okay. And is that Exhibit 21, which is a
10 loose exhibit in there.

11 A. Yes.

12 Q. Is that the letter you got?

13 A. Yes.

14 Q. From Mr. Henderson?

15 A. Yes.

16 Q. And he says in here that "expanding the
17 footprint of this nonconforming structure is in
18 direct conflict with Zoning Ordinance Section
19 21-151."

20 Is that the basis for his denial?

21 A. It is.

22 Q. Okay. Is "footprint" defined in the
23 zoning code?

24 A. It is.

25 Q. All right. Let's go to it. Okay. In

1 garage, you can't raise your roof; correct?

2 A. Correct.

3 Q. If it's a principal building, you can
4 raise your roof; correct?

5 A. Correct.

6 Q. You're also appealing the furniture --
7 the order to remove the furniture; is that
8 correct?

9 A. Correct, yes.

10 Q. Are you aware of any portion of the
11 Zoning Ordinance which would not allow you to
12 have a railing or furniture on the roof of a slat
13 house?

14 A. I'm not.

15 Q. And has anyone ever pointed out one to
16 you?

17 A. No.

18 Q. And, lastly, are you appealing the
19 decision not to allow you to -- to use these roof
20 posts that are outside of the stairway and the
21 existing walkway?

22 A. Correct, yes.

23 Q. And is the basis for that because they
24 are not the existing walkway, and the stairway is
25 not part of the footprint?

1 A. Correct.

2 MS. PAYLOR: Okay. I don't have any
3 further questions. Do you have any questions for
4 Mr. Boehm?

5 MR. HENDERSON: Sure, if I could.

6 MS. PAYLOR: You got it.

7
8 EXAMINATION

9 BY MR. HENDERSON:

10 Q. Paul, did -- you mentioned you talked to
11 Kent Prause, the previous Zoning Administrator.

12 A. For years, yes.

13 Q. Did he ever issue you a permit to expand
14 any portion of this structure?

15 A. No.

16 Q. He didn't. Did he ever issue you a
17 Statement of Zoning Compliance or any other
18 zoning statement that -- that called this a
19 principal -- a second principal building?

20 A. No.

21 Q. Okay. Did Randy ever issue you a permit
22 to expand any portion of this structure?

23 A. The roof but I'm not sure what you call
24 that.

25 Q. Why did he allow you to ex -- to extend

1 Q. And the Zoning Administrator said that
2 was a good plan. Is that what you're saying?

3 A. He suggested it.

4 Q. Okay. When did you -- when did you
5 construct the bench and the planter, and when did
6 you cut out the rail so that you could access the
7 roof of the slat house?

8 A. Those were added about 1910 when we
9 did -- I mean, 2010, sorry. When we did the
10 improvements to the downstairs area as well as
11 the framing for the screen porch.

12 Q. Was that permitted, the framing for the
13 screen porch and the enclosure?

14 A. Yes.

15 Q. Why didn't you get permits for the
16 benches and the --

17 A. I didn't think I needed a permit for
18 those. Why would I need a permit to put
19 furniture up on a slat house?

20 Q. Why would you need permits to enclose the
21 bottom?

22 A. Because --

23 Q. Why would you do one and not the other?
24 Did you get permits to connect the slat house to
25 the deck?

1 this roof?

2 A. I requested it.

3 Q. Was it because he considered the -- the
4 steps part of the building footprint and,
5 therefore, he was applying what he thought was a
6 little flexibility in allowing you --

7 A. I couldn't tell you that.

8 Q. -- to go to the edge?

9 A. I couldn't tell you what Randy's intent
10 was. He just told me I could do a roof over the
11 walkway on the side and the rear of the building.

12 Q. Okay. When -- when we were talking about
13 the slat house, when permits were issued for the
14 slat house, were the rails part of that permit?

15 A. I didn't request rails.

16 Q. Okay. You just built the slat house;
17 right?

18 A. Uh-huh, yes.

19 Q. And then at what point did you remove the
20 handrails? You said that you and Kent talked
21 about building the slat house so that people
22 could jump over the rails and use it as a deck;
23 right?

24 A. I said that's how they accessed the slat
25 house. They went over the rail.

1 A. No.

2 Q. The request that was denied by the BZA?

3 A. No, no.

4 Q. You didn't get permits to connect that?

5 A. No.

6 Q. What did you request from the BZA in
7 2009?

8 A. I requested a roof over the slat house
9 and a rail around the slat house. I could --
10 actually requested that the entire slat house
11 roof be able to be screened in.

12 Q. I believe as part of that request in
13 2009, it was to connect the slat house to the
14 deck, if I'm not mistaken.

15 MR. ROBINSON: Probably to make it a
16 deck.

17 MS. PAYLOR: Okay. He can be a witness
18 in a minute.

19 MR. HENDERSON: Okay. So, I have two
20 more things. I just want to kind of go through
21 very carefully here with y'all. Under
22 nonconforming structures, there's been a lot of
23 discussion about --

24 MS. PAYLOR: I'm presenting my case
25 now. You can do your closing at the end. I know

1 you're not a lawyer. I'm just telling you
2 because I got a couple more witnesses.

3 MR. SMITH: With all due respect, it's
4 not a court of law either. You've elicited a not
5 of hearsay. Right now we're going down a path of
6 everyone else got to do it. So I want to do it.
7 Let's stick to what we've got here.

8 MR. HENDERSON: And I know that's just
9 a voluntary -- there's no cross-examination
10 allowed. It can be voluntary from what I
11 understand from the Rules of Procedure.

12 MS. TEZZA: Yes.

13 MR. HENDERSON: Okay. Just to recap,
14 in our Ordinance under nonconforming structures,
15 it states verbatim, "Structural alterations
16 including enlargements are permitted if the
17 structural alteration does not increase the
18 extent of the nonconformity."

19 Mr. Boehm's request is to take his
20 structure with a roof and raise that roof up 2
21 feet. So you said it yourself. You're
22 increasing the volume of that; correct?

23 MS. TEZZA: Yes.

24 MR. HENDERSON: So what's keeping him
25 from going up 10 feet? If you do go up 10 feet,

1 on the island and then build your big house
2 somewhere else on the lot.

3 And to, also, allow -- I have some
4 photographs here. And allow historic properties
5 that have multiple dwellings on them. I'm
6 thinking specifically of Steve Herlong's property
7 at 22 -- I'm sorry. 226 Station 19, I believe.

8 There are three structures on that. Historically
9 there have always been three dwellings on there.

10 MS. TEZZA: Since 1902.

11 MR. HENDERSON: I don't think that it's
12 the intent of the ordinance to allow new
13 constructions to be considered to be allowed to
14 have multiple principal buildings on them, and I
15 would -- I would just leave you with one more --
16 one more item here, and if I could ask one more
17 question to Paul Boehm.

18 BY MR. HENDERSON:

19 Q. Mr. Boehm, you have a -- a business;
20 correct?

21 A. Yes.

22 Q. You have a business. Is that on Isle of
23 Palms? What's the name of that business?

24 A. It's East Island Real Estate, and it's
25 licensed on both Isle of Palms and Sullivans

1 then what are you doing to the inside space of
2 that structure? Can you then put in a loft?
3 Could you then put additional shelves, or could
4 you put additional bunk beds? I don't know.

5 This I would think would be an increase
6 to the extent of the nonconformity, and I think
7 the key point that you're making is that
8 increasing the height is not an increase in the
9 extent of the nonconformity. I would disagree.
10 I think height is very relevant here.

11 And so I -- without having the
12 documentation that calls this a second principal
13 building, having the documentation that calls
14 this a garage from Town staff, Mr. Tymco that
15 contradicts himself later in the letter that he
16 sent to me and then calls it a principal
17 building.

18 I'm going with the official document.
19 In fact, I think that's hearsay. Is that the
20 term? Regarding the historic -- the intent of
21 allowing second principal buildings on one
22 parcel, I think the spirit of the Ordinance --
23 and correct me if I am wrong, Randy, is to allow
24 two situations. A special exception to help
25 preserve existing cottages and smaller structures

1 Island.

2 Q. You mentioned that you bought it in 2001,
3 this structure in 2001?

4 A. Correct.

5 Q. And you bought it because you thought it
6 was a second house basically; right?

7 A. Correct.

8 Q. Second principal building.

9 A. Correct.

10 Q. Have you ever thought otherwise?

11 A. No.

12 Q. Have you ever thought about this
13 structure in another way?

14 A. No.

15 Q. You haven't. Have you ever seen this MLS
16 listing? (Indicating.)

17 MR. HENDERSON: What I've just pointed
18 out is an MLS listing that states -- and it's
19 referring to this structure, the garage, and it's
20 listed by Paul Boehm of East Island Real Estate
21 under PaulBoehm0@Yahoo.com. Has his contact
22 information.

23 States, when giving remarks about this
24 structure, he states, verbatim, "Because it is
25 the second structure of the lot, it cannot be

1 enlarged but otherwise you can doll it up inside
2 and out. The lower level contains a garage for
3 two cars, a storage workshop area for your
4 favorite hobbies." And this was -- there are
5 some dates on the back of this MLS listing, and
6 it begins at 2008 and goes to 2012.

7 So this is a fairly recent note that
8 was made here. And from what I understand of
9 MLS, it's a very exclusive ability to tap into
10 this. You have to be a real estate agent, and so
11 I would ask if you've ever seen this.

12 A. Oh, sure, I've seen it.

13 Q. Did you type this?

14 A. No. Probably Bradley did, my son
15 Bradley.

16 Q. So somebody in your office believed that
17 this was a garage secondary structure that can't
18 be enlarged?

19 MS. PAYLOR: Object to the form.
20 That's not what it says anyway.

21 A. That's not what it is. It's a
22 dwelling -- two-bedroom dwelling at the top of a
23 listing with 1,076 square feet. It's not saying
24 it's a garage. It's saying it has a garage
25 underneath the dwelling.

1 Q. Would you think "enlarge," what does that
2 mean? Does that mean expanding?

3 A. "Enlarge" to me means expanding the
4 footprint.

5 Q. The footprint being --

6 A. You couldn't add on sideways and increase
7 the heated footprint. That's what it meant to
8 me.

9 MR. HENDERSON: Okay. Randy do, you
10 have any issues?

11 MR. ROBINSON: You know, the only --
12 the only thing I'd like to say here is, you know,
13 Paul made some statements about what I said and
14 also about some other structures. You know, that
15 was -- and I don't know exactly how to say it
16 except that that was history according to Paul.

17 You know, if you -- if we dissect every
18 different property and every different situation,
19 they're all different. You know, he stated that
20 I was going to raise my roof at my house and
21 have, you know, company do it. I never intended
22 to raise the roof to the house. I intended to
23 raise the ceiling in my house.

24 You know, the way Paul interprets and
25 the way I interpret it could be two different

1 things. And until a permit is applied for,
2 reviewed, and approved, you don't have approval.
3 You can come talk to me about something, and I
4 will tell you what I think; but then until it's
5 applied for and approved, we don't know if we're
6 on the same page, you know. So I think that's
7 really about all I have to say.

8 MS. TEZZA: I'm going to ask one
9 question before we'll let you finish. Most of
10 the -- the properties in the exhibits seem to be
11 pre Hugo historic properties, historically had
12 dependencies. The history of this garage, I
13 believe, is such that we do not believe it
14 predates Hurricane Hugo, but is there an aerial
15 photo?

16 MR. HENDERSON: That's correct, we do
17 have some aerials.

18 MS. TEZZA: Because this garage -- I
19 just want to point out the fact that this was not
20 a structure that existed before Hurricane Hugo.

21 MR. HENDERSON: We don't have any
22 evidence that shows we -- we asked several of the
23 long-time residents of the neighborhood if they
24 remember a structure being there. Nobody could
25 tell us there was one.

1 MS. TEZZA: We know that one was built
2 post Hugo. We know that, but we don't know that
3 there was a structure before Hugo.

4 MR. HENDERSON: That's correct. So
5 what I've done is I've pulled a photograph from
6 just before. This is from February of 1989. Of
7 course, Hugo was September of 1989. And we can't
8 identify -- if you notice there's a house there.
9 There's no garage. This is Goldbug so that's
10 kind of the house that I identified.
11 (Indicating.)

12 MS. TEZZA: Thank you. Okay. Before
13 we ask any questions, I'll ask Alice to go ahead
14 and do a summation or a final statement; and then
15 we I'll ask the -- I'll ask the Board if they
16 have any questions. And/or should we take
17 statements from the -- does anybody else in the
18 audience want to make a statement or -- about
19 this property?

20 Both of you do. Okay. Alice, why
21 don't you go ahead. Then we'll take those
22 statements. Then the Board will ask any
23 questions.

24 MS. PAYLOR: Okay. I would actually
25 would like to call Mr. Henderson as a witness, if

1 that's okay.

2 MS. TEZZA: You may ask him any
3 question you want.

4 MS. PAYLOR: Thank you very much.

6 EXAMINATION

7 BY MS. PAYLOR:

8 Q. How long have you been with the Town of
9 Sullivan's Island?

10 A. About nine months.

11 Q. And you weren't here in the 1990s, 1980s
12 when 2027 Goldbug was constructed; correct?

13 A. No.

14 Q. And what is your understanding of what
15 was there?

16 A. When?

17 Q. When it was first built. What was it?
18 Was it ever something different from what it is
19 today?

20 A. Well, this -- when it was built, the
21 document says that it was a garage.

22 Q. Well, it says "apartment above a garage."
23 Does it not?

24 A. Uh-huh.

25 Q. So it doesn't say it's a garage. Says

1 Ordinance where it says that a garage can be part
2 of a principal dwelling, of a principal building?

3 A. I don't know specifically whether it says
4 that.

5 Q. Well, it does. I just have to find it.
6 Here it is. Section 21-203.

7 A. Is that definitions?

8 Q. Yeah. Right back there. (Indicating.)

9 A. I'm sorry. What are we defining?

10 Q. Garage.

11 A. Garage?

12 Q. Uh-huh.

13 MR. SMITH: Or rather whether it can be
14 part of a principal building is the question.

15 Q. Well, let's look at the definition now.
16 Are you to interpret the Zoning Ordinance, is
17 that your --

18 A. Yes, ma'am, uh-huh.

19 Q. Okay. So when you look at the
20 definition, it says, "an accessory building or
21 portion of a principal building." Isn't that
22 right? A garage?

23 A. Uh-huh.

24 Q. You deny that's what that says?

25 A. No. I -- I agree that it says an

1 "apartment above garage"; correct?

2 A. That's right, which infers that it's a
3 garage and not a house; right?

4 Q. Any way you want. I mean, I understand
5 where you -- I understand what you're saying. I
6 don't believe it's in accordance with the Zoning
7 Ordinance.

8 A. Wouldn't there be a CO for a house if it
9 were not a garage?

10 Q. Well, it's a CO for an apartment, isn't
11 it?

12 A. Okay.

13 Q. And isn't an apartment a dwelling?

14 A. An apartment is a dwelling but this -- if
15 it were as you said a principal building,
16 wouldn't this be a CO for a house? I mean, it
17 would be a new construction; right?

18 Q. I'm asking you questions. Is that what
19 your opinion is? It would have to be a house on
20 there? Is that what you're saying?

21 A. To be a principal building? To be
22 considered a principal building and not a garage?
23 It would not -- it would have to not say
24 "garage."

25 Q. Okay. Are you aware in the Zoning

1 accessory building or a portion of a principal
2 building.

3 Q. Okay. So it can only be two things;
4 right? Either an accessory building or a portion
5 of a principal building; correct?

6 A. I suppose, yeah.

7 Q. Okay. Thank you.

8 And if you look at the definition of
9 "accessory structures," they cannot have an
10 electric meter, can they? You want to go look
11 under the accessory structure?

12 A. I think if they're newly constructed, no,
13 they can't have an electrical meter.

14 Q. Well, this is -- this is what was in
15 effect when this was constructed in 1989-'90;
16 correct? An accessory structure could not have a
17 separate electrical meter?

18 MR. ROBINSON: Just for history
19 purposes, we -- we have not allowed a second
20 meter on a lot since 1975-'77 when our original
21 Zoning Ordinance was put into place.

22 MS. PAYLOR: So for an accessory
23 structure, it specifically says in the Zoning
24 Ordinance that an accessory structure shall not
25 have an electric meter; correct?

1 MR. ROBINSON: A separate meter, and it
2 has said that since 1975-'77.

3 Q. Okay. And you agree with me that this
4 apartment has a separate electric meter; correct?

5 A. That's what you said. I think you
6 confirmed that it does have one, yes. I haven't
7 confirmed that.

8 Q. You don't -- but he's -- he's testified
9 to that. You don't have any reason to not
10 believe that.

11 A. I don't have any reason to doubt him, no.

12 Q. And an accessory structure cannot have --
13 be -- be connected to the sewer system, can it,
14 under the Ordinance?

15 A. Not legal, but, yeah, it's a
16 nonconforming structure, right.

17 Q. No. It's not a nonconforming structure.
18 It's a nonconforming use. Well, maybe it's a
19 nonconforming structure.

20 A. It's definitely a nonconforming
21 structure.

22 MS. TEZZA: It's a nonconforming use of
23 a nonconforming structure is actually what it is.

24 A. It's both. It can actually be both.
25 They're not mutually exclusive.

1 MS. TEZZA: That's my read.

2 Q. Okay. Have you looked at the definition
3 for "principal building"? How about looking at
4 Section 21-25.

5 A. (Complies with request.)

6 Q. Do you see that? 21-25?

7 A. Building principal, yeah.

8 Q. Okay. Let's look. There's definitions
9 under Subsection A. Do you see that?

10 A. You're looking at "building principal."

11 Q. I'm looking at "principal building
12 coverage area," Section 21-25.

13 A. Oh, you're looking in the body of the
14 Ordinance now.

15 Q. I am.

16 A. I'm sorry. I'm trying to keep up with
17 you.

18 Q. I'm sorry. Actually it says it in both
19 places. That's on page 16.

20 A. (Complies with request.) Okay.

21 Q. Have you got that? And it's got
22 definitions, and it's got a definition of the
23 principal building. "A building or buildings in
24 which the principal use of the lot is conducted."

25 Would you agree with me that the

1 principal use of 2720 Goldbug is residential?

2 A. Yes.

3 Q. Okay. And would you agree with me that
4 the use of that apartment is residential?

5 A. Yes.

6 Q. So that is a principal building under
7 this Ordinance; correct?

8 A. No, not necessarily. No, it -- it could
9 be -- we have lots of structures on the island
10 that have illegal uses. They could be an illegal
11 use. It could be a nonconforming use.

12 Q. It's a residential use, isn't it?

13 A. So there's nothing --

14 MR. ROBINSON: Anything -- anything --

15 MS. PAYLOR: Randy, I'll get to you in
16 a minute.

17 MR. ROBINSON: Thank you.

18 A. He can't help me out? I mean, this isn't
19 a court of law. We're staff.

20 Q. Y'all go for it.

21 MS. TEZZA: Excuse me. This isn't a
22 court; and so if Randy has something germane to
23 the discussion, I'm going to let him answer.

24 MS. PAYLOR: I apologize. I'm used to
25 being in court. If I say stuff like that, it's

1 just my habit. I apologize.

2 MR. HENDERSON: I think it's a
3 voluntary cross-examination from your rules of
4 procedure so I, you know.

5 MS. TEZZA: So Randy predates Joe, and
6 that is why it's important for him to be here
7 because many statements have been made about what
8 Randy said; and so that's why they're working
9 together on this. It's the staff supporting the
10 Board of Zoning Appeals.

11 MR. HENDERSON: But to answer your
12 question, we have on this island, I recently did
13 some GIS work, Geographic Information System
14 dropping dots on every illegal and nonconforming
15 extra dwelling on a lot. We got lots of them.
16 We have lots of people using structures on this
17 island as dwelling units that are illegal, that
18 they have knowledge about; and that's why it's so
19 critical that we get this right. Alice, that we
20 don't allow the increase of these uses and the
21 expansion of these uses. If we overturn this
22 decision, then that sets the standard for doing
23 it across the board for all of these structures.

24 If you have a garage on your property
25 and 20 years down the road, five Zoning

1 Administrators later, probably ten, you know,
2 it -- it's just we need to hold the line with --
3 with not allowing this use to expand, not
4 allowing this footprint to expand. And that's --
5 that's why this is critical for us.

6 Q. And what's the use? Residential?

7 A. It's a legal nonconforming residential
8 use.

9 Q. Okay.

10 A. Yeah.

11 Q. It's residential.

12 A. Uh-huh.

13 Q. And it's legal; right? This isn't
14 illegal as you were just saying; correct?

15 A. Well, yeah. It's -- it has a Certificate
16 of Occupancy issued in 1989, which is strange
17 because all of them were issued in 1977.

18 Q. These are the Town's records. Mr. Boehm
19 did not have anything to do with this property in
20 1989.

21 A. Okay. Well, we have a CO. That's right.

22 Q. So you have a Certificate of Occupancy
23 showing apartment above the garage. So you're
24 not telling the Board that this is an illegal
25 use, are you?

1 Q. And is there anything in the Zoning
2 Ordinance which leads you to that conclusion?
3 there anything talking about expanding by going
4 up? Aren't there lots of cases in here?

5 A. There's lots of case law out there. I'm
6 not an attorney, but there's lots of case law out
7 there that would describe that the increase in
8 height is an intensification of a use and that's
9 a -- that's very common in zoning regulation.
10 After all, that's why we have maximum heights for
11 structures.

12 Q. Okay. And that's why I'm asking you
13 what's in your Zoning Ordinance, not --

14 A. We have maximum heights in our Zoning
15 Ordinance.

16 Q. -- and not what is in anybody else's
17 Zoning Ordinance because this is what you're
18 supposed to interpret; right?

19 A. We only have maximum heights in the
20 Zoning Ordinance. Why do we have a limitation on
21 height?

22 Q. And a nonconforming -- a legal
23 nonconforming structure like this dwelling with
24 the garage underneath it can have a deck on it,
25 can't it? Is there any prohibition in the Zoning

1 A. No. He can continue this legal but
2 nonconforming use.

3 Q. Okay.

4 A. It's nonconforming.

5 Q. And the use is residential; correct?

6 A. That's right, uh-huh.

7 Q. Okay. Tell the Board how he's expanding
8 the residential use by raising the roof 2 feet.
9 Is he adding any bedrooms on?

10 A. He's -- he's increasing the volume and
11 the square footage, the useable square footage in
12 that dwelling.

13 Q. What useable square footage? The 2 feet
14 that goes up?

15 A. Well, when you say "square footage,"
16 you're taking a measurement length by width;
17 right?

18 Q. Correct.

19 A. So you don't --

20 Q. Where do you increase?

21 A. When you walk around in a space, you're
22 not sliding around on the floor. You're up top;
23 right? So you're using what's above the floor.
24 So if you raise the roof, you're increasing the
25 area that you can use within that dwelling unit.

1 Ordinance from having a deck on it?

2 A. On a legal nonconforming use?

3 Q. Legal nonconforming dwelling structure.

4 A. There would be a prohibition on expanding
5 the structure or anything attached to that
6 structure.

7 Q. Have you --

8 A. That's why --

9 Q. Have you looked in the Zoning Ordinance
10 for that? Is there any prohibition in the Zoning
11 Ordinance from having an accessory use, an
12 accessory structure on an accessory use to a
13 legal nonconforming dwelling?

14 A. It doesn't specifically call that out,
15 but we just went through the section that
16 describes legal -- or nonconforming structures
17 which you guys admit it's a nonconforming
18 structure; right?

19 Q. It's a legal --

20 A. You can't expand a nonconforming
21 structure, period.

22 Q. It's a legal nonconforming structure --
23 well, where does it say you can't expand the
24 structure? Where does it say you can't expand
25 the use? And I'll -- I'll call you to 21-150.

1 A. I'm looking at 151.

2 Q. 151. Whatever it is.

MR. SMITH: 151 is nonconforming
4 structures. 150 is nonconforming uses.

5 A. That's right. Structural alterations
6 including enlargements are permitted if the
7 structural alteration does not increase the
8 extent of nonconformity.

9 I would say that when you build a wall
10 out to expand that square footage or if you
11 expand the roof, you increase the height of the
12 roof, then you increase the volume or the useable
13 area within that dwelling; and that's an
14 increase, in my interpretation.

15 Q. Well, let's go back to -- okay. Are you
16 in 150 or 151?

17 A. 151.

18 Q. Let's go back to 150 because these are
19 nonconforming uses; correct?

20 A. They're both nonconforming use and --

21 Q. And in 150 it talks about two or more
22 principal buildings on one lot; correct? (F).
23 Do you see that?

24 A. That's right.

25 Q. And it says -- in (f) talks about having

1 purely legal interpretation of what your Zoning
2 Ordinance says, and -- all right. Let me go to
3 your letter that you sent. That's Exhibit 21.

4 Okay. Is that a letter that you sent to
5 Mr. Boehm on March 10?

6 A. Yes, it is.

7 Q. And in here you say, "Expanding the
8 footprint of this nonconforming structure is in
9 direct conflict with Zoning Ordinance Section
10 21-151."

11 A. Uh-huh.

12 Q. Now, "footprint" is defined in Section
13 21-25 as well as in the definitions section;
14 correct?

15 A. Yes.

16 Q. And the footprint does not extend to the
17 decks, walkways, or stairs, does it?

18 A. It doesn't, and, therefore, we probably
19 shouldn't have issued the permits for the roof
20 extension to go over your stairs either. So I
21 think that may have been an error on our -- my
22 part, our part.

23 Q. So you're in error in this because the
24 footprint does not include that; correct?

25 A. Again, I think that we were just trying

1 two or more, and it says a building permit for
2 improvements to the designated conforming
3 principal building may be considered favorably so
4 that would be --

5 A. The house.

6 Q. -- the regular house; correct? Provided
7 all other requirements of the Town Ordinances are
8 met, the nonconforming structures shall be
9 regulated in accordance with Subsections A
10 through E of Section 150; correct?

11 A. (Nods head.)

12 Q. So if you look, the only one that talks
13 about it is B; correct? Expansion.

14 A. Uh-huh. But, again --

15 Q. A nonconforming use shall not be expanded
16 except to eliminate or reduce the nonconforming
17 aspects.

18 A. But you've never been issued a
19 Certificate of Zoning Compliance for this to be a
20 principal building.

21 Q. And whose responsibility was that?

22 A. The Town's. If it really was a principal
23 building, but it's a garage. That's why it
24 wasn't issued.

25 Q. Okay. All right. I'm -- this is a

1 to work with Mr. Boehm and -- we were -- because
2 the decks in our Ordinance are considered
3 impervious surfaces; right? We were considering
4 that area, the steps and the rear deck, as an
5 impervious surface for the footprint. Isn't that
6 why we were trying to work with him to give him
7 the expansion over the stairs?

8 MR. ROBINSON: Oh, yeah.

9 A. But, you know, I -- I think that you
10 could -- you could say, you know, by using our
11 definitions, taking the more -- more strict
12 interpretation of the Ordinance, someone would
13 have probably denied your request to extend that
14 roof over your stairs.

15 Q. Under what provision of the Zoning
16 Ordinance would that be prohibited?

17 A. Under the nonconforming structure
18 section.

19 Q. What does it say?

20 A. Structural alterations, including
21 enlargements, are permitted if the structural
22 alteration does not increase the extent of the
23 nonconformity. I guess the extent of the
24 nonconformity would be, you know.

25 Q. It's the dwelling.

1 A. Right. The usability of that structure
2 so you could probably deny the permit based upon
3 that. But, again, I think that we are trying to
4 make an effort to -- to work with Paul on that --

5 Q. And --

6 A. -- when we issued the permit.

7 Q. -- how was putting a roof over the
8 walkway and the stairways an extension of the
9 nonconformity? How could that possibly be an
10 extension of the nonconformity?

11 A. Well, it's a nonconforming structure,
12 nonconforming use. I think the stairs going up
13 the side to the -- to the entrance, that's a
14 characteristic of the use because you have folks
15 that are using that structure. Accessing the
16 structure there, and you're -- and you're
17 building on. You're intensifying that staircase.
18 Right? You're making it stronger. You're making
19 it last longer. You actually replaced all the
20 stairs; right? In that permit. Didn't you
21 replace the staircase?

22 MR. BOEHM: Yes.

23 MR. HENDERSON: Okay. So
24 intensification of the use, rebuilding it, you're
25 basically allowing that nonconforming structure,

1 a neighbor, even though I'm in the neighborhood
2 I'm speaking -- I am a very strong proponent of
3 the Ordinance for the Town. I am no longer on
4 the Planning Commission, but I was for seven
5 years so I don't necessarily understand all the
6 legal, but I -- I really feel very strongly about
7 the Ordinance.

8 And the thing that -- that concerned
9 me, which is something that you will have to
10 determine and not me -- if, indeed, this is
11 enlarging the usability by using -- expanding the
12 deck over the slat house, what precedent it would
13 set as far as interpretation of Ordinance.

14 We have restaurants that are
15 nonconforming structures, nonconforming uses; but
16 they then say, hey, have more decks. We have
17 garages or apartments over garages. We have
18 houses that are nonconforming structures.

19 And I guess my concern is if, once you
20 start reinterpreting without rewriting, which can
21 be done by Council and can be done through
22 Planning; but if you start edging away at the
23 Ordinance, then you just open a very large can of
24 worms possibly.

25 MS. TEZZA: Thank you for your

1 the stairs are part of the structure, to live
2 longer so I think that would be an
3 intensification. I don't even know if the stairs
4 should have been rebuilt either if it's a
5 nonconforming use.

6 Q. So you're going to take a position that
7 you cannot maintain a legal nonconforming use?

8 A. You can maintain it; but reconstruct it,
9 I think, is something different.

10 Q. Replacing the stairs.

11 A. Why don't you tear the whole house down
12 and build it back.

13 Q. You're saying that cannot happen? I just
14 want to be clear on, you know, how you're
15 interpreting the Zoning Ordinances.

16 MS. PAYLOR: I have no further
17 questions.

18 MS. TEZZA: Okay. Is there any public
19 comment?

20 MR. HENDERSON: Oh, here are your
21 exhibits back. I'm sorry.

22 MS. TEZZA: If you will state your name
23 and address for the record, please.

24 MS. GEAR: My name is Aussie Gear. I
25 live at 2702 Goldbug. I'm not really speaking as

1 comments.

2 MS. GEAR: Thank you.

3 MS. TEZZA: Jimmy.

4 MR. HIERS: Yes. I'm James Hiers. I
5 live next door at 2714 Goldbug, and I'm going to
6 violate the first rule of a good public speaker.
7 I'm going to read part of a letter because I
8 think it's important, and we live at 2714 Goldbug
9 directly next door to 2720 Goldbug. We'd like to
10 make the following comments regarding the
11 application to overrule it.

12 We would ask the Board not to grant the
13 request to overrule the Zoning Official who
14 denied the application regarding 2720-B, and I
15 guess I'd like to state I'm really going to make
16 it clear to the Board; and for the record, I'm
17 speaking as a next-door neighbor as a citizen,
18 not as anyone that's ever been on the Board for
19 the Town.

20 We've lived in our house since 1992,
21 and we've always had the clear understanding that
22 the garage and garage apartment next door were
23 nonconforming and could not be expanded or
24 increased. I'm asking to keep in mind the four
25 following points regarding the property at 2720

1 Goldbug.

2 The property at 2720 Goldbug consists
3 of one lot which contains one house and one
4 garage with a living space above. We believe
5 that the garage was built in 1989 without the
6 proper building permits. The garage called
7 2720-B has clearly always been treated as a
8 nonconforming property by all parties in the
9 past.

10 No. 2, there are no restrictions on
11 increasing the size of the -- of the main house
12 at 2720 Goldbug. It can certainly be expanded.
13 The roof can be raised. It could be doubled in
14 size and could have several additional porches
15 and decks. Under past and current Town
16 Ordinances, the nonconforming garage on the
17 property could not be expanded or increased.

18 Despite these facts, the applicant,
19 Mr. Boehm, has made -- has made several attempts
20 to expand the garage; and written records will
21 show that he has been turned down by Town
22 officials as well as by the BZA. And at this
23 point I'd like to note that in Mr. Boehm's 2009
24 application to overrule the Zoning Administrator,
25 the BZA voted unanimously not to overturn the

1 2720-B has been described in real
2 estate advertising as a secondary structure on
3 the lot. It has also been described in real
4 estate advertising as the garage with living
5 space above it, and it also has been described by
6 stating it cannot be enlarged.

7 No. 4, we believe that -- and when I
8 say "we," I'm speaking for my wife and myself.
9 We believe that the reason the slat house was
10 installed by the current property owners was
11 because under Town Zoning Ordinances, they were
12 not allowed to install a deck or a porch and that
13 the slat house is an attempt to circumvent these
14 Ordinances.

15 Under the rules in place, it seems
16 clear that a slat house nor any other structure
17 at the rear of the garage should be allowed to be
18 attached, railed, screened, redecked, raised, or
19 connected in any way. And the roof piers at the
20 rear of the property for the new -- the new roof
21 that was going in, the roof piers were put
22 through the slat house thereby attaching the slat
23 house to the structure which was what Mr. Boehm
24 was denied in his request to do in 2009.

25 I would just like to finish to say we

1 Zoning Administrator.

2 And at that time Mr. Boehm --
3 Mr. Boehm's present counselor was -- was the
4 chair of the Sullivans Island BZA in its own
5 record of voting against overruling the Town
6 Administrator.

7 MS. PAYLOR: I can speak up and say it
8 was not an overruling of the Town Administrator.

9 MR. HIERS: Let me finish, please.

10 MS. PAYLOR: It was an --

11 MR. HIERS: Would you let me finish,
12 please.

13 MS. PAYLOR: It was a variance request.
14 Go ahead.

15 MR. HIERS: Anything else?

16 MS. PAYLOR: I just wanted to make it
17 clear it was a variance request.

18 MR. HIERS: We believe that this
19 application is the latest attempt to test both
20 the new BZA and the new Zoning Administrator. So
21 for the past several -- No. 3, for the past
22 several years, the garage called 2720-B has been
23 offered for sale as a condominium, which we
24 believe goes against both the spirit and intent
25 of the Town zoning laws.

1 agree with the staff decision; and we also
2 believe that since our house and 2720-B are very
3 closely located to one another, any expansion of
4 2720-B would be of substantial detriment to our
5 adjacent property.

6 I'd like to ask the Town a question. I
7 think I know the answer to it. But does 2720-B
8 have a separate water meter?

9 MR. ROBINSON: Do not know.

10 MR. HENDERSON: I'm not sure.

11 MR. HIERS: Well, I'd like to know that
12 it does. We've heard it has a separate electric
13 meter but how about the water meter? I would
14 like to see if we can determine that. Mr. Boehm,
15 would you -- would you tell me if you have a
16 separate water meter?

17 MS. PAYLOR: There's no -- I don't know
18 if he does or he doesn't.

19 MR. BOEHM: Am I allowed to answer this
20 question?

21 MS. PAYLOR: If you want to. You don't
22 have to.

23 MR. BOEHM: As -- as all condominiums
24 on the island, there is one water meter. We
25 actually separate the bill for the garage

1 internally.

2 MS. TEZZA: You have a sub meter?

3 MR. BOEHM: We have our own meter for
4 the garage, and it's calculated -- it's used
5 separately.

6 MS. TEZZA: So it's like a sub meter.

7 MR. BOEHM: Sub meter, yes.

8 MR. HIERS: In any event, I'd just like
9 to say that Sullivans Island is a -- most of us
10 in this room live on Sullivans Island. It's a
11 special place, and I think it's a very special
12 place because the Town has had strict Zoning
13 Ordinances trying to preserve lot size and lot
14 coverages. A lot of the barrier islands don't
15 have these rules in place.

16 And I think there's -- there's a
17 reason -- there's a reason that these rules are
18 in place, and that's -- that's to maintain the
19 quality of life that's existed here, and I
20 believe that this -- this application is a --
21 is -- is really just to try to make the
22 property -- the garage more salable as a -- as a
23 condominium. Of course, even on Sullivans
24 Island, it's hard to sell a garage.

25 We all like to make money. If we

1 MR. SMITH: I have a couple of

2 questions. Is the slat house currently attached
3 to the garage apartment?

4 MR. BOEHM: No.

5 MR. SMITH: It's just freestanding?

6 MR. BOEHM: Yes.

7 MS. PAYLOR: But it abuts to the wall.

8 MR. SMITH: Is there --

9 MR. HENDERSON: I have a picture here
10 that shows it is attached. I believe.

11 MR. BOEHM: I don't think you do.

12 MS. PAYLOR: It abuts.

13 MR. HENDERSON: It actually looks like
14 a two by four or some structure that is nailed
15 up, and the slat house is leaning against it.

16 MR. BOEHM: Well, it's currently
17 supported by two by fours until the -- until the
18 balance of the roof is built, until this issue of
19 where the posts go is resolved; but it's not
20 permanently attached. Those are -- that's like a
21 batter board, I think they call them. What do
22 you call those things, Randy, when you're
23 supporting a temporary post?

24 MR. ROBINSON: What I saw has been
25 there a long time.

1 didn't, we'd live in Venezuela or in Cuba; but I
2 think it's -- I think you -- for me I draw the
3 line making money and being a decent neighbor.
4 So it's a very -- it's a very difficult thing to
5 have to speak before this Board as -- as someone
6 objecting to something going on next door.
7 It's -- it's clear that it's a -- it's clear to
8 me that -- that it -- that this -- this structure
9 was built without a permit in 1989 and that it
10 was -- it was built illegally.

11 Now, the CO, don't know how that was
12 gotten; but how do you get -- how does Mr. Tymco,
13 who's written this letter, how does he defend
14 being his own administrator when you have
15 something built, a structure like this built,
16 with no building permit?

17 So in any event, y'all have got a
18 difficult task and just look at the facts and do
19 the best you can.

20 MS. TEZZA: Thank you, Mr. Hiers.

21 I'm going to -- does anybody on the --
22 before we close comments, does anybody on the
23 Board have a question of the applicant? We
24 can't -- we can ask staff questions about any
25 details we've --

1 MS. TEZZA: Well, what I see is that
2 the bench that's supposedly furniture but looks
3 to me like it was put there also as a railing, is
4 attached to the slat house; and it is also
5 attached to the garage wall. Right here.
6 (Indicating.)

7 MR. SMITH: Okay.

8 MS. TEZZA: I mean, it is attached.

9 MR. SMITH: Looks like we have
10 conflicting opinions of whether it's attached or
11 not.

12 MS. TEZZA: Yeah.

13 MS. TIMMONS: You would fall -- excuse
14 me. There's enough space to slip through between
15 the walkway and the deck.

16 MS. PAYLOR: No, no.

17 MS. TEZZA: It's -- it's touching.

18 MS. TIMMONS: Yes, yes.

19 MS. PAYLOR: Right.

20 MR. SMITH: I noticed RJ Denton's
21 letter, he asserted that the reason the posts --
22 the six by's had to be put where they were was so
23 that it wouldn't disturb the structural integrity
24 of the slat house. Did I read that correct?

25 MR. BOEHM: I think he said the

1 walkway. The walkway, yeah. I didn't have a
2 permit to replace the walkway. The permit I had
3 was for the roof structure; and the roof
4 structure, by the way, includes everything to do
5 with how you build it, the footer, all the way up
6 to the roof rafters and the eave. All of those
7 things extend well beyond the posts.

8 MR. SMITH: And then would the --
9 the -- the roof if it were built and extended out
10 like that, would -- would those posts that are
11 now attached to the slat house, would that, then,
12 connect the slat house --

13 MR. BOEHM: No.

14 MR. SMITH: -- to --

15 MR. BOEHM: No. The posts are
16 freestanding, come up between the existing deck
17 and the slat house. The slat house and the
18 framing of the slat house and the deck are two
19 separate things.

20 MR. SMITH: Right.

21 MR. BOEHM: The only things that come
22 close together, they are separated by air, are
23 the deck surfaces.

24 MR. SMITH: Right.

25 MR. BOEHM: So those things come close

1 sixes --

2 MS. TEZZA: Going right through the
3 slat house roof.

4 MR. BOEHM: They do. Sure, they do.

5 MS. TEZZA: So they're connected.

6 MR. BOEHM: No, they don't. They're
7 not connected at all. They just go through the
8 roof. How are they connected? We cut -- we cut
9 the roof of the slat house away and a portion of
10 the deck away to slide those six by six posts
11 down through the hole. They're not connected at
12 all.

13 MS. TEZZA: What did that do to the
14 structural integrity to the slat house?

15 MR. BOEHM: Nothing. Slat house was a
16 freestanding structure. It was built to have
17 people walk on it, built to have furniture
18 sitting on top of it. You could put 20 people
19 out there. The posts are six by six posts. The
20 frame is two by eight. If you needed some kind
21 of a statement from an engineer or an architect,
22 I could get that for you. Randy inspected it.

23 MR. SMITH: Yeah. Those are my
24 questions. Thanks.

25 MS. TEZZA: Okay. Do either you -- do

1 together. Otherwise, the posts simply come up
2 between the framing.

3 MR. SMITH: But if this project were to
4 continue, what you're seeking to do is extend --
5 raise the roof and extend out. You've got these
6 six by's. Clearly they're going to be tied into
7 something.

8 MR. BOEHM: They're tied into the
9 house.

10 MR. SMITH: Tied into the house but
11 then they go around to the --

12 MR. BOEHM: And the deck, yeah.

13 MR. SMITH: So then the deck -- is the
14 slat house and the deck two different things?

15 MR. BOEHM: Two different things
16 completely.

17 MR. SMITH: So this slat house in no,
18 way, shape, or form will be -- taking your
19 contention that it's not attached right now,
20 after all this is done, you're telling me that
21 the slat house will not be connected to the
22 building.

23 MR. BOEHM: That's correct.

24 MR. SMITH: And we're looking at
25 photographs that appear to show the six by

1 you have any questions of applicants?

2 MS. TIMMONS: No, I don't.

3 MS. TEZZA: Okay. If y'all have no
4 more questions, I don't have any more questions
5 so I'm going to close the public comment.

6 And we shall -- who wants to open the
7 discussion?

8 MS. PAYLOR: Could I make a closing
9 statement just to tie together the Zoning
10 Ordinance, or you don't care. I mean, it's
11 legally just --

12 MS. TEZZA: A short one.

13 MS. PAYLOR: Very short.

14 MS. TEZZA: You may make a short
15 statement, Miss Paylor.

16 MS. PAYLOR: Thank you. I apologize.
17 I remember being on this, and I did not like long
18 meetings so I understand that.

19 MS. TEZZA: On the record books.

20 MS. PAYLOR: There have been some
21 statements that Mr. Truesdale didn't have a
22 building permit. That's not in the record.
23 There's no record of it. I mean, I asked the
24 Town for the full file; and they said they've
25 lost all kinds of stuff.

1 Mr. Boehm bought it well after the fact
2 of its being built so he didn't have anything to
3 do with constructing an illegal structure as
4 Mr. Hiers would like you to believe.

5 The building in question contains a
6 dwelling. Because it contains a dwelling, it is
7 a principal building under your Zoning Ordinance.
8 As a principal building, you can have an
9 accessory use. You can also -- the only thing
10 that you can't expand the use, and that was what
11 was so important about the first house that we
12 went through -- that I went through with
13 Mr. Boehm.

14 The Board of Zoning Appeals said they
15 didn't need a variance because they were not
16 expanding the use. You look at it as Exhibit 9.
17 Said footprint was not going to change; and the
18 footprint, remember, is the exterior wall right
19 here. (Indicating.)

20 Doesn't have anything to do with the
21 stairways or the walkways. The footprint was not
22 going to change. They're not adding any
23 bedrooms. The same number of bedrooms are going
24 to be there. The enclosed space is not going to
25 change. There was no variance needed.

1 And I'm -- that's the way I read the
2 Zoning Ordinance. It says that if you don't --
3 that you cannot expand the use. It doesn't talk
4 about the structure; and I don't believe raising
5 the roof which happened in basically every one of
6 these that we had where the Town allowed it
7 without a variance, I don't think a variance was
8 needed under the Zoning Ordinance.

9 They were allowed to -- because there's
10 a height restriction of 38 feet. This is a
11 principal building. It's well within the 38
12 feet. I think if you look at the Zoning
13 Ordinance, it clearly says that he can raise,
14 elevate his roof, on a principal building. Even
15 Mr. Henderson said that in the e-mail that he
16 sent to him.

17 Every -- there's no question about it.
18 except now there's -- he's trying to come up with
19 a reason why, you know, he can't have, you know,
20 what he's entitled to.

21 This is a principal building. It can
22 be elevated. He's not asking for anything other
23 than raising the roof 2 feet so he can raise the
24 ceiling in the apartment by 2 feet. There's no
25 other expansion. There's no expansion of the use

1 itself. And when you look at the -- putting a
2 roof over, there's nothing in the Zoning
3 Ordinance that prohibits him from putting a roof
4 over an existing stairway and the walkway.

5 I don't think there's anything in the
6 Zoning Ordinance that prohibits him from putting
7 a deck on it. Now, if you go back, it was a
8 variance request; and as we all know when you ask
9 for a variance, you have to show hardship and
10 that type of thing.

11 Well, I don't -- I don't know he could
12 show hardship because he didn't have a deck back
13 there. So I guess what I'm saying is: We did
14 not and I was on that, and I think that was the
15 right decision because I don't think he needed a
16 variance.

17 I think he could have put a deck out
18 there under the Zoning Ordinance the way it's
19 drafted. And that -- that's where we are. And I
20 know that, you know, Mr. Boehm, you know, this is
21 an appeal. It is not a variance request. He
22 doesn't have to show a hardship.

23 So we're asking that Mr. Boehm be
24 allowed to raise his roof by 2 feet so he can
25 increase the ceiling height in his apartment.

1 Asking that you find that this is a principal
2 building; and really it's up to the Zoning
3 Administrator to give a Certificate of Occupancy
4 that says this is the nonconforming use on the
5 lot, nonconforming secondary building.

6 We don't believe that there's anything
7 in the Zoning Ordinance that prohibits the
8 placement of furniture on a slat house roof or
9 the placement of a safety rail around the slat
10 house roof because it's still within the height
11 restriction, even with the rail, of accessory
12 because that's 15 feet; and it's nowhere close to
13 15 feet now high.

14 And the roof piers, they don't have to
15 be within the existing footprint. If they did,
16 they would have to be -- you'd have to take part
17 of the building out to put them in. So we're
18 asking that you reverse the decision of the
19 Zoning Administrator. I believe that none of
20 this is a precedent for anything. I think it's
21 been done. I think that's why it was done in all
22 these other cases, because the Zoning Ordinance
23 allowed it. I don't -- I don't think they had
24 any reason to get a variance because the Zoning
25 Ordinance allowed what they did.

1 Thank you.

2 MS. TEZZA: Thank you. I'm going to
allow Jimmy to speak since I allowed you to
4 speak.

5 MR. HIERS: I would like to ask the
6 chair if she would open the conversation back up
7 for a brief statement.

8 MS. TEZZA: I will.

9 MR. HIERS: Thank you. I'd just like
10 to state for the record that I never said
11 Mr. Boehm nor did I apply that Mr. Boehm had
12 anything to do with this structure being built
13 illegally. This -- that occurred before
14 Mr. Boehm bought the property.

15 However, I would like to add this: I
16 spoke with Kent Prause today by phone and read
17 him this sentence from page 2 of Mr. Boehm's
18 application. Mr. Boehm would not have purchased
19 the property without the assurance of Mr. Prause
20 that the two structures were principal buildings
21 under the then Zoning Ordinance. Mr. Prause
22 said --

23 MS. PAYLOR: I object because this is
24 hearsay. Just putting it on the record. Now you
25 can read it.

1 MS. TEZZA: This is not a court of law.

2 MR. HIERS: Ms. Paylor, would you let
3 me finish before you -- this is the second time
4 you interrupted me. This is not court.

5 MS. PAYLOR: I'm making my objection
6 before you say it. It's for the record.

7 MS. TEZZA: And for the record, this is
8 not a court of law.

9 MS. PAYLOR: I know, but this appeal is
10 going up.

11 MS. TEZZA: That's fine. You don't
12 know what we're going to do yet.

13 MR. HIERS: May I proceed?

14 MS. TEZZA: You may proceed.

15 MR. HIERS: Mr. Prause stated that he
16 is sure that he never said nor assured Mr. Boehm
17 that the two structures were both principal
18 buildings. He said, in fact, that he did not see
19 how they could both be principal buildings.

20 MS. TEZZA: Thank you. The public
21 comment is now closed.

22 Carlin, do you have any --

23 MS. TIMMONS: Well --

24 MS. TEZZA: I think the issue is, is
25 this a principal building? Is there are -- there

1 two principal buildings on this lot?

2 MS. TIMMONS: Uh-huh, yes.

3 MS. TEZZA: And I think that's the
4 first question that we have to ask. Are you in
5 agreement, Bachman?

6 MR. SMITH: I'm in agreement.

7 Unfortunately, I think the waters are
8 sufficiently muddied that a decision at this --
9 this evening is probably not in the best
10 interests of the Board; however, that said, I
11 mean, I'm okay with making a decision, leaving it
12 up -- open to come back and revisit it later or
13 however we want to do it.

14 There's unanswered questions here; but
15 as it stands, I'm going to have the -- I'm going
16 to, you know. I'm okay with going forward, but
17 we just spent a lot of time talking about a lot
18 of things that -- that might not have a lot to do
19 with what we're here to decide.

20 MS. TIMMONS: Right.

21 MS. TEZZA: Right.

22 MR. SMITH: That's a little bit
23 unfortunate, but that is where we are now. So
24 with that said, I would agree with you that the
25 first question is to decide if there are two

1 principal structures up there.

2 And I even submit that in the
3 applicant's own facts, one of those structures
4 was the principal dwelling; and the other was the
5 garage apartment. They state it right there that
6 one's a principal and one's not, and I don't see
7 a way to get around that one.

8 MS. TIMMONS: Right.

9 MS. TEZZA: And -- and all of these
10 exhibits are -- those are dependency. They're
11 not garages, I don't think. I think most of them
12 are dependencies. I know the one that -- this
13 nine, I know -- I know that little house, and
14 that was a cottage. So we're talking about a
15 cottage versus a post storm garage that was
16 probably built. So in the -- the spirit and the
17 intent of the ordinance to allow variance --
18 variance requests for nonconforming structures
19 was to preserve cottages.

20 MS. TIMMONS: Right.

21 MS. TEZZA: In my view.

22 MS. TIMMONS: Yeah, I think and -- to
23 me, I have trouble when it's like your aunt, when
24 you can look and what you see, you know, is one
25 thing, you know. What your brain recognizes is a

1 two-car garage with an apartment up top and
2 whoever's renting it now wasn't told to keep that
3 door down 'cause when I rode my bike by, it --
4 the one on the right was up. And there was
5 nothing in there but some bikes at the back and a
6 golf cart right in front ready to drive in, you
7 know. So that's what I saw, Paul.

8 You know, and one's obviously a little
9 house; and the other's a nice apartment. I mean,
10 if it was just a couple of folks, it would be
11 great, you know. I mean, but -- I mean, I --
12 obviously, y'all are building a case; and that's
13 fine. But I know what my eyes see and I know
14 where it says a nonconforming use shall not be
15 expanded except to eliminate or reduce the
16 nonconforming aspects to, you know, the decks,
17 the walkways around the back, you know, to get
18 the view, you know. Where are you going?
19 Where's your door? You know, it's kind of put
20 two and two together, you know. So I --

21 MS. TEZZA: Is this still on the
22 market? Is this on the market right now?

23 MR. BOEHM: No.

24 MS. TIMMONS: Anyway, yeah.

25 MS. SCHWEITZER: I'm in agreement with

1 you that this is the key issue that needs to be
2 decided. I -- I saw what Carlin saw when I drove
3 by as well.

4 MS. TEZZA: And I went by as well. I
5 knew the house. I just drove by it get to make
6 sure.

7 MS. TIMMONS: Yeah.

8 MS. TEZZA: But it -- it looks like a
9 garage. It is referred to as a garage. It is
10 called a secondary structure in the applicant's
11 own documents. So I think that's fairly clear.
12 And it's not our job to suppose what might happen
13 based on our decision. It's our job to make the
14 best decision that we can make according to what
15 we see and how -- how we interpret the Zoning
16 Ordinance as written.

17 MS. TIMMONS: Right.

18 MS. TEZZA: So -- would anyone like to
19 make a motion?

20 MR. SMITH: I'll make a motion to deny
21 the appeal.

22 MS. TEZZA: Is there a second?

23 MS. TIMMONS: I'll second it.

24 MS. TEZZA: Any further discussion?
25 (No response.)

1 MS. TEZZA: All in favor, signify by
2 saying aye.

3 (All Member respond aye.)

4 MS. TEZZA: Opposed. Like sign.

5 (No response.)

6 MS. TEZZA: The motion to overturn the
7 Zoning Administrator is denied.

8 MS. PAYLOR: And is that as to all
9 three of the issues?

10 MS. TEZZA: Yes.

11 MS. PAYLOR: Okay. Thank you.
12 (Proceedings concluded at 8 p.m.)
13 ---
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

3 I, Ronda K. Blanton, a Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing proceedings were taken
7 at the time and location therein stated; that all
8 statements made at the time of the proceedings
9 were recorded stenographically by me and were
10 thereafter transcribed by computer-aided
11 transcription; that the foregoing is a full
12 complete, and true record of the proceedings.

13 I further certify that I am neither related
14 to nor counsel for any party to the cause pending
15 or interested in the events thereof.

16 Witness my hand, I have hereunto affixed my
17 official seal on March 31, 2014, at Charleston,
18 Charleston County, South Carolina.
19
20
21
22
23
24
25

Ronda K. Blanton, RPR
Notary Public, South Carolina
My Commission expires:
May 14, 2018.

TOSI-BZA 0343

COPY

TOWN OF SULLIVANS ISLAND
BOARD OF ZONING APPEALS
MARCH 13, 2014

DATE: March 13, 2014
TIME: 6 P.M.
LOCATION: TOWN OF SULLIVANS ISLAND
SULLIVANS ISLAND, SOUTH CAROLINA

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TOSI-BZA 0344

1 A P P E A R A N C E S

2 BOARD MEMBERS PRESENT:

3 Carlin Timmons
4 Delores Schweitzer
5 Bachman Smith, IV
6 Elizabeth Tezza
7 Jimmy Hiers

8 STAFF MEMBERS PRESENT:

9 Randy Robinson
10 Joe Henderson
11 Ellen Miller

12 ON BEHALF OF THE LANDOWNER:

13 ROSEN HAGOOD, LLC
14 BY: ALICE F. PAYLOR, ESQ.
15 151 Meeting Street, Suite 400
16 Charleston, SC 29401
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- - -

TOSI-BZA 0345

I N D E X

EXAMINATION

WITNESSES:

PAUL BOEHM

Examination by Ms. Paylor 10

Examination by Mr. Henderson 49

JOE HENDERSON

Examination by Ms. Paylor 61

CERTIFICATE OF NCRA REGISTERED 103
PROFESSIONAL REPORTER

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TOSI-BZA 0346

P R O C E E D I N G S

MS. TEZZA: Would anyone who was going to speak before the Board please stand and raise your right hand, if you're going to speak.

(Witnesses are sworn.)

MS. TEZZA: Thank you. Okay. We -- the variance request for 3001 Marshall Boulevard has been deferred to the next meeting.

MR. HENDERSON: That's correct.

MS. TEZZA: So we will work on Item E. Joe Henderson to present.

MR. HENDERSON: Okay. Very good. Thank you members of the Board. Our one and only agenda item is the administrative appeal.

This is regarding an appeal of several staff decisions as they relate to 2720-B Goldbug Avenue. The property owner, Paul Boehm, is the applicant.

What I would like to do is go through some of the site conditions, the existing site conditions, and then move on to staff position. Currently you have two structures on the property. You have 2720 and then 2720-B.

If you look at this photograph, you have a single-family detached home on the

1 right-hand side; and then on the left-hand side
2 you have a detached garage, what staff perceives
3 to be a detached garage. Here's a closer
4 photograph of that. (Indicating.)

5 Within this detached garage, we have a
6 legal but nonconforming apartment unit; and we
7 have made this determination because we have two
8 documents that were drafted, one in 1989, and
9 then another one in 1991 that established that
10 this is a garage with an apartment on top, which
11 is what it states.

12 Apartment above garage, and then an
13 inspection ticket from 1991 that states
14 "apartment over garage." So these are signed by
15 David Canty and Frank Tymco.

16 So because we made this determination
17 that this structure, the garage, was an accessory
18 structure, we made several determinations about
19 Mr. Boehm's permit request. His first request
20 when I first met him -- and that was October of
21 2013, Mr. Boehm requested to raise the roof of
22 this garage structure by 2 feet.

23 And so because this is in conflict of
24 our zoning ordinance, Section 21-150 and 21-151,
25 which addresses nonconforming structures and

1 nonconforming uses -- and I have a copy of this.
2 That permit request was denied.

3 MS. PAYLOR: What was the section? I'm
4 sorry.

5 MR. HENDERSON: 21-150 and 21-151. So
6 that's 21-150 is actually nonconforming uses, and
7 21-151 is nonconforming structures. So by
8 raising the roof, he would be expanding the
9 nonconforming use and also expanding the
10 nonconforming structure. Again, this is an
11 accessory structure garage.

12 Mr. Boehm also requested to expand his
13 building footprint. In February of 2013 our
14 staff issued a permit to establish a roof
15 overhang to come over the steps that come up the
16 side and then around the back of this structure.

17 What Mr. Boehm did when he constructed
18 this is he actually placed the posts outside of
19 the area that he showed on his plans. The only
20 reason that we issued these permits to Mr. Boehm
21 was so that -- was in, I guess, with the
22 condition that he not expand beyond the existing
23 building footprint.

24 So this is something that Randy wanted
25 to offer a little flexibility for. He understood

1 that the folks living in the nonconforming
2 apartment needed some cover when they go up the
3 steps carrying groceries, and it's raining. It's
4 a reasonable sort of permit to issue.

5 When we went out on site to do an
6 inspection, we realized that he put the posts
7 outside of that building footprint so we issued a
8 stop work order. In addition to that we noticed
9 that there was several alterations made to the
10 back deck. This alteration was the removal of
11 handrails and actually structures, benches and
12 planters; and you can see here's a grill was
13 placed on top of what we permitted to be an arbor
14 or a slat house.

15 And so none of these things had permits
16 issued for it, and I can pass these around.
17 (Indicating.)

18 MS. TEZZA: 'Cause I saw the copy.

19 MR. HENDERSON: So, again, recap, the
20 staff position is very simple here. What
21 Mr. Boehm has asked to do is to modify a
22 nonconforming use by raising the roof; expanding
23 the usable square footage of this legal and
24 nonconforming use which is prohibited by our
25 Zoning Ordinance; and he's also expanded the roof

1 overhang, and he's gone beyond the scope of those
2 plans. He's also expanded the original footprint
3 for the deck onto this slat house.

4 Now, we also required him to put up
5 those handrails and keep them there because we
6 don't think that the slat house has been
7 engineered to withstand the weight of folks
8 walking around on it; and there's some big open
9 gaps underneath the -- the benches that were
10 constructed, and we think that that's a safety
11 hazard as well.

12 So in a nutshell, that's why we denied
13 permits; and I'll defer to you, Madam Chair.

14 MS. TEZZA: Before we go further, I
15 have a recusal statement from Jim Hiers because
16 he lives contiguous to the property that we're
17 discussing so he says he's -- he lives directly
18 next door so I will accept this recusal, and
19 Jimmy will step to the audience.

20 MR. HIERS: I -- I -- in researching
21 this recusal, I asked the Town if -- if I could
22 recuse myself and if I could also speak as a
23 citizen. They got a ruling from the South
24 Carolina Ethics Board that, in fact, I could
25 recuse myself and speak as a citizen. So I'm

1 going to reserve the right to -- to speak as a --
2 as a citizen.

3 MS. TEZZA: And I will note that even
4 with that recusal, we do still have a quorum
5 present.

6 MR. SMITH: I'd like -- before we
7 continue just so it's all on the table, I had no
8 intention of recusing myself; but I do live
9 immediately across the street from this property.
10 I don't think it's going to affect my decision
11 one way or the other but -- and would let us know
12 where I stand and where we live.

13 MS. TEZZA: Thanks, Bachman. We will
14 now hear from the applicant.

15 MS. PAYLOR: Thank you. I'm Alice
16 Paylor. I'm here representing the owner of
17 2720-B, which is the dwelling that is above a
18 storage area; and this is an appeal. It's not a
19 variance request. So we are here appealing the
20 three rulings made by the Zoning Administrator
21 because they are not in accordance with the
22 Zoning Ordinance itself.

23 And it's our position that the Zoning
24 Ordinance controls, and that's what we're going
25 to do. And I do have a court reporter here

1 'cause we're going to make a record; and if
2 there's an appeal, then we'll have a transcript
3 of exactly what was presented.

4 I'm going to call my first witness,
5 Mr. Paul Boehm, and he's already sworn in.

6 PAUL BOEHM,
7 having been first duly sworn, was examined and
8 testified as follows:

9
10 EXAMINATION

11 BY MS. PAYLOR:

12 Q. Paul, will you tell the Board who you
13 are. You can sit down.

14 A. I'm Paul Boehm. I live at 3209 Middle
15 Street; and I own 2720-B Goldbug next door to my
16 son, Ashley Haynes.

17 Q. Okay. And is that property part of a
18 condominium regime?

19 A. It is.

20 Q. And when did you condo it?

21 A. 2003.

22 Q. Okay. When did you buy the property?

23 A. In 2001.

24 Q. And what was on the lot that -- at the
25 time that you were considering purchasing it?

1 A. The main house, the next door structure,
2 which is a dwelling, and a car port.

3 Q. Okay. And -- and I believe that this is
4 a picture that the Town put in. On the right, is
5 that the main house? (Indicating.)

6 A. That's -- that's the main house on the
7 right.

8 Q. And on the second, is that another
9 dwelling? (Indicating.)

10 A. Another dwelling, yes.

11 Q. Okay. And main house, dwelling right
12 there. (Indicating.) Or secondary dwelling.

13 Did you talk to the Town of Sullivans
14 Island regarding the impact of its Zoning
15 Ordinance on your ability to use this property
16 prior to your actually purchasing it?

17 A. Yes. I came to see Kent Prause, who at
18 the time was the Zoning Administrator; and I
19 asked Kent what it meant to have these two
20 separate dwellings on the property, and he
21 explained to me that the larger of the two
22 dwellings would be the conforming dwelling, and
23 the smaller of the two dwellings, which is the
24 called the garage apartment on the CO or
25 apartment above garage, would be the

1 nonconforming dwelling.

2 Q. And would you have bought this if this
3 was an accessory structure, the second building?

4 A. I wouldn't.

5 Q. Would not.

6 A. I would not.

7 Q. Did you rely on what Mr. Prause told you
8 when you made your purchase?

9 A. Yes.

10 Q. And I'm going to hand you a notebook
11 that's got our exhibits in it, and these are the
12 originals which we'll provide. And in front of
13 y'all are two notebooks that I hope I can share
14 because that's all I have, but I'm going to refer
15 to the exhibits in there.

16 Look at Exhibit 1 in the notebook.

17 A. (Complies with request.)

18 Q. Can you tell -- did you get that out of
19 the files of the Town of Sullivans Island?

20 A. Yes. Kent gave me this document when I
21 came to see him about the two structures..

22 Q. And one of them is a Certificate of
23 Occupancy; is that correct?

24 A. Correct.

25 Q. And it says, "apartment above garage";

1 correct?

2 A. Correct.

3 Q. Prior to Mr. Henderson's recently taking
4 the position that the second building was an
5 accessory structure, a garage, had anyone with
6 the Town ever told you that it was not a
7 principal building?

8 A. Never.

9 Q. Had you applied for a variance -- did you
10 apply for a variance in 2009?

11 A. Yes.

12 Q. And what -- and I've got that Exhibit 2
13 in there is the order that was in the file here,
14 and did Mr. Robinson make the presentation to the
15 Board at that hearing?

16 A. Yes.

17 Q. And did he rely on Section 21-151 when he
18 asked the Board to turn down your variance
19 request?

20 A. Yes.

21 Q. Did he rely on Section 21-150(f) when he
22 asked the Board to deny your variance request?

23 A. Yes.

24 Q. Okay. And I'm going to go to that
25 section of the Zoning Ordinance, and what is the

1 title -- I'm going to hand it to you -- what is
2 the title of Section 21-150(f)?

3 A. Two or more principal buildings on one
4 lot.

5 Q. Okay. Does that discuss having a
6 principal building and an accessory structure on
7 a lot?

8 A. It does not.

9 Q. And was your variance request denied?

10 A. It was.

11 Q. And that's Exhibit 2. I'm going to move
12 all these into evidence.

13 Look at Exhibit 3.

14 A. (Complies with request.)

15 Q. Is that a picture of the structure?

16 A. Yes.

17 Q. Have you ever considered this to be a
18 garage?

19 A. Not just a garage. Obviously, a dwelling
20 over a garage.

21 Q. Okay. And do you -- what do you do with
22 the dwelling?

23 A. I rent it out. It's been rented by -- by
24 my sons initially for about five years and by
25 regular tenants for the last nine years.

1 Q. Do you have a rental license to rent this
2 structure as a dwelling?

3 A. I do.

4 Q. Have you had one every year that you've
5 owned it?

6 A. I have.

7 MS. PAYLOR: Okay. And he brought them
8 with you if you have any questions about that.

9 A. 14 years.

10 Q. Does that structure have a separate
11 electric meter on it?

12 A. It does.

13 Q. Does this structure have a separate sewer
14 system? Tied into the sewer?

15 A. Tied into the city sewer.

16 Q. Is it used only for the storage of motor
17 vehicles and that type of thing?

18 A. It is not. It actually is used for
19 storage of my junk, furniture, et cetera.

20 Q. Okay. And has it ever -- to your
21 knowledge, has it ever been used as a garage for
22 the principal building, the other principal
23 building on the lot?

24 A. It has not.

25 Q. Have you made improvements to Building B,

1 this building, over the years of your ownership?

2 A. Yes, numerous improvements.

3 Q. Okay. And Exhibit 4 has got a stop work
4 order there which we'll talk about, but are these
5 some of the permits that you've had to do work on
6 2720-B?

7 A. Yes.

8 Q. How many construction permits have you
9 received for improvements to this nonconforming
10 principal building?

11 A. I've gotten seven. The next door
12 dwelling where Ashley lives now and owns has
13 gotten four or five; and then there's a couple of
14 permits that were issued for the overall
15 property, the dock, and the fence.

16 Q. If this were an accessory structure,
17 would you have received those permits?

18 A. I don't think so.

19 Q. If this were a garage, would you have
20 been entitled to a rental permit?

21 A. I would not.

22 Q. As the owner of the larger -- pardon me.
23 Did the Town ever issue a Certificate of
24 Occupancy providing that Building B was the
25 nonconforming principal building when the permits

1 were requested as the Zoning Ordinance requires
2 in Section 20-150?

3 A. They were not.

4 Q. Did you have -- was that because of
5 anything that you did?

6 A. Absolutely not.

7 Q. Did you ever prevent them from performing
8 their job under the Zoning Ordinance?

9 A. No.

10 Q. And I'll ask y'all to look at the Zoning
11 Ordinance, 20-150(f), says, "In the event that
12 two or more principal buildings occupy a single
13 lot, said occupancy shall constitute a
14 nonconforming use. One structure shall be
15 designated conforming and the other shall be
16 nonconforming under the following procedure: If
17 a request to improve the property is received,
18 the Zoning Administrator shall," it's mandatory,
19 "designate the principal building, the greatest
20 liveable square footage, including porches as a
21 conforming use and the other principal building
22 as nonconforming.."

23 So which building had the most liveable
24 square footage?

25 A. Where Ashley lives now.

1 Q. All right. Which is the building on the
2 right in that picture? (Indicating.)

3 A. Correct.

4 Q. Have you ever gotten another Certificate
5 of Occupancy other than the one saying it's an
6 apartment over garage?

7 A. I have not.

8 Q. Has -- when -- when the owner of 2720,
9 the main building, has applied, has there ever
10 been a -- have they ever been given a Certificate
11 of Occupancy?

12 A. Not to my knowledge.

13 Q. In 2001 did you build an accessory
14 structure adjacent to the rear deck on
15 Building B?

16 A. I did.

17 Q. Tell the Board how that occurred.

18 A. Well, Ashley had moved into the
19 apartment; and we spent some time there and
20 pretty well determined that that -- the back
21 walkway -- there was a walkway that came up
22 alongside the house and turned around to the back
23 and went down some back steps. Really wasn't
24 adequate to sit outside so I came to Kent to ask
25 him if it was possible to add onto the deck.

1 And he said it was not, but he said I
2 have a suggestion for something that you can do.
3 And that is you could construct a slat house
4 adjacent to the existing deck, and that would
5 serve the same purpose.

6 Q. Did you know what a slat house was?

7 A. Had no idea what a slat house was.

8 Q. Did you ask Mr. Prause what a slat house
9 was?

10 A. I did. And he told me it was a garden
11 structure that if I built it the same height as
12 the existing walkway/deck, that it would serve
13 the purpose of a deck.

14 Q. Okay. And so did you do that?

15 A. I did.

16 Q. Did you get a building permit for that?

17 A. I did.

18 Q. And did they inspect it and do all the
19 stuff that they had to do?

20 A. Yes. Randy inspected it.

21 Q. Okay. And that was an accessory
22 structure to what building?

23 A. To the Building B.

24 Q. Okay. And it's not used at all by the
25 primary building; correct?

TOSI-BZA 0362

1 A. It is not.

2 Q. So let's look at Exhibit 5.

3 A. (Complies with request.)

4 Q. There's a plat, the first document, and
5 does it show the slat house back there?

6 A. It does.

7 Q. Okay. And it's -- it's adjacent to that
8 building, and it abuts to your walkway; is that
9 correct?

10 A. Correct, correct.

11 Q. And what was your purpose in building
12 that slat house?

13 A. For someone to use it as a deck.

14 Q. Okay. And how did the occupants get
15 access to it?

16 A. They actually climbed over the rail.

17 Q. Have you had discussions with Randy
18 Robinson about the slat house over the years?

19 A. Yes.

20 Q. Did he give you permission to screen in
21 the slat house?

22 A. He did. In 2010.

23 Q. Now, have you installed furniture on the
24 slat house roof?

25 A. Yes. It's treated, for lack of a better

1 word, garden furniture, something you could leave
2 outside.

3 Q. And why did you do that?

4 A. For people to be able to sit outside for
5 one; but also it occurred to me that we needed
6 some kind of protection around the perimeter of
7 the slat house deck, slat house roof to keep
8 someone from getting too close to the edge.

9 Q. So it was basically a safety rail?

10 A. It was.

11 Q. And have they told you you could not put
12 a railing around that slat house roof?

13 A. They have, yes.

14 Q. And what was the basis for that? Did
15 they ever tell you what that was?

16 A. No.

17 Q. So they told you you could put up a slat
18 house, and they could use it as a deck; but you
19 couldn't have a safety railing around it. Is
20 that correct?

21 A. Correct, that's correct.

22 Q. Has the Town ever provided any basis in
23 the Zoning Ordinance for your not being allowed
24 to have furniture on the slat house roof?

25 A. No.

1 Q. In early 2013 did you meet with
2 Mr. Robinson about elevating the roof of
3 Building B?

4 A. I did.

5 Q. And was he the Zoning Administrator at
6 the time?

7 A. He was.

8 Q. Okay. And what did he tell you?

9 A. He told me that I could elevate the
10 ceiling/roof by 2 feet. He suggested that I
11 contact Rusty Shumpert at Carolina House Movers
12 to get a quote to do it. He told me that he had
13 considered doing exactly the same thing at his
14 house in Mount Pleasant and had decided not to do
15 it, but I did contact Rusty. He came over,
16 looked at the dwelling, gave me an estimate; and,
17 unfortunately, I had not gotten the plans drawn
18 up in time before Joe became the new Zoning
19 Administrator.

20 Q. And then did you apply -- did you make
21 application with him?

22 A. I did make the application with Joe with
23 a set of plans, and he refused me.

24 Q. And was that because he said this was a
25 garage?

1 A. He did. He said it was a garage, and I
2 couldn't elevate it any further.

3 Q. Okay. Did you contact Sullivans Island's
4 former building official, Frank Tymco, who issued
5 the Certificate of Occupancy in 1989?

6 A. I did.

7 Q. And did he send the letter to
8 Mr. Henderson?

9 A. He did.

10 Q. And is that Exhibit 7?

11 A. Yes.

12 Q. Okay. And in this letter, did he -- did
13 he say that there were two principal buildings
14 on -- at 2720 Goldbug?

15 A. He did. He said that.

16 Q. Okay. Did the Town -- did Mr. Henderson
17 change his mind about whether or not this was an
18 accessory structure or a principal building?

19 A. He did not.

20 Q. Now, has Mr. Henderson told you that if
21 Building B is a principal building, you would be
22 allowed to raise the roof under the Zoning
23 Ordinance?

24 A. He did tell me that.

25 Q. And did he do that in an e-mail?

1 A. He did.

2 Q. And is that found in Exhibit 8?

3 A. Yes.

4 Q. Have you reviewed the Zoning Ordinance,
5 Mr. Boehm?

6 A. Yes.

7 Q. Is there a definition of "garage" in
8 there?

9 A. There is.

10 Q. Okay. And I think it's -- it's at the
11 very back, although exactly under several places;
12 but I'm going to show you it's page 98 and
13 Section 21-203.

14 But I want to read the preamble of 21.
15 This says, "Except as specifically defined
16 herein, all words used in the Zoning Ordinance
17 have their customary definitions. For the
18 purpose of this Zoning Ordinance, certain words
19 or terms herein are defined as follows:" And one
20 of them is "garage private." Can you read the
21 definition of "garage private" there?

22 A. "Accessory building or portion of a
23 principal building used only for the private
24 storage of motor vehicles, campers, boats, boat
25 trailers, and lawn mowers as an accessory use."

1 Q. Okay. Is Building B only used for the
2 private storage of motor vehicles, campers,
3 boats, boat trailers, and lawn mowers?

4 A. No.

5 Q. To your knowledge, has Building B ever
6 been used as an accessory building for the
7 conforming principal building on 2027 Goldbug?

8 A. No.

9 Q. Have you reviewed the prior versions of
10 the Zoning Ordinance?

11 A. Yes.

12 Q. Do they all define "garage" in the same
13 way?

14 A. They do.

15 Q. Do you rent out Building B?

16 A. Yes.

17 Q. And you have a building -- you have a
18 business license; correct?

19 A. Correct.

20 Q. Would you be allowed to rent a garage to
21 tenants to use as a dwelling?

22 A. I would not.

23 Q. Look at Section 21-138 of the code.

24 A. (Complies with request.)

25 MR. HENDERSON: I'm sorry. Could you

1 repeat that?

2 MS. PAYLOR: 21-138.

3 Q. Okay. And this is in Article 15 entitled
4 "Accessory Uses and Structures." Okay. That's
5 21-138. And does this section that I just gave
6 you, does that discuss accessory structures?

7 A. It does.

8 Q. Are accessory structures allowed to have
9 a separate electric meter?

10 A. They are not.

11 Q. Does Building B have a separate electric
12 meter?

13 A. It does.

14 Q. Are accessory structures allowed to be
15 connected to the sanitary sewer system?

16 A. They are not.

17 Q. Is Building B connected to the sanitary
18 sewer system?

19 A. It is.

20 Q. What is the nonconforming use with regard
21 to Building B? What is its use?

22 A. It's a dwelling.

23 Q. Okay. And you're not supposed to have
24 more than one dwelling on a lot; correct?

25 A. Correct, correct.

TOSI-BZA 0369

1 Q. So is that the nonconforming use?

2 A. It is.

3 Q. Have you ever proposed to expand the
4 nonconforming use?

5 A. No.

6 Q. Have you ever requested that you be
7 allowed to add another dwelling in this building?

8 A. No.

9 Q. Are there other properties on Sullivans
10 Island that have more than one dwelling located
11 on a single lot?

12 A. Yes. Quite a few.

13 Q. Has the Town allowed some of those
14 property owners to increase the size of their
15 nonconforming uses without obtaining a variance?

16 A. They have.

17 Q. Has the Town allowed some of those
18 property owners to add onto the existing
19 footprint?

20 A. Yes.

21 Q. All right. I'm going to ask you to look
22 at Exhibit 9.

23 A. (Complies with request.)

24 Q. Did you -- this has to do with 2805
25 Atlantic Avenue. Did you get a copy of the

1 Town's file regarding this property?

2 A. I did.

3 Q. Go through what we've got. Were there
4 two dwellings on this single-family lot?

5 A. There were two dwellings on the property,
6 one the conforming dwelling, the other the
7 nonconforming dwelling.

8 Q. Okay. And at some point, I believe it
9 was 1998, was a variance request presented to the
10 Board of Zoning Appeals?

11 A. It was.

12 Q. And did the Board of Zoning Appeals
13 determine that they didn't need a variance in
14 order to elevate, add on, and improve this
15 nonconforming use?

16 A. That's correct.

17 Q. Now, in here there's some pictures. I'd
18 like you to kind of go through those. There's --
19 there's a drawing that shows the house before.

20 A. There's a drawing of the original
21 structure, a before drawing. That was obtained
22 from the Town.

23 MS. PAYLOR: Go right to the next page.
24 Go right to the next page, and you'll be -- no.
25 I'll show you. I'm sorry. It's right after the

1 minutes. Okay. Certificate of Occupancy.

2 Q. Okay. This is a plat showing -- or
3 drawing showing the house before; right?

4 A. Before, correct.

5 Q. And there are some pictures also that
6 are -- that are in here.

7 A. There's some elevations that were done by
8 the architect, although they don't show the house
9 elevated as high as it is today; and there's a
10 new layout plan approved by Kent, and then there
11 are photographs of the structure being elevated
12 and added onto. And then there's some
13 photographs of the finished structure as well.

14 Q. Do you know what the square -- the heated
15 square footage of the original house was?

16 A. It was, according to the County, 198
17 square feet. Basically 10 by 20 so 200 square
18 feet.

19 Q. And do you know how many heated square
20 feet there are in the house now?

21 A. According to the County it is 485 square
22 feet.

23 Q. Okay. And was that house elevated?

24 A. It was elevated above the required flood
25 elevation in order to provide for parking and

1 storage underneath.

2 Q. And if you look at the minutes of the
3 Board of Zoning Appeals, they determined that
4 because the footprint was not going to change,
5 the number of bedrooms was not going to change,
6 the size and quote enclosed space was not going
7 to change, there was no variance needed.

8 A. That's correct.

9 Q. Do you -- with regard to your request, is
10 your footprint as defined in the Zoning Ordinance
11 rather than as defined by Mr. Henderson, is that
12 going to change?

13 A. It is not.

14 Q. Is the number of bedrooms going to
15 change?

16 A. They are not.

17 Q. Is the size and enclosed space going to
18 change?

19 A. Only the interior volume.

20 Q. And what do you mean by "volume"?

21 A. Going up 2 more feet would increase the
22 cubic feet inside the dwelling.

23 Q. Is your request any different than what
24 the owners of 2805 Atlantic Avenue were allowed
25 to do?

TOSI-BZA 0373

1 A. No.

2 Q. You're actually not asking for what they
3 got.

4 A. They actually got more heated square
5 footage, and I'm not asking for that.

6 Q. Okay. Let's look at 1851 Flag Street,
7 which is Exhibit 10.

8 A. (Complies with request.)

9 Q. Did you get copies of the County's and
10 the Town's files on this property?

11 A. I did.

12 Q. And is the first sheet there kind of your
13 summary of what you found?

14 A. Yes.

15 Q. Okay. Tell the -- tell the Board about
16 this -- is this another property that had two
17 dwellings on it?

18 A. It is. And this is the nonconforming
19 structure. The -- the property was condoed in
20 1987; and as a result of that, there was a file
21 with the County for what the structure looked
22 exactly like, the size of it, the elevation of
23 it, in 1987 before Hurricane Hugo, the property
24 was damaged in Hugo and was subsequently
25 demolished and a new house was built.

1 Q. And how -- and so -- I believe in all of
2 this, Building A is the smaller of the two; is
3 that correct? They call it Building A?

4 A. Building A is the smaller of the two,
5 correct.

6 Q. How many stories was Building A in 1985?

7 A. It was a single story.

8 Q. Was it elevated off the ground?

9 A. It was elevated a few feet.

10 Q. In your review of the Town files, did you
11 find any variance allowing the owners to increase
12 the footprint of that nonconforming use?

13 A. I did not.

14 Q. Was there a variance allowing the house
15 to be moved away from the property line?

16 A. There was.

17 Q. Did it address anything about any other
18 changes?

19 A. It did not.

20 Q. And is that included in what was provided
21 here, Exhibit 10?

22 A. Yes.

23 Q. How many square feet was Building A in
24 1985?

25 A. 804 square feet.

TOSI-BZA 0375

1 Q. And in 1990 a Certificate of Occupancy
2 was issued, which is in there. Did it provide
3 that the living area could not be expanded beyond
4 1,080 square feet?

5 A. It did.

6 Q. Was there any variance with regard to
7 allowing that expansion?

8 A. No.

9 Q. Did that Certificate of Occupancy allow
10 for a two-story frame house?

11 A. There is a two-story frame house there.
12 The Certificate of Occupancy doesn't address
13 whether it's two stories or not.

14 Q. Okay. Did you locate a variance allowing
15 the house to be elevated so that it would have
16 two stories?

17 A. No.

18 Q. Did you see any variance allowing the
19 square footage to be increased?

20 A. No.

21 Q. Have you found a plat from 2004, or did
22 you find an additional plat recently that showed
23 the much greater square footage than the 1,080?

24 A. Well, according to the County records --
25 I thought there was a plat here somewhere, isn't

1 there? Yes, I'm sorry. Here it is.

2 The 2004 plat calls for Building A to
3 have 1456 square feet heated.

4 Q. Did you ever find a variance allowing the
5 increase from the 1,080 square feet from 1990?

6 A. No. And by the way, on this plat it does
7 call it existing two-story frame house.

8 Q. Okay. Have the decks and porches
9 changed?

10 A. They have increased.

11 Q. Any variances allowing those?

12 A. No.

13 Q. Do you know when those changes were made?

14 A. The roof deck was put on the property
15 with a new construction. The screened porch was
16 expanded with the new construction, and the last
17 deck that was added was done in 2006.

18 Q. Is this structure subject to the same
19 provisions of the Zoning Ordinance as is 2720-B?

20 A. It is.

21 Q. Let's go to Exhibit 11.

22 A. (Complies with request.)

23 Q. This is 956 Middle Street. Can you go
24 through that for us.

25 A. (Complies with request.) Again, the

1 property was condoed in 1987. So there's a set
2 of documents that exists that show the square
3 footage as it was in 1987. It was a single-story
4 dwelling, had 1139 square feet of heated
5 footprint, which is the total square footage.
6 Had a 213 square foot porch and a 160 square foot
7 deck.

8 Q. Was there a variance allowing these
9 increases?

10 A. Well, it's increased from that; but there
11 is no variance allowing it to be increased.

12 Q. Okay. So what -- so what has it been
13 increased to?

14 A. The current square footage is about 2200
15 square feet. It has a roof deck of 800 square
16 feet, covered porch of 192 square feet, and
17 additional deck of 133 square feet.

18 Q. Okay. And does -- and there's a picture
19 in here. Does that --

20 A. No, that's not it.

21 Q. Okay. And you could find no variance for
22 that; is that correct?

23 A. There's no variance for it.

24 Q. Okay. Let's go to Exhibit 12 which is
25 1121 Middle Street, Unit 5.

1 A. (Complies with request.) Yes.

2 Q. Okay. What did you discover about this
3 dwelling? Is this also -- are there two
4 principal buildings on that one?

5 A. There are two buildings on the lot. This
6 is the nonconforming dwelling constructed pre
7 1977, pre Town Zoning Ordinances being passed.
8 It was damaged in Hugo but not destroyed. It was
9 condoed in 1987. So, again, there are drawings
10 that exist of the -- of the structure before it
11 was elevated above parking and expanded.

12 Q. And were -- was a second floor added?

13 A. There was already a second floor, but the
14 useable square footage was significantly
15 diminished because of the design of the house;
16 and I actually have some drawings here I could
17 show.

18 Q. Well, just tell them what happened.
19 They -- they added on --

20 A. They were allowed to increase the side
21 walls from about 2-and-a-half feet of height up
22 to 8 feet 9 inches. As a result of that, the
23 useable square footage approximately doubled.
24 The volume of the second floor completely
25 doubled.

TOSI-BZA 0379

1 Q. Was there a variance given for that?

2 A. There was not.

3 Q. And did the Town attorney work out a --
4 basically a deal which is set forth in the letter
5 in here that allowed this owner to do that?

6 A. That's correct.

7 Q. Has the owner also put a roof deck up?

8 A. Yes. As part of the new construction
9 when it was elevated, there was a roof deck added
10 above the porch that's accessed from the second
11 floor; and then there's an additional roof deck
12 on top of the house that was also added.

13 Q. Okay. And there's a brochure in here,
14 apparently was on the market; and it shows the
15 back with these decks and the spiral up to the
16 other roof deck. Correct?

17 A. Correct. It also shows the elevation of
18 the second floor roof or ceiling so you can see
19 what happened.

20 Q. Was there a variance ever given for any
21 of these changes to this nonconforming structure?

22 A. There was not.

23 Q. Let's go to Exhibit 13.

24 A. (Complies with request.)

25 Q. This is 2102 I'On Street. Can you tell

1 the Board what you found about this property that
2 had two dwellings located on it?

3 A. It started out in 1979 according to the
4 County records as 254 square feet with a screened
5 porch of 124 square feet and a sun deck of 41
6 square feet. It was renovated in 1986 before
7 Hurricane Hugo. It was also low to the ground,
8 by the way.

9 Renovated in '86 and expanded to a heated
10 footprint of 510 square feet and had a sun deck
11 of 59 square feet added to the property. Then
12 after Hurricane Hugo, it was elevated well above
13 the required flood elevation to allow for storage
14 underneath; and the deck was expanded to 214
15 square feet.

16 Q. Was there a variance allowing any of this
17 work?

18 A. No.

19 Q. All right. Let's go to Exhibit 14.

20 A. (Complies with request.)

21 Q. This is 2263 I'On. Tell the Board what
22 you found about this property that had two
23 dwellings located on it.

24 A. The only records I found were from the
25 County that showed that the original dwelling was

1 511 square feet of heated footprint and that
2 after hurricane -- it was, again, damaged in
3 Hugo. Demolished. After Hurricane Hugo, it was
4 allowed to be increased to 620 square feet.

5 Q. Okay. Was -- are you aware of any
6 variance that was given?

7 A. There was not one.

8 Q. And let's look at the picture which is
9 the second page of that. Does that look somewhat
10 like your --

11 A. Looks a lot like it to me.

12 Q. Like an apartment over a garage?

13 A. It sure does.

14 Q. And that's a nonconforming dwelling;
15 correct?

16 A. It is, yes.

17 Q. Okay. Let's look at Exhibit 15.

18 A. (Complies with request.)

19 Q. Which is 2523 --

20 A. Myrtle.

21 Q. -- Myrtle. Okay. Can you tell the Board
22 about this property that has two dwellings
23 located on it?

24 A. Yes. This is the nonconforming secondary
25 dwelling; and the only thing that they did

1 according to the County was add two small decks,
2 front and rear, in 1990-'91, a four by eight size
3 for an increase of the deck of 64 square feet.

4 Q. Okay. And are you aware of any variance
5 that they got to do that?

6 A. They did not.

7 Q. In your review of the Zoning Ordinance,
8 have you found anything that would prohibit an
9 owner from putting a deck onto an -- a
10 nonconforming structure?

11 A. I have not.

12 Q. Let's look at Exhibit 17.

13 A. (Complies with request.)

14 Q. There's no Exhibit 16, by the way. This
15 is 1820 Central Avenue. Tell the Board about
16 this property that has two dwellings located on
17 it.

18 A. The original structure that became the
19 secondary dwelling, nonconforming dwelling, was
20 originally a commercial building that sat up on
21 the front of the property. In 1983 the owner
22 asked for permission to move it to the back of
23 the lot and elevate it and make it a dwelling.

24 So there was a variance request for the
25 ability to move it to the back of the lot and

1 elevate it and make it into a dwelling. But it
2 started life as 800 square feet, was not to be
3 expanded, and since then the -- the property --
4 the heated footprint has expanded to 1176 square
5 feet, and a very large porch was added to the
6 front of the house of 520 square feet; and an
7 additional 100 square feet of deck was added to
8 the side of the house so it significantly
9 increased in size.

10 Q. So are there pictures in here? Is this
11 the way it looks now? (Indicating.)

12 A. That's the way it looks now, yes.

13 Q. And before it had no porches or decks on
14 it?

15 A. Had no porch or decks at all.

16 Q. Okay. Did you see any variance that was
17 granted to allow that?

18 A. No.

19 Q. Let's go to Exhibit 18, which is 1857
20 Flag Street.

21 A. (Complies with request.)

22 Q. Explain to the Board about this property
23 that has two dwellings located on it.

24 A. Well, this property is -- was a
25 nonconforming dwelling on the lot. It was

1 damaged in Hurricane Hugo so it was replaced. It
2 was a few feet off the ground initially and had
3 about 850 square feet of heated space.

4 The new dwelling was elevated above
5 parking. Approximately the same size; however,
6 the roof was allowed to be elevated so that you
7 could -- you could have a loft inside the
8 structure. So it increased in size. Overall
9 square footage increased by 410 square feet.

10 Q. And it's also got a loft in it; correct?

11 A. Has a loft.

12 Q. And did you see any evidence of a
13 variance with regard to this?

14 A. There was not one.

15 Q. Okay. And the last one we're going to
16 look at is Exhibit 19. 1856 I'On. Is this
17 another property on which two dwellings are
18 located?

19 A. It is.

20 Q. Tell the Board about this one.

21 A. Well, this structure in 1976, according
22 to Charleston County, was a -- a single-story
23 elevated structure, had a heated footprint
24 according to Charleston County of 940 square
25 feet. The ground floor was enclosed with

1 concrete blocks for storage.

2 In 1973 there was a Certificate of
3 Occupancy issued by the Town that referenced the
4 fact that it was a rental cottage behind the main
5 house. By March of 1979, according to Charleston
6 County, the ground floor had become living area.
7 The structure had become a duplex so basically it
8 doubled in size, and somewhere over the years a
9 second electric meter has been added to it. In
10 addition to that, a deck has expanded and a
11 screened porch was added underneath.

12 Q. And what is the total square footage of
13 the two-story dwelling now?

14 A. According to the County, it's 1860 square
15 feet; and the deck was enlarged by 138 square
16 feet.

17 Q. Okay. Did you see any evidence of a
18 variance allowing that?

19 A. There was not one.

20 Q. Did you get permission from the Town to
21 extend the existing roof on your Building B over
22 the existing stairs and walkways?

23 A. Yes.

24 Q. And is that Exhibit 20? Well, this is
25 the permit.

1 A. That's the permit, yes.

2 Q. So what has happened with regard to that?
3 Did you start building it?

4 A. We started building it. The footers were
5 put in last summer. They were inspected by Randy
6 and approved. I should say the side 6 footers
7 were put in, inspected by Randy, and approved.
8 Then in January the posts were installed for the
9 side 6 footers, and the 4 footers in the back
10 were dug. And Randy came and inspected the
11 existing six posts and their connection to the
12 footer and inspected the footers, the 4 footers
13 in the back.

14 Q. And did he approve those?

15 A. He did.

16 Q. What has happened since then?

17 A. Well, he approved them on Thursday, that
18 Thursday in January. We poured the footers the
19 next day. We installed the posts, the four
20 posts, in the back on Saturday; and then by
21 Monday, Randy posted a stop work order.

22 Q. Okay. And is that Exhibit 6? Did you
23 get a letter also from Mr. Henderson?

24 A. Yes.

25 Q. And there are -- and at this point he

1 also pointed out that the connection has been
2 made to the slat house, which was originally
3 denied by the Board of Zoning Appeals. A portion
4 of the handrail was removed from the second story
5 rear walkway. Wooden benches were constructed
6 and anchored. Wooden planters were installed.
7 Additional wood plank slats were installed onto
8 the roof of the slat house, which is now
9 illegally being used as a deck surface.

10 Does he cite any code section for that
11 being a violation of the Zoning Ordinance?

12 A. He does not.

13 Q. Did you subsequently obtain a letter from
14 architect Ron Denton to address the placement of
15 the roof posts?

16 A. Yes.

17 Q. And is that -- that's in Exhibit 20? The
18 last two pages of that?

19 A. Yes.

20 Q. And did he say in here that it was needed
21 for the structural integrity of the existing deck
22 walkway?

23 A. He did.

24 Q. And have you -- and that was submitted to
25 Mr. Robinson; correct?

1 A. Correct.

2 Q. And has anyone said that you can go
3 forward with your --

4 A. No, as a matter of fact.

5 Q. -- extension, roof extension?

6 A. As a matter of fact, I requested a review
7 of the new drawing that was provided by
8 Mr. Denton and was, again, turned down.

9 Q. Okay. And is that Exhibit 21, which is a
10 loose exhibit in there.

11 A. Yes.

12 Q. Is that the letter you got?

13 A. Yes.

14 Q. From Mr. Henderson?

15 A. Yes.

16 Q. And he says in here that "expanding the
17 footprint of this nonconforming structure is in
18 direct conflict with Zoning Ordinance Section
19 21-151."

20 Is that the basis for his denial?

21 A. It is.

22 Q. Okay. Is "footprint" defined in the
23 zoning code?

24 A. It is.

25 Q. All right. Let's go to it. Okay. In

1 the -- in the definitions it says "building
2 footprint," and it refers you to "building
3 coverage area principal."

4 Can you read that? It's the very first
5 one at the top of the page.

6 A. The lot area covered by the principal
7 building measured vertically downward from the
8 principal building's exterior walls to the ground
9 but excludes, one, accessory structures not
10 readily useable as living space; two, exterior
11 portions and decks; and, three, exterior stairs.

12 Q. So the footprint is from the walls of the
13 house, not from the -- the stairs and the
14 walkway; correct?

15 A. Correct, correct.

16 Q. Are you aware of any other definition of
17 "footprint" in there?

18 A. No.

19 Q. And I understand that you're appealing
20 basically three rulings. First of all, that
21 Building B, which is an apartment, which has a
22 storage area underneath, is a garage. That's not
23 true, is it?

24 A. That is not correct.

25 Q. You're also appealing and because it's a

1 garage, you can't raise your roof; correct?

2 A. Correct.

3 Q. If it's a principal building, you can
4 raise your roof; correct?

5 A. Correct.

6 Q. You're also appealing the furniture --
7 the order to remove the furniture; is that
8 correct?

9 A. Correct, yes.

10 Q. Are you aware of any portion of the
11 Zoning Ordinance which would not allow you to
12 have a railing or furniture on the roof of a slat
13 house?

14 A. I'm not.

15 Q. And has anyone ever pointed out one to
16 you?

17 A. No.

18 Q. And, lastly, are you appealing the
19 decision not to allow you to -- to use these roof
20 posts that are outside of the stairway and the
21 existing walkway?

22 A. Correct, yes.

23 Q. And is the basis for that because they
24 are not the existing walkway, and the stairway is
25 not part of the footprint?

TOSI-BZA 0391

1 A. Correct.

2 MS. PAYLOR: Okay. I don't have any
3 further questions. Do you have any questions for
4 Mr. Boehm?

5 MR. HENDERSON: Sure, if I could.

6 MS. PAYLOR: You got it.

7

8 EXAMINATION

9 BY MR. HENDERSON:

10 Q. Paul, did -- you mentioned you talked to
11 Kent Prause, the previous Zoning Administrator.

12 A. For years, yes.

13 Q. Did he ever issue you a permit to expand
14 any portion of this structure?

15 A. No.

16 Q. He didn't. Did he ever issue you a
17 Statement of Zoning Compliance or any other
18 zoning statement that -- that called this a
19 principal -- a second principal building?

20 A. No.

21 Q. Okay. Did Randy ever issue you a permit
22 to expand any portion of this structure?

23 A. The roof but I'm not sure what you call
24 that.

25 Q. Why did he allow you to ex- -- to extend

1 this roof?

2 A. I requested it.

3 Q. Was it because he considered the -- the
4 steps part of the building footprint and,
5 therefore, he was applying what he thought was a
6 little flexibility in allowing you --

7 A. I couldn't tell you that.

8 Q. -- to go to the edge?

9 A. I couldn't tell you what Randy's intent
10 was. He just told me I could do a roof over the
11 walkway on the side and the rear of the building.

12 Q. Okay. When -- when we were talking about
13 the slat house, when permits were issued for the
14 slat house, were the rails part of that permit?

15 A. I didn't request rails.

16 Q. Okay. You just built the slat house;
17 right?

18 A. Uh-huh, yes.

19 Q. And then at what point did you remove the
20 handrails? You said that you and Kent talked
21 about building the slat house so that people
22 could jump over the rails and use it as a deck;
23 right?

24 A. I said that's how they accessed the slat
25 house. They went over the rail.

TOSI-BZA 0393

1 Q. And the Zoning Administrator said that
2 was a good plan. Is that what you're saying?

3 A. He suggested it.

4 Q. Okay. When did you -- when did you
5 construct the bench and the planter, and when did
6 you cut out the rail so that you could access the
7 roof of the slat house?

8 A. Those were added about 1910 when we
9 did -- I mean, 2010, sorry. When we did the
10 improvements to the downstairs area as well as
11 the framing for the screen porch.

12 Q. Was that permitted, the framing for the
13 screen porch and the enclosure?

14 A. Yes.

15 Q. Why didn't you get permits for the
16 benches and the --

17 A. I didn't think I needed a permit for
18 those. Why would I need a permit to put
19 furniture up on a slat house?

20 Q. Why would you need permits to enclose the
21 bottom?

22 A. Because --

23 Q. Why would you do one and not the other?
24 Did you get permits to connect the slat house to
25 the deck?

TOSI-BZA 0394

1 A. No.

2 Q. The request that was denied by the BZA?

3 A. No, no.

4 Q. You didn't get permits to connect that?

5 A. No.

6 Q. What did you request from the BZA in
7 2009?

8 A. I requested a roof over the slat house
9 and a rail around the slat house. I could --
10 actually requested that the entire slat house
11 roof be able to be screened in.

12 Q. I believe as part of that request in
13 2009, it was to connect the slat house to the
14 deck, if I'm not mistaken.

15 MR. ROBINSON: Probably to make it a
16 deck.

17 MS. PAYLOR: Okay. He can be a witness
18 in a minute.

19 MR. HENDERSON: Okay. So, I have two
20 more things. I just want to kind of go through
21 very carefully here with y'all. Under
22 nonconforming structures, there's been a lot of
23 discussion about --

24 MS. PAYLOR: I'm presenting my case
25 now. You can do your closing at the end. I know

1 you're not a lawyer. I'm just telling you
2 because I got a couple more witnesses.

3 MR. SMITH: With all due respect, it's
4 not a court of law either. You've elicited a not
5 of hearsay. Right now we're going down a path of
6 everyone else got to do it. So I want to do it.
7 Let's stick to what we've got here.

8 MR. HENDERSON: And I know that's just
9 a voluntary -- there's no cross-examination
10 allowed. It can be voluntary from what I
11 understand from the Rules of Procedure.

12 MS. TEZZA: Yes.

13 MR. HENDERSON: Okay. Just to recap,
14 in our Ordinance under nonconforming structures,
15 it states verbatim, "Structural alterations
16 including enlargements are permitted if the
17 structural alteration does not increase the
18 extent of the nonconformity."

19 Mr. Boehm's request is to take his
20 structure with a roof and raise that roof up 2
21 feet. So you said it yourself. You're
22 increasing the volume of that; correct?

23 MS. TEZZA: Yes.

24 MR. HENDERSON: So what's keeping him
25 from going up 10 feet? If you do go up 10 feet,

1 then what are you doing to the inside space of
2 that structure? Can you then put in a loft?
3 Could you then put additional shelves, or could
4 you put additional bunk beds? I don't know.

5 This I would think would be an increase
6 to the extent of the nonconformity, and I think
7 the key point that you're making is that
8 increasing the height is not an increase in the
9 extent of the nonconformity. I would disagree.
10 I think height is very relevant here.

11 And so I -- without having the
12 documentation that calls this a second principal
13 building, having the documentation that calls
14 this a garage from Town staff, Mr. Tymco that
15 contradicts himself later in the letter that he
16 sent to me and then calls it a principal
17 building.

18 I'm going with the official document.
19 In fact, I think that's hearsay. Is that the
20 term? Regarding the historic -- the intent of
21 allowing second principal buildings on one
22 parcel, I think the spirit of the Ordinance --
23 and correct me if I am wrong, Randy, is to allow
24 two situations. A special exception to help
25 preserve existing cottages and smaller structures

1 on the island and then build your big house
2 somewhere else on the lot.

3 And to, also, allow -- I have some
4 photographs here. And allow historic properties
5 that have multiple dwellings on them. I'm
6 thinking specifically of Steve Herlong's property
7 at 22 -- I'm sorry. 226 Station 19, I believe.
8 There are three structures on that. Historically
9 there have always been three dwellings on there.

10 MS. TEZZA: Since 1902.

11 MR. HENDERSON: I don't think that it's
12 the intent of the ordinance to allow new
13 constructions to be considered to be allowed to
14 have multiple principal buildings on them, and I
15 would -- I would just leave you with one more --
16 one more item here, and if I could ask one more
17 question to Paul Boehm.

18 BY MR. HENDERSON:

19 Q. Mr. Boehm, you have a -- a business;
20 correct?

21 A. Yes.

22 Q. You have a business. Is that on Isle of
23 Palms? What's the name of that business?

24 A. It's East Island Real Estate, and it's
25 licensed on both Isle of Palms and Sullivans

1 Island.

2 Q. You mentioned that you bought it in 2001,
3 this structure in 2001?

4 A. Correct.

5 Q. And you bought it because you thought it
6 was a second house basically; right?

7 A. Correct.

8 Q. Second principal building.

9 A. Correct.

10 Q. Have you ever thought otherwise?

11 A. No.

12 Q. Have you ever thought about this
13 structure in another way?

14 A. No.

15 Q. You haven't. Have you ever seen this MLS
16 listing? (Indicating.)

17 MR. HENDERSON: What I've just pointed
18 out is an MLS listing that states -- and it's
19 referring to this structure, the garage, and it's
20 listed by Paul Boehm of East Island Real Estate
21 under PaulBoehm0@Yahoo.com. Has his contact
22 information.

23 States, when giving remarks about this
24 structure, he states, verbatim, "Because it is
25 the second structure of the lot, it cannot be

1 enlarged but otherwise you can doll it up inside
2 and out. The lower level contains a garage for
3 two cars, a storage workshop area for your
4 favorite hobbies." And this was -- there are
5 some dates on the back of this MLS listing, and
6 it begins at 2008 and goes to 2012.

7 So this is a fairly recent note that
8 was made here. And from what I understand of
9 MLS, it's a very exclusive ability to tap into
10 this. You have to be a real estate agent, and so
11 I would ask if you've ever seen this.

12 A. Oh, sure, I've seen it.

13 Q. Did you type this?

14 A. No. Probably Bradley did, my son
15 Bradley.

16 Q. So somebody in your office believed that
17 this was a garage secondary structure that can't
18 be enlarged?

19 MS. PAYLOR: Object to the form.
20 That's not what it says anyway.

21 A. That's not what it is. It's a
22 dwelling -- two-bedroom dwelling at the top of a
23 listing with 1,076 square feet. It's not saying
24 it's a garage. It's saying it has a garage
25 underneath the dwelling.

TOSI-BZA 0400

1 Q. Would you think "enlarge," what does that
2 mean? Does that mean expanding?

3 A. "Enlarge" to me means expanding the
4 footprint.

5 Q. The footprint being --

6 A. You couldn't add on sideways and increase
7 the heated footprint. That's what it meant to
8 me.

9 MR. HENDERSON: Okay. Randy do, you
10 have any issues?

11 MR. ROBINSON: You know, the only --
12 the only thing I'd like to say here is, you know,
13 Paul made some statements about what I said and
14 also about some other structures. You know, that
15 was -- and I don't know exactly how to say it
16 except that that was history according to Paul.

17 You know, if you -- if we dissect every
18 different property and every different situation,
19 they're all different. You know, he stated that
20 I was going to raise my roof at my house and
21 have, you know, company do it. I never intended
22 to raise the roof to the house. I intended to
23 raise the ceiling in my house.

24 You know, the way Paul interprets and
25 the way I interpret it could be two different

1 things. And until a permit is applied for,
2 reviewed, and approved, you don't have approval.
3 You can come talk to me about something, and I
4 will tell you what I think; but then until it's
5 applied for and approved, we don't know if we're
6 on the same page, you know. So I think that's
7 really about all I have to say.

8 MS. TEZZA: I'm going to ask one
9 question before we'll let you finish. Most of
10 the -- the properties in the exhibits seem to be
11 pre Hugo historic properties, historically had
12 dependencies. The history of this garage, I
13 believe, is such that we do not believe it
14 predates Hurricane Hugo, but is there an aerial
15 photo?

16 MR. HENDERSON: That's correct, we do
17 have some aeriels.

18 MS. TEZZA: Because this garage -- I
19 just want to point out the fact that this was not
20 a structure that existed before Hurricane Hugo.

21 MR. HENDERSON: We don't have any
22 evidence that shows we -- we asked several of the
23 long-time residents of the neighborhood if they
24 remember a structure being there. Nobody could
25 tell us there was one.

TOSI-BZA 0402

1 MS. TEZZA: We know that one was built
2 post Hugo. We know that, but we don't know that
3 there was a structure before Hugo.

4 MR. HENDERSON: That's correct. So
5 what I've done is I've pulled a photograph from
6 just before. This is from February of 1989. Of
7 course, Hugo was September of 1989. And we can't
8 identify -- if you notice there's a house there.
9 There's no garage. This is Goldbug so that's
10 kind of the house that I identified.
11 (Indicating.)

12 MS. TEZZA: Thank you. Okay. Before
13 we ask any questions, I'll ask Alice to go ahead
14 and do a summation or a final statement; and then
15 we I'll ask the -- I'll ask the Board if they
16 have any questions. And/or should we take
17 statements from the -- does anybody else in the
18 audience want to make a statement or -- about
19 this property?

20 Both of you do. Okay. Alice, why
21 don't you go ahead. Then we'll take those
22 statements. Then the Board will ask any
23 questions.

24 MS. PAYLOR: Okay. I would actually
25 would like to call Mr. Henderson as a witness, if

1 that's okay.

2 MS. TEZZA: You may ask him any
3 question you want.

4 MS. PAYLOR: Thank you very much.
5

6 EXAMINATION

7 BY MS. PAYLOR:

8 Q. How long have you been with the Town of
9 Sullivans Island?

10 A. About nine months.

11 Q. And you weren't here in the 1990s, 1980s
12 when 2027 Goldbug was constructed; correct?

13 A. No.

14 Q. And what is your understanding of what
15 was there?

16 A. When?

17 Q. When it was first built. What was it?
18 Was it ever something different from what it is
19 today?

20 A. Well, this -- when it was built, the
21 document says that it was a garage.

22 Q. Well, it says "apartment above a garage."
23 Does it not?

24 A. Uh-huh.

25 Q. So it doesn't say it's a garage. Says

1 "apartment above garage"; correct?

2 A. That's right, which infers that it's a
3 garage and not a house; right?

4 Q. Any way you want. I mean, I understand
5 where you -- I understand what you're saying. I
6 don't believe it's in accordance with the Zoning
7 Ordinance.

8 A. Wouldn't there be a CO for a house if it
9 were not a garage?

10 Q. Well, it's a CO for an apartment, isn't
11 it?

12 A. Okay.

13 Q. And isn't an apartment a dwelling?

14 A. An apartment is a dwelling but this -- if
15 it were as you said a principal building,
16 wouldn't this be a CO for a house? I mean, it
17 would be a new construction; right?

18 Q. I'm asking you questions. Is that what
19 your opinion is? It would have to be a house on
20 there? Is that what you're saying?

21 A. To be a principal building? To be
22 considered a principal building and not a garage?
23 It would not -- it would have to not say
24 "garage."

25 Q. Okay. Are you aware in the Zoning

1 Ordinance where it says that a garage can be part
2 of a principal dwelling, of a principal building?

3 A. I don't know specifically whether it says
4 that.

5 Q. Well, it does. I just have to find it.
6 Here it is. Section 21-203.

7 A. Is that definitions?

8 Q. Yeah. Right back there. (Indicating.)

9 A. I'm sorry. What are we defining?

10 Q. Garage.

11 A. Garage?

12 Q. Uh-huh.

13 MR. SMITH: Or rather whether it can be
14 part of a principal building is the question.

15 Q. Well, let's look at the definition now.
16 Are you to interpret the Zoning Ordinance, is
17 that your --

18 A. Yes, ma'am, uh-huh.

19 Q. Okay. So when you look at the
20 definition, it says, "an accessory building or
21 portion of a principal building." Isn't that
22 right? A garage?

23 A. Uh-huh.

24 Q. You deny that's what that says?

25 A. No. I -- I agree that it says an

1 accessory building or a portion of a principal
2 building.

3 Q. Okay. So it can only be two things;
4 right? Either an accessory building or a portion
5 of a principal building; correct?

6 A. I suppose, yeah.

7 Q. Okay. Thank you.

8 And if you look at the definition of
9 "accessory structures," they cannot have an
10 electric meter, can they? You want to go look
11 under the accessory structure?

12 A. I think if they're newly constructed, no,
13 they can't have an electrical meter.

14 Q. Well, this is -- this is what was in
15 effect when this was constructed in 1989-'90;
16 correct? An accessory structure could not have a
17 separate electrical meter?

18 MR. ROBINSON: Just for history
19 purposes, we -- we have not allowed a second
20 meter on a lot since 1975-'77 when our original
21 Zoning Ordinance was put into place.

22 MS. PAYLOR: So for an accessory
23 structure, it specifically says in the Zoning
24 Ordinance that an accessory structure shall not
25 have an electric meter; correct? TOSI-BZA 0407

1 MR. ROBINSON: A separate meter, and it
2 has said that since 1975-'77.

3 Q. Okay. And you agree with me that this
4 apartment has a separate electric meter; correct?

5 A. That's what you said. I think you
6 confirmed that it does have one, yes. I haven't
7 confirmed that.

8 Q. You don't -- but he's -- he's testified
9 to that. You don't have any reason to not
10 believe that.

11 A. I don't have any reason to doubt him, no.

12 Q. And an accessory structure cannot have --
13 be -- be connected to the sewer system, can it,
14 under the Ordinance?

15 A. Not legal, but, yeah, it's a
16 nonconforming structure, right.

17 Q. No. It's not a nonconforming structure.
18 It's a nonconforming use. Well, maybe it's a
19 nonconforming structure.

20 A. It's definitely a nonconforming
21 structure.

22 MS. TEZZA: It's a nonconforming use of
23 a nonconforming structure is actually what it is.

24 A. It's both. It can actually be both.
25 They're not mutually exclusive.

1 MS. TEZZA: That's my read.

2 Q. Okay. Have you looked at the definition
3 for "principal building"? How about looking at
4 Section 21-25.

5 A. (Complies with request.)

6 Q. Do you see that? 21-25?

7 A. Building principal, yeah.

8 Q. Okay. Let's look. There's definitions
9 under Subsection A. Do you see that?

10 A. You're looking at "building principal."

11 Q. I'm looking at "principal building
12 coverage area," Section 21-25.

13 A. Oh, you're looking in the body of the
14 Ordinance now.

15 Q. I am.

16 A. I'm sorry. I'm trying to keep up with
17 you.

18 Q. I'm sorry. Actually it says it in both
19 places. That's on page 16.

20 A. (Complies with request.) Okay.

21 Q. Have you got that? And it's got
22 definitions, and it's got a definition of the
23 principal building. "A building or buildings in
24 which the principal use of the lot is conducted."

25 Would you agree with me that the

1 principal use of 2720 Goldbug is residential?

2 A. Yes.

3 Q. Okay. And would you agree with me that
4 the use of that apartment is residential?

5 A. Yes.

6 Q. So that is a principal building under
7 this Ordinance; correct?

8 A. No, not necessarily. No, it -- it could
9 be -- we have lots of structures on the island
10 that have illegal uses. They could be an illegal
11 use. It could be a nonconforming use.

12 Q. It's a residential use, isn't it?

13 A. So there's nothing --

14 MR. ROBINSON: Anything -- anything --

15 MS. PAYLOR: Randy, I'll get to you in
16 a minute.

17 MR. ROBINSON: Thank you.

18 A. He can't help me out? I mean, this isn't
19 a court of law. We're staff.

20 Q. Y'all go for it.

21 MS. TEZZA: Excuse me. This isn't a
22 court; and so if Randy has something germane to
23 the discussion, I'm going to let him answer.

24 MS. PAYLOR: I apologize. I'm used to
25 being in court. If I say stuff like that, it's

1 just my habit. I apologize.

2 MR. HENDERSON: I think it's a
3 voluntary cross-examination from your rules of
4 procedure so I, you know.

5 MS. TEZZA: So Randy predates Joe, and
6 that is why it's important for him to be here
7 because many statements have been made about what
8 Randy said; and so that's why they're working
9 together on this. It's the staff supporting the
10 Board of Zoning Appeals.

11 MR. HENDERSON: But to answer your
12 question, we have on this island, I recently did
13 some GIS work, Geographic Information System
14 dropping dots on every illegal and nonconforming
15 extra dwelling on a lot. We got lots of them.
16 We have lots of people using structures on this
17 island as dwelling units that are illegal, that
18 they have knowledge about; and that's why it's so
19 critical that we get this right. Alice, that we
20 don't allow the increase of these uses and the
21 expansion of these uses. If we overturn this
22 decision, then that sets the standard for doing
23 it across the board for all of these structures.

24 If you have a garage on your property
25 and 20 years down the road, five Zoning

1 Administrators later, probably ten, you know,
2 it -- it's just we need to hold the line with --
3 with not allowing this use to expand, not
4 allowing this footprint to expand. And that's --
5 that's why this is critical for us.

6 Q. And what's the use? Residential?

7 A. It's a legal nonconforming residential
8 use.

9 Q. Okay.

10 A. Yeah.

11 Q. It's residential.

12 A. Uh-huh.

13 Q. And it's legal; right? This isn't
14 illegal as you were just saying; correct?

15 A. Well, yeah. It's -- it has a Certificate
16 of Occupancy issued in 1989, which is strange
17 because all of them were issued in 1977.

18 Q. These are the Town's records. Mr. Boehm
19 did not have anything to do with this property in
20 1989.

21 A. Okay. Well, we have a CO. That's right.

22 Q. So you have a Certificate of Occupancy
23 showing apartment above the garage. So you're
24 not telling the Board that this is an illegal
25 use, are you?

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1 A. No. He can continue this legal but
2 nonconforming use.

3 Q. Okay.

4 A. It's nonconforming.

5 Q. And the use is residential; correct?

6 A. That's right, uh-huh.

7 Q. Okay. Tell the Board how he's expanding
8 the residential use by raising the roof 2 feet.
9 Is he adding any bedrooms on?

10 A. He's -- he's increasing the volume and
11 the square footage, the useable square footage in
12 that dwelling.

13 Q. What useable square footage? The 2 feet
14 that goes up?

15 A. Well, when you say "square footage,"
16 you're taking a measurement length by width;
17 right?

18 Q. Correct.

19 A. So you don't --

20 Q. Where do you increase?

21 A. When you walk around in a space, you're
22 not sliding around on the floor. You're up top;
23 right? So you're using what's above the floor.
24 So if you raise the roof, you're increasing the
25 area that you can use within that dwelling unit.

1 Q. And is there anything in the Zoning
2 Ordinance which leads you to that conclusion? Is
3 there anything talking about expanding by going
4 up? Aren't there lots of cases in here?

5 A. There's lots of case law out there. I'm
6 not an attorney, but there's lots of case law out
7 there that would describe that the increase in
8 height is an intensification of a use and that's
9 a -- that's very common in zoning regulation.
10 After all, that's why we have maximum heights for
11 structures.

12 Q. Okay. And that's why I'm asking you
13 what's in your Zoning Ordinance, not --

14 A. We have maximum heights in our Zoning
15 Ordinance.

16 Q. -- and not what is in anybody else's
17 Zoning Ordinance because this is what you're
18 supposed to interpret; right?

19 A. We only have maximum heights in the
20 Zoning Ordinance. Why do we have a limitation on
21 height?

22 Q. And a nonconforming -- a legal
23 nonconforming structure like this dwelling with
24 the garage underneath it can have a deck on it,
25 can't it? Is there any prohibition in the Zoning

1 Ordinance from having a deck on it?

2 A. On a legal nonconforming use?

3 Q. Legal nonconforming dwelling structure.

4 A. There would be a prohibition on expanding
5 the structure or anything attached to that
6 structure.

7 Q. Have you --

8 A. That's why --

9 Q. Have you looked in the Zoning Ordinance
10 for that? Is there any prohibition in the Zoning
11 Ordinance from having an accessory use, an
12 accessory structure on an accessory use to a
13 legal nonconforming dwelling?

14 A. It doesn't specifically call that out,
15 but we just went through the section that
16 describes legal -- or nonconforming structures
17 which you guys admit it's a nonconforming
18 structure; right?

19 Q. It's a legal --

20 A. You can't expand a nonconforming
21 structure, period.

22 Q. It's a legal nonconforming structure --
23 well, where does it say you can't expand the
24 structure? Where does it say you can't expand
25 the use? And I'll -- I'll call you to 21-150.

1 A. I'm looking at 151.

2 Q. 151. Whatever it is.

3 MR. SMITH: 151 is nonconforming
4 structures. 150 is nonconforming uses.

5 A. That's right. Structural alterations
6 including enlargements are permitted if the
7 structural alteration does not increase the
8 extent of nonconformity.

9 I would say that when you build a wall
10 out to expand that square footage or if you
11 expand the roof, you increase the height of the
12 roof, then you increase the volume or the useable
13 area within that dwelling; and that's an
14 increase, in my interpretation.

15 Q. Well, let's go back to -- okay. Are you
16 in 150 or 151?

17 A. 151.

18 Q. Let's go back to 150 because these are
19 nonconforming uses; correct?

20 A. They're both nonconforming use and --

21 Q. And in 150 it talks about two or more
22 principal buildings on one lot; correct? (F).
23 Do you see that?

24 A. That's right.

25 Q. And it says -- in (f) talks about having

1 two or more, and it says a building permit for
2 improvements to the designated conforming
3 principal building may be considered favorably so
4 that would be --

5 A. The house.

6 Q. -- the regular house; correct? Provided
7 all other requirements of the Town Ordinances are
8 met, the nonconforming structures shall be
9 regulated in accordance with Subsections A
10 through E of Section 150; correct?

11 A. (Nods head.)

12 Q. So if you look, the only one that talks
13 about it is B; correct? Expansion.

14 A. Uh-huh. But, again --

15 Q. A nonconforming use shall not be expanded
16 except to eliminate or reduce the nonconforming
17 aspects.

18 A. But you've never been issued a
19 Certificate of Zoning Compliance for this to be a
20 principal building.

21 Q. And whose responsibility was that?

22 A. The Town's. If it really was a principal
23 building, but it's a garage. That's why it
24 wasn't issued.

25 Q. Okay. All right. I'm -- this is a

1 purely legal interpretation of what your Zoning
2 Ordinance says, and -- all right. Let me go to
3 your letter that you sent. That's Exhibit 21.
4 Okay. Is that a letter that you sent to
5 Mr. Boehm on March 10?

6 A. Yes, it is.

7 Q. And in here you say, "Expanding the
8 footprint of this nonconforming structure is in
9 direct conflict with Zoning Ordinance Section
10 21-151."

11 A. Uh-huh.

12 Q. Now, "footprint" is defined in Section
13 21-25 as well as in the definitions section;
14 correct?

15 A. Yes.

16 Q. And the footprint does not extend to the
17 decks, walkways, or stairs, does it?

18 A. It doesn't, and, therefore, we probably
19 shouldn't have issued the permits for the roof
20 extension to go over your stairs either. So I
21 think that may have been an error on our -- my
22 part, our part.

23 Q. So you're in error in this because the
24 footprint does not include that; correct?

25 A. Again, I think that we were just trying

1 to work with Mr. Boehm and -- we were -- because
2 the decks in our Ordinance are considered
3 impervious surfaces; right? We were considering
4 that area, the steps and the rear deck, as an
5 impervious surface for the footprint. Isn't that
6 why we were trying to work with him to give him
7 the expansion over the stairs?

8 MR. ROBINSON: Oh, yeah.

9 A. But, you know, I -- I think that you
10 could -- you could say, you know, by using our
11 definitions, taking the more -- more strict
12 interpretation of the Ordinance, someone would
13 have probably denied your request to extend that
14 roof over your stairs.

15 Q. Under what provision of the Zoning
16 Ordinance would that be prohibited?

17 A. Under the nonconforming structure
18 section.

19 Q. What does it say?

20 A. Structural alterations, including
21 enlargements, are permitted if the structural
22 alteration does not increase the extent of the
23 nonconformity. I guess the extent of the
24 nonconformity would be, you know.

25 Q. It's the dwelling.

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1 A. Right. The usability of that structure
2 so you could probably deny the permit based upon
3 that. But, again, I think that we are trying to
4 make an effort to -- to work with Paul on that --

5 Q. And --

6 A. -- when we issued the permit.

7 Q. -- how was putting a roof over the
8 walkway and the stairways an extension of the
9 nonconformity? How could that possibly be an
10 extension of the nonconformity?

11 A. Well, it's a nonconforming structure,
12 nonconforming use. I think the stairs going up
13 the side to the -- to the entrance, that's a
14 characteristic of the use because you have folks
15 that are using that structure. Accessing the
16 structure there, and you're -- and you're
17 building on. You're intensifying that staircase.
18 Right? You're making it stronger. You're making
19 it last longer. You actually replaced all the
20 stairs; right? In that permit. Didn't you
21 replace the staircase?

22 MR. BOEHM: Yes.

23 MR. HENDERSON: Okay. So
24 intensification of the use, rebuilding it, you're
25 basically allowing that nonconforming structure,

1 the stairs are part of the structure, to live
2 longer so I think that would be an
3 intensification. I don't even know if the stairs
4 should have been rebuilt either if it's a
5 nonconforming use.

6 Q. So you're going to take a position that
7 you cannot maintain a legal nonconforming use?

8 A. You can maintain it; but reconstruct it,
9 I think, is something different.

10 Q. Replacing the stairs.

11 A. Why don't you tear the whole house down
12 and build it back.

13 Q. You're saying that cannot happen? I just
14 want to be clear on, you know, how you're
15 interpreting the Zoning Ordinances.

16 MS. PAYLOR: I have no further
17 questions.

18 MS. TEZZA: Okay. Is there any public
19 comment?

20 MR. HENDERSON: Oh, here are your
21 exhibits back. I'm sorry.

22 MS. TEZZA: If you will state your name
23 and address for the record, please.

24 MS. GEAR: My name is Aussie Gear. I
25 live at 2702 Goldbug. I'm not really speaking as

1 a neighbor, even though I'm in the neighborhood.
2 I'm speaking -- I am a very strong proponent of
3 the Ordinance for the Town. I am no longer on
4 the Planning Commission, but I was for seven
5 years so I don't necessarily understand all the
6 legal, but I -- I really feel very strongly about
7 the Ordinance.

8 And the thing that -- that concerned
9 me, which is something that you will have to
10 determine and not me -- if, indeed, this is
11 enlarging the usability by using -- expanding the
12 deck over the slat house, what precedent it would
13 set as far as interpretation of Ordinance.

14 We have restaurants that are
15 nonconforming structures, nonconforming uses; but
16 they then say, hey, have more decks. We have
17 garages or apartments over garages. We have
18 houses that are nonconforming structures.

19 And I guess my concern is if, once you
20 start reinterpreting without rewriting, which can
21 be done by Council and can be done through
22 Planning; but if you start edging away at the
23 Ordinance, then you just open a very large can of
24 worms possibly.

25 MS. TEZZA: Thank you for your

1 comments.

2 MS. GEAR: Thank you.

3 MS. TEZZA: Jimmy.

4 MR. HIERS: Yes. I'm James Hiers. I
5 live next door at 2714 Goldbug, and I'm going to
6 violate the first rule of a good public speaker.
7 I'm going to read part of a letter because I
8 think it's important, and we live at 2714 Goldbug
9 directly next door to 2720 Goldbug. We'd like to
10 make the following comments regarding the
11 application to overrule it.

12 We would ask the Board not to grant the
13 request to overrule the Zoning Official who
14 denied the application regarding 2720-B, and I
15 guess I'd like to state I'm really going to make
16 it clear to the Board; and for the record, I'm
17 speaking as a next-door neighbor as a citizen,
18 not as anyone that's ever been on the Board for
19 the Town.

20 We've lived in our house since 1992,
21 and we've always had the clear understanding that
22 the garage and garage apartment next door were
23 nonconforming and could not be expanded or
24 increased. I'm asking to keep in mind the four
25 following points regarding the property at 2720

1 Goldbug.

2 The property at 2720 Goldbug consists
3 of one lot which contains one house and one
4 garage with a living space above. We believe
5 that the garage was built in 1989 without the
6 proper building permits. The garage called
7 2720-B has clearly always been treated as a
8 nonconforming property by all parties in the
9 past.

10 No. 2, there are no restrictions on
11 increasing the size of the -- of the main house
12 at 2720 Goldbug. It can certainly be expanded.
13 The roof can be raised. It could be doubled in
14 size and could have several additional porches
15 and decks. Under past and current Town
16 Ordinances, the nonconforming garage on the
17 property could not be expanded or increased.

18 Despite these facts, the applicant,
19 Mr. Boehm, has made -- has made several attempts
20 to expand the garage; and written records will
21 show that he has been turned down by Town
22 officials as well as by the BZA. And at this
23 point I'd like to note that in Mr. Boehm's 2009
24 application to overrule the Zoning Administrator,
25 the BZA voted unanimously not to overturn the

1 Zoning Administrator.

2 And at that time Mr. Boehm --
3 Mr. Boehm's present counselor was -- was the
4 chair of the Sullivans Island BZA in its own
5 record of voting against overruling the Town
6 Administrator.

7 MS. PAYLOR: I can speak up and say it
8 was not an overruling of the Town Administrator.

9 MR. HIERS: Let me finish, please.

10 MS. PAYLOR: It was an --

11 MR. HIERS: Would you let me finish,
12 please.

13 MS. PAYLOR: It was a variance request.
14 Go ahead.

15 MR. HIERS: Anything else?

16 MS. PAYLOR: I just wanted to make it
17 clear it was a variance request.

18 MR. HIERS: We believe that this
19 application is the latest attempt to test both
20 the new BZA and the new Zoning Administrator. So
21 for the past several -- No. 3, for the past
22 several years, the garage called 2720-B has been
23 offered for sale as a condominium, which we
24 believe goes against both the spirit and intent
25 of the Town zoning laws.

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1 2720-B has been described in real
2 estate advertising as a secondary structure on
3 the lot. It has also been described in real
4 estate advertising as the garage with living
5 space above it, and it also has been described by
6 stating it cannot be enlarged.

7 No. 4, we believe that -- and when I
8 say "we," I'm speaking for my wife and myself.
9 We believe that the reason the slat house was
10 installed by the current property owners was
11 because under Town Zoning Ordinances, they were
12 not allowed to install a deck or a porch and that
13 the slat house is an attempt to circumvent these
14 Ordinances.

15 Under the rules in place, it seems
16 clear that a slat house nor any other structure
17 at the rear of the garage should be allowed to be
18 attached, railed, screened, redecked, raised, or
19 connected in any way. And the roof piers at the
20 rear of the property for the new -- the new roof
21 that was going in, the roof piers were put
22 through the slat house thereby attaching the slat
23 house to the structure which was what Mr. Boehm
24 was denied in his request to do in 2009.

25 I would just like to finish to say we

1 agree with the staff decision; and we also
2 believe that since our house and 2720-B are very
3 closely located to one another, any expansion of
4 2720-B would be of substantial detriment to our
5 adjacent property.

6 I'd like to ask the Town a question. I
7 think I know the answer to it. But does 2720-B
8 have a separate water meter?

9 MR. ROBINSON: Do not know.

10 MR. HENDERSON: I'm not sure.

11 MR. HIERS: Well, I'd like to know that
12 it does. We've heard it has a separate electric
13 meter but how about the water meter? I would
14 like to see if we can determine that. Mr. Boehm,
15 would you -- would you tell me if you have a
16 separate water meter?

17 MS. PAYLOR: There's no -- I don't know
18 if he does or he doesn't.

19 MR. BOEHM: Am I allowed to answer this
20 question?

21 MS. PAYLOR: If you want to. You don't
22 have to.

23 MR. BOEHM: As -- as all condominiums
24 on the island, there is one water meter. We
25 actually separate the bill for the garage

1 internally.

2 MS. TEZZA: You have a sub meter?

3 MR. BOEHM: We have our own meter for
4 the garage, and it's calculated -- it's used
5 separately.

6 MS. TEZZA: So it's like a sub meter.

7 MR. BOEHM: Sub meter, yes.

8 MR. HIERS: In any event, I'd just like
9 to say that Sullivans Island is a -- most of us
10 in this room live on Sullivans Island. It's a
11 special place, and I think it's a very special
12 place because the Town has had strict Zoning
13 Ordinances trying to preserve lot size and lot
14 coverages. A lot of the barrier islands don't
15 have these rules in place.

16 And I think there's -- there's a
17 reason -- there's a reason that these rules are
18 in place, and that's -- that's to maintain the
19 quality of life that's existed here, and I
20 believe that this -- this application is a --
21 is -- is really just to try to make the
22 property -- the garage more salable as a -- as a
23 condominium. Of course, even on Sullivans
24 Island, it's hard to sell a garage.

25 We all like to make money. If we

1 didn't, we'd live in Venezuela or in Cuba; but I
2 think it's -- I think you -- for me I draw the
3 line making money and being a decent neighbor.
4 So it's a very -- it's a very difficult thing to
5 have to speak before this Board as -- as someone
6 objecting to something going on next door.
7 It's -- it's clear that it's a -- it's clear to
8 me that -- that it -- that this -- this structure
9 was built without a permit in 1989 and that it
10 was -- it was built illegally.

11 Now, the CO, don't know how that was
12 gotten; but how do you get -- how does Mr. Tymco,
13 who's written this letter, how does he defend
14 being his own administrator when you have
15 something built, a structure like this built,
16 with no building permit?

17 So in any event, y'all have got a
18 difficult task and just look at the facts and do
19 the best you can.

20 MS. TEZZA: Thank you, Mr. Hiers.

21 I'm going to -- does anybody on the --
22 before we close comments, does anybody on the
23 Board have a question of the applicant? We
24 can't -- we can ask staff questions about any
25 details we've --

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1 MR. SMITH: I have a couple of
2 questions. Is the slat house currently attached
3 to the garage apartment?

4 MR. BOEHM: No.

5 MR. SMITH: It's just freestanding?

6 MR. BOEHM: Yes.

7 MS. PAYLOR: But it abuts to the wall.

8 MR. SMITH: Is there --

9 MR. HENDERSON: I have a picture here
10 that shows it is attached. I believe.

11 MR. BOEHM: I don't think you do.

12 MS. PAYLOR: It abuts.

13 MR. HENDERSON: It actually looks like
14 a two by four or some structure that is nailed
15 up, and the slat house is leaning against it.

16 MR. BOEHM: Well, it's currently
17 supported by two by fours until the -- until the
18 balance of the roof is built, until this issue of
19 where the posts go is resolved; but it's not
20 permanently attached. Those are -- that's like a
21 batter board, I think they call them. What do
22 you call those things, Randy, when you're
23 supporting a temporary post?

24 MR. ROBINSON: What I saw has been
25 there a long time.

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1 MS. TEZZA: Well, what I see is that
2 the bench that's supposedly furniture but looks
3 to me like it was put there also as a railing, is
4 attached to the slat house; and it is also
5 attached to the garage wall. Right here.

6 (Indicating.)

7 MR. SMITH: Okay.

8 MS. TEZZA: I mean, it is attached.

9 MR. SMITH: Looks like we have
10 conflicting opinions of whether it's attached or
11 not.

12 MS. TEZZA: Yeah.

13 MS. TIMMONS: You would fall -- excuse
14 me. There's enough space to slip through between
15 the walkway and the deck.

16 MS. PAYLOR: No, no.

17 MS. TEZZA: It's -- it's touching.

18 MS. TIMMONS: Yes, yes.

19 MS. PAYLOR: Right.

20 MR. SMITH: I noticed RJ Denton's
21 letter, he asserted that the reason the posts --
22 the six by's had to be put where they were was so
23 that it wouldn't disturb the structural integrity
24 of the slat house. Did I read that correct?

25 MR. BOEHM: I think he said the

1 walkway. The walkway, yeah. I didn't have a
2 permit to replace the walkway. The permit I had
3 was for the roof structure; and the roof
4 structure, by the way, includes everything to do
5 with how you build it, the footer, all the way up
6 to the roof rafters and the eave. All of those
7 things extend well beyond the posts.

8 MR. SMITH: And then would the --
9 the -- the roof if it were built and extended out
10 like that, would -- would those posts that are
11 now attached to the slat house, would that, then,
12 connect the slat house --

13 MR. BOEHM: No.

14 MR. SMITH: -- to --

15 MR. BOEHM: No. The posts are
16 freestanding, come up between the existing deck
17 and the slat house. The slat house and the
18 framing of the slat house and the deck are two
19 separate things.

20 MR. SMITH: Right.

21 MR. BOEHM: The only things that come
22 close together, they are separated by air, are
23 the deck surfaces.

24 MR. SMITH: Right.

25 MR. BOEHM: So those things come close

1 together. Otherwise, the posts simply come up
2 between the framing.

3 MR. SMITH: But if this project were to
4 continue, what you're seeking to do is extend --
5 raise the roof and extend out. You've got these
6 six by's. Clearly they're going to be tied into
7 something.

8 MR. BOEHM: They're tied into the
9 house.

10 MR. SMITH: Tied into the house but
11 then they go around to the --

12 MR. BOEHM: And the deck, yeah.

13 MR. SMITH: So then the deck -- is the
14 slat house and the deck two different things?

15 MR. BOEHM: Two different things
16 completely.

17 MR. SMITH: So this slat house in no,
18 way, shape, or form will be -- taking your
19 contention that it's not attached right now,
20 after all this is done, you're telling me that
21 the slat house will not be connected to the
22 building.

23 MR. BOEHM: That's correct.

24 MR. SMITH: And we're looking at
25 photographs that appear to show the six by

1 sixes --

2 MS. TEZZA: Going right through the
3 slat house roof.

4 MR. BOEHM: They do. Sure, they do.

5 MS. TEZZA: So they're connected.

6 MR. BOEHM: No, they don't. They're
7 not connected at all. They just go through the
8 roof. How are they connected? We cut -- we cut
9 the roof of the slat house away and a portion of
10 the deck away to slide those six by six posts
11 down through the hole. They're not connected at
12 all.

13 MS. TEZZA: What did that do to the
14 structural integrity to the slat house?

15 MR. BOEHM: Nothing. Slat house was a
16 freestanding structure. It was built to have
17 people walk on it, built to have furniture
18 sitting on top of it. You could put 20 people
19 out there. The posts are six by six posts. The
20 frame is two by eight. If you needed some kind
21 of a statement from an engineer or an architect,
22 I could get that for you. Randy inspected it.

23 MR. SMITH: Yeah. Those are my
24 questions. Thanks.

25 MS. TEZZA: Okay. Do either you -- do

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1 you have any questions of applicants?

2 MS. TIMMONS: No, I don't.

3 MS. TEZZA: Okay. If y'all have no
4 more questions, I don't have any more questions
5 so I'm going to close the public comment.

6 And we shall -- who wants to open the
7 discussion?

8 MS. PAYLOR: Could I make a closing
9 statement just to tie together the Zoning
10 Ordinance, or you don't care. I mean, it's
11 legally just --

12 MS. TEZZA: A short one.

13 MS. PAYLOR: Very short.

14 MS. TEZZA: You may make a short
15 statement, Miss Paylor.

16 MS. PAYLOR: Thank you. I apologize.
17 I remember being on this, and I did not like long
18 meetings so I understand that.

19 MS. TEZZA: On the record books.

20 MS. PAYLOR: There have been some
21 statements that Mr. Truesdale didn't have a
22 building permit. That's not in the record.
23 There's no record of it. I mean, I asked the
24 Town for the full file; and they said they've
25 lost all kinds of stuff.

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1 Mr. Boehm bought it well after the fact
2 of its being built so he didn't have anything to
3 do with constructing an illegal structure as
4 Mr. Hiers would like you to believe.

5 The building in question contains a
6 dwelling. Because it contains a dwelling, it is
7 a principal building under your Zoning Ordinance.
8 As a principal building, you can have an
9 accessory use. You can also -- the only thing
10 that you can't expand the use, and that was what
11 was so important about the first house that we
12 went through -- that I went through with
13 Mr. Boehm.

14 The Board of Zoning Appeals said they
15 didn't need a variance because they were not
16 expanding the use. You look at it as Exhibit 9.
17 Said footprint was not going to change; and the
18 footprint, remember, is the exterior wall right
19 here. (Indicating.)

20 Doesn't have anything to do with the
21 stairways or the walkways. The footprint was not
22 going to change. They're not adding any
23 bedrooms. The same number of bedrooms are going
24 to be there. The enclosed space is not going to
25 change. There was no variance needed.

1 And I'm -- that's the way I read the
2 Zoning Ordinance. It says that if you don't --
3 that you cannot expand the use. It doesn't talk
4 about the structure; and I don't believe raising
5 the roof which happened in basically every one of
6 these that we had where the Town allowed it
7 without a variance, I don't think a variance was
8 needed under the Zoning Ordinance.

9 They were allowed to -- because there's
10 a height restriction of 38 feet. This is a
11 principal building. It's well within the 38
12 feet. I think if you look at the Zoning
13 Ordinance, it clearly says that he can raise,
14 elevate his roof, on a principal building. Even
15 Mr. Henderson said that in the e-mail that he
16 sent to him.

17 Every -- there's no question about it
18 except now there's -- he's trying to come up with
19 a reason why, you know, he can't have, you know,
20 what he's entitled to.

21 This is a principal building. It can
22 be elevated. He's not asking for anything other
23 than raising the roof 2 feet so he can raise the
24 ceiling in the apartment by 2 feet. There's no
25 other expansion. There's no expansion of the use

1 itself. And when you look at the -- putting a
2 roof over, there's nothing in the Zoning
3 Ordinance that prohibits him from putting a roof
4 over an existing stairway and the walkway.

5 I don't think there's anything in the
6 Zoning Ordinance that prohibits him from putting
7 a deck on it. Now, if you go back, it was a
8 variance request; and as we all know when you ask
9 for a variance, you have to show hardship and
10 that type of thing.

11 Well, I don't -- I don't know he could
12 show hardship because he didn't have a deck back
13 there. So I guess what I'm saying is: We did
14 not and I was on that, and I think that was the
15 right decision because I don't think he needed a
16 variance.

17 I think he could have put a deck out
18 there under the Zoning Ordinance the way it's
19 drafted. And that -- that's where we are. And I
20 know that, you know, Mr. Boehm, you know, this is
21 an appeal. It is not a variance request. He
22 doesn't have to show a hardship.

23 So we're asking that Mr. Boehm be
24 allowed to raise his roof by 2 feet so he can
25 increase the ceiling height in his apartment.

1 Asking that you find that this is a principal
2 building; and really it's up to the Zoning
3 Administrator to give a Certificate of Occupancy
4 that says this is the nonconforming use on the
5 lot, nonconforming secondary building.

6 We don't believe that there's anything
7 in the Zoning Ordinance that prohibits the
8 placement of furniture on a slat house roof or
9 the placement of a safety rail around the slat
10 house roof because it's still within the height
11 restriction, even with the rail, of accessory
12 because that's 15 feet; and it's nowhere close to
13 15 feet now high.

14 And the roof piers, they don't have to
15 be within the existing footprint. If they did,
16 they would have to be -- you'd have to take part
17 of the building out to put them in. So we're
18 asking that you reverse the decision of the
19 Zoning Administrator. I believe that none of
20 this is a precedent for anything. I think it's
21 been done. I think that's why it was done in all
22 these other cases, because the Zoning Ordinance
23 allowed it. I don't -- I don't think they had
24 any reason to get a variance because the Zoning
25 Ordinance allowed what they did.

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1 Thank you.

2 MS. TEZZA: Thank you. I'm going to
3 allow Jimmy to speak since I allowed you to
4 speak.

5 MR. HIERS: I would like to ask the
6 chair if she would open the conversation back up
7 for a brief statement.

8 MS. TEZZA: I will.

9 MR. HIERS: Thank you. I'd just like
10 to state for the record that I never said
11 Mr. Boehm nor did I apply that Mr. Boehm had
12 anything to do with this structure being built
13 illegally. This -- that occurred before
14 Mr. Boehm bought the property.

15 However, I would like to add this: I
16 spoke with Kent Prause today by phone and read
17 him this sentence from page 2 of Mr. Boehm's
18 application. Mr. Boehm would not have purchased
19 the property without the assurance of Mr. Prause
20 that the two structures were principal buildings
21 under the then Zoning Ordinance. Mr. Prause
22 said --

23 MS. PAYLOR: I object because this is
24 hearsay. Just putting it on the record. Now you
25 can read it.

1 MS. TEZZA: This is not a court of law

2 MR. HIERS: Ms. Paylor, would you let
3 me finish before you -- this is the second time
4 you interrupted me. This is not court.

5 MS. PAYLOR: I'm making my objection
6 before you say it. It's for the record.

7 MS. TEZZA: And for the record, this is
8 not a court of law.

9 MS. PAYLOR: I know, but this appeal is
10 going up.

11 MS. TEZZA: That's fine. You don't
12 know what we're going to do yet.

13 MR. HIERS: May I proceed?

14 MS. TEZZA: You may proceed.

15 MR. HIERS: Mr. Prause stated that he
16 is sure that he never said nor assured Mr. Boehm
17 that the two structures were both principal
18 buildings. He said, in fact, that he did not see
19 how they could both be principal buildings.

20 MS. TEZZA: Thank you. The public
21 comment is now closed.

22 Carlin, do you have any --

23 MS. TIMMONS: Well --

24 MS. TEZZA: I think the issue is, is
25 this a principal building? Is there are -- there

1 two principal buildings on this lot?

2 MS. TIMMONS: Uh-huh, yes.

3 MS. TEZZA: And I think that's the
4 first question that we have to ask. Are you in
5 agreement, Bachman?

6 MR. SMITH: I'm in agreement.
7 Unfortunately, I think the waters are
8 sufficiently muddied that a decision at this --
9 this evening is probably not in the best
10 interests of the Board; however, that said, I
11 mean, I'm okay with making a decision, leaving it
12 up -- open to come back and revisit it later or
13 however we want to do it.

14 There's unanswered questions here; but
15 as it stands, I'm going to have the -- I'm going
16 to, you know. I'm okay with going forward, but
17 we just spent a lot of time talking about a lot
18 of things that -- that might not have a lot to do
19 with what we're here to decide.

20 MS. TIMMONS: Right.

21 MS. TEZZA: Right.

22 MR. SMITH: That's a little bit
23 unfortunate, but that is where we are now. So
24 with that said, I would agree with you that the
25 first question is to decide if there are two

1 principal structures up there.

2 And I even submit that in the
3 applicant's own facts, one of those structures
4 was the principal dwelling; and the other was the
5 garage apartment. They state it right there that
6 one's a principal and one's not, and I don't see
7 a way to get around that one.

8 MS. TIMMONS: Right.

9 MS. TEZZA: And -- and all of these
10 exhibits are -- those are dependency. They're
11 not garages, I don't think. I think most of them
12 are dependencies. I know the one that -- this
13 nine, I know -- I know that little house, and
14 that was a cottage. So we're talking about a
15 cottage versus a post storm garage that was
16 probably built. So in the -- the spirit and the
17 intent of the ordinance to allow variance --
18 variance requests for nonconforming structures
19 was to preserve cottages.

20 MS. TIMMONS: Right.

21 MS. TEZZA: In my view.

22 MS. TIMMONS: Yeah, I think and -- to
23 me, I have trouble when it's like your aunt, when
24 you can look and what you see, you know, is one
25 thing, you know. What your brain recognizes is a

1 two-car garage with an apartment up top and
2 whoever's renting it now wasn't told to keep that
3 door down 'cause when I rode my bike by, it --
4 the one on the right was up. And there was
5 nothing in there but some bikes at the back and a
6 golf cart right in front ready to drive in, you
7 know. So that's what I saw, Paul.

8 You know, and one's obviously a little
9 house; and the other's a nice apartment. I mean,
10 if it was just a couple of folks, it would be
11 great, you know. I mean, but -- I mean, I --
12 obviously, y'all are building a case; and that's
13 fine. But I know what my eyes see and I know
14 where it says a nonconforming use shall not be
15 expanded except to eliminate or reduce the
16 nonconforming aspects to, you know, the decks,
17 the walkways around the back, you know, to get
18 the view, you know. Where are you going?
19 Where's your door? You know, it's kind of put
20 two and two together, you know. So I --

21 MS. TEZZA: Is this still on the
22 market? Is this on the market right now?

23 MR. BOEHM: No.

24 MS. TIMMONS: Anyway, yeah.

25 MS. SCHWEITZER: I'm in agreement with

1 you that this is the key issue that needs to be
2 decided. I -- I saw what Carlin saw when I drove
3 by as well.

4 MS. TEZZA: And I went by as well. I
5 knew the house. I just drove by it get to make
6 sure.

7 MS. TIMMONS: Yeah.

8 MS. TEZZA: But it -- it looks like a
9 garage. It is referred to as a garage. It is
10 called a secondary structure in the applicant's
11 own documents. So I think that's fairly clear.
12 And it's not our job to suppose what might happen
13 based on our decision. It's our job to make the
14 best decision that we can make according to what
15 we see and how -- how we interpret the Zoning
16 Ordinance as written.

17 MS. TIMMONS: Right.

18 MS. TEZZA: So -- would anyone like to
19 make a motion?

20 MR. SMITH: I'll make a motion to deny
21 the appeal.

22 MS. TEZZA: Is there a second?

23 MS. TIMMONS: I'll second it.

24 MS. TEZZA: Any further discussion?

25 (No response.)

1 MS. TEZZA: All in favor, signify by
2 saying aye.

3 (All Member respond aye.)

4 MS. TEZZA: Opposed. Like sign.

5 (No response.)

6 MS. TEZZA: The motion to overturn the
7 Zoning Administrator is denied.

8 MS. PAYLOR: And is that as to all
9 three of the issues?

10 MS. TEZZA: Yes.

11 MS. PAYLOR: Okay. Thank you.

12 (Proceedings concluded at 8 p.m.)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

3 I, Ronda K. Blanton, a Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing proceedings were taken
7 at the time and location therein stated; that all
8 statements made at the time of the proceedings
9 were recorded stenographically by me and were
10 thereafter transcribed by computer-aided
11 transcription; that the foregoing is a full,
12 complete, and true record of the proceedings.

13 I further certify that I am neither related
14 to nor counsel for any party to the cause pending
15 or interested in the events thereof.

16 Witness my hand, I have hereunto affixed my
17 official seal on March 31, 2014, at Charleston,
18 Charleston County, South Carolina.

19 *Ronda K Blanton*

20 Ronda K. Blanton, RPR
21 Notary Public, South Carolina
22 My Commission expires:
23 May 14, 2018.
24
25

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TOSI-BZA 0469

STATE OF SOUTH CAROLINA)
)
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 PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO:2014-CP-10-2623

FILED
2014 AUG 28 PM 4:32
JULIE J. ARMSTRONG
CLERK OF COURT

BRIEF OF APPELLANT

Appellant Paul Boehm appealed the written Order of the Town of Sullivan's Island Board of Zoning Appeals ("BZA"), dated April 10, 2014, denying his appeals from three determinations of the Town's Zoning Administrator that he could not make improvements to a building which is primarily used as a residence, is rented out to tenants, and is located at 2720B Goldbug Avenue on Sullivan's Island. After a hearing, the BZA ignored the clear provisions of the Town's Zoning Ordinance ("Z.O.") defining a "garage" and a "Principal Building" and, instead, concluded that the building, the primary use of which was residential, was not a Principal Building under the Z.O. and was a garage solely because it looked like a garage in their opinions. T.R., pp. 98-102. The BZA made no other findings of fact with regard to this matter and based its denial of the improvement requests of Appellant solely on the individual members' opinions that it looked like a garage so it must be a garage. Appellant appeals the BZA's decision that the building in question is a "garage" as defined by its Zoning Ordinance and asserts instead that it is a Principal Building, which may be improved in the ways requested by Appellant and, therefore, the BZA decision should be reversed.

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 facts of the evidence in the record as applied to the terms of the Z.O., 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.

FACTS

Paul 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. T.R. 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.

10-11.¹ 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. 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. 10. Mr. Boehm conveyed the main house to another party but continues to own the smaller dwelling.

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.² T.R. 12-13.

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 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. 18-20. Because the Town would not let him put a safety rail around the slat house roof,

¹ 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.

² 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.

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 Sec. 21-137.

⁴ Accessory structures are only allowed as accessories to a Principal Building. Z.O. Sec. 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.”)

which the Town knew he was using as a deck, Mr. Boehm installed furniture on the perimeter as a safety precaution. T.R. 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 Zoning Ordinance, Sec. 21-150(B) and (F)(3), which applies to "Two or more Principal Buildings on one lot." T.R. 13-14; 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.

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. 14-15. The dwelling located on 2720B has a separate electric meter and is connected to the City sewer system. T.R. 15. The building has never been used as a garage for the larger dwelling on 2720 Goldbug. T.R. 15. He received a permit in January of 2013 to construct a utility building as an accessory structure to 2720B. T.R., 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, and Robinson told him that he could elevate the ceiling/roof by two (2') feet. Prior to getting the plans drawn up, the Town hired a new Zoning Administrator, Joe Henderson. T.R. 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. 22-23; see also email attached to T.R. as Exhibit 8. Mr. Boehm appealed that denial by Mr. Henderson.

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 the owners to add a 2nd floor where there had only been one floor. T.R. 27-43. The Zoning Ordinance clearly allows secondary dwellings to be enlarged, elevated, etc., so long as the "nonconforming use" is not expanded. § 21-150(B), Town of Sullivan's Island Zoning Ordinance ("Z.O.").

Mr. 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 Mr. Boehm a building permit but subsequently issued a Stop Work Order when Mr. Henderson discovered that the footings for the roof extension were outside what he determined was the "existing footprint" of the building.⁵ Mr. Boehm appealed that decision of Mr. Henderson 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 Mr. Boehm to remove that furniture. Mr. Boehm appealed that decision of Mr. Henderson.

On March 13, 2014, the Town of Sullivan's Island Board of Zoning Appeals ("BZA") heard Mr. Boehm's appeals of the three decisions of the Zoning Administrator.

Mr. Henderson, the Zoning Administrator, testified that the use of the structure located on 2720B was "residential," a "legal nonconforming residential use." T.R. 67-70. But he contended that the building was still an "accessory structure" – a garage.

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. 98-

⁵ 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. 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. 76.

99. The BZA members ignored the plain language of the Z.O. which clearly states that the two are not mutually exclusive. 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 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. 98-103.

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

Mr. Boehm filed this appeal to the Circuit Court in accordance with S.C. Code Ann. § 6-29-820.

SUMMARY OF ARGUMENT

S.C. Code Ann. § 6-29-800(F) requires that "[a]ll final decisions and orders of the board must be in writing ... All findings of fact and conclusions of law must be separately stated in final decisions or order of the board ..." The Sullivan's Island BZA's Order stated only:

The attached Minutes [Transcript] as reported by NCRA Registered Professional Reporter Ronda K. Blanton serve as an accurate representation of the public meeting held on March 13, 2014. As stated in said Minutes, motion was made by Board Member Bachman Smith, IV; seconded by Board Member Carlin Timmons, to deny the appeal to overturn the Zoning Administrator's decision, carried unanimously.

As the BZA acknowledged in the record, all of Mr. Boehm's appeals hinged on whether 2720B is a Principal Building under the Z.O. In the minutes, the only finding of fact or conclusion of law made by the BZA was that, because 2720B Goldbug looked like a garage in the opinion of the BZA members, it must be a "garage" under the Zoning Ordinance. This finding/conclusion

is totally arbitrary and is not supported by the undisputed facts in the record as applied to the definitions in the Zoning Ordinance, and the Order of the BZA must be reversed so that Mr. Boehm can proceed with the improvements that he has requested be made to 2720B Goldbug.

LEGAL ARGUMENTS

I. The BZA erred when it concluded that 2720B Goldbug is an Accessory Structure, rather than a Principal Building, under the Zoning Ordinance.

The Z.O. restricts the height of Principal Buildings on Sullivan's Island to 38'. Z.O. § 21-24(A). The height of an Accessory Structure is limited to 15' and, in some circumstances, 18'. Z.O. § 21-138(A)(3)(a). As stated by Mr. Henderson in the email attached to the transcript as Exhibit 8, 2720B has a height of 22'-24'. Thus, as a Principal Building, increasing the height of the roof by 2' would be permissible. However, the BZA erroneously concluded that 2720B is an Accessory Structure, and not a Principal Building, and thus denied Appellant's application to increase the roof by 2'.

Z.O. § 21-25(2) defines a "Principal Building" as "[a] building or buildings in which the principal use of the lot is conducted. The term also specifically applies to multiple dwellings located on the same lot..." Z.O. § 21-203, "Definitions," defines "Building, Principal" as "[a] building in which the principal use of the lot is conducted." Thus, any and every building on Sullivan's Island that is located on a residential lot and is used as a residence is a Principal Building under these definitions. Additionally, there can be more than one Principal Building on a residential lot. There is ample evidence contained within the record to establish that 2720B is primarily used as a residence. As such, 2720B is a Principal Building and the BZA erred as a matter of law in concluding it was not and denying Appellant's application.

The BZA based its erroneous conclusion on the fact that there is a "garage" area on the ground floor of 2720B. The BZA then concluded that, because garages are one of the types of

structures listed in the Z.O. as permissible “Accessory Structures,” see Z.O. § 21-137(A)(3), the entirety of 2720B was therefore an Accessory Structure. This conclusion is flawed.

The Z.O. 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)⁶. 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. If the BZA’s reasoning was followed to its logical conclusion, it would result in every residence on Sullivan’s Island with parking under the house being transformed into an Accessory Structure.

That the BZA recognizes 2720B as a residence, and therefore a Principal Building, is evidenced by the record. Mr. Henderson unequivocally testified that the principal use of 2720B is residential. T.R. 66-67. For each of the last 14 years Mr. Boehm has rented out 2720B as a residential dwelling and has obtained a rental license from the Town for the same. T.R. 14-15.

Additionally, 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.

That 2720B is a Principal Building is further evidenced by the fact that it has its own Accessory Structure – the “slat house.” Pursuant to the Z.O., certain structures/uses, delineated at Z.O. § 21-2137(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

⁶ The BZA’s disregard for the plain language of the Z.O. is evidenced by Mr. Henderson’s testimony. He was asked if he was “aware in the Zoning Ordinance where it says that a garage can be part of a principal dwelling, of a Principal Building?” His response: “I don’t know specifically whether it says that.” After being read the definition, he concedes that it does, in fact, say as much. T.R. 62-64.

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 Z.O. in effect as of 2001 when Mr. Boehm constructed his “slat house,” a “slat house” was listed as a permissible Accessory Structure. T.R. 18-20. The slat house could not have been permitted if 2720B were not a Principal Building.

Finally, the BZA’s determination that 2720B is a “garage” and not a Principal Building under the Z.O. contradicted the testimony of Henderson that “we have a legal but nonconforming apartment unit.” T.R. 5. There is no Accessory Structure in the Z.O. that contains a dwelling, whether it be an apartment unit or otherwise. A building containing a residence on a residential lot is a Principal Building under the Z.O. The finding of the BZA that 2720B is a garage, and therefore an Accessory Structure, is clearly not correct as a matter of law and should be reversed with a direction that the Zoning Administrator make a designation that 2720B Goldbug is a legal, nonconforming Principal Building.

The arguments made by Mr. Henderson at the hearing before the BZA are without merit. The evidence is undisputed that, up until Mr. Henderson arrived as Zoning Administrator in 2013, the Town treated 2720B as a Principal Building. Even with the plain language of the Z.O. designating 2720B as a Principal Building, Mr. Henderson testified that, because the Town never issued a “Certificate of Zoning Compliance” designating 2720B as a non-conforming Principal Building under Z.O. § 21-150(F), it could not be a Principal Building. T.R. 74. That section provides, 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 Town Hall.⁷

Z.O. § 21-150(F). Clearly, this section, and the designation it requires the Zoning Administrator to make, concerns only which Principal Building will be the “conforming” building and which will be the “non-conforming” building when there are two or more Principal Buildings on a residential lot. It does not alter the very clear definition of “Principal Building” contained within the Z.O. and it most certainly does not allow the BZA to conclude that its failure to make this designation somehow strips 2720B of its Principal Building status.

As testified to at the hearing, there have been multiple requests to improve the buildings located on 2720 Goldbug, and the Zoning Administrators, including Mr. Henderson, did not follow through with the designation required of them by this section. The Town had a mandatory duty to make the designation, not Mr. Boehm. Now, Mr. Henderson and the Town take the position that, because Mr. Henderson and his predecessors have not done their jobs and designated the larger Principal Building on 2720 Goldbug as being the conforming Principal Building and the smaller “apartment over garage” as being the non-conforming Principal Building, the smaller residence is not a Principal Building. That is an absurd argument and an absurd result. Mr. Henderson testified that the Town should not even allow the building to be maintained, because it was never designated as a Principal Building.⁸ Contrary to Mr.

⁷ The Z.O. in effect at the time that Mr. Boehm purchased the property contained different language. In the May 2005 edition that is now in effect, the language made it mandatory for the Zoning Administrator to make the designation of conforming and non-conforming when he received a request to improve the property. This required Mr. Henderson at the time that Mr. Boehm submitted his requests regarding improvements for 2720B to make the designation. The Town may not benefit from the failure of its Zoning Administrator to perform his job.

⁸ In cross examination as to his misinterpretation of the Z.O., and despite the clear language of Z.O. § 21-149(F), Mr. Henderson even went so far as to testify that an owner may not maintain or improve in any way a second Principal Building or an accessory structure if it were nonconforming, because that would “expand” the nonconforming use:

Henderson's testimony that a nonconforming structure may not be restored, Z.O. § 21-151(D) specifically allows an owner to rebuild even a **destroyed** nonconforming structure. The Zoning Administrator has a mandatory, not a discretionary, duty to determine the conforming and non-conforming structures, and Henderson should have done that when he received a request to improve the secondary building instead of coming up with an absurd argument to support his decision that 2720B is an Accessory Building and deny the improvement requests.

As an additional basis for reversal, the Town of Sullivan's Island is estopped from taking a position that is contrary to the position taken by Kent Prause at the time that Appellant 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

12 A. I think the stairs going up
13 the side to the -- to the entrance, that's a
14 characteristic of the use because you have folks
15 that are using that structure. Accessing the
16 structure there, and you're -- and you're
17 building on. You're intensifying that staircase.
18 Right? You're making it stronger. You're making
19 it last longer. You actually replaced all the
20 stairs; right? In that permit. Didn't you
21 replace the staircase?

22 MR. BOEHM: Yes.

23 MR. HENDERSON: Okay. So
24 intensification of the use, rebuilding it, you're
25 basically allowing that nonconforming structure,

1 the stairs are part of the structure, to live
2 longer so I think that would be an
3 intensification. I don't even know if the stairs
4 should have been rebuilt either if it's a
5 nonconforming use.

6 Q. So you're going to take a position that
7 you cannot maintain a legal nonconforming use?

8 A. You can maintain it; but reconstruct it,
9 I think, is something different.

10 Q. Replacing the stairs.

11 A. Why don't you tear the whole house down
12 and build it back.

13 Q. You're saying that cannot happen? I just
14 want to be clear on, you know, how you're
15 interpreting the Zoning Ordinances.

T.R., 77-78.

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. The BZA erred when it concluded that raising the roof of 2720B Goldbug by two feet would constitute an expansion of the nonconforming use of that building.

The other argument made by Mr. Henderson, and apparently accepted by the BZA, was that allowing Appellant to increase the height of the roof would run afoul of the provisions of the Z.O. which prohibit any alterations to a legal, nonconforming use or structure where those alterations expand the nonconformity. See Z.O. § 21-150(B); § 21-151(B). It is clear that 2720B is a legal, nonconforming use. T.R. 69-70. The “nonconformity” here is the fact that it constitutes a second residential unit on the lot. See Z.O. § 21-20(A)(1) (permitting only one residential dwelling per lot). Mr. Boehm has not requested to expand that nonconforming use. Z.O. Sec. 21-151(B)(1) deals with nonconforming structures, which 2720B is, and states: “[s]tructural alterations, **including enlargements**, are permitted if the structural alteration does not increase the extent of nonconformity.” Elevating the roof two (2’) feet will not increase the extent of the nonconformity as it will not involve adding another dwelling or even increasing the number of bedrooms.⁹

In a prior case from 1998 involving two principal dwellings on a lot, when the homeowner brought to the BZA a request for a variance in order to raise the house to accommodate storage and parking underneath, as well as to meet the flood code, the BZA determined that no variance was required, because the nonconformity was not being expanded.

⁹ If a Principal Building was nonconforming due to the fact that its height exceeded the maximum set by the Z.O, elevating the roof would, in such a case, be an expansion of the nonconformity. That is not the case here.

The BZA determined that the number of bedrooms and the footprint were to remain the same, so there was no expansion of the nonconformity, and the Zoning Administrator should have issued a building permit. T.R. 27-30; Exhibit 9. Similarly, Mr. Boehm's request to elevate the roof was not going to change the number of bedrooms or the footprint, so the Zoning Administrator should have issued the requested building permit.

There is no provision of the Z.O. that prohibits a property owner from elevating a Principal Building within the height restrictions for such building. The elevation of 2720B by two (2') feet will not come close to the height restriction imposed by the Z.O. for a Principal Building.

Although there are no South Carolina reported cases on point, other courts have discussed the meaning of expansion of use in a Zoning Ordinance. In Eddins v. City of Lewiston, 150 Idaho 30 (Supreme Court of Idaho, 2010), the Court discussed the meaning of expansion of nonconforming use and found that the substitution of one mobile home for another was not an expansion, citing Lewis-Clark Memorial Gardens, Inc. v. City of Lewiston, 99 Idaho 680, 587 P.2d 821 (1978) (The nonconforming use had not been expanded or enlarged by the pouring of additional crypts above ground which did not result in the change of the fundamental or primary use of the property as a cemetery.)

In our case, the BZA made no findings of fact that Mr. Boehm's request would expand the nonconforming use and, instead, determined that the only question that they needed to answer was whether the structure was a "garage" or a "dwelling." The decision of the BZA should be reversed and the Zoning Administrator and Building Official should be directed to issue the requisite permits to Mr. Boehm to do the requested work.

III. The BZA erred when it concluded that the roof piers, placed around the perimeter of the Principal Building to support the roof extension that was approved by the BZA, constituted an expansion of 2720B's footprint and its nonconforming use.

For all of the reasons set forth above, the placement of roof piers a few inches outside of existing steps and walkways of 2720B is not an expansion of the legal nonconforming use. By so doing, the nonconformity, i.e., the fact that 2720B is a second residence on a residential lot, is not being expanded in any way. Additionally, in its Order, the BZA states that these roof piers were impermissible because they "expand[ed] the building footprint." As conceded by Mr. Henderson during the hearing before the BZA, the piers did not, in fact, expand the "footprint." T.R. 75-76. The term "footprint" is defined as the area "covered by the Principal Building measured vertically downward from the Principal Building's exterior walls to the ground" and specifically excludes areas covered only by porches, decks, and exterior stairs.

Additionally, there is no provision of the Z.O. that prohibits a property owner of a legal residence from replacing existing stairs and covering them and the existing walkway, which is what Mr. Boehm proposes to do. In fact, the Z.O. specifically allows a property owner to repair, maintain, and restore nonconforming structures¹ as necessary to keep them in sound condition. Z.O. § 21-149(F). The decision of the BZA should be reversed and the Zoning Administrator and Building Official should be directed to issue the requisite permits to Mr. Boehm to do the requested work.

IV. The BZA erred when it concluded that the Zoning Ordinance prohibited the placement of a handrail and furniture on the roof of the slat house or around a deck adjacent to a Principal Building such as 2720B.

The Z.O. allows accessory uses or structures in conjunction with a principal use. Z.O. § 21-136. Permitted accessory uses include "deck or patio." Z.O. § 21-137. The Z.O. does not prohibit accessory uses/structures to a nonconforming Principal Building like 2720B. The

decision of the BZA in denying Mr. Boehm's request to place a safety handrail around the accessory structure that he uses as a deck led to his placement of furniture on that deck. The Zoning Ordinance does not prohibit the placement of a handrail or furniture on either the roof of a slat house or around a deck adjacent to a Principal Building.

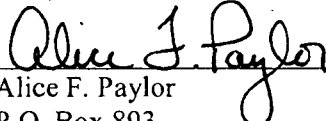
The decision of the BZA should be reversed and the Zoning Administrator and Building Official should be directed to issue the requisite permits to Mr. Boehm to place a handrail around the slat house roof/deck.

CONCLUSION

The Appellant is entitled to a reversal of the decision of the Zoning Administrator and the Board of Zoning Appeals of Sullivan's Island. He is entitled to building permits required to make the requested improvements to 2720B Goldbug Avenue and a Certificate of Occupancy designating 2720B Goldbug as a legal nonconforming residential structure.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

Charleston, South Carolina
August 28, 2014

STATE OF SOUTH CAROLINA)
)
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 PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-2623

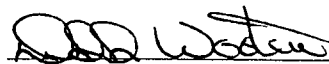
CERTIFICATE OF SERVICE

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The undersigned hereby certifies that on the 28th day of August, 2014 a true and correct filed-stamped copy of Appellant's Brief was placed in an envelope with first class postage prepaid and affixed thereto and mailed to all parties of record.

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STATE OF SOUTH CAROLINA

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 PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A No.: 2014-CP-10-2623

) **Respondents' Brief in Opposition to**
) **Appellant's Petition to Reverse the BZA's**
) **Final Order**

FILED
JULIE J. ARISTON
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Appellant Paul Boehm initiated this appeal from the final order of the Town of Sullivan's Island's Board of Zoning Appeals ("BZA") dated April 10, 2014, ("Final Order") and mailed on April 11, 2014. **TOSI-BZA 0087—0098 (Appellant's Petition)**. Respondents Town of Sullivan's Island Board of Zoning Appeals ("BZA") and Town of Sullivan's Island ("Town") (jointly, "Respondents") respectfully submit this Brief in Opposition to Appellant's Petition to Reverse the BZA's Final Order. As set forth herein, the Court's review is limited to determining whether the BZA committed an error of law in rendering its final decision. Because the BZA did not commit an error of law, the Final Order should be affirmed.

BACKGROUND

This appeal involves two structures on the property of Paul Boehm ("Appellant") located at 2720 Goldbug Ave. One of the structures is a garage with an apartment located above the garage, hereinafter referred to as "Unit B." See **TOSI-BZA 0138** (Certificate of Occupancy issued November 20, 1989 for "Apartment Above Garage"). The other structure is a "slat house," immediately adjacent to Unit B. See e.g. **TOSI-BZA 0103**.

The Final Order includes three rulings of the BZA affirming three decisions of the Town's Zoning Administrator (the "Zoning Administrator"), all of which Appellant asserts should be reversed. See TOSI-BZA 0087—0098 (Petition); **TOSI-BZA 0103-129** (Final Order of the BZA). Specifically, the BZA's Final Order: (1) affirmed the denial of a request to increase the roof height of Unit B by two feet; (2) affirmed the issuance of a Stop Work Order for construction work beyond the scope of the work illustrated on a building permit; and (3) affirmed the issuance of violations related to the alteration of the slat house. **TOSI-BZA 0103**. The background of each of these rulings and the BZA proceedings are discussed in detail below.

I. Denial of request to increase the roof height of Unit B by two feet:

The Town's Zoning Administrator denied Appellant's request for a building permit to increase the height of the roof of Unit B by two feet. **TOSI-BZA 0176-180** (e-mail chain between Appellant and Zoning Administrator discussing the denial of the request). In denying the request, the Zoning Administrator found, based upon the Certificate of Occupancy from 1989 and his observation of the construction of Unit B, that Unit B is not a second principal building located on a single parcel, but rather a retrofitted space within an accessory structure (the detached garage). Id. In his e-mail correspondence to Appellant, the Zoning Administrator explained as follows: "Because accessory structures are permitted a maximum height of 18 feet, the detached garage/unit is already exceeding the maximum height allowed (22-24 feet), and therefore would not allow your requested height increase of two feet." Id. The Zoning Administrator specifically cited Town of Sullivan's Island Zoning Ordinance ("ZO") Sections 21-150.B and 21-151.B which provide in pertinent part that "[a] Nonconforming Use shall not be expanded except to eliminate or reduce the nonconforming aspect" and that "[s]tructural alterations, including enlargements, are permitted if the structural alteration does not increase the

extent of nonconformity.” See id. (citing ZO §§ 21-150.B and 21-151.B). After explaining that the structure was non-conforming, and that the applicable section of the Zoning Ordinance does not permit an increase of the non-conforming aspect of a non-conforming structure, the Zoning Administrator decided to deny the request for the permit because “[r]aising the roof’s overall height, well over the allowed 18’ feet, is an increase in the extent of the nonconformity.” Id.

II. Roof addition beyond the scope of the building permit:

Appellant applied for a building permit to do certain renovations to Unit B and on February 14, 2013, the Town approved the permit as noted on the plans for “roof over stairs t[o] walk *only*.” TOSI-BZA 0099-0102 (Residential Permit # 2013-2510 with attached plans noting scope of approval) (double emphasis added).

The Town’s Building Department staff conducted an inspection of Unit B on January 13, 2014, to ensure compliance with Building Permit # 2013-2510. TOSI-BZA 0163-173 (letter from Zoning Administrator discussing Stop Work Order, with enclosures). After this inspection, the Chief Building Official issued a Stop Work Order for “exceeding scope of work” authorized by the building permit. Id.; TOSI-BZA 0315 (Stop Work Order). The Stop Work Order was issued because Appellant exceeded the authority granted by the building permit. The building permit permitted only the construction of a stairway overhang along Unit B’s second story access and rear walkway, but the construction work that was in progress at the time of the inspection included an overhang support system located outside of the permitted area of construction as illustrated on the drawings. TOSI-BZA 0163-0164. The Zoning Administrator’s letter to Appellant advised that the unpermitted posts that had been installed outside of the permitted area of construction as illustrated on the permit drawings needed to be relocated to the location shown

on the permitted plans or revised engineer plans needed to be resubmitted for zoning and building staff review. **Id.**

III. Violations issued February 3, 2014:

At the time he issued the Stop Work Order, the Zoning Administrator also cited Appellant for other zoning and building code violations related to Unit B and the adjacent slat house. These violations all related to other unpermitted construction performed on the slat house and Unit B.

Specifically, the Zoning Administrator issued violations for (1) connecting the slat house to Unit B; (2) removing of a portion of the handrail on the second story rear walkway of Unit B, which allowed this connection; (3) constructing anchored, wooden benches on the roof of the slat house; and (4) installing anchored planters on the roof of the slat house; and (5) installing additional slats/plats on the roof of the slate house. **TOSI-BZA 0163-173.** The Zoning Administrator enclosed pictures with the letter showing these five other violations for unpermitted construction work. **TOSI-BZA 0165.** All five of the violations for unpermitted construction work relate to Appellant's unpermitted work in connecting the slate house to Unit B to expand and outfit Unit B's second story deck area. See TOSI-BZA 0163-173. The Zoning Administrator noted in his letter concerning these violations that BZA previously issued an order in 2009 denying Appellant's application for permission to connect the slat house to Unit B. **Id.** Appellant did not appeal this 2009 determination of the BZA. Instead, he proceeded to connect the two structures in disregard of the BZA's ruling.

IV. Appeal to the BZA

Appellant appealed all three of the Zoning Administrator's decisions discussed above to the BZA. See S.C. Code § 6-29-800 (1) (granting boards of zoning appeals the power "to hear

and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.”).

The BZA held a public hearing on March 13, 2014, on the appeal of all three decisions of the Zoning Administrator. **TOSI-BZA 0103-129** (Final Order of the BZA). The minutes of the public hearing were transcribed and made a part of the Final Order. See TOSI-BZA 0103 (stating in the written order that “[t]he attached Minutes as Reported by NCRA Registered Professional Reporter Ronda K. Blanton serve as an accurate representation of the public meeting held on March 13, 2014.”). The transcript of the meeting indicates that the public hearing lasted approximately two hours (6pm-8pm); two witnesses testified; twenty-one exhibits were introduced; and public comments were invited and made by members of the public. **TOSI-BZA 0103-129**.

After allowing exhaustive arguments and comments on Appellant’s appeals, the BZA unanimously denied the appeal to overturn the Zoning Administrator’s decisions on the basis that Unit B was an accessory structure with a nonconforming residential apartment on the top floor and all three of the issues on appeal concerned the expansion of the nonconforming use. **TOSI-BZA 0128-0129** (BZA members discussing that the threshold decision is whether Unit B is a nonconforming accessory structure, and voting unanimously that it is such a structure and that such that an expansion of the nonconforming use is prohibited by the Zoning Ordinance). The BZA’s Final Order described the Zoning Administrator’s decisions it affirmed as follows:

1. Increase of roof height: request made to raise the roof by two feet, violating Sec. 21-150 and Sec. 21-151.
2. Expansion of a deck area: Violations were issued for the following (violating Sec. 21-150 and Sec. 21-151):
 - The construction of benches and planters on top of the slat house.
 - Removal of a handrail required for elevated walkway.

- Establishment of a permanent connection of the slat house to the rear deck when previous permits required the slat house remain free standing.

3. Building footprint expansion: (violating Sec. 21-150 and Sec. 21-151). Staff issued approval of permits to extend a roof over the steps and rear walkway. The contractors went outside of this permitted area of construction effectively expanding the building footprint.

Id.

Appellant now appeals all of the BZA's decisions above to this Court. For the reasons discussed below, the Petition should be dismissed and the BZA's decision affirmed.

DISCUSSION

I. The BZA's written decision complies with section 6-29-800(F) of the South Carolina Code.

Appellant asserts in his Petition that the BZA's decision "ignor[ed] the requirements of S.C. Code Ann. § 6-29-800(F)." **TOSI-BZA 0092 at ¶17a.** South Carolina Code section 6-29-800(F) provides in pertinent part that "[a]ll final decisions and orders of the board must be in writing . . . [and] [a]ll findings of fact and conclusions of law must be separately stated in final decisions or orders. . . ." The BZA's Final Order in this case fully complied with the statutory requirements. The Final Order includes a written order summarizing the proceedings and the decision, and also includes the transcript of the proceedings in front of the BZA. See TOSI-BZA 0103-0129. The transcript was specifically made a part of the Final Order. See TOSI-BZA 0103 (stating in the written order that "[t]he attached Minutes as Reported by NCRA Registered Professional Reporter Ronda K. Blanton serve as an accurate representation of the public meeting held on March 13, 2014.").

Established South Carolina precedent permits the form of the order issued in this case under section 6-29-800(F). For example, in Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, the Court of Appeals affirmed the circuit court's reliance on the transcript of the

BZA hearing and a letter confirming the decision as sufficient. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000). In that case, the court stated that “[g]enerally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case.” Id. (citations omitted).

In Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 34, 606 S.E.2d 209, 212 (Ct. App. 2004), the BZA’s decision was set forth in a letter from the Town’s Deputy Planning Director, providing as follows:

Pursuant to testimony in this matter, the Board of Zoning Appeals concluded and made the following written findings:

1. There is no evidence that indicates that Jacana Street has a higher traffic volume than Dune Lane and therefore it was correct for the Department of Building and Fire Codes to issue a building permit with a ten (10) foot setback on the Jacana Street side of the affected property.

The vote on the motion to uphold the administrative determination was 5-1 and therefore the appeal request was denied.

(quoting letter). In Austin, the Court of Appeals held that “[i]n the present case, the evidence considered by the Board is clearly laid out in the transcript of the hearing.” Id. at 35, 606 S.E.2d at 212. “Reading this transcript together with the December 9, 2002, letter, therefore, provides sufficient basis for a reviewing court to determine whether the decision was supported by the facts of the case.” Id.

In this case, the BZA expressly recited the issues on appeal and included a description of the facts it adopted in the Final Order. See e.g., TOSI-BZA 103. For example, the Final Order specifically states that the structure is being treated by the BZA as a “nonconforming garage (structure),” the major factual finding of the BZA appeal. Id. Additionally, with respect to the

Stop Work Order, the Final Order specifically states that “[s]taff issued approval of permits to extend a roof over the steps and rear walkway [but] [t]he contractors went outside of this permitted area of construction effectively expanding the building footprint.” **Id.** Finally, with respect to the violations for unpermitted construction work, the Final Order specifically states what work was being done that it found was in violation of the zoning ordinance: “The construction of benches and planters on top of the slat house. . . . [;][r]emoval of a handrail required for elevated walkway. . . . [;] [and the][e]stablishment of a permanent connection of the slat house to the rear deck when previous permits required the slat house remain free standing.” **Id.** Furthermore, the Final Order includes several references to the applicable provisions of the Zoning Ordinance that serve as the basis for the legal conclusion of the BZA. **Id.** (citing, with respect to all three decisions, that ZO §§21-150B. and 21-151B. prohibit the expansion of a nonconforming use and/or nonconforming aspect of a nonconforming structure).

As mentioned above, in addition to specifically stating the major factual conclusions associated with each of the BZA’s decisions, the Final Order also attached and referenced the entire transcript of the proceedings. **See id.** (“[t]he attached Minutes as Reported by NCRA Registered Professional Reporter Ronda K. Blanton serve as an accurate representation of the public meeting held on March 13, 2014.”). Therefore, much like the BZA orders in Vulcan Materials Co. and Austin, the Final Order stating the major findings of fact and conclusions of law, along with the transcript of the proceedings, provides a sufficient basis for a reviewing court to determine whether the decision was supported by the facts of the case and complies with the statutory requirement that the BZA state findings of fact and conclusions of law.

II. The applicable standard of review requires that the BZA's decision be affirmed.

The BZA's decision should be affirmed because the decision is not incorrect as matter of law; and the BZA's decision was not in any way arbitrary, capricious, or without reasonable relation to a lawful purpose.

a. Standard of Review.

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. S.C. Code § 6-29-840(A); See also, Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (S.C. Ct. App. 2004). On appeal from the BZA, "[t]he findings of fact by the [BZA] must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code § 6-29-840(A); See also, Austin, at 33, 606 S.E.2d at 211. "In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing." S.C. Code § 6-29-840(A).

Furthermore, "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Austin, at 33, 606 S.E.2d at 211 (quoting Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). "[A] decision of [the BZA] 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.

b. The BZA's decision to affirm the denial of a permit to raise the roof of Unit B was not based on an error of law or any arbitrary or capricious conclusion, and therefore, should be affirmed.

The crux of Appellant's appeal of the denial of a permit to raise the roof of Unit B is that the BZA wrongfully determined that Unit B was a nonconforming accessory structure under the Zoning Ordinance, rather than a second principal building.

In its Final Order, the BZA determined that Unit B was a nonconforming accessory structure and, therefore, the requested permit to raise the roof two feet, and increase in the nonconformity was properly denied. See TOZI-BZA 0103 (stating that Unit be is a “nonconforming garage (structure)” and affirming the denial of the permit). The Final Order specifically cites ZO §§21-150 and 21-151 as the basis for its decision. Id. The pertinent parts of those sections provide that “[a] Nonconforming Use shall not be expanded except to eliminate or reduce the nonconforming aspect” and that “[s]tructural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.” ZO §§ 21-150.B and 21-151.B.

The BZA’s factual determination that Unit B was a nonconforming accessory structure was based upon the factual record presented at the BZA hearing. The Zoning Administrator explained at the public hearing several facts that served as the basis of the BZA’s decision. Indeed, it appears to be factually undisputed that Unit B is a garage on the bottom floor and an apartment on the second floor. See e.g., TOSI-BZA 105 (the Zoning Administrator discussing two documents referring to the “apartment over garage”: one document from 1989 (the Certificate of Occupancy) and the other from 1991 (an inspection ticket)); see also e.g., TOSI-BZA 0118 (Appellant testifying that Unit B has a two bedroom apartment on the top floor and a garage underneath).

Appellant challenges the legal conclusion that Unit B, a unit consisting of a garage on the first floor and an apartment on the second floor, was treated as a nonconforming accessory structure rather than a second principal building. It was not clear error of law for the BZA to reach its conclusion that Unit B is a nonconforming accessory structure. The Zoning Ordinance defines Accessory Use or Structure 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.” ZO §21-203. Here, the BZA determined, based on the factual record, that the structure was a garage and that a garage structure is customarily incidental to the main or principal use or building. Having made that conclusion, it is clear that the “apartment above garage” is nonconforming. See ZO §21-203 (defining Nonconforming Use and Nonconforming Structure).

Appellant does appear to dispute that under the Zoning Ordinance a Nonconforming Structure or Use may not be expanded in a way that expands the nonconforming aspect of the use or structure. See ZO §§21-150B and 21-151B. Rather, Appellant asserts that Unit B should have been treated as a second principal building, rather than an accessory structure. A principal building is defined as “[a] building in which the principal use of the lot is conducted.” and principal use as “[t]he specific, primary purpose for which land or a building is used.” ZO §21-203.

In arguing that Unit B is a second principal building, Appellant asks this Court to adopt its view of the facts rather than the BZA’s. This argument fails in all respects. Significantly, Appellant seeks a decision prohibited by the standard of review that requires deference to the findings of fact made by the BZA. See Austin, at 33, 606 S.E.2d at 211. Additionally, as discussed in detail above, the BZA’s factual finding that Unit B was a garage with an apartment on the second floor was fully supported by the record.

Furthermore, even if Appellant’s interpretation of the facts were adopted and Unit B treated as a second principal dwelling with a garage underneath, the outcome would not change. Even if the structure were treated as a second principal structure, Unit B would still be nonconforming and the permit to expand the extent of the nonconformity would still have been

properly denied under the Zoning Ordinance. Specifically, if Unit B were treated as second principal building, the apartment would still be classified as a nonconforming use pursuant to ZO § 21-150(F) which provides that “[i]n the event that two or more Principal Buildings occupy a single lot, said occupancy shall constitute a non-conforming use. . .[o]ne structure shall be designated conforming and the other(s) shall be non-conforming. . .” ZO § 21-150(F); see also id. at subsection (1) (providing that “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.”). As a nonconforming use, the permit would have been properly denied because raising the roof would have expanded that use. See ZO § 21-150(F)(3); §21-150B.

Therefore, for the reasons discussed above, the Court should affirm the BZA’s decision denying the permit to expand a nonconforming structure/use.

- c. The BZA’s decision that Appellant violated the Zoning Ordinance by performing work outside the permitted area was not based on an error of law or any arbitrary or capricious conclusion, and therefore, should be affirmed.

The Town approved a building permit for Appellant to construct a “roof over stairs t[o] walk only” of Unit B. **TOSI-BZA 0099-0102** (Residential Permit # 2013-2510 with attached plans noting scope of approval). The permit included drawings which illustrated the addition as being within the existing footprint of Unit B. Id. Appellant proceeded with construction that violated the approved plans. Appellant constructed posts *outside* of the existing footprint of Unit B contrary to the permit. Compare **TOSI-BZA 0099-0102** (permitted drawings) with **TOSI-BZA 0165** (photographs showing construction outside of existing footprint of Unit B). The BZA affirmed the issuance of a Stop Work Order for this unpermitted construction work and further

found that it should not be permitted because, based on the determination that Unit B was a nonconforming accessory structure, it could not be expanded. **TOSI-BZA 0103.**

For all of the same reasons discussed at length above with respect to the request to raise the roof of Unit B two feet, the unpermitted construction outside of the footprint of the house was properly found to be prohibited by the Zoning Ordinance because allowing such construction expanding the footprint of the nonconforming structure is prohibited. Therefore, the BZA's decision that Appellant's unpermitted construction work expanding the footprint of Unit B should be affirmed.

- d. The BZA's decision that Appellant's unpermitted construction work connecting the slat house to Unit B, and outfitting the connect structure with built in benches and planters violated the Zoning Ordinance was not based on an error of law or any arbitrary or capricious conclusion, and therefore, should be affirmed.

The BZA determined that the expansion of a deck area of Unit B by establishing a permanent connection between Unit B's walkway and the roof of the slat house violated the terms of the Zoning Ordinance precluding the expansion of a nonconforming structure/use. See TOSI-BZA 0103; see also, TOSI-BZA 0165 (picture showing unpermitted work violations for unpermitted construction work).

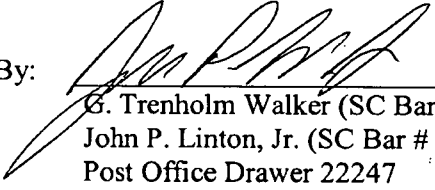
For all of the same reasons discussed at length above with respect to the request to raise the roof of Unit B two feet, the unpermitted construction expanding Unit B by establishing a permanent connection between Unit B and slat house, and outfitting of the newly established deck area with built-in benches and planters, was properly found to be prohibited by the Zoning Ordinance because allowing such construction expanding the nonconforming accessory structure is prohibited. Therefore, the BZA's decision that Appellant's unpermitted construction work expanding Unit B by establishing a permanent connection between Unit B and slat house, and

outfitting of the newly established deck area with built-in benches and planters, should be affirmed.

CONCLUSION

For all of the forgoing reasons, the decision of BZA should be affirmed in full.

PRATT-THOMAS WALKER, P.A.

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
August 29, 2014

STATE OF SOUTH CAROLINA

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 PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A No.: 2014-CP-10-2623

CERTIFICATE OF SERVICE

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JANASTRONG
CLERK OF COURT

The undersigned hereby certifies that a copy of the **Respondents' Brief in Opposition to the Appellant's Petition to Reverse the BZA's Final Order** in regards to the above-referenced matter has been served upon counsel listed below on August 29, 2014 by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

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EXCERPTS OF
TOWN OF
SULLIVAN'S
ISLAND ZONING
ORDINANCE

ARTICLE XVI. Nonconformities.

Sec. 21-149. General.

A. Scope.

The regulations of this Article govern "nonconformities" which are uses, structures, lots, signs and other situations that came into existence legally but that do not conform to one or more requirements of this Zoning Ordinance. These are referred to in this Zoning Ordinance as "nonconformities." Nonconformities are legal situations and have legal status under this Zoning Ordinance.

B. General policy.

In order to encourage development consistent with this Zoning Ordinance and provide landowners with reasonable use of their land, it is the general policy of the Town to allow uses, structures, signs, lots and other situations that came into existence legally, in conformance with then applicable requirements, to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible.

C. Intent.

The regulations of this Article are intended to:

- (1) Recognize the interests of landowners in continuing to use their property;
- (2) Promote reuse and rehabilitation of existing buildings; and
- (3) Place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the Town as a whole.

D. Authority to continue.

Any nonconformity that came into existence lawfully and continues to be a lawful use at the time of adoption of this Ordinance or that becomes nonconforming upon the adoption of any amendment to this Zoning Ordinance may be continued in accordance with the provisions of this Article.

E. Determination of nonconformity status.

The burden of proving that nonconformity existed prior to the adoption of this Ordinance or subsequent amendments rests with the subject landowner.

F. Repairs and maintenance.

- (1) Incidental repairs and normal maintenance necessary to keep a Nonconforming Structure in sound condition are permitted unless such repairs are otherwise expressly prohibited by this Zoning Ordinance.
- (2) Nothing in this Article will be construed to prevent Structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

G. Change of tenancy or ownership.

Nonconformity status runs with the land and is not affected by changes of tenancy, ownership, or management.

H. Historic buildings.

Buildings designated as historic through the process set forth in the HP Historic Preservation Overlay District, ARTICLE XI shall be considered conforming to this Ordinance as hereinafter provided. This conforming status shall only apply to height, setback, yard, area and other dimensional requirements as found by the Design Review Board to be of historic significance in the designation process. Such finding shall supersede any conflicting standard set forth in the zoning district in which the building is located and shall be applied to the building and the site in making future determinations of conformity as to the existing building or any changes consistent with an approved Certificate of Appropriateness (see Historic Preservation Overlay District, Article XI). Notwithstanding anything to the contrary herein, alteration or removal of architectural features and/or historic fabric considered instrumental in the original designation by the Design Review Board may, at the option of the Design Review Board, result in the loss of historic designation and conforming status. (1/20/09)

Sec. 21-150. Nonconforming uses.

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.

C. Moving.

A Nonconforming Use shall not be moved in whole or in part to another location on the lot unless the movement or relocation eliminates or decreases the extent of nonconformity.

D. Damage or destruction of a nonconforming use.

- (1) When a building or structure containing a Nonconforming Use is damaged by intent or by neglect, not caused by natural disaster, civil strife or uncontrollable accident, to the extent of more than fifty percent (50%) of its assessed value based on the most recent property assessment, the use shall not be restored except in conformity with the regulations of this Zoning Ordinance.
- (2) When a building or structure containing a Nonconforming Use is damaged by natural disaster, civil strife or uncontrollable accident to the extent of more than fifty percent (50%) of its assessed value based on the most recent property assessment, the use may be restored in as close conformity with the regulations of this Zoning Ordinance as possible. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage.
- (3) When a building or structure containing a Nonconforming Use is damaged by less than fifty percent (50%) of its assessed value, a Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage.

E. Abandonment of a nonconforming use.

- (1) A Nonconforming Use shall be considered abandoned when any of the following occurs:
 - (a) The intent of the owner to discontinue the use is apparent;
 - (b) The use has been discontinued for a period of twelve (12) months or more;
 - (c) A demolition permit has been applied for;
 - (d) The characteristic equipment and furnishings associated with the Nonconforming Use have been removed from the premises and have not been replaced by similar equipment within 90 days, unless other facts show intention to resume the Nonconforming Use;
 - (e) The Nonconforming Use has been replaced by a conforming use; or
 - (f) A Certificate of Zoning Compliance nor a Building Permit to reconstruct a damaged nonconforming use has been secured within twelve (12) months of the date of occurrence of such damage nor has construction been diligently pursued and completed within three (3) years from the date of the occurrence of such damage.
- (2) Once a Nonconforming Use is abandoned, the use's nonconforming status shall be lost and any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

F. Two or more Principal Buildings on one lot

In the event that two or more Principal Buildings occupy a single lot, said occupancy shall constitute a nonconforming use. One structure shall be designated conforming and the other(s) shall be nonconforming 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 nonconforming.
- (2) The designation of conforming and nonconforming 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.

G. Vacation rental:

Nothing contained herein shall be construed to allow the continued use of a Vacation Rental after damage or destruction of greater than fifty percent (50%) of its assessed value, regardless of reason for such damage or destruction.

H. Accessory uses:

A use accessory to a principal Nonconforming Use may not be continued after the principal Use has been abandoned, unless the use is a permitted Accessory Use in the base zoning district and any applicable overlay district.

Sec. 21-151. Nonconforming structures.

A. Definition.

A Nonconforming Structure is 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. Nonconforming Structures may remain, subject to the regulations of this Article.

B. Structural alterations.

- (1) Structural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.
- (2) When a structure is nonconforming because it encroaches into a required Side or Rear Yard Setback, this provision shall be interpreted as allowing other portions of the structure to be expanded out to the extent of the existing encroachment, as long as there is no greater encroachment into a required Setback.
- (3) When a structure is nonconforming because it encroaches into a required Front Yard Setback, this provision shall be interpreted as prohibiting other portions of the structure from being expanded out to the extent of the existing encroachment.

C. Moving:

A Nonconforming Structure may be moved in whole or in part to another location only if the movement or relocation decreases or eliminates the nonconformity.

D. Damage or destruction of a nonconforming structure.

- (1) When a Nonconforming Structure is damaged or destroyed by natural disaster, civil strife or uncontrollable accident, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be repaired in accordance with its pre-existing footprint, square footage, setbacks, and lot coverage. The Zoning Administrator shall rely on all credible information provided by the owner and/or available from the Town, to establish the damaged or destroyed structure's pre-existing condition and lot location. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage. If FEMA regulations require the structure's foundation to be elevated over fifty percent (50%) above its original elevation, the Design Review Board shall determine whether or not the reconstruction shall be required to meet the current Zoning Ordinance's Setback requirements.
- (2) When a Nonconforming Structure is damaged by intent or by neglect, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure shall be restored in conformity with the Zoning Ordinance in effect at the time a building permit is issued.
- (3) When a Nonconforming Structure is damaged by less than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be reconstructed in accordance with its pre-existing footprint, height, square footage, setbacks, and lot coverage. The Zoning Administrator shall rely on all credible information provided by the owner and/or available from the Town, to establish the damaged structure's pre-existing condition and lot location. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage. If FEMA regulations require the structure's foundation to be

ARTICLE XXI. Definition of Terms.

Sec. 21-203. Definitions

Except as specifically defined herein, all words used in this Zoning Ordinance have their customary definitions. For the purpose of this Zoning Ordinance, certain words or terms herein are defined as follows:

Accessory Use or Structure. A use or structure subordinate to the Principal Building on a lot and used for purpose customarily incidental to the main or principal use or building and located on the same lot.

Addition. Construction to existing structures intended to provide additional square footage, storage or porch areas, whether or not completely enclosed.

Addition Attached to Principal Building. A visually and architecturally integrated construction intended to provide additional square footage and living space to an existing principal building. If there is a connection between the addition and the principal building, said connection should be located under one roof and contain a permanent floor above grade. The length to width ratio of any proposed connection may not exceed a two to one (2:1) dimension ratio, with a minimum width of four (4) feet and a maximum length of twenty (20) feet. *[Example: a bedroom addition is connected by an eight (8) feet wide and sixteen (16) feet long hallway/corridor/porch (2:1 dimension ratio)]* (9/17/2013)

Alley. A secondary way that affords access to the side or rear of abutting lots but is not considered a street.

Alteration. Any change in the supporting members of a building, such as bearing walls, columns, or girders; any addition or reduction to a building; any change in use; or any relocation of a building from one location or position to another.

Assessed Value or Valuation. A property assessment conducted by the Charleston County Tax Assessor based upon the most recent property assessment figures available.

Bank (Savings and Loan or Credit Union). A financial depository institution or related banking facility that accepts money for deposit into accounts from the general public or other financial institutions, and may include personal or business loans, wire transfers and safe deposit boxes as accessory uses.

Bar. A business that serves alcoholic beverages for on premise consumption and receives less than fifty percent (50%) of its revenues from the sale of food prepared on premises.

Baseline. The South Carolina Department of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management (OCRM) final baseline depicted on the SCDHEC OCRM orthophoto maps of Sullivan's Island, sheets 154 through 162. (1-21-92 revised 1999)

Bedroom. An enclosed space within a single-family dwelling unit designed or intended for sleeping and which contains at least one closet (or piece of closet-sized and closet-like storage furniture) for the storage of clothes and other personal effects. A room or other enclosed area is not a bedroom, nor considered habitable for sleeping purposes, unless it has a permanent door permitting complete closure and separation by that door from any and all kitchen and bathroom areas. As an example, a room or other enclosed area is not a bedroom within this definition if the room arrangement is such that access to a bathroom intended for use by the occupants of other bedrooms can be had only by going through that room, nor shall such a room be considered a bedroom if it is the only access to another bedroom.

Bed and Breakfast Inn. A business establishment operated within a Principal Building by an owner-occupant or resident manager, offering one to four units for temporary lodging and breakfast to the traveling public while away from their normal places of residence.

Blank Facade. A blank facade is an expanse of wall that has no windows, doors or porches.

Breakfast. A meal served between the hours of 6 a.m. and 11 a.m.

Board of Zoning Appeals. An officially constituted body whose principal duties are to hear appeals, including appeals related variances, special exceptions and administrative determinations.

Buildable Area. See "Lot Area, Buildable."

Building. A structure which is enclosed by a roof and by exterior walls along whose outside faces can be traced an unbroken line for the complete circumference of the structure, which is permanently affixed to a lot or lots, and used or intended for the shelter, support, or enclosure of persons, animals, or property of any kind.

Building Coverage Area, Principal. The Lot Area covered by the Principal Building measured vertically downw from the Principal Building's exterior walls to the ground, but excludes (1) accessory structures not useable as living space; (2) exterior porches and decks; and, (3) exterior stairs.

Building Envelope. A three-dimensional space created by required setbacks, heights, coverage and slope ang within a lot.

Building Envelope, Front Yard. A theoretical line through which the Principal Building's front façade shall nc cross.

Building Floor Area. See "Building Square Footage, Principal."

Building Footprint. See "Building Coverage Area, Principal."

Building Height. A vertical distance measured in a straight line from the highest point of the Building or Structure, excepting any chimney but including any other vertical improvement, to the natural ground elevation at the center point of the Building or Structure.

Building Line. A line that represents the distance a building or structure shall be set back from a lot boundary line or a street right-of-way line or a street centerline according to the terms of this Zoning Ordinance. In all cases, the building lines of a lot shall be determined to run parallel to and set back the appropriate distance required within the district in which the lot is located from street right-of-way lines, street center lines or other lot boundary lines. Also called Front, Side or Rear Building Line.

Building Permit. A permit issued by the Building Official for the construction of a building or structure.

Building, Principal. A building in which the principal use of the lot is conducted.

Building Square Footage, Principal. The entire square footage of the principal building or buildings measured from the outside of the exterior walls, specifically including more than one dwelling on the same lot and historic structures used as accessory dwelling units, but not including (1) interior space not useable as living space (attic or parking area beneath Principal Building); (2) structures that are not used as living space; (3) exterior porches and decks; and, (4) exterior stairs. (12-17-13)

Category I Tree. Also known as a "Significant" tree, this tree has a DBH of at least sixteen (16) inches at a height of at least forty (40) feet. A Category I tree has the highest level of protection based on its total value to the island environment.

Category II Tree. Also known as a "Protected" tree or species, this tree has a DBH of at least six (6) inches. All Sabal Palmetto (Cabbage Palm, herein called "Palmetto") shall be given special protection as a "Protected Species."

Certificate of Appropriateness. The official document issued by the Design Review Board, on the recommendation of the Historic Preservation Design Review Subcommittee, approving and/or concurring in any application for permit for erection, demolition, moving, reconstruction, restoration or alteration of any structure designated historic property.

Certificate of Occupancy. A certificate issued by the Zoning Administrator or Building Official stating that the proposed use of the building or land conforms to the requirements of the Town's Code of Ordinances.

Certificate of Zoning Compliance, Temporary. A certificate issued by the Zoning Administrator to confirm that a temporary improvement or use is in conformity with the Zoning Ordinance.

Certificate of Zoning Compliance. A certificate issued by the Zoning Administrator to confirm that an improvement or use is in conformity with the Zoning Ordinance.

Clinic. An establishment where medical or dental patients, who are not lodged overnight, are admitted for examination or treatment.

Conditional Use. A permitted land use that has specified conditions, restrictions or limitations that are in addition to the restrictions applicable to all land uses in the zoning district.

Construction. The creation or erection of structure(s) or improvements.

Day Care Facility. The use of a building or premises for the care and supervision of children or elderly adults who do not reside on the property, for periods of less than 12 hours.

Deck. An unenclosed, unroofed horizontal structure, whether or not elevated above grade in any manner.

DBH. Diameter of tree at breast height or the diameter at four and a half (4½) feet above grade.

Overlay Zone. A zone which imposes a set of requirements or relaxes a set of requirements imposed the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries.

Parcel. See "Lot".

Parking. The placement of a vehicle or equipment at a location for less than thirty (30) days.

Parking Lot. Any area used for the express purposes of parking automobiles, but not including a single-family dwelling's parking area incidental to the principal use.

Parking Space. A space within a parking lot or on a single-family dwelling lot expressly provided for the purpose of parking an automobile or other vehicle.

Person. The word "person" includes a firm, association, organization, partnership, trust company, or corporation, as well as an individual.

Pervious Materials. Any material through which water can be easily absorbed or passed, at a minimum infiltration rate of 2.0 inches per hour, such as, but not limited to, grass and uncompacted gravel, shell and crushed stone. (1/20/09)

Pet, Non-traditional. Non-domesticated animals or animals commonly used for the production of food or products, such as cattle, sheep, goats, hogs or poultry.

Premises. A lot or other tract of land including the buildings or structures thereon. Also, see "lot."

Principal Building. See "Building, Principal."

Principal Use. The specific, primary purpose for which land or a building is used.

Primary Oceanfront Sand Dune. A line marked in the field by South Carolina Department of Health and Environmental Control-Bureau of OCRM staff that designates the location of the crest of a sand dune.

Prohibited Use. A use that is not permitted in a Zoning District.

Property. Something tangible to which its owner has legal title.

Recreation Vehicle. A mobile home, tent, trailer, or other self-contained vehicle, designed for recreational purposes, made of metal or other materials, mounted on two or more wheels and either self-propelled or rigged for towing, provided such vehicle is less than thirty (30) feet in length and is not used for residential purposes within the Town of Sullivan's Island.

Residence. See "Dwelling".

Residential, Attached Single Family. See "Dwelling."

Residential, Single Family. See "Dwelling."

Residential, Upper Story. See "Dwelling."

Religious Institution. A religious organization operated for worship, religious training or study, and including convents, monasteries, shrines and temples.

Rental or Rental Dwelling. A dwelling(s) intended to be occupied as a permanent residence by a person or persons that are other than the property owner.

Restaurant. An establishment where food and drink are prepared to individual order, ordered and served at the table, and consumed primarily within the principal building or in established outdoor dining areas.

SCCC. South Carolina Department of Health and Environmental Control Bureau of Ocean and Coastal Resource Management.

SCDHEC. South Carolina Department of Health and Environmental Control.

Setback. The required horizontal distance, measured at right angles to the boundary line, between a Principal Building and a boundary line.

Single-family. See "family."

Sign. The term "sign" shall mean and include every sign, poster panel, free-standing ground sign, roof sign, projecting sign, pylon sign, sign painted on a wall, window, marquee, awning or canopy, and shall include any announcement, declaration, demonstration, display, ribbon, banner, illustration or insignia used to advertise

STATE OF SOUTH CAROLINA)

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 PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-10-1103

PETITION

BY

2015 FEB 20 PM 3:47
JULIE J ARMSTRONG
CLERK OF COURT

FILED

For his appeal, Paul Boehm respectfully states:

1. This is an appeal from the Final Order of the Town of Sullivan's Island Board of Zoning Appeals ("BZA") dated February 8, 2015, and mailed on February 17, 2015.¹ This appeal is brought pursuant to S.C. Code Ann. § 6-29-820 and is filed within 30 days after the Final Order was mailed to Appellant.

2. Appellant Paul Boehm is the owner of a residence (an apartment over garage) located at 2720 B Goldbug Avenue, Town of Sullivan's Island, South Carolina.

3. Respondent Town of Sullivan's Island ("Town") is a municipal corporation which through its governing council has adopted a Zoning Ordinance.

4. Respondent BZA is established under the provisions of §21-172 *et seq.* of the Town's Zoning Ordinance and pursuant to S.C. Code Ann. §§ 6-29-790 *et seq.* Section 21-177 of the Town's Zoning Ordinance allows the owner of a property on Sullivan's Island to appeal to

¹ This appeal relates to Case No. 2014-CP-10-2623. In that appeal, the Hon. R. Markley Dennis, Jr. remanded the matter to the Sullivan's Island Board of Zoning Appeals "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." This appeal is from that order issued on remand.

the BZA “an allegation that there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of this Zoning Ordinance.”

5. John Truesdell, a former owner of 2720 Golbug Avenue, built the secondary residence in question in or around 1989. Mr. Truesdell received from the Town a Certificate of Occupancy, dated November 20, 1989, for an “apartment above garage.” On November 20, 1991, the Town conducted an inspection and approved the “use of apartment over garage” at 2720 Goldbug Avenue. There was and is another structure containing a residence located on the lot. The Town’s Zoning Ordinance only allows one residence per lot so that the second residence on any lot is a nonconforming use.

6. The second structure, 2720B Goldbug, which is the subject of this appeal, contains a dwelling with two bedrooms, two bathrooms, a kitchen and a great room over a storage room/garage on the ground floor. The dwelling is served by a separate electric meter, is connected to water and sewer and no part of the structure is used as an accessory structure to the other residence. The storage room/garage area is not heated and is used as storage for the apartment/dwelling located above it.

7. In 2001, Appellant bought 2720 Goldbug Avenue, which included both structures, after confirming with the then Town’s Zoning Administrator, Kent Prause, that there were two dwelling structures under the Town’s Zoning Ordinance located on the property. After purchase, Appellant used a horizontal property regime to make two condominiums, so that the two structures could be sold separately. Appellant sold the other structure and continues to own the structure at issue in this matter. Appellant has continuously rented the apartment in Unit B and paid the required business license fee to the Town for the rental of the dwelling. The Town recognizes Appellant’s right to use this structure as a residence.

8. Shortly after the purchase of the property, the Appellant sought to add a deck onto the building at issue, and the Zoning Administrator at the time told him that he could not add a deck but could build a "slat house" as an accessory structure to it and use the roof of the slat house as a deck. Appellant built a slat house adjacent to the rear walkway of the second structure, and the inhabitants of that structure have used that roof as a deck since 2001. Appellant has added furniture to the sides of the roof deck as a safety feature.

9. On August 13, 2009, Appellant submitted a variance request to the Board of Zoning Appeals to connect the "slat house to other deck and house at 2720 Goldbug 'B'." Randy Robinson, the Town Zoning Administrator at that time, denied the request, because the Town Zoning Ordinance, §§ 21-150(B) and (F)(3) "clearly state that a nonconforming use shall not be expanded except to eliminate or reduce the nonconforming aspects," and Mr. Boehm did not meet the requirements to obtain a variance. As Mr. Robinson stated at that time, Sec. 21-150(F)(3) applies when there are "two or more Principal Buildings on one lot." Mr. Boehm appealed that decision to the BZA, which agreed with Mr. Robinson and denied the variance request.

10. Early in 2013, Appellant asked Mr. Robinson if he could raise the roof by two feet (2') in unit B, and Mr. Robinson told him that was allowed by the Zoning Ordinance, because unit B was a dwelling under the ordinance. By the time Mr. Boehm had plans drawn up for the elevation of the roof, Mr. Robinson was no longer the Zoning Officer, having been replaced by Joe Henderson. Mr. Henderson denied Appellant's request for a building permit stating that Building B was a nonconforming accessory structure, a garage, and not a principal building. He stated that, because the "garage" exceeded the height requirements for garages,

Appellant would not be allowed to raise the roof as that would increase the height restriction nonconformity.

11. Appellant did receive permission in 2013 to extend the existing roof of 2720 B to cover the walkways around the structure. He began doing that work, had the initial six piers approved, and subsequently the Town issued a Stop Work Order, because the piers for the roof were outside of the structure's "footprint." In addition, the Town cited Appellant for having furniture on the roof of the slat house and for not having a railing between the walkway for the structure and the roof of the slat house.

12. Appellant appealed the three decisions of the Town Zoning Administrator to the BZA.

13. On March 13, 2014, the BZA heard Appellant's appeals and found that the second structure was an accessory structure, a "garage," under the Town's Zoning Ordinance and verbally affirmed the Zoning Administrator's three decisions refusing to allow Appellant to improve his structure.

14. On April 10, 2014, the BZA issued its Final Decision, which contained no findings of facts or conclusions of law and merely stated that the transcript of the public hearing was accurate and that the motion "to deny the appeal to overturn the Zoning Administrator's decision carried unanimously." A copy is attached hereto as Exhibit A.

15. S.C. Code § 6-29-800(F) provides that "[a]ll findings of fact and conclusions of law must be separately stated in final decisions or order of the board..." The BZA failed to comply with this code section.

16. Appellant appealed the BZA's final decision denying his right to improve 2720B Goldbug Avenue.

17. In an Order, dated November 19, 2014, the Hon. R. Markley Dennis, Jr, Circuit Court Judge, ordered that Appellant's appeals "be remanded to the Town of Sullivan's Island Board of Zoning Appeals which is 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."

18. At a meeting of the BZA on January 8, 2015, the BZA heard no additional evidence or argument from Appellant, went into executive session with their attorney and then unanimously adopted the following "findings of fact:"

- a. 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. This prior classification of the structure as a garage with an apartment unit above it supports the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.
- b. The inspection ticket issued November 20, 1991 approved the use of apartment over garage. This document shows a request and approval of the use of the apartment over the garage. This prior classification of the structure as a garage and the approval of the use of the second floor as an apartment unit support the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.
- c. The May 15, 2001 survey of 2720 Goldbug Avenue issued by John E. Wade, Jr., RLS, identified the structure as garage with apartment. The survey identifies the owner of the property at the time of the survey as Paul Boehm, the applicant. The Board finds that the identification of the building on this survey as a garage with an apartment is further support for the Board's finding that the structure is a non-conforming accessory structure. The survey does not identify the structure as a residence, dwelling, house, principal building or apartment. The survey identifies the structure as a garage, nothing that the garage structure includes an apartment. The survey shows that the building is an accessory structure with a non-conforming, but approved, apartment use.
- d. 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. While there is an apartment on the second story of the structure, the Board finds that these design characteristics of the structure are further support for the Board's finding that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.

- e. 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. In fact, a real estate listing from the applicant's real estate company described the first floor of the secondary structure as follows: "a garage for two cars, a storage/workshop area for your favorite hobbies. Instead of cars put a pool table and ping pong table in the garage." When asked about this listing, the applicant continued to characterize the structure as a dwelling with a garage below it. However, the Board finds that this testimony provides additional support for the Board's finding that the structure is a non-conforming accessory structure and rejects the applicant's subjective classification of the structure.
- f. 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.

19. The Final Decision rendered by the BZA on March 13, 2014, and April 10, 2014, a copy of which is attached hereto as Exhibit B, that the building located at 2720B Goldbug is an "accessory structure" and not a "principal building" under the Town's Zoning Ordinance, violates the Town's Zoning Ordinance and State law, as follows:

- a. In failing to base its decision on the provisions of the Town's Zoning Ordinance and, instead, on their individual perceptions of the structure at issue;
- b. In acting arbitrarily and capriciously in failing to apply the definitions contained in the Town's Zoning Ordinance, which defines "principal

building,” “principal use,” “garage,” “footprint,” “dwelling,” “accessory use or structure,” and other terms, all of which definitions were ignored by the BZA in rendering its determination that 2720B Goldbug was not a “principal building” under the Zoning Ordinance and was, instead, a “garage,” which is an “accessory structure;”

- c. In failing to find that 2720B, which contains a dwelling was a “principal building” which is defined as “a building in which the principal use of the lot is conducted”, under the Zoning Ordinance;
- d. In finding that 2720B, which contains a dwelling, was a “garage,” which is defined in the Ordinance as “an 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;”
- e. In relying on Zoning Ordinance Sec. 21-151 to deny Appellant’s right to raise the roof, to extend the roof over the exterior walkways and steps of 2720 B, to replace steps that contained rotten wood with new wood and to find that Appellant could not place furniture or even railings around the roof of the slat house;
- f. The BZA’s findings of fact set forth above all find that the structure contains an apartment, which is a dwelling, so this structure must be a principal building under the Zoning Ordinance;
- g. The BZA’s findings of fact set forth above all find that the garage is part of a structure that contains a dwelling, so this structure must be a principal building under the Zoning Ordinance; and

h. In unreasonably exercising and flagrantly abusing its discretion.

20. The decision of the BZA is vague, unspecific, arbitrary and capricious and is without legal or factual support and therefore constitutes an abuse of discretion and is patently unlawful.

21. The BZA's decision was a reaction to public comments from a recused member of the BZA and the Zoning Administrator both of whom gave interpretations of the Zoning Ordinance that are contradicted by the relevant provisions of the Zoning Ordinance.

22. The BZA considered matters outside of the matters that should be considered by the BZA under the Zoning Ordinance and State law.

23. The BZA's decision directly contradicts the intent of the Zoning Ordinance, regarding nonconformities which is to "recognize the interests of landowners in continuing to use their property; promote reuse and rehabilitation of existing buildings; and place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the Town as a whole."

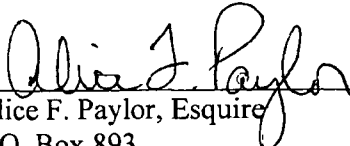
24. The Town is estopped from taking a position contrary to the position taken by its Zoning Administrator at the time that Appellant was considering the purchase of 2720 Goldbug and confirmed by the Zoning Administrator and the BZA when Appellant's variance request in 2009 was denied. See Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979).

25. The denial of Appellant's application should be set aside and this Court should remand the case to the BZA with the specific direction that it grant Appellant's applications.

WHEREFORE, Appellant prays:

- a. That the Clerk of Court shall provide immediate notice to the Secretary of the Town of Sullivan's Island to file with the Court within 30 days a duly certified copy of the proceedings before the BZA; That the Court upon reviewing the proceedings find that the BZA violated, failed to follow, and acted outside, the provisions of the Zoning Ordinance and reverse the decision of the BZA and order appropriate building permits be granted to Appellant; and
- b. That the Court award costs to Appellant.

ROSEN, ROSEN & HAGOOD, LLC

By: 
Alice F. Paylor, Esquire
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
February 20, 2015

EXHIBIT A

**Appeal Zoning Administrator
Board of Zoning Appeals
Town of Sullivan's Island**

Dated Filed: _____ Permit Application No. _____ Appeal No. _____

The Board of Zoning Appeals held a public hearing on March 13, 2014 to hear the following request: Paul Boehm, applicant and property owner, is appealing Zoning Administrator's decision to deny the following building permit requests for existing nonconforming garage (structure) at 2720-B Goldbug Avenue:

1. Increase of roof height: request made to raise the roof by two feet, violating Sec. 21-150 and Sec. 21-151.

2. Expansion of a deck area: Violations were issued for the following (violating Sec. 21-150 and Sec. 21-151):

- The construction of benches and planters on top of the slat house.
- Removal of a handrail required for elevated walkway.
- Establishment of a permanent connection of the slat house to the rear deck when previous permits required the slat house remain free standing.

3. Building footprint expansion: (violating Sec. 21-150 and Sec. 21-151). Staff issued approval of permits to extend a roof over the steps and rear walkway. The contractors went outside of this permitted area of construction effectively expanding the building footprint.

The attached Minutes as Reported by NCRA Registered Professional Reporter Ronda K. Blanton serve as an accurate representation of the public meeting held on March 13, 2014. As stated in said Minutes, motion was made by Board Member Bachman Smith, IV; seconded by Board Member Carlin Timmons, to deny the appeal to overturn the Zoning Administrator's decision, carried unanimously.

Date issued: 4-10-14

Elizabeth M. Lipp
Chairman

Date mailed to parties in interest: 4-11-14

Jill Miller
Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

BZA Final Order - 2720-B Goldbug Ave.

Page 1

EXHIBIT B

Administrative Appeal (Remand from Circuit Court)
Board of Zoning Appeals
Town of Sullivan's Island

Dated Filed: _____ Permit Application No. _____ Appeal No. _____

The Board of Zoning Appeals held a public hearing on January 8, 2015 for an administrative appeal for 2720-B Goldbug Avenue: Remand from Circuit Court for Findings of Fact based on the record from the Town of Sullivan's Island Board of Zoning Appeals hearing on March 13, 2014. The record from the Town of Sullivan's Island Board of Zoning Appeals hearing on March 13, 2014 is attached to these minutes and has been labeled TOSI-BZA 0001-0469).

Motion was made by Bachman Smith, seconded by Delores Schweitzer, that the Board adopt the following findings of fact in accordance with Judge Dennis' order.

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. This prior classification of the structure as a garage with an apartment unit above it supports the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.

2. The inspection ticket issued November 20, 1991 approved the use of apartment over garage. This document shows a request and approval of the use of the apartment over the garage. This prior classification of the structure as a garage and the approval of the use of the second floor as an apartment unit support the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.

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 identifies the owner of the property at the time of the survey as Paul Boehm, the applicant. The Board finds that the identification of the building on this survey as a garage with an apartment is further support for the Board's finding that the structure is a non-conforming accessory structure. The survey does not identify the structure as a residence, dwelling, house, principal building or apartment. The survey identifies the structure as a garage, noting that the garage structure includes an apartment. The survey shows that the building is an accessory structure with a non-conforming, but approved, apartment use.

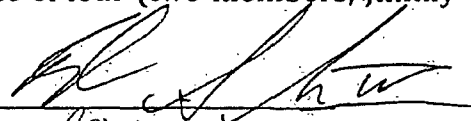
4. The design of the structure, which can be readily observed by reference to the photographs, drawings, documents and testimony in the record, is that of a garage that has an apartment on top. There are two garage doors on the front of the structure, which open to the bays. The only entrance to the 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. While there is an apartment on the second story of the structure, the Board finds that these design characteristics of the structure are further support for the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.

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. In fact, a real estate listing from the applicant's real estate company described the first floor of the secondary structure as follows: "a garage for two cars, a storage/workshop area for your favorite hobbies. Instead of cars put a pool table and ping pong table in the garage." When asked about this listing, the applicant continued to characterize the structure as a dwelling with a garage below it. However, the Board finds that this testimony provides additional support for the Board's finding that the structure is a non-conforming accessory structure and rejects the applicant's subjective classification of the structure.

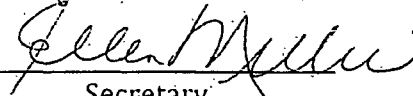
6. The Board finds that the structure at issue and use of the structure as a garage with a non-conforming apartment on the second story is customarily incidental to the principal use in building located on the lot, a principal building used as a residence. The Board recognizes the structures on the lot 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.

Motion carried unanimously with a vote of four (two members, Jimmy Hiers and Sarah Church, had been recused).

Date issued: 2/12/15


Chairman

Date mailed to parties in interest: 2-17-15


Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-10- 2015-CP-10-1103

PAUL BOEHM,)

Appellant,)

v.)

TOWN OF SULLIVAN'S ISLAND)
BOARD OF ZONING APPEALS)
and TOWN OF SULLIVAN'S ISLAND,)

Respondents.)
_____)

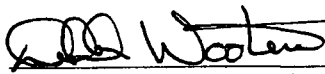
CERTIFICATE OF SERVICE

FILED
2015 FEB 20 PM 3:47
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on the 20th day of February, 2015 a true and correct filed-stamped copy of Appellant's Notice of Appeal and Petition was placed in an envelope with first class postage prepaid and affixed thereto and mailed to all parties of record.

Town of Sullivan's Island
Board of Zoning Appeals
P. O. Box 427
Sullivan's Island, SC 29482

Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482



Deborah Wooten, Legal Assistant

STATE OF SOUTH CAROLINA)
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 PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-10-1103

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JULIE J. ADAMS-STRONG
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BRIEF OF APPELLANT

Appellant Paul Boehm appealed the written Order of the Town of Sullivan's Island Board of Zoning Appeals ("BZA"), dated February 8, 2015. That Order made "findings of fact" with regard to the BZA's prior Order, dated April 10, 2014, denying Mr. Boehm's appeals from three determinations of the Town's Zoning Administrator that he could not make improvements to a dwelling located at 2720B Goldbug Avenue on Sullivan's Island.

At the hearing in March of 2014, the BZA ignored the clear provisions of the Town's Zoning Ordinance ("Z.O.") defining a "garage" and a "Principal Building" and, instead, concluded that the building, the primary use of which was residential, was not a Principal Building under the Z.O. and was a garage solely because it looked like a garage in their opinions. T.R., pp. 98-102.

Mr. Boehm appealed the April 2014 Order, and this Court remanded the matter to the BZA to make findings of fact from the record previously made to support its legal conclusion that the structure at issue was a garage, an accessory structure, and not a principal building. At its hearing in February 2015, the BZA made certain "findings of fact" that did not relate to the

definitions in, or any provisions of, the Z.O. and, rather, related to the BZA's subjective determination that the building was a garage solely because it contained a garage within it. This determination ignores the provisions of the Z.O. that provide that a garage may be part of a "principal building" and the fact that there is no provision of the Z.O. that allows a garage or any accessory structure to contain a dwelling.

This renewed appeal concerns the failure of the BZA to make decisions in accordance with the requirements of the Zoning Ordinance and, instead, to make decisions based on the members' own subjective opinions. The decisions being appealed from are clearly arbitrary, capricious, have no reasonable relation to a lawful purpose, are an abuse of discretion and have no basis in the applicable provisions of the Z.O., which clearly defines a "principal building" and an "accessory structure." Because of these clear definitions, the building at issue in this appeal cannot be an "accessory structure" and must be a "principal building." Therefore, the Orders must be reversed and the BZA ordered to grant Mr. Boehm what he needs to make the requested improvements.

Mr. Boehm appeals the BZA's decision that the building in question is a "garage" as defined by its Zoning Ordinance and asserts instead that, because it contains a dwelling, it is and can only be a Principal Building, which may be improved in the ways requested by Appellant and, therefore, the BZA decisions must be reversed.

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 evidence in the record as applied to the terms of the Z.O., 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.

SUMMARY OF ARGUMENT

As the BZA acknowledged in the record, all of Mr. Boehm’s appeals hinge on whether 2720B is a Principal Building under the Z.O. In the recently issued “findings of fact,” the BZA clearly finds that 2720B contains an apartment used as a residence/dwelling.

Z.O. § 21-25(2) defines a “Principal Building” as “[a] building or buildings in which the principal use of the lot is conducted. The term also specifically applies to multiple dwellings located on the same lot...” Z.O. § 21-203, “Definitions,” defines “Building, Principal” as “[a] building in which the principal use of the lot is conducted.” Thus, any and every building on Sullivan’s Island that is located on a residential lot and is used as a residence is a Principal Building under these definitions.

Further, the Z.O. 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)¹. 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 as a residence, into an Accessory Structure. If the BZA’s reasoning was followed to its logical conclusion, it would result in every residence on Sullivan’s Island with parking under the house being transformed into an Accessory Structure.

The Z.O. further provides that no accessory structure may have a separate electric meter or be connected to the sanitary sewer system. Z.O. § 21-138(7). 2720B has a separate electric meter and is connected to the sanitary sewer system.

Until 2014, the Zoning Administrator and the BZA recognized 2720B as a “principal building” when accessory structures were allowed to be built adjacent to it, when considering a variance request and in discussions with Mr. Boehm. Prior to Mr. Boehm’s purchase of the property, the then Zoning Administrator told him that 2720B was a second principal building, and Mr. Boehm relied on that conversation when he made the purchase. Subsequently, in denying a prior request from Mr. Boehm, the BZA relied on Z.O. § 21-150(F), which provided guidance for the BZA when there were two **principal buildings** on the same residential lot. If 2720B were not a principal building, that section would not have applied.

Because the recently made “findings of fact” do not find facts that support the BZA’s legal conclusion that 2720B is an accessory structure and, instead, support the conclusion that it is a principal building, the decision of the BZA should be reversed, and the Zoning

¹ The BZA’s disregard for the plain language of the Z.O. is evidenced by Mr. Henderson’s testimony. He was asked if he was “aware in the Zoning Ordinance where it says that a garage can be part of a principal dwelling, of a Principal Building?” His response: “I don’t know specifically whether it says that.” After being read the definition, he conceded that it does, in fact, say as much. T.R. 62-64.

Administrator ordered to issue the necessary permits for Mr. Boehm to make the requested improvements to 2720B.

FACTS

Paul 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. T.R. 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. 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. 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. 10. Mr. Boehm conveyed the main house to his son but continues to own the smaller dwelling.

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. 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.

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.

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 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. 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. 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 Zoning Ordinance, Sec. 21-150(B) and (F)(3), which applies to "Two or more Principal Buildings on one lot." T.R. 13-14; 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. 14-15. The dwelling

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 Sec. 21-137.

⁴ Accessory structures are only allowed as accessories to a Principal Building. Z.O. Sec. 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." See TOSI-BZA 0023; T.R., p.

located on 2720B has a separate electric meter and is connected to the City sewer system. T.R. 15. The building has never been used as a garage for the larger dwelling on 2720 Goldbug. T.R. 15. He received a permit in January of 2013 to construct a utility building as an accessory structure to 2720B.⁶ T.R., 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, and Robinson told him that he could elevate the ceiling/roof by two (2') feet. Prior to getting the plans drawn up, the Town hired a new Zoning Administrator, Joe Henderson. T.R. 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. 22-23; see also email attached to T.R. as Exhibit 8. Mr. Boehm appealed that denial by Mr. Henderson.

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 the owners to add a 2nd floor where there had only been one floor. T.R. 27-43. The Zoning Ordinance clearly allows secondary dwellings to be enlarged, elevated, etc., so long as the "nonconforming use" is not expanded. § 21-150(B), Town of Sullivan's Island Zoning Ordinance ("Z.O.").

Mr. 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 Mr. 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

⁶ See footnote 4.

extension were outside what he determined was the “existing footprint” of the building.⁷ T.R., p. 44. Mr. Boehm appealed that decision of Mr. Henderson 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 Mr. Boehm to remove that furniture. Mr. Boehm appealed that decision of Mr. Henderson.

On March 13, 2014, the Town of Sullivan’s Island Board of Zoning Appeals (“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. 67-70. But he contended that the building was still an “accessory structure” – a garage – even though the Z.O. does not allow for an accessory structure to contain a dwelling or residence, a separate electric meter, a sewer hookup, etc..

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. 98-99. The BZA members ignored the plain language of the Z.O. which clearly states that the two are not mutually exclusive. 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 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. 98-103.

Subsequently, the BZA issued its Order, stating that the three appeals were denied because they were not permitted by § 21-150, “Nonconforming Uses,” and § 21-151,

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. 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. 76.

“Nonconforming Structures” and attached the transcript of the hearing “as an accurate representation of the public meeting held on March 13, 2014.”

This 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 “findings of fact.”

The BZA’s “findings of fact” are:

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.

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."

LEGAL ARGUMENTS

I. Each of the BZA's findings of fact require the legal conclusion that 2720B Goldbug Avenue is a Principal Building under the Sullivan's Island Zoning Ordinance.

Mr. Boehm admits that each of the BZA's factual findings are supported by the record. However, the BZA's legal conclusions are clearly erroneous, are not based on the terms of the Z.O. and, instead, simply express the personal opinions of the individual BZA members that Mr. Boehm should not be allowed to improve the structure located at 2720B Goldbug Avenue. A member of the BZA, who lived adjacent to 2720B Goldbug Avenue, recused himself from the process but spoke very emotionally, without reference to any provision of the Z.O., about his personal beliefs with regard to what Mr. Boehm had done and should be allowed to do with his property. T.R., pp. 80-86. The BZA's job is to enforce the provisions of the Z.O. rather than to issue decisions based solely on the personal feelings of its members. See S.C.Code § 6-29-

780(A). This is a clear abuse of discretion, if not an abuse of power, by the Sullivan's Island BZA.⁸

As the BZA found in each of its findings, 2720B contains an apartment, a dwelling, a residence. The definition of Principal Building does not require that the building only be used as a residence. It simply states that any building in which the principal use of the lot is conducted is a principal building. The principal use of the lot, residential, is conducted in the apartment located at 2720B, so it must be 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 Z.O, 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 in part 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.⁹

⁸ "An abuse of discretion occurs when the judge's ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E.2d 290 (1981).

⁹ The recused BZA member made a big deal about 2720B not having a separate water meter as support for its being an accessory structure, but that is not a requirement of the Z.O. T.R., pp. 21-22.

That 2720B is, and has always previously been considered, a Principal Building is further evidenced by the fact that it has its own Accessory Structure – the “slat house.” Pursuant to the Z.O., certain structures/uses, delineated at Z.O. § 21-2137(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 Z.O. in effect as of 2001 when Mr. Boehm constructed his “slat house,” a “slat house” was listed as a permissible Accessory Structure. T.R. 18-20. The slat house could not have been permitted if 2720B were not a Principal Building as it is an accessory structure only to 2720B.

The findings of fact discuss ways that the 2720B building have been described. None of these “descriptions” override the provisions of the Z.O., 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 states that if a structure has dual uses, one of which is as a garage, the building is a garage.

The findings of fact 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 Z.O. 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 Z.O. goes on to discuss “uses customarily accessory to dwelling” in § 21-31(A), and one of those uses is a garage. Under any interpretation of the Sullivan’s Island Z.O., the building located at 2720B Goldbug Avenue is a principal building, and the decision of the BZA must be reversed.

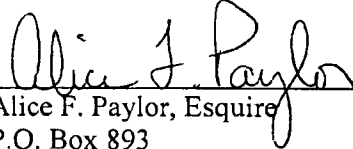
As an additional basis for reversal, the Town of Sullivan's Island is estopped from taking a position that is contrary to the position taken by Kent Prause at the time that Appellant was contemplating the purchase of the property and upon which he relied in making the purchase. This position was also 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).

CONCLUSION

The BZA's findings of fact that the building located at 2720B Goldbug contains an apartment, a dwelling, requires the legal conclusion that the structure is a principal building under the Z.O. The BZA's conclusions that the building in a garage, an accessory structure are directly contrary to the terms of the Z.O. and constitute an abuse of discretion. The BZA decisions must be reversed and Mr. Boehm's appeals granted.

Respectfully submitted,

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Charleston, South Carolina
April 2, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PAUL BOEHM,)
)
Appellant,)
)
v.)
)
TOWN OF SULLIVAN'S ISLAND)
BOARD OF ZONING APPEALS)
and TOWN OF SULLIVAN'S ISLAND,)
)
Respondents.)
_____)

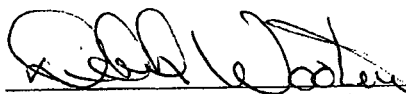
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-10-1103

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on the 2nd day of April, 2015 a true and correct copy of Appellant's Brief was placed in an envelope with first class postage prepaid and affixed thereto and mailed to all parties or counsel of record.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A No.: 2014-CP-10-2623

PAUL BOEHM

Appellant,

v.

TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS and
TOWN OF SULLIVAN'S ISLAND

Respondents.

**Respondents' Brief in Opposition to
Appellant's Petition to Reverse the
BZA's Final Order**

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BY 

Appellant Paul Boehm ("Appellant" or "Boehm") initiated this appeal from the final order of the Town of Sullivan's Island's Board of Zoning Appeals ("BZA") dated April 10, 2014, ("Final Order") and mailed on April 11, 2014. **TOSI-BZA 0087—0098** (Appellant's Petition). The BZA's Final Order was based in part on its threshold decision that the structures at issue was an accessory structure with a nonconforming residential apartment on the top floor. See TOSI-BZA 0128-0129 (BZA members discussing that the threshold decision is the determination of whether the structure at issue is a nonconforming accessory structure or a nonconforming second principal building). By Order dated November 19, 2014, this Court remanded the matter to the BZA with instructions to make additional findings of fact to support its decision that the structure at issue was an accessory structure with a nonconforming residential use on the second floor, which is the issue Appellant raises in this appeal. See Ex. A. In accordance with this Court's Order, the BZA held a public meeting on January 8, 2015 and unanimously adopted six additional specific findings of fact supporting its prior decision. See Ex. B (BZA Order issued February 17, 2015 adopting findings of fact based upon the record, TOSI-BZA 0001-0469).

After the BZA issued its additional findings of fact, Appellant renewed his appeal of the BZA decision. Respondents Town of Sullivan's Island Board of Zoning Appeals ("BZA") and Town of Sullivan's Island ("Town") (collectively, "Respondents") respectfully submit this Brief in Opposition to Appellant's Petition to Reverse the BZA's Final Order. As set forth herein, the Court's review is limited to determining whether the BZA committed an error of law in rendering its decision. Because the BZA did not commit an error of law, the decision should be affirmed.

BACKGROUND

This appeal involves two structures on the property of Paul Boehm ("Appellant") located at 2720 Goldbug Ave. One of the structures is a garage with an apartment located above the garage, hereinafter referred to as "Unit B." See **TOSI-BZA 0138** (Certificate of Occupancy issued November 20, 1989 for "Apartment Above Garage"). The other structure is a "slat house," immediately adjacent to Unit B. See e.g., **TOSI-BZA 0103**.

The Final Order includes three rulings of the BZA affirming three decisions of the Town's Zoning Administrator (the "Zoning Administrator"), all of which Appellant asserts should be reversed. See **TOSI-BZA 0087—0098** (Petition); **TOSI-BZA 0103-129** (Final Order of the BZA). Specifically, the BZA's Final Order: (1) affirmed the denial of a request to increase the roof height of Unit B by two feet; (2) affirmed the issuance of a Stop Work Order for construction work beyond the scope of the work illustrated on a building permit; and (3) affirmed the issuance of violations related to the alteration of the slat house. **TOSI-BZA 0103**. The background of each of these rulings and the BZA proceedings are discussed in detail below.

I. Denial of request to increase the roof height of Unit B by two feet:

The Town's Zoning Administrator denied Appellant's request for a building permit to increase the height of the roof of Unit B by two feet. **TOSI-BZA 0176-180** (e-mail chain between

Appellant and Zoning Administrator discussing the denial of the request). In denying the request, the Zoning Administrator found, based upon the Certificate of Occupancy from 1989 and his observation of the design features of Unit B, that Unit B is not a second principal building located on a single parcel, but rather a retrofitted space within an accessory structure (the detached garage).

Id. In his e-mail correspondence to Appellant, the Zoning Administrator explained as follows: “Because accessory structures are permitted a maximum height of 18 feet, the detached garage/unit is already exceeding the maximum height allowed (22-24 feet), and therefore would not allow your requested height increase of two feet.” **Id.** The Zoning Administrator specifically cited Town of Sullivan’s Island Zoning Ordinance (“ZO”) Sections 21-150.B and 21-151.B which provide in pertinent part that “[a] Nonconforming Use shall not be expanded except to eliminate or reduce the nonconforming aspect” and that “[s]tructural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.” See **id.** (citing ZO §§ 21-150.B and 21-151.B). After explaining that the structure was nonconforming, and that the applicable section of the Zoning Ordinance does not permit an increase of the nonconforming aspect of a nonconforming structure, the Zoning Administrator decided to deny the request for the permit because “[r]aising the roof’s overall height, well over the allowed 18’ feet, is an increase in the extent of the nonconformity.” **Id.**

II. Roof addition beyond the scope of the building permit:

Appellant applied for a building permit to do certain renovations to Unit B and on February 14, 2013, the Town approved the permit as noted on the plans for “roof over stairs t[o] walk *only*.” **TOSI-BZA 0099-0102** (Residential Permit # 2013-2510 with attached plans noting scope of approval) (double emphasis added).

The Town's Building Department staff conducted an inspection of Unit B on January 13, 2014, to ensure compliance with Building Permit # 2013-2510. **TOSI-BZA 0163-173** (letter from Zoning Administrator discussing Stop Work Order, with enclosures). After this inspection, the Chief Building Official issued a Stop Work Order for "exceeding scope of work" authorized by the building permit. **Id.**; **TOSI-BZA 0315** (Stop Work Order). The Stop Work Order was issued because Appellant exceeded the authority granted by the building permit. The building permit permitted only the construction of a stairway overhang along Unit B's second story access and rear walkway, but the construction work that was in progress at the time of the inspection included an overhang support system located outside of the permitted area of construction as illustrated on the drawings. **TOSI-BZA 0163-0164**. The Zoning Administrator's letter to Appellant advised that the unpermitted posts that had been installed outside of the permitted area of construction as illustrated on the permit drawings needed to be relocated to the location shown on the permitted plans or revised engineer plans needed to be resubmitted for zoning and building staff review. **Id.**

III. Violations issued February 3, 2014:

At the time he issued the Stop Work Order, the Zoning Administrator also cited Appellant for other zoning and building code violations related to Unit B and the adjacent slat house. These violations all related to other unpermitted construction performed on the slat house and Unit B.

Specifically, the Zoning Administrator issued violations for (1) connecting the slat house to Unit B; (2) removing of a portion of the handrail on the second story rear walkway of Unit B, which allowed this connection; (3) constructing anchored, wooden benches on the roof of the slat house; and (4) installing anchored planters on the roof of the slat house; and (5) installing additional slats/plats on the roof of the slate house. **TOSI-BZA 0163-173**. The Zoning Administrator enclosed pictures with the letter showing these five other violations for unpermitted

construction work. **TOSI-BZA 0165**. All five of the violations for unpermitted construction work relate to Appellant's unpermitted work in connecting the slate house to Unit B to expand and outfit Unit B's second story deck area. See **TOSI-BZA 0163-173**. The Zoning Administrator noted in his letter concerning these violations that BZA previously issued an order in 2009 denying Appellant's application for permission to connect the slate house to Unit B. Id. Appellant did not appeal this 2009 determination of the BZA. Instead, he proceeded to connect the two structures in disregard of the BZA's ruling.

IV. Appeal to the BZA

Appellant appealed all three of the Zoning Administrator's decisions discussed above to the BZA. See S.C. CODE § 6-29-800 (1) (granting boards of zoning appeals the power "to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.").

The BZA held a public hearing on March 13, 2014, on the appeal of all three decisions of the Zoning Administrator. **TOSI-BZA 0103-129** (Final Order of the BZA). The minutes of the public hearing were transcribed and made a part of the Final Order. See **TOSI-BZA 0103** (stating in the written order that "[t]he attached Minutes as Reported by NCRA Registered Professional Reporter Ronda K. Blanton serve as an accurate representation of the public meeting held on March 13, 2014."). The transcript of the meeting indicates that the public hearing lasted approximately two hours (6pm-8pm); two witnesses testified; twenty-one exhibits were introduced; and public comments were invited and made by members of the public. **TOSI-BZA 0103-129**.

After allowing exhaustive arguments and comments on Appellant's appeals, the BZA unanimously denied the appeal to overturn the Zoning Administrator's decisions on the basis that

Unit B was an accessory structure with a nonconforming residential apartment on the top floor and all three of the issues on appeal concerned the expansion of the nonconforming use. **TOSI-BZA 0128-0129** (BZA members discussing that the threshold decision is whether Unit B is a nonconforming accessory structure, and voting unanimously that it is such a structure and that such that an expansion of the nonconforming use is prohibited by the Zoning Ordinance). The BZA's Final Order described the Zoning Administrator's decisions it affirmed as follows:

1. Increase of roof height: request made to raise the roof by two feet, violating Sec. 21-150 and Sec. 21-151.
2. Expansion of a deck area: Violations were issued for the following (violating Sec. 21-150 and Sec. 21-151):
 - The construction of benches and planters on top of the slat house.
 - Removal of a handrail required for elevated walkway.
 - Establishment of a permanent connection of the slat house to the rear deck when previous permits required the slat house remain free standing.
3. Building footprint expansion: (violating Sec. 21-150 and Sec. 21-151).
Staff issued approval of permits to extend a roof over the steps and rear walkway. The contractors went outside of this permitted area of construction effectively expanding the building footprint.

Id.

- V. **Appeal to the Circuit Court, remand to the BZA, and additional findings of fact supporting the determination that Unit B is an accessory structure with a nonconforming residential use on the second floor, under the Zoning Ordinance.**

As noted above, Appellant appealed the BZA's decision to the Circuit Court and this Court remanded the matter to the BZA with instructions to make additional findings of fact to support its decision that the structure at issue was an accessory structure with a nonconforming residential use on the second floor. See Ex. A. In accordance with this Court's remand Order, the BZA held a public meeting on January 8, 2015 and unanimously adopted six additional specific findings of

fact. See Ex. B. In an Order issued February 12, 2015, the BZA memorialized those specific findings.

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. This prior classification of the structure as a garage with an apartment unit above it supports the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.
2. The inspection ticket issued November 20, 1991 approved the use of apartment over garage. This document shows a request and approval of the use of the apartment over the garage. This prior classification of the structure as a garage and the approval of the use of the second floor as an apartment unit support the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.
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 identifies the owner of the property at the time of the survey as Paul Boehm, the applicant. The Board finds that the identification of the building on this survey as a garage with an apartment is further support for the Board's finding that the structure is a non-conforming accessory structure. The survey does not identify the structure as a residence, dwelling, house, principal building or apartment. The survey identifies the structure as a garage, noting that the garage structure includes an apartment. The survey shows that the building is an accessory structure with a non-conforming, but approved, apartment use.
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. While there is an apartment on the second story of the structure, the Board finds that these design characteristics of the structure are further support for the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.

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. In fact, a real estate listing from the applicant's real estate company described the first floor of the secondary structure as follows: "a garage for two cars, a storage/workshop area for your favorite hobbies. Instead of cars put a pool table and ping pong table in the garage." When asked about this listing, the applicant continued to characterize the structure as a dwelling with a garage below it. However, the Board finds that this testimony provides additional support for the Board's finding that the structure is a non-conforming accessory structure and rejects the applicant's subjective classification of the 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.

Ex. B. Appellant agrees that these factual findings are supported by the record. See Brief of Appellant, 10 ("Mr. Boehm admits that's each of the BZA's factual findings are supported by the record").

STANDARD OF REVIEW

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. S.C. Code § 6-29-840(A); See also, Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). On appeal from the BZA, "[t]he findings of fact by the [BZA] must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code § 6-29-840(A); See also, Austin, at 33, 606 S.E.2d at 211. "In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing." S.C. Code § 6-29-840(A).

Furthermore, “[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” Austin, at 33, 606 S.E.2d at 211 (quoting Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). “[A] decision of [the BZA] 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.

DISCUSSION

Appellant appeals the BZA’s decisions above to this Court. For the reasons discussed below, the Petition should be dismissed and the BZA’s decisions affirmed. Appellant’s legal argument in his renewed appeal is that the BZA made a legal error in classifying Unit B as an accessory structure with a nonconforming residential use on the second floor, rather than a nonconforming second principle building. As explained herein, the BZA’s decisions should be affirmed because the decisions are not incorrect as matter of law and were not in any way arbitrary, capricious, without reasonable relation to a lawful purpose, or in abuse of the BZA’s discretion. Additionally, if the Court determines that the BZA made a clear error of law in finding that Unit B is an accessory structure with a nonconforming residential use on the second floor, the Petition should nonetheless be dismissed and BZA’s ruling affirmed, because if Unit B were a second principal building, as argued by Appellant, then Unit B would still be nonconforming under the Zoning Ordinance, and thus, still precluding from expansion.

- I. **The BZA did not commit error of law, act arbitrarily, act capriciously, or act with no reasonable relation to a lawful purpose, or abuse its discretion in determining that Unit B is properly classified as an accessory structure with a nonconforming residential use on the second floor.**

The crux of Appellant’s renewed appeal is that the BZA wrongfully determined that Unit B was an accessory structure with a nonconforming residential use on the second floor, rather than a nonconforming second principal building. In its Final Order, the BZA determined that Unit B

was an accessory structure with a nonconforming residential use on the second floor and, therefore, ruled that any changes that would increase the nonconformity were prohibited. See **TOZI-BZA 0103** (stating that Unit B is a “nonconforming garage (structure)” and affirming the denial of the permit); see also, **Ex. B** (additional findings of facts supporting the conclusion that Unit B is an accessory structure with a nonconforming residential use on the second floor). The nonconformity is the residential use of part of an accessory structure. See e.g., **Ex. B** (stating that the accessory structure has a nonconforming, but approved, residential use on the second floor); **TOZI-BZA 0103**; **ZO §21-36-137(A)** (listing permitted accessory uses, which are “customarily incidental to the main or principal use or building”). The BZA’s factual determinations that serve as the basis of its conclusion that Unit B was a nonconforming accessory structure were based upon the factual record presented at the BZA hearing—the BZA specifically identified six factual determinations, quoted in full above, which support the decision. In fact, Appellant agrees that these factual findings are supported by the record. See **Brief of Appellant, 10** (“Mr. Boehm admits that’s each of the BZA’s factual findings are supported by the record”). Instead Appellant asserts that the BZA committed error of law in determining, based upon these factual findings, in determining that Unit B is an accessory structure with a nonconforming residential use on the second floor.

As explained herein, it was not error of law for the BZA to reach the conclusion above. The Zoning Ordinance defines Accessory Use or Structure 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.” **ZO §21-203**. Here, the BZA determined, based on the factual record, that the structure was a free standing garage. Having made that conclusion, it is clear that the “apartment above garage” is nonconforming. See **ZO §21-203** (defining Nonconforming Use and Nonconforming Structure); see also, **ZO §21-36-137(A)** (listing

permitted accessory uses, which are “customarily incidental to the main or principal use or building”).

Under the Zoning Ordinance, a garage is either (1) “[a]n accessory building” or (2) a “portion of a Principal Building.” ZO §21-203. Here, the BZA determined that Unit B was an accessory structure, in part, because of several prior classifications of the structure as a garage. See Ex. B, ¶¶1-3 (citing prior historical identifications of the entire structure as a garage). The BZA also relied on the design of the structure to support its decision that the garage structure was an accessory structure, rather than a portion of a principal building. See Ex. B, ¶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. While there is an apartment on the second story of the structure, the Board finds that these design characteristics of the structure are further support for the Board’s finding that the structure is a non-conforming accessory structure.”) The BZA also considered Appellant’s testimony at the hearing regarding the structure, wherein Appellant agreed that the structure is comprised of a garage on the first floor and an apartment on the second floor. See Ex. B, ¶4 The BZA also pointed to a real estate listing from the Appellant’s own real estate company describing the first floor of Unit B as follows: “a garage for two cars, a storage/workshop area for your favorite hobbies. Instead of cars put a pool table and ping pong table in the garage” as additional support for the finding that the structure is a nonconforming accessory structure. See Ex. B., ¶5.

Appellant asserts that Unit B should have been treated as a second principal building, rather than an accessory structure. A principal building is defined as “[a] building in which the principal use of the lot is conducted” and a principal use is defined as “[t]he specific, primary purpose for which land or a building is used.” ZO §21-203. Appellant essentially argues that the second floor is a dwelling and the principal use of the lot is residential, so therefore according to Appellant, Unit B is a second principal building. See Brief of Appellant, 10-12. This argument is flawed in that it relies solely upon the nonconforming aspect of Unit B, the residential use, to change the classification of Unit B. Additionally, it is worth noting that Unit B as a whole fails to meet the Zoning Ordinance definition of a dwelling because there is not free access through the entire structure by all members of the family—the first and second floors have separate entrances. See ZO § 21-203 (defining “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.” (double emphasis added)); **Ex. B, ¶ 4** (“The only entrance to the apartment above the garage is the staircase on the exterior right side of the structure.”).

In arguing that Unit B is a second principal building, Appellant asks this Court to adopt its view of the facts rather than the BZA’s. This argument fails in all respects. Significantly, Appellant seeks a decision prohibited by the standard of review that requires deference to the findings of fact made by the BZA. See Austin, at 33, 606 S.E.2d at 211.

Furthermore, even if Appellant’s interpretation of the facts were adopted and Unit B treated as a second principal dwelling with a garage underneath, the outcome would not change. Even if the structure were treated as a second principal structure, Unit B would still be nonconforming and the expansion of the nonconformity would still be prohibited under the Zoning Ordinance.

Specifically, if Unit B were treated as second principal building, the apartment would still be classified as a nonconforming use pursuant to ZO § 21-150(F) which provides that “[i]n the event that two or more Principal Buildings occupy a single lot, said occupancy shall constitute a non-conforming use. . .[o]ne structure shall be designated conforming and the other(s) shall be non-conforming. . .” ZO § 21-150(F); see also id. at subsection (1) (providing that “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.”).

II. Because Unit B is nonconforming structure, the BZA’s decision prohibiting expansion of the nonconforming aspect, the residential use, was correct as a matter of law.

Whether Unit B is properly classified as a nonconforming accessory structure or a second principal building, a nonconforming structure under the Zoning Ordinance, does not affect the outcome of this appeal. As explained above, Unit B is nonconforming regardless of the determination of whether it is an accessory structure with a nonconforming residential use or a nonconforming second principal building. The pertinent sections of those Zoning Ordinance provide that “[a] Nonconforming Use shall not be expanded except to eliminate or reduce the nonconforming aspect” and that “[s]tructural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.” ZO §§ 21-150.B and 21-151.B.

Here, because Unit B is either an accessory structure with a nonconforming residential use on the second floor or a nonconforming second principal building, it cannot be expanded to enlarge the residential use, the nonconformity. Therefore, the BZA’s decisions below—(1) affirming the denial of a permit to raise the roof of Unit B; (2) that Appellant violated the Zoning Ordinance by performing work outside the permitted area; and (3) that Appellant’s unpermitted

construction work connecting the slat house to Unit B, and outfitting the connect structure with built in benches and planters violated the Zoning Ordinance—all of which prevented the expansion the nonconformity, were not based on an error of law or any arbitrary or capricious conclusion, and therefore, should be affirmed.

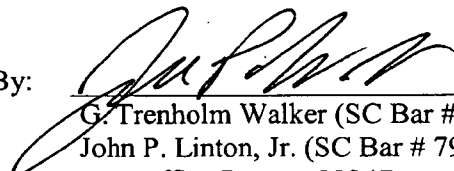
CONCLUSION

For all of the forgoing reasons, Appellant's Petition should be dismissed and the decision of BZA should be affirmed in full.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.

By:


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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
April 6, 2014

STATE OF SOUTH CAROLINA
PLEAS

CIRCUIT
COUNTY OF CHARLESTON

PAUL BOEHM,

Appellant,

v.

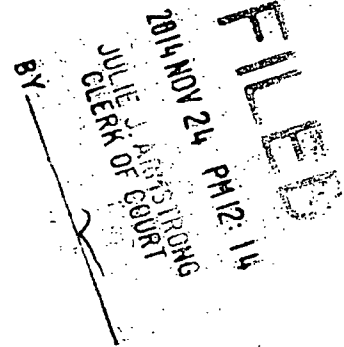
TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS
And TOWN OF SULLIVAN'S ISLAND,

Respondents.

IN THE COURT OF COMMON

FOR THE NINTH JUDICIAL

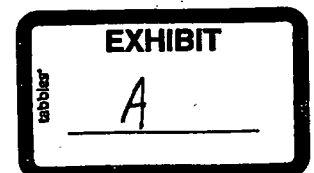
CASE NO:2014-CP-10-2623



ORDER

This matter came before the Court for a hearing on September 2, 2014, on the Appeal of Paul Boehm from the written Order of the Town of Sullivan's Island Board of Zoning Appeals ("BZA"), dated April 10, 2014. 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. The BZA made no factual findings as to why it was a garage in accordance with the terms of the Sullivan's Island Zoning Ordinance. Without factual findings, the Court cannot make a reasoned decision with regard to the pending appeals and, therefore, remands the three appeals to the BZA with the instruction that the BZA 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.

pmot/r



IT IS, THEREFORE, ORDERED that the pending appeals be remanded to the Town of Sullivan's Island Board of Zoning Appeals which is 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.

AND IT IS SO ORDERED.


R. MARKLEY DENNIS, JR.
CIRCUIT COURT JUDGE

November 19, 2014
Charleston, SC

RMOT/2

**Administrative Appeal (Remand from Circuit Court)
Board of Zoning Appeals
Town of Sullivan's Island**

Dated Filed: _____ Permit Application No. _____ Appeal No. _____

The Board of Zoning Appeals held a public hearing on January 8, 2015 for an administrative appeal for 2720-B Goldbug Avenue: Remand from Circuit Court for Findings of Fact based on the record from the Town of Sullivan's Island Board of Zoning Appeals hearing on March 13, 2014. The record from the Town of Sullivan's Island Board of Zoning Appeals hearing on March 13, 2014 is attached to these minutes and has been labeled TOSI-BZA 0001-0469).

Motion was made by Bachman Smith, seconded by Delores Schweitzer, that the Board adopt the following findings of fact in accordance with Judge Dennis' order.

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. This prior classification of the structure as a garage with an apartment unit above it supports the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.
2. The inspection ticket issued November 20, 1991 approved the use of apartment over garage. This document shows a request and approval of the use of the apartment over the garage. This prior classification of the structure as a garage and the approval of the use of the second floor as an apartment unit support the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.
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 identifies the owner of the property at the time of the survey as Paul Boehm, the applicant. The Board finds that the identification of the building on this survey as a garage with an apartment is further support for the Board's finding that the structure is a non-conforming accessory structure. The survey does not identify the structure as a residence, dwelling, house, principal building or apartment. The survey identifies the structure as a garage, noting that the garage structure includes an apartment. The survey shows that the building is an accessory structure with a non-conforming, but approved, apartment use.

Jan 8 2015 Final Order 2720-B Goldbug Ave - Remand from

EXHIBIT

B

1

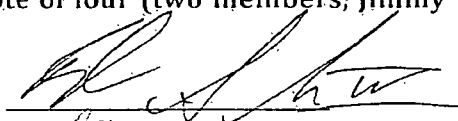
4. The design of the structure, which can be readily observed by reference to the photographs, drawings, documents and testimony in the record, is that of a garage that has an apartment on top. There are two garage doors on the front of the structure, which open to the bays. The only entrance to the 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. While there is an apartment on the second story of the structure, the Board finds that these design characteristics of the structure are further support for the Board's finding that the structure is a non-conforming accessory structure. It shows that the structure is an accessory structure with a non-conforming, but approved, apartment use on the second floor.

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. In fact, a real estate listing from the applicant's real estate company described the first floor of the secondary structure as follows: "a garage for two cars, a storage/workshop area for your favorite hobbies. Instead of cars put a pool table and ping pong table in the garage." When asked about this listing, the applicant continued to characterize the structure as a dwelling with a garage below it. However, the Board finds that this testimony provides additional support for the Board's finding that the structure is a non-conforming accessory structure and rejects the applicant's subjective classification of the structure.

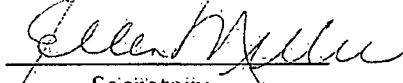
6. The Board finds that the structure at issue and use of the structure as a garage with a non-conforming apartment on the second story is customarily incidental to the principal use in building located on the lot, a principal building used as a residence. The Board recognizes the structures on the lot 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.

Motion carried unanimously with a vote of four (two members, Jimmy Hiers and Sarah Church, had been recused).

Date issued: 2/12/15


Chairman

Date mailed to parties in interest: 2-17-15


Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

Jan 8 2015 Final Order 2720-B Goldbug Ave - Remand from Circuit Court Page 2

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Respondent's Brief in Opposition to Appellant's Petition to Reverse the BZA's Final Order via United States Mail in accord with applicable Rules of Civil Procedure on this 6th day of April, 2015.

Alice F. Paylor, Esq.
Rosen, Rosen & Hagood, LLC
P. O. Box 893
Charleston, SC 29402



Christine Morrow
Paralegal to John P. Linton, Jr.

Charleston, South Carolina

Sec. 21-25. Principal building coverage area.

A. Definitions.

- (1) **Principal Building Coverage Area.** The Lot Area covered by the Principal Building measured vertically downward from the Principal Building's exterior walls to the ground (also known as the building footprint area), but excludes areas covered only by:
 - (a) accessory structures not readily useable as living space;
 - (b) exterior porches and decks; and,
 - (c) exterior stairs.
- (2) **Principal Building.** A building or buildings in which the principal use of the lot is conducted. The term also specifically applies to multiple dwellings located on the same lot, including an historic structure used as an accessory dwelling unit. (5-15-07)

B. Permitted principal building coverage area.

- (1) Lot Area equal to or greater than fifteen thousand (15,000) square feet:
 - (a) Principal Building Coverage Area shall be no greater than fifteen percent (15%) of the Lot Area.
 - (b) Example (18,000 sf Lot Area): $18,000 \text{ sf lot} \times 15\% = 2700 \text{ sf Principal Building Coverage Area permitted (15\% of Lot Area)}$.
- (2) Lot Area less than fifteen thousand (15,000) square feet:
 - (a) Principal Building Coverage Area shall be no greater than fifteen percent (15%) times Lot Area plus fifteen thousand (15,000) square feet minus the Lot Area times five percent (5%).
 - (b) Example (12,000 sf Lot Area): $(15\% \times 12,000 \text{ sf}) + [(15,000 \text{ sf} - 12,000 \text{ sf}) \times 5\%] = 1950 \text{ sf Principal Building Coverage Area permitted (16.3\% of Lot Area)}$
- (3) Examples.
 - (a) $\frac{1}{2}$ acre Lot 21,780 sf = 3267 sf Coverage (15%).
 - (b) $\frac{1}{2}$ acre Lot 14,505 sf = 2176 sf Coverage (15%).
 - (c) $\frac{1}{4}$ acre Lot 10,890 sf = 1634 sf Coverage (20%)
 - (d) Lot 5,000 sf = 1250 sf Coverage (25%).

C. Design Review Board.

- (1) The Design Review Board may increase by no more than twenty percent (20%) the maximum permitted Principal Building Coverage Area if this or other modifications achieve greater Neighborhood Compatibility as described in ARTICLE XII, except as provided in Section 21-20C.(2)(j) regarding historic properties with a second structure on the same lot. (5-15-07)
- (2) *In cases of interpretation of Enclosed Principal Building Coverage Area, the Design Review Board shall determine what portion of the Enclosed Principal Building Coverage Area shall be included or excluded in the calculations.*

Sec. 21-54. Building height.

- A. No Principal Building shall be erected, altered or moved so as to exceed thirty-eight (38) feet in overall height.
- B. Building height shall be measured in a straight line from the highest point of the Principal Building, excepting any chimney, to the natural ground elevation at the center point of the Principal Building.
- C. Elevated Lot: In no case shall the highest point of a Principal Building be higher than forty (40) feet above the crown of the street nearest to the center of the foundation.
 - (1) Example: Natural ground elevation is three (3) feet above street crown; maximum Principal Building height = 37 feet.
- D. Religious institutions: A height limit of 60 feet shall apply to spires, belfries, cupolas and domes not intended for human occupancy located on the Principal Building.
- E. Notwithstanding any of the requirements in Sec. 21-54 A-C above, structures on split-zoned lots as defined and described in Sec. 21-49 A in the CC-District may be permitted only if the principal building height shall not exceed 80% of the maximum height otherwise permitted in Sec. 21-54 A-C. (6-19-07)

Sec. 21-136. Intent.

An accessory use or structure is subordinate to the Principal Building on a lot and is used for purposes customarily incidental to the main or principal use or building and located on the same lot. Its purpose is for the enhanced utilization of the principal use of the property but would not exist independent of the principal use.

An accessory use or structure is permitted on a property in conjunction with a principal use. The size of accessory structures should bear a relation to the size of the principal structure. Proper location of accessory structures is important to their impact on adjacent homes and businesses.

Sec. 21-137. Accessory uses/structures permitted/restricted.

A. Permitted accessory uses/structures:

- (1) Deck or patio;
- (2) Fence;
- (3) Garage for personal use;
- (4) Gazebo or cabana;
- (5) Greenhouse for personal use;
- (6) Historic structure;
- (7) Home occupation;
- (8) Kennel for personal pets;
- (9) Parking and outdoor storage;
- (10) Personal storage building, shed, tool room or workshop;
- (11) Recreational facilities for personal use (pool, tennis or basketball court, large playground equipment, etc);
- (12) Satellite dish;
- (13) Signs; and,
- (14) Temporary uses, limited to those defined herein.

B. Restrictions.

- (1) The above accessory uses and/or structures are permitted within any zoning district on Sullivan's Island, subject to restrictions provided herein.
- (2) No accessory use and/or structure shall be permitted without the existence of a permitted Principal Building or use on the same lot; provided however not withstanding the definition of the term "accessory use or structure" contained in Section 21-203, fences are expressly allowed on lots without the existence of a permitted Principal Building or use on the same lot. (08-15-06)
- (3) In the RS-Residential District, accessory uses and/or structures are confined to the personal, non-commercial use of the property owner or renter, except as otherwise provided.
- (4) In the CC-Community Commercial District, accessory uses and/or structures may be used for commercial or office enterprises related to the commercial use.
- (5) All accessory uses and/or structures shall meet the yard Setback requirements of the zoning districts in which they are located unless otherwise provided herein.

C. Approvals required.

A Certificate of Zoning Compliance issued by the Zoning Administrator shall be required for all Accessory Uses and Structures. The Design Review Board shall also approve all Accessory Structures that require a building permit. The Board of Zoning Appeals shall approve all Accessory Structures and Uses that are permitted by Special Exception. The Town Council shall approve all Temporary Accessory Uses and Structures.

Sec. 21-138. Accessory structures.

A. Accessory structures shall

(1) Be located a minimum of twenty (20) feet to the rear of the principal building's primary front facade; provided, however, that for lots adjacent to the RC-1 or RC-2 District zones, accessory structures may be allowed in the yard area abutting the RC District or in the yard area abutting the street. (11-20-07)

(2) (a) Not exceed the greater of twenty-five percent (25%) of the principal buildings square footage in total combined square footage of all accessory structures or 750 s.f; and no one (1) structure may exceed 750 square feet in total area; total area to include square footage below BFE (Base Flood Elevation), above BFE and any roof overhang or shed roof, excluding any roof overhang less than 30 inches beyond the footprint of the structure; a cantilevered section of a structure will not be considered a roof overhang; and further provided that the accessory structure footprint shall not exceed 625 square feet, measured between the exterior walls of the structure. (11-20-07)

(b) The Design Review Board may grant no more than a twenty (20%) percent increase in this zoning standard, if this or other modifications achieve greater Neighborhood Compatibility as described in ARTICLE XII, and with particular consideration of the size and floor elevation of the principal dwelling. (11-20-07)

(3) (a) Not exceed 15 feet in height, except that the height may be extended to 18 feet where the pitch of the accessory structures roof is not less than seven on twelve (7/12); dormers will be limited to twenty percent (20%) of the roof area with no one dormer exceeding six (6) feet in length measured at the portion of the wall plate parallel to the exterior of the structure at the lowest roof edge; (11-20-07)

(b) The Design Review Board may grant no more than a 20% increase in this zoning standard, if this or other modifications achieve greater Neighborhood Compatibility as described in ARTICLE XII, and with particular consideration of the size and floor elevation of the principal dwelling. (11-20-07)

(4) Not have any one wall that exceeds twenty five (25) feet in length; (11-20-07)

(5) (a) Not be closer to any Lot Line than ten (10) feet; or thirty (30) feet from street pavement; whichever is greater; (11-20-07)

(b) The Design Review Board may grant no more than a 40% decrease in this zoning standard, if this or other modifications achieve greater Neighborhood Compatibility as described in ARTICLE XII. (11-20-07)

(6) Not encroach upon the RC-1 or RC-2 required setback; and, (11-20-07)

(7) Not have a separate electric meter, but may utilize such plumbing fixtures as sinks, hose bibs and outdoor showers located below BFE; provided such plumbing fixtures are attached to a non-breakaway vertical support member, employ a disconnect valve located above BFE and are not connected to the sanitary sewer system. (11-20-07)

B. Types of Accessory Structures

For the purpose of applying the zoning standards provided in (A) above, only the following structures are considered an Accessory Structure: Cabana, garage, gazebo, greenhouse of personal use, personal storage building, shed, tool room or workshop, and any other structure having a roof. (11-20-07)

Sec. 21-142. Recreation facilities.

A. Permitted accessory recreational uses.

- (1) Swimming pool and attendant facilities.
- (2) Basketball, tennis or other type of play court.
- (3) Decks and patios.

B. Restrictions.

- (1) All accessory recreational uses and structures shall be located a minimum of twenty (20) feet to the rear of the Principal Building's front façade.
- (2) All accessory recreational uses and structures shall meet the same Setbacks required of the Principal Building.
- (3) Pools elevated more than six inches above grade are not permitted unless developed as an integral part of a Principal Building.
- (4) Elevated decks shall only be permitted if constructed as an integral part of the Principal Building.
- (5) Mesh fencing around recreational courts shall be permitted to exceed the height standards of the fence regulations but shall be substantially transparent.
- (6) No accessory recreational use or structure shall be lit for night play.

Sec. 21-149. General.

A. Scope.

The regulations of this Article govern "nonconformities" which are uses, structures, lots, signs and other situations that came into existence legally but that do not conform to one or more requirements of this Zoning Ordinance. These are referred to in this Zoning Ordinance as "nonconformities." Nonconformities are legal situations and have legal status under this Zoning Ordinance.

B. General policy.

In order to encourage development consistent with this Zoning Ordinance and provide landowners with reasonable use of their land, it is the general policy of the Town to allow uses, structures, signs, lots and other situations that came into existence legally, in conformance with then-applicable requirements, to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible.

C. Intent.

The regulations of this Article are intended to:

- (1) Recognize the interests of landowners in continuing to use their property;
- (2) Promote reuse and rehabilitation of existing buildings; and
- (3) Place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the Town as a whole.

D. Authority to continue.

Any nonconformity that came into existence lawfully and continues to be a lawful use at the time of adoption of this Ordinance or that becomes nonconforming upon the adoption of any amendment to this Zoning Ordinance may be continued in accordance with the provisions of this Article.

E. Determination of nonconformity status.

The burden of proving that nonconformity existed prior to the adoption of this Ordinance or subsequent amendments rests with the subject landowner.

F. Repairs and maintenance.

- (1) Incidental repairs and normal maintenance necessary to keep a Nonconforming Structure in sound condition are permitted unless such repairs are otherwise expressly prohibited by this Zoning Ordinance.
- (2) Nothing in this Article will be construed to prevent Structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

G. Change of tenancy or ownership.

Nonconformity status runs with the land and is not affected by changes of tenancy, ownership, or management.

H. Historic buildings.

Buildings designated as historic through the process set forth in the HP Historic Preservation Overlay District, ARTICLE XI shall be considered conforming to this Ordinance for all purposes. Any height, setback, yard, area or other dimension found by the Design Review Board to be of historic significance in the designation process shall supersede any conflicting standard set forth in the zoning district in which the building is located and shall be applied to the building and the site in making future determinations of conformity as to the existing building or any changes consistent with an approved Certificate of Appropriateness (see Historic Preservation Overlay District, ARTICLE XI).

Sec. 21-150. Nonconforming uses.

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.

C. Moving.

A Nonconforming Use shall not be moved in whole or in part to another location on the lot unless the movement or relocation eliminates or decreases the extent of nonconformity.

D. Damage or destruction of a nonconforming use.

- (1) When a building or structure containing a Nonconforming Use is damaged by intent or by neglect, not caused by natural disaster, civil strife or uncontrollable accident, to the extent of more than fifty percent (50%) of its assessed value based on the most recent property assessment, the use shall not be restored except in conformity with the regulations this Zoning Ordinance.
- (2) When a building or structure containing a Nonconforming Use is damaged by natural disaster, civil strife or uncontrollable accident to the extent of more than fifty percent (50%) of its assessed value based on the most recent property assessment, the use may be restored in as close conformity with the regulations of this Zoning Ordinance as possible. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage.
- (3) When a building or structure containing a Nonconforming Use is damaged by less than fifty percent (50%) of its assessed value, a Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage.

E. Abandonment of a nonconforming use.

- (1) A Nonconforming Use shall be considered abandoned when any of the following occurs:
 - (a) The intent of the owner to discontinue the use is apparent;
 - (b) The use has been discontinued for a period of twelve (12) months or more;
 - (c) A demolition permit has been applied for;
 - (d) The characteristic equipment and furnishings associated with the Nonconforming Use have been removed from the premises and have not been replaced by similar equipment within 90 days, unless other facts show intention to resume the Nonconforming Use;
 - (e) The Nonconforming Use has been replaced by a conforming use; or
 - (f) A Certificate of Zoning Compliance nor a Building Permit to reconstruct a damaged nonconforming use has been secured within twelve (12) months of the date of occurrence of such damage nor has construction been diligently pursued and completed within three (3) years from the date of the occurrence of such damage.
- (2) Once a Nonconforming Use is abandoned, the use's nonconforming status shall be lost and any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

F. Two or more Principal Buildings on one lot

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.

G. Vacation rental.

Nothing contained herein shall be construed to allow the continued use of a Vacation Rental after damage or destruction of greater than fifty percent (50%) of its assessed value, regardless of reason for such damage or destruction.

H. Accessory uses.

A use accessory to a principal Nonconforming Use may not be continued after the principal use has been abandoned, unless the use is a permitted Accessory Use in the base zoning district and any applicable overlay district.

Sec. 21-151. Nonconforming structures.

A. Definition.

A Nonconforming Structure is 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. Nonconforming Structures may remain, subject to the regulations of this Article.

B. Structural alterations.

- (1) Structural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.
- (2) When a structure is nonconforming because it encroaches into a required Side or Rear Yard Setback, this provision shall be interpreted as allowing other portions of the structure to be expanded out to the extent of the existing encroachment, as long as there is no greater encroachment into a required Setback.
- (3) When a structure is nonconforming because it encroaches into a required Front Yard Setback, this provision shall be interpreted as prohibiting other portions of the structure from being expanded out to the extent of the existing encroachment.

C. Moving.

A Nonconforming Structure may be moved in whole or in part to another location only if the movement or relocation decreases or eliminates the nonconformity.

D. Damage or destruction of a nonconforming structure.

- (1) When a Nonconforming Structure is damaged or destroyed by natural disaster, civil strife or uncontrollable accident, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be repaired in accordance with its pre-existing footprint, square footage, setbacks, and lot coverage. The Zoning Administrator shall rely on all credible information provided by the owner and/or available from the Town, to establish the damaged or destroyed structure's pre-existing condition and lot location. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage. If FEMA regulations require the structure's foundation to be elevated over fifty percent (50%) above its original elevation, the Design Review Board shall determine whether or not the reconstruction shall be required to meet the current Zoning Ordinance's Setback requirements.
- (2) When a Nonconforming Structure is damaged by intent or by neglect, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure shall be restored in conformity with the Zoning Ordinance in effect at the time a building permit is issued.
- (3) When a Nonconforming Structure is damaged by less than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be reconstructed in accordance with its pre-existing footprint, height, square footage, setbacks, and lot coverage. The Zoning Administrator shall rely on all credible information provided by the owner and/or available from the Town, to establish the damaged structure's pre-existing condition and lot location. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage. If FEMA regulations require the structure's foundation to be elevated over fifty percent (50%) above its original elevation, the Design Review Board shall determine whether or not the reconstruction shall be required to meet the current Zoning Ordinance's Setback requirements.

E. Abandonment of a nonconforming structure.

- (1) A Nonconforming Structure will be considered abandoned when any of the following occurs:
 - (a) The owner has discontinued all use of the structure for a period of 12 months or more;
 - (b) A demolition permit has been applied for; or
 - (c) A Certificate of Zoning Compliance or a Building Permit to reconstruct a damaged Nonconforming Structure has not been secured within twelve (12) months of the date of occurrence of such damage, nor has construction under said permit been diligently pursued and completed within three (3) years from the date of the occurrence of such damage.
- (2) Once a Nonconforming Structure shall be deemed abandoned, its nonconforming status shall be lost and the structure, or any replacement, shall comply with the regulations of the zoning district in which it is located.

Sec. 21-184. Administration officer; powers and duties.

A. Authority of zoning administrator.

The Zoning Administrator shall be appointed by the Town Council and shall have the authority to administer and enforce the provisions of this Zoning Ordinance. In cases where the Zoning Administrator is not available, the Building Official shall be authorized to sign on behalf of the Zoning Administrator.

B. Powers of zoning administrator.

The Zoning Administrator shall have the power to

- (1) Review, approve, approve with conditions, or deny any application for a Certificate of Zoning Compliance for
 - (a) Permitted uses or conditional uses that do not involve exterior construction; and,
 - (b) Construction that does not require a Building Permit or expand or enlarge the interior living space.
- (2) Process applications to the Design Review Board for Certificates of Zoning Compliance and upon approval, issue the certificates;
- (3) Process applications to the Design Review Board for Certificates of Appropriateness (HP Historic Overlay District) and upon approval, issue the certificates;
- (4) Process applications or appeals to the Board of Zoning Appeals for Special Exceptions, Variances and administrative appeals;
- (5) Process applications to the Tree Commission for Category I trees and issue permits or denials at the direction of the Tree Commission;
- (6) Review and approve or deny all Category II tree and palmetto permit applications;
- (7) Review and approve or deny Certificates of Zoning Compliance for permitted Vacation Rentals;
- (8) Review and approve or deny Certificates of Zoning Compliance for signs, parking and other accessory structures and uses as provided for in ARTICLE XV; and,
- (9) Review and approve or deny, in collaboration with the Building Official, Certificates of Occupancy; and,
- (10) Interpret and enforce the provisions of the Zoning Ordinance.

Sec. 21-190. Appeal from decision of zoning administrator or other official.

Any person not satisfied with the decision or interpretation of the Zoning Administrator or any other city official or board regarding this Ordinance, may file an Administrative Appeal to the Design Review Board in accordance with article XII or the Board of Zoning Appeals in accordance with ARTICLE XVIII. Sec. 21-177.

- A. The applicant may appeal a determination based upon an interpretation of the Design Standards to the Design Review Board. The Design Review Board shall have final authority to interpret and apply the Design Standards.
- B. The applicant may appeal a determination based upon an interpretation of the Zoning Standards to the Board of Zoning Appeals. The Board of Zoning Appeals shall have final authority to interpret and apply the Zoning Standards.
- C. In case of any conflict between a Zoning Standard and a Design Standard, or where it is unclear as to the determination being a Zoning or Design Standard, the Board of Zoning Appeals shall have final authority in such appeals.

ARTICLE XXI. Definition of Terms.

Sec. 21-203. Definitions

Except as specifically defined herein, all words used in this Zoning Ordinance have their customary definitions. For the purpose of this Zoning Ordinance, certain words or terms herein are defined as follows:

Accessory Use or Structure. 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.

Addition. Construction to existing structures intended to provide additional square footage, storage or porch areas, whether or not completely enclosed.

Alley. A secondary way that affords access to the side or rear of abutting Lots but is not considered a street.

Alteration. Any change in the supporting members of a building, such as bearing walls, columns, or girders; any addition or reduction to a building; any change in use; or any relocation of a building from one location or position to another.

Assessed Value or Valuation. A property assessment conducted by the Charleston County Tax Assessor based upon the most recent property assessment figures available.

Bank (Savings and Loan or Credit Union). A financial depository institution or related banking facility that accepts money for deposit into accounts from the general public or other financial institutions, and may include personal or business loans, wire transfers and safe deposit boxes as accessory uses.

Bar. A business that serves alcoholic beverages for on premise consumption and receives less than fifty percent (50%) of its revenues from the sale of food prepared on premises.

Baseline. The South Carolina Department of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management (OCRM) final baseline depicted on the SCDHEC OCRM orthophoto maps of Sullivan's Island, sheets 154 through 162. (1-21-92 revised 1999)

Bedroom. An enclosed space within a single-family dwelling unit designed or intended for sleeping and which contains at least one closet (or piece of closet-sized and closet-like storage furniture) for the storage of clothes and other personal effects. A room or other enclosed area is not a bedroom, nor considered habitable for sleeping purposes, unless it has a permanent door permitting complete closure and separation by that door from any and all kitchen and bathroom areas. As an example, a room or other enclosed area is not a bedroom within this definition if the room arrangement is such that access to a bathroom intended for use by the occupants of other bedrooms can be had only by going through that room, nor shall such a room be considered a bedroom if it is the only access to another bedroom.

Bed and Breakfast Inn. A business establishment operated within a Principal Building by an owner-occupant or resident manager, offering one to four units for temporary lodging and breakfast to the traveling public while away from their normal places of residence.

Blank Façade. A blank façade is an expanse of wall that has no windows, doors or porches.

Breakfast. A meal served between the hours of 6 a.m. and 11 a.m.

Board of Zoning Appeals. An officially constituted body whose principal duties are to hear appeals, including appeals related variances, special exceptions and administrative determinations.

Buildable Area. See "Lot Area, Buildable."

Building. A structure which is enclosed by a roof and by exterior walls along whose outside faces can be traced an unbroken line for the complete circumference of the structure, which is permanently affixed to a lot or lots, and used or intended for the shelter, support, or enclosure of persons, animals, or property of any kind.

Building Coverage Area, Principal. The Lot Area covered by the Principal Building measured vertically downward from the Principal Building's exterior walls to the ground, but excludes (1) accessory structures not readily useable as living space; (2) exterior porches and decks; and, (3) exterior stairs.

Building Envelope. A three-dimensional space created by required setbacks, heights, coverage and slope angles within a lot.

Building Envelope, Front Yard. A theoretical line through which the Principal Building's front façade shall not cross.

Building Floor Area. See "Building Square Footage, Principal."

Building Footprint. See "Building Coverage Area, Principal."

Building Height. A vertical distance measured in a straight line from the highest point of the Building or Structure, excepting any chimney but including any other vertical improvement, to the natural ground elevation at the center point of the Building or Structure.

Building Line. A line that represents the distance a building or structure shall be set back from a lot boundary line or a street right-of-way line or a street centerline according to the terms of this Zoning Ordinance. In all cases, the building lines of a lot shall be determined to run parallel to and set back the appropriate distance required within the district in which the lot is located from street right-of-way lines, street center lines or other lot boundary lines. Also called Front, Side or Rear Building Line.

Building Permit. A permit issued by the Building Official for the construction of a building or structure.

Building, Principal. A building in which the principal use of the lot is conducted.

Building Square Footage, Principal. The entire square footage encompassed within the interior portion of the Principal Building measured from the outside of the exterior walls but not including (1) interior space not useable as living space (attic or parking area beneath Principal Building); (2) structures that are not used as living space; (3) exterior porches and decks; and, (4) exterior stairs.

Category I Tree. Also known as a "Significant" tree, this tree has a DBH of at least sixteen (16) inches at a height of at least forty (40) feet. A Category I tree has the highest level of protection based on its total value to the island environment.

Category II Tree. Also known as a "Protected" tree or species, this tree has a DBH of at least six (6) inches. All Sabal Palmetto (Cabbage Palm, herein called "Palmetto") shall be given special protection as a "Protected Species."

Certificate of Appropriateness. The official document issued by the Design Review Board, on the recommendation of the Historic Preservation Design Review Subcommittee, approving and/or concurring in any application for permit for erection, demolition, moving, reconstruction, restoration or alteration of any structure designated historic property.

Certificate of Occupancy. A certificate issued by the Zoning Administrator or Building Official stating that the proposed use of the building or land conforms to the requirements of the Town's Code of Ordinances.

Certificate of Zoning Compliance, Temporary. A certificate issued by the Zoning Administrator to confirm that a temporary improvement or use is in conformity with the Zoning Ordinance.

Certificate of Zoning Compliance. A certificate issued by the Zoning Administrator to confirm that an improvement or use is in conformity with the Zoning Ordinance.

Clinic. An establishment where medical or dental patients, who are not lodged overnight, are admitted for examination or treatment.

Conditional Use. A permitted land use that has specified conditions, restrictions or limitations that are in addition to the restrictions applicable to all land uses in the zoning district.

Construction. The creation or erection of structure(s) or improvements.

Day Care Facility. The use of a building or premises for the care and supervision of children or elderly adults who do not reside on the property, for periods of less than 12 hours.

Deck. An unenclosed, unroofed horizontal structure, whether or not elevated above grade in any manner.

DBH. Diameter of tree at breast height or the diameter at four and a half (4½) feet above grade.

Density. The number of dwelling units per acre of land developed or used for residential purposes. Unless otherwise clearly stated, density requirements in this Zoning Ordinance are expressed in dwelling units per net acre, that is, per acre of land devoted to residential use exclusive of land utilized for streets, alleys, parks, playgrounds, school grounds or other public uses, or contained in the RC 1 and 2 areas.

Design Guideline. Preferred design features or approaches recommended as guidelines only and not imposed as requirements.

Design Standard. Design Standards are regulation governing the design, orientation, and elevation of buildings and the treatment of site lighting.

Determination of Tree Size. Tree size made by measuring the diameter of the tree at four and a half (4½) feet above grade (DBH).

District. The term applied to various geographical areas of the Town of Sullivan's Island for the purpose of interpreting the provisions of this Zoning Ordinance. The terms "district" and "zoning district" are synonymous and are used interchangeably throughout this Zoning Ordinance.

Dwelling. 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.

Dwelling, Attached Single Family. No more than three single-family Principal Buildings constructed adjacent to one another and sharing a common building wall intended to be purchased as single-family Principal Buildings, also known as "Attached Single Family Residential."

Dwelling, Single Family. A detached Principal Building other than a mobile home designed for or occupied exclusively by a single family on a single lot.

Dwelling, Upper Story. An attached dwelling constructed as an integral part of a non-residential Principal Building located on the second floor.

Extended Lot Line.

Exterior. The outside walls of a structure.

Enclosed Portion. A Principal Building's living area (or other areas sheltered from the elements that may be used for living space).

Erosion Control Structure. Device or material placed on property intended to minimize erosion of soil from wind or rain events.

Elevation, Ground. The existing elevation of the earth, without modification by filling or removal of soil.

Facade, Primary Front. The largest front facing surface of a Principal Building that is parallel or nearly parallel to the front yard street frontage and is considered to be the front of the structure.

Facade, Side. The side-facing surface of a Principal Building that is parallel or nearly parallel to the side lot line.

Family. One or more persons occupying a single Principal Building living and cooking together as a single housekeeping unit with no such family containing over six persons unless all members are related by blood or marriage or unless there is some custodial responsibility for the unrelated family member.

FEMA. Federal Emergency Management Agency.

Fence. Any created unroofed barrier that blocks or impedes the flow of people or animals; a fence may be a wall or other structure that prohibits physical or visual access across a lot, but does not include vegetation.

Floor Area. The sum of the gross horizontal areas of all floors of a building measured from the exterior face of exterior walls, including any space where the floor-to-ceiling height is greater than less than four (4) feet, but excluding any unenclosed porches.

Forty-year Setback Line. The South Carolina Department of Health and Environmental Control Bureau of Ocean and Coastal Resource final Setback Line depicted on the OCRM orthophoto maps of Sullivan's Island, sheets 154 through 162. Also referred to as OCRM Setback Line. The lines referred to are to be interpreted as the most recently adopted version.

Frontage. See "Street Frontage."

Garage, private. An 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.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for personal enjoyment.

Historic Preservation Overlay District. An area, designated by the Town Council pursuant to the provisions of this Article. The District may contain one or more significant historic structures and landmarks and may have within its boundaries other property or structures that are not of such historic and/or architectural

significance to be designated as landmarks, nevertheless, contribute to the overall visual characteristics of the district.

Historic Property. Any place (including an archaeological site or the location of a significant historical event), building, structure, work of art, fixture or similar object that has been individually designated by Town Council of Sullivan's Island or designated as a contributing property within a historic district.

Historic Sites Survey, 2003. A survey completed by David Schneider of historic structures on Sullivan's Island.

Home Occupation. Any business or occupational use conducted entirely within a Principal Building and carried on by the residents thereof, which use is clearly incidental and secondary to the use of the Principal Building for residential purposes.

HVAC. Heating, ventilation and air conditioning.

Impervious Coverage Area. That portion of the Lot Area covered by an impervious surface.

Impervious Surface. Any material or structure through which water cannot be absorbed or passed without limitation, including but not limited to roofed structures, compacted soil or stone, pavement consisting of asphalt, concrete, oil and stone, tar, or asphalt. Impervious surfaces also include building foundations, porches, decks, patios, sidewalks, play courts (tennis, basketball, etc.), pools, and other improvements that impede the absorption of water. Grassed or mulched areas are not considered impervious materials.

Improved Access. All driveways except natural grass or lawn areas.

Living Space. Any interior portion of a Dwelling used for residential or home occupation purposes including closets and hallways but excluding basements or attics used only for storage.

Loading Space, Off-Street. Space logically and conveniently located for pickups and deliveries, scaled to delivery vehicles, and accessible to such vehicles when required off-street parking spaces are filled.

Long Term Rental. The use of a Principal Building(s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for one or more persons in return for valuable consideration for any period of more than twenty-eight (28) continuous days duration.

Lot or Lot of Record. A land area designated as a separate and distinct parcel, tract or property on the most recent legally recorded plat filed and/or approved by the Town of Sullivan's Island, or in the absence of a legally recorded plat, that as described on the most recent legally recorded deed executed and delivered by the Town of Sullivan's Island, both or either as filed in the Office of Register of Mesne Conveyance of Charleston County; provided, however, that for the purpose of determining whether such lot is a separate, distinct building lot, or lot suitable for independent conveyance, any and all applicable restrictions and limitations in the chain of title shall be considered. (9-18-07)

Lot Line. A legal boundary line of a lot.

Lot, Corner. A lot located at the intersection of two or more streets.

Lot, Double Frontage. A lot which has frontage on more than one street, provided, however, that no corner lot shall qualify as a double frontage lot unless said corner lot has frontage on more than three or more streets, also known as a "Through Lot."

Lot, Interior. A lot that has frontage on only one street other than an alley.

Lot Area. The area of the lot lying outside the area designated as marsh or that portion above the ocean's high water mark; lots adjacent to RC-1 - only land area located above and landward of the landward RC-1 Area District boundary line; and, lots adjacent to RC-2 - only land area located above and landward of the SC DHEC-OCRM "Critical Area Line" as determined in the field by OCRM staff.

Lot, Buildable Area. The land area remaining after deleting the required Front, Side, and Rear Yard Setbacks and excluding any land area not considered as Lot Area as defined above.

Lot, Buildable Width. The width of the lot at the building line less that required for Side Yard Setbacks.

Lot Depth. The mean horizontal distance between front and rear lot lines.

Lot, Shallow. A lot with less depth than width at the building line.

Lot Width. The horizontal distance between side lot lines measured at the building line.

Manufactured Home. A structure that is transportable in one (1) or more sections, built on a permanent chassis and has been designed to be used as a dwelling with or without permanent foundation. This structure, when connected to the required utilities, which includes plumbing, heating air conditioning and electrical systems contained therein, bears a label certifying that is constructed in compliance with the national Manufactured Housing Construction and Safety Standards act, U.S. Public Law 93-383.

Map. The word "map" or "zoning map" shall mean the official Zoning Map of the Town of Sullivan's Island, South Carolina.

Mobile Home. A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 that became effective June 15, 1976. This definition differs from that of a "manufactured home" above.

Modular building unit. Any building of closed construction, regardless of type of construction or occupancy classification, other than a mobile or manufactured home, constructed off-site in accordance with the applicable codes, and transported to the point of use for installation.

Neighborhood Compatibility. A condition that exists when land uses and structures are harmonious, with adjacent development. [See article XII.]

National Register of Historic Places. The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, or culture, maintained by the Secretary of the Interior under authority of the National Historic Preservation Act, as amended.

Natural Ground Elevation. The elevation of any lot or any point on a lot before fill is placed on a lot as required in section 5-16.

Nonconforming Lot. A duly recorded lot of record established prior to adoption of the Sullivan's Island's first Zoning Ordinance that does not comply with the minimum Lot Area, lot width or lot depth requirements of this Zoning Ordinance.

Nonconforming Structure. 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.

Nonconforming Use. 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.

Nonconformities. Uses, structures, lots, signs and other situations that came into existence legally and continued to exist as a legal nonconforming use until the time of the adoption of this ordinance but that do not conform to one or more requirements of this Zoning Ordinance.

Occupant. Any person, including adults and children and guests of such adults or children, using residential property as a place for overnight sleeping.

Occupied. The word "used" or "occupied" as applied to any land or building shall be construed to imply that said land or building is in actual use or occupancy and shall be construed to include the words intended, arranged, or designed to be used or occupied.

OCRM. Office of Ocean and Coastal Resource Management formerly known as South Carolina Coastal Council.

Ordinary Maintenance and Repairs. Any work on which a Building Permit or any other Town permit or certificate is not required and where the purpose is stabilization, and further, where such work will not noticeably change the exterior appearance of the resource. Any work not satisfying all of the above requirements shall not be considered ordinary maintenance and repair.

Outdoor Display Area. A portion of a property outside of any building where merchandise, goods or other items are placed in public view for the purpose of direct sale or lease to customers.

Outdoor Storage. The keeping within an unroofed and unenclosed area any goods, materials, merchandise or vehicles in the same place for more than less than thirty days.

Overlay Zone. A zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries

Parcel. See "Lot".

Parking. The placement of a vehicle or equipment at a location for less than thirty (30) days.

- Parking Lot.** Any area used for the express purposes of parking automobiles, but not including a single family dwelling's parking area incidental to the principal use.
- Parking Space.** A space within a parking lot or on a single-family dwelling lot expressly provided for the purpose of parking an automobile or other vehicle.
- Person.** The word "person" includes a firm, association, organization, partnership, trust company, or corporation, as well as an individual.
- Pervious Materials.** Materials through which water can be easily absorbed or passed such as, but not limited to, grass, uncompacted soil, gravel, shell, and crushed stone.
- Pet, Non-traditional.** Non-domesticated animals or animals commonly used for the production of food or products, such as cattle, sheep, goats, hogs or poultry
- Premises.** A lot or other tract of land including the buildings or structures thereon. Also, see "lot."
- Principal Building.** See "Building, Principal."
- Principal Use.** The specific, primary purpose for which land or a building is used.
- Primary Oceanfront Sand Dune.** A line marked in the field by South Carolina Department of Health and Environmental Control Bureau of OCRM staff that designates the location of the crest of a sand dune.
- Prohibited Use.** A use that is not permitted in a Zoning District.
- Property.** Something tangible to which its owner has legal title.
- Recreation Vehicle.** A mobile home, tent, trailer, or other self-contained vehicle, designed for recreational purposes, made of metal or other materials, mounted on two or more wheels and either self-propelled or rigged for towing, provided such vehicle is less than thirty (30) feet in length and is not used for residential purposes within the Town of Sullivan's Island.
- Residence.** See "Dwelling".
- Residential, Attached Single Family.** See "Dwelling."
- Residential, Single Family.** See "Dwelling."
- Residential, Upper Story.** See "Dwelling."
- Religious Institution.** A religious organization operated for worship, religious training or study, and including convents, monasteries, shrines and temples.
- Rental or Rental Dwelling.** A dwelling(s) intended to be occupied as a permanent residence by a person or persons that are other than the property owner.
- Restaurant.** An establishment where food and drink are prepared to individual order, ordered and served at the table, and consumed primarily within the principal building or in established outdoor dining areas.
- SCCC.** South Carolina Department of Health and Environmental Control Bureau of Ocean and Coastal Resource Management.
- SCDHEC.** South Carolina Department of Health and Environmental Control.
- Setback.** The required horizontal distance, measured at right angles to the boundary line, between a Principal Building and a boundary line.
- Single-family.** See "family."
- Sign.** The term "sign" shall mean and include every sign, poster panel, free-standing ground sign, roof sign, projecting sign, pylon sign, sign painted on a wall, window, marquee, awning or canopy, and shall include any announcement, declaration, demonstration, display, ribbon, banner, illustration or insignia used to advertise or promote the interests of any person when the same is placed in view of the general public, traveling along a public street right-of-way.
- Sign Area.** The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle or combination thereof that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework,

bracing or decorative fence or wall when such fence or wall otherwise meets the requirements of this Ordinance and is clearly incidental to the display itself.

Sign Height. The distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the newly established grade after any site construction, exclusive of any filling, berming or mounding that was created solely for the purpose of locating the sign. In cases in which the normal grade cannot be reasonably determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the point of crown elevation of the nearest public street.

Sign, Wall: A sign attached to a vertical surface of the building on the walls of a building, attached flat against a wall, or a projecting sign, including on awnings and in windows.

Sign, Pole or Ground Mounted. Signs, whether or not illuminated, mounted on poles or constructed as monument sign at ground level, whose primary purpose is for advertising or information related to private property or businesses.

Sign, Illuminated. When artificial illumination techniques are used in any fashion to project the message on a sign, that sign shall be an illuminated sign.

Special Exception. A use permitted in a zoning district that possesses characteristics that require certain controls in order to insure compatibility with other uses in the district within which they are proposed for location and therefore shall be approved by the Board of Zoning Appeals.

Spirits Tasting Events. An event or festival produced for a limited time and permitted by codes and laws for the purpose of public sampling of alcoholic beverages.

Story. That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and ceiling next above it. The area used as foundation beneath the first usable living floor shall not be considered a "story."

Story, Half. A story in which one or more exterior walls intersect a sloping roof not more than two (2') feet above the floor of such story.

Street. A dedicated and accepted public right-of-way for vehicular traffic that affords the principal means of access to abutting properties.

Street Centerline. That line surveyed and monumental by the governing body shall be the centerline of a street; or in the event that no centerline has been so determined, it shall be that line running midway between, and parallel to the general direction of, the outside right-of-way lines of such streets.

Street Frontage. The width in linear feet of a lot where it abuts the right-of-way of any street from which access may be directly gained.

Structure. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground. A "building" and "sign" as defined in this section are "structures." A structure or part of a structure shall include buildings, overhanging eaves, covered structures such as steps, porches, patios, decks, pools, carports, and any extension of a building beyond its foundation line.

Structure Height. See "Building Height."

Temporary Use: A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

Town Council. The term "Town Council" refers to the legally constituted and elected governing body of the Town of Sullivan's Island.

Tract. See "lot".

Trailer. Any vehicle or structure capable of moving, or being moved, over streets and highways on its own wheels or on flat beds or other carriers, which is designed or utilized to: (1) provide temporary or permanent quarters for the conduct of a business, profession, trade or occupation; (2) serve as a carrier of people, new or used goods, products or equipment; and (3) be used as selling, advertising or display device. For the purposes of this Zoning Ordinance, the term "trailer" shall not include the terms "camper", "recreational vehicle", or "house trailer".

Tree. Any living, self-supporting woody perennial plant that is evergreen or deciduous.

Tree Commission. A Commission appointed by the Town Council to oversee the Tree Protection Article of the Zoning Ordinance.

Tree, Protected. A Category II tree that has a DBH of at least 6 inches.

Tree, Protected Species. All Sabal Palmettos (Cabbage Palm, herein called "Palmetto").

Tree, Significant. A Category I tree that has a DBH of at least 16 inches or a height of at least 40 feet; it shall have the highest level of protection based on its total value to the island environment.

Upper Story Residential. See "Dwelling."

Useable Living Space. That area contained in a Principal Building used for bedrooms, living rooms, kitchens, bathrooms, entranceways, hallways, closets, enclosed sun porches and other such space but not including attics without windows or skylights, or area below the first floor living area not used as living space.

Usable Lot Area: See "buildable Lot Area."

Use, Accessory. See "accessory."

Use, Principal. The primary purpose for which a lot is occupied and/or used.

Used. See "occupied".

Utility substation. A facility for the operation of public utility services such as electrical, gas, water and sewer.

Vacation Rental. The commercial use of a Principal Building(s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for use, occupancy, possession, sleeping accommodations, or lodging for one or more persons in return for valuable consideration for any period of less than twenty-eight (28) continuous days duration.

Variance. A modification of the terms of this Zoning Ordinance not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of the Zoning Ordinance or resolution shall be observed, public safety and welfare secured, and substantial justice done.

Yard, Front. A yard situated between the front building line and the front lot line extending the full width of the lot; the front yard is that portion of the lot adjacent to the street.

Yard, Rear. A yard situated between the rear building line and the rear lot line and extending the full width of the lot.

Yard, Side. A yard situated between a side building line and a side lot line and extending from the front yard to the rear yard.

Zoning Administrator. The term "Zoning Administrator" refers to any person so designated by the Town Council of Sullivan's Island, and so employed.

Zoning District. See "District".

Zoning Map. See "Map".

Zoning Standard. Regulations governing land uses, lot area and dimensions, setbacks, lot coverage, size and height. These regulations address a structure's location on the lot and the permitted building envelope.

Sec. 21-204. Reserved.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
PAUL BOEHM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
TOWN OF SULLIVAN'S ISLAND,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 7, 2015, before The Honorable R. Markley Dennis, Jr., in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Alice Paylor, Attorney-at-Law
 ROSEN LAW FIRM
 151 Meeting Street, Suite 400
 Charleston, South Carolina 29402
 Appearing for Plaintiff

Treholm Walker, Esq.
 John Linton, Esq.
 PRATT-THOMAS WALKER
 16 Charlotte Street
 Charleston, South Carolina 29403
 Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

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Case No.
Hearing of April 7, 2015
Before The Honorable R. Markley Dennis, Jr.

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1 THE COURT: The next one is Boehm
2 versus Sullivan's Island, zoning appeal.

3 MS. PAYLOR: Thank you, Your Honor.
4 This was before you last year and was
5 remanded.

6 The Town BZA made certain findings
7 of fact. Every factual finding determined
8 that this property contained a residence.
9 Under the zoning ordinance, if a building
10 contains a use that is the principal use of a
11 lot, which in this case was residential, then
12 it is a principal building. Every factual
13 finding found that this was a residence
14 there.

15 They just totally ignored the zoning
16 board and said, 'well, there is a garage at
17 the bottom of it.' Which is true. The
18 definition for a garage says that it can
19 either be a freestanding building or it can
20 be part of a principal building. Because on
21 Sullivan's Island, I can tell you that just
22 about every house has a garage underneath the
23 residence; including my own house because it
24 is built up.

25 Their decision just went totally

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1 against the provisions of the zoning
2 ordinance. It has to be a principal building
3 because it contains a residence in there.

4 The only -- there is a member of
5 the BZA that lives next door. He is so
6 vehemently against, you know, letting him do
7 any improvements to the building and that is
8 what this concerns, whether or not he can
9 improve a building.

10 The Town's brief and the decision to
11 ignore the zoning ordinance, which clearly
12 states that any building in which the
13 principal use of the lot is conducted, is a
14 principal building. That is clearly what we
15 have here. It's an apartment, it is a
16 residence.

17 The only citation that they make in
18 opposition to that is to the definition of
19 dwelling, which is "a building or portion of
20 a building arranged or designed to provide
21 living quarters for a single family, with no
22 structural feature impeding free access
23 throughout the entire structure by all
24 members of the family." Their position is
25 that because it is a garage and there is not

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1 an interior stairway, that it cannot be a
2 principal -- cannot be a dwelling. Well,
3 it is clearly a dwelling, Your Honor.

4 THE COURT: Okay.

5 MS. PAYLOR: It has to be a
6 principal building. They then say -- they go
7 into another thing, but I think that's really
8 not before the court. It really wasn't
9 determined by the Board of Zoning Appeals, on
10 the expansion of a nonconforming use.

11 The nonconforming use in our case is
12 that it is a second dwelling on a lot. Well,
13 all of his requested improvements, none of
14 them are going to expand the use. It's still
15 going to be one dwelling, it's going to be an
16 apartment.

17 All he is asking for is the right to
18 be able to make improvements to it, to fix it
19 up. His intention is that he at some point
20 would like to move into it. He wants to fix
21 it up, make it nicer. That's really what we
22 are talking about here, Your Honor.

23 I believe that they just totally
24 ignored the terms of the zoning ordinance for
25 no lawful purpose. I believe their decision

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1 is arbitrary and capricious. Thank you, Your
2 Honor.

3 THE COURT: Okay. Mr. Linton?

4 MR. LINTON: Your Honor, this
5 appeal, as you will recall, involves the
6 expansion of this property in various ways,
7 including raising the roof of the top floor,
8 connecting a separate building to it. So it
9 all does have to do with the expansion of the
10 structure, it's not just fixing it up.

11 Your Honor, this case involves the
12 application of certain findings of facts to
13 the zoning ordinance. As you are well aware,
14 the standard for an appeal for a BZA decision
15 is that the decision of the Board is entitled
16 to certain deference and the Supreme Court
17 has recognized that as recently as last year
18 in an Horry County where the case did involve
19 looking at a certain body of facts and
20 applying the zoning ordinance.

21 Here, upon remand the BZA issued six
22 findings of fact supporting it's determina-
23 tion that the structure at issue was an
24 accessory structure with nonconforming
25 residential use. Those findings of fact are

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1 in our brief, and I know that Your Honor has
2 had an opportunity to review that.

3 THE COURT: I have.

4 MR. LINTON: And they will dispute
5 that all of those facts were based on the
6 record. They argue instead that it is a
7 second principal building because it has
8 second residential use. Your Honor, the
9 definition of a garage in the zoning ordinance
10 is that it is either an accessory structure
11 or a portion of a principal building.

12 Here the BZA looked at the facts in
13 front of it and determined that it was indeed
14 an accessory structure. Their argument is a
15 tail-wagging-the-dog sort of ordinance
16 because there is a residential use that has
17 to be a principal building. It's a
18 residential lot, it's residential use. That
19 will allow people to convert any accessory
20 structure into a second principal building
21 simply by changing the use. The BZA ---

22 THE COURT: Well, I understand
23 that. Maybe I'm confusing this with another
24 appeal but I thought that it had already been
25 used prior to this as a residence.

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1 MR. LINTON: Yes, sir, and that is
2 why ---

3 THE COURT: So you've addressed
4 that in your findings of facts, why that
5 doesn't carry the day anymore ---

6 MR. LINTON: Yes.

7 THE COURT: Because you allowed
8 it to exist as a residence for a number of
9 years.

10 MR. LINTON: Yes, sir, Your Honor.
11 The determination ---

12 THE COURT: How did they
13 distinguish that then? In the findings?

14 MR. LINTON: Yes, sir.

15 THE COURT: Maybe I missed it.
16 I'm looking at it.

17 MR. LINTON: They never ruled that
18 residential use wasn't allowed. They have
19 always held, in fact the Town approved it in
20 1991, ---

21 THE COURT: Correct.

22 MR. LINTON: It's an approved use
23 but it is nonconforming, so it can't be
24 expanded.

25 THE COURT: Well, I appreciate

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8

1 that. Okay, all right. Thank you very much.
2 I appreciate your positions, they've been
3 briefed. Prepare me the Order, Ms. Paylor.
4 Thank you.

5 MS. PAYLOR: Thank you, Your Honor.
6 Appreciate it.

7 THE COURT: Then we will find out.
8 Thank you all for going back and doing what I
9 needed you to do, and that is specifically
10 put those findings in. Now the court can
11 say, 'Judge, you can't do that.' Y'all
12 briefed it thoroughly and I really appreciate
13 that as well. Thank you.

14 (HEARING CONCLUDED)

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Before The Honorable R. Markley Dennis, Jr.

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

Trial Court Case No. 2015-CP-20-1103

Appellate Case No. 2015-001230

Paul Boehm..... Respondent,

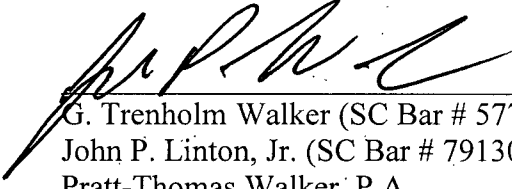
v.

Town of Sullivan's Island Board of Zoning Appeals
And Town of Sullivan's Island.....Appellants.

CERTIFICATE OF COUNSEL

Appellants, by and through the undersigned counsel, certify that the Record on Appeal contains all material proposed to be included by any of the parties and no other material.

Respectfully submitted,



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John P. Linton, Jr. (SC Bar # 79130)
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December 16, 2015
Charleston, South Carolina