In the Matter Of:

## Town of Sullivan's Island v In Re: Board of Zoning Appeals

Public Meeting March 12, 2015

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1	TOWN OF SULLIVAN'S ISLAND			
2	BOARD OF ZONING APPEALS			
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11	HEARING BEFORE: ELIZABETH TEZZA, CHAIRPERSON			
12	DATE:	March 12, 2015		
13	TIME:	6:00 PM		
14 15	LOCATION: Sullivan's Island Town Hall 2050-B Middle Street Sullivan's Island SC			
16	Sullivan's Island, SC			
17	REPORTED BY:	LORA L. McDANIEL, Registered Professional Reporter		
18		Registered Floressional Reporter		
19	A. WILLIAM ROBERTS, JR. & ASSOCIATES			
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25				



1	APPEARANCES:		
2	ELIZABETH TEZZA, CHAIRPERSON		
3	CARLIN TIMMONS, BOARD MEMBER DELORES SCHWEITZER, BOARD MEMBER		
4	SARAH CHURCH, BOARD MEMBER BACHMAN SMITH, IV, BOARD MEMBER		
5	JIMMY HIERS, BOARD MEMBER RANDY ROBINSON, BUILDING OFFICIAL ELLEN MILLER, TOWN CLERK		
6	ELLEN MILLER, IOWN CLERK	:	
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1	THE CHAIRPERSON: I'd like to call this			
2	meeting to order. And the Freedom Of Information Act			
3	requirement has been met?			
4	MS. MILLER: They have.			
5	THE CHAIRPERSON: We're going to move onto			
6	the approval of the minutes from January 8, 2015.			
7	Everybody have a chance to review them? Were there			
8	any			
9	MS. MILLER: I thought they were from			
10	February 12th.			
11	THE CHAIRPERSON: Oh, because this says			
12	Thursday, February 12th.			
13	MS. CHURCH: I didn't get to make any			
14	corrections on my, you know			
15	MR. SMITH: The errata sheet.			
16	MS. CHURCH: Can we defer it to next time			
17	so I have a chance?			
18	THE CHAIRPERSON: I'll entertain.			
19	MR. SMITH: Make a motion to amend until			
20	our next meeting.			
21	THE CHAIRPERSON: Is there a second?			
22	MS. CHURCH: Second.			
23	THE CHAIRPERSON: Any discussion? All in			
24	favor signify by saying aye.			
25	(All board members stated aye.)			

1	THE CHAIRPERSON: Likewise, oppose? That
2	carries.
3	We'll now do the applicant and participant
4	opening. Any member of the public or staff that will
5	be speaking before the Board of Zoning Appeals,
6	please stand, raise your right hand.
7	AUDIENCE AND STAFF
8	being first duly sworn, testified as follows:
9	2714 MIDDLE STREET
10	THE CHAIRPERSON: We are now going to hear
11	an administrative appeal on 2714 Middle Street. I'll
12	ask Randy Robinson to present for the town.
13	MR. ROBINSON: On February 4th of this
14	year, I rode by 2714 Middle Street and observed some
15	guys out there building a pergola, four posts and had
16	a couple of boards going across the top.
17	I stopped and questioned whether they had
18	a permit. They said they did not. And so I asked
19	them to stop work on it.
20	Came back here. Joe and I had a
21	discussion on it, whether it was an accessory
22	structure. We felt that we had a lot of back and
23	forth on this. We felt like it was probably a little
24	bit larger than what we had approved in the past.

What we approved in the past were pergolas

1	over an entrance to a house, say, on a sidewalk or		
2	something like that; feeling that was a landscape		
3	feature. And so we've approved that in the past.		
4	We feel like this being 100 square feet,		
5	that it probably fit in the accessory structure		
6	ordinances and I'm sorry 80 square feet is how		
7	big it is. It fit in the accessory structure		
8	ordinance, and we should follow through with the stop		
9	work order.		
ιο	The applicants came in, and we had a		
11	discussion about whether this was or not an accessory		
12	structure. We felt like we didn't have really a line		
13	in the sand of what was accessory structure, what was		
14	a landscape feature. So we felt like we should err		
15	on the side of caution and go ahead and uphold that		
16	stop work order.		
17	Hence, they come to y'all for an		
18	administrative appeal, looking for some clarification		
19	on this and approval to do this pergola.		
20	And with that, I'll let the applicant go		
21	ahead.		
22	THE CHAIRPERSON: Thank you, Randy.		
23	Who's going to present for the applicant?		
24	Would you please state your name for the record		

before you speak.

25

1	MS. ROKES: My name is Johanna Rokes. We		
2	really do feel like the pergola that we're building		
3	is a landscape feature versus an accessory structure.		
4	It's not going to have any real roof to speak of.		
5	There's no floor. It's really designed more to hold		
6	up vines and really be a feature in the landscape		
7	that we're creating.		
8	I brought some pictures, if you guys would		
9	entertain some pictures. These are pergolas in		
10	landscapes to kind of give you an idea that they		
11	really can be quite beautiful and part of the		
12	landscape.		
13	We also, in our zoning appeal, have		
13 14	We also, in our zoning appeal, have pictures of our pergola. I don't know if you-all had		
14	pictures of our pergola. I don't know if you-all had		
14 15	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not		
14 15 16	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not very invasive, you know. It's not very tall. And by		
14 15 16 17	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not very invasive, you know. It's not very tall. And by the time the landscape fills in, you're not even		
14 15 16 17 18	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not very invasive, you know. It's not very tall. And by the time the landscape fills in, you're not even going to see it from outside the property.		
14 15 16 17 18	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not very invasive, you know. It's not very tall. And by the time the landscape fills in, you're not even going to see it from outside the property.  You know, like Randy said, it's only, you		
14 15 16 17 18 19 20	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not very invasive, you know. It's not very tall. And by the time the landscape fills in, you're not even going to see it from outside the property.  You know, like Randy said, it's only, you know, eight by ten. So 80 square feet, less than 100		
14 15 16 17 18 19 20 21	pictures of our pergola. I don't know if you-all had a chance to look at those. You know, it's really not very invasive, you know. It's not very tall. And by the time the landscape fills in, you're not even going to see it from outside the property.  You know, like Randy said, it's only, you know, eight by ten. So 80 square feet, less than 100 square feet. I don't know if there's any other		

about the accessory structure and, when addressing a

pergola, this type structure, it says that it has a roof if it is an accessory structure. This does not have a roof. That was our basis for not having --

THE CHAIRPERSON: Randy, do you have anything you'd like to add?

MR. ROBINSON: I would like to add, whereas this structure at 80 square feet isn't very — doesn't create a lot of mass up on the street. If someone wanted to build a 400 square foot pergola in the front yard, that would create a lot of mass. That's why we're coming to y'all, basically, for some guidance here on what you could possibly do.

As far as some of the discussion Joe and I had concerning this was that a structure of 100 square feet, technically, in the building code doesn't even require a permit. So maybe if y'all decide to grant this appeal, y'all would put some very strict guidelines on it: You're granting it because it is under 100 square feet, it won't have a roof, it doesn't have a floor, it will not have walls around it, it will not have curtains around it, it will be used for growing landscape only, similar to a fence. I think that's about it.

THE CHAIRPERSON: Thank you, Randy. Does

8 anyone on the board have any questions of the			
applicants or Randy?			
MS. CHURCH: I do, for you guys. Is this			
picture that came with our application, is that what			
you're intending the finish to be?			
MS. ROKES: Yes.			
MS. CHURCH: I rode by it.			
MS. ROKES: All we need is			
MS. TIMMONS: Cross pieces.			
•			
MS. CHURCH: Are you going to hang			
anything?			
MS. ROKES: Our intention is to hang a			
swing from it. More of a large Charleston swing, not			
a kid's, a child's swing. It's more of a relaxation			
area and, again, a focal piece looking from the pool.			
THE CHAIRPERSON: Any other questions?			
MR. HIERS: The slats that are going on			
top, let's look at the dimensions of the structure.			
Nine feet tall by			
MS. ROKES: It's eight feet by ten feet.			
MR. HIERS: How about the slats at the			
top? How many, roughly, do you think y'all			
MS. ROKES: Roughly 18 inches apart.			
THE CHAIRPERSON: Any more questions?			
Okay. We're going to close public comment and			

mention.

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proceed to deliberate on this administrative appeal.

2 MR. ROBINSON: Elizabeth, there's one 3 thing that I didn't say that Joe also wanted me to

THE CHAIRPERSON: Okay, Randy, go ahead.

MR. ROBINSON: Sorry, I didn't think about that. Once y'all, if you do grant this, this will be applied to every structure over here, every pergola. If somebody comes in, another 100 square feet pergola, we will be granting that and will be attaching this as part of it. I mean, attaching y'all's order, the reason why we're granting this.

Although we don't have a problem with it, we just want you to be aware of that. This is going to apply to any pergola under 100 square feet or however y'all word it in the front yard.

Something also we thought of, what if -- and this goes for the swing underneath it, what if somebody wanted to hang a swing on their front porch. What is the difference in doing that and this? So I just wanted to throw that out there as a thought, kind of as that was a thought we had.

I mean, does a swing on a porch constitute a recreational area forward of the principal building? Don't think so. Thank you.

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1	THE CHAIRPERSON: So our decision would
2	basically set a precedent for future pergolas?
3	MR. ROBINSON: It would.
4	THE CHAIRPERSON: Thanks for that
5	clarification. Anyone like to start the discussion?
6	MR. SMITH: Yes, I don't think it's an
7	accessory structure. I don't have a problem with it.
8	I'm inclined to overturn the town's decision. I do
9	appreciate that there might be some precedent being
10	set here. I don't think that our decision
11	necessarily creates a precedent as past decisions do
12	not always set precedents.
13	I want to be careful about decisions or
14	using decisions we make as precedents because we have
15	found that simple changes offer varying degrees of
16	interpretation. For instance, in this case, I'm not
17	inclined to define the spacing between the joists
18	running across the top 'cause I don't want to limit
19	someone's vision but, at the same time, I don't want
20	to limit our ability to make decisions because of the
21	minutia of varying degrees of how someone goes about
22	building any type of structure.
23	I am all for offering some guidelines,
24	perhaps a ceiling as far as what we would consider,

considering square feet. But looking at this

1 particular structure, in conjunction with the house 2 and the size of the lot, I think that it is 3 appropriately massed. Who's to say that something of 4 a different size would be appropriately massed? Ιf 5 it were larger and, then again, if this is, for 6 instance, 1,000 square foot house and someone wants 7 to put 100 square foot pergola in there, I might say 8 that is not appropriately massed for the 9 circumstances. 10

MR. HIERS: I agree. I think we have to be able to look at these things and say, okay, this is what it is. It looks like a duck and it quacks and it has feathers. This looks to be like a landscape feature rather than an accessory structure. However, because of the size, and the -- I think I understand why the town administrator has gone the route that he has gone and the zoning official as well.

I think we craft something that we -- that includes the 80 square foot maximum, that it needs to be solely used as a landscape feature with no floor, no roof, no storage ability. Then we can proceed, as far as I'm concerned.

MR. SMITH: If I may, since you mentioned it, I will say I'm concerned about limiting the use

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1	of a floor. I'm not saying I would be okay with it
2	in every instance. My concern comes from the manner
3	in which some of these yards hold water. And if I
4	were to be constructing something like this, say in
5	front of a house, located on the front, next to a
6	child's swing set, after a couple days' rain, I would
7	not be able to use it for weeks but for it having
8	some type of a slat floor there.

MR. HIERS: I think the applicant, I think he said it would not have a floor.

MR. SMITH: I understand that. I'm responding to this setting. Your comment, you would put restrictions on it. Restriction on this one particular, certainly.

As far as that making a precedent for a decision to make down the line, I'm not fully comfortable getting that detailed, but I can be swayed.

MR. HIERS: I think that's important. If you put, for argument's sake, if you put a floor on something and have side structures and some roof, then I think you're getting away from the pergola, more into possibly an accessory structure-type thing.

MS. CHURCH: I don't think we need to set a precedent in this particular case. As a precedent,

we just need to say this is what we're doing for this one. We can, in our heads, come to that decision. I don't see it's something we need to spell out.

For me, this is our second case in, roughly, six months where we've had to assess something as accessory structure or not. I just went back and looked at the definition again. It's pretty specific when you go through this, and the only other stipulation is of a structure having a roof.

And this one doesn't have a roof. There's no walls and there's no floor. It doesn't fit into any of these categories. I don't have any problem with it not being an accessory structure.

MR. SMITH: I think also, as to the precedent here, that I'm opposed to trying to manufacture. I don't think it's our place to create laws. I do believe the minutes of our meetings will be instructive to future decisions.

THE CHAIRPERSON: Point well taken.

Further, we've already established over the years every lot on this island is unique in some way, shape or form. This lot happens to be at elevation. I don't think they have a problem with water. We wouldn't see this exact same thing again.

I think the precedent for, in a general

nature, that a pergola that is not part of a walkway or a gate or entrance, which is all the ones that we've seen on the island have been, that it's a free-standing pergola. That we're defining this for this particular situation.

MS. TIMMONS: I, too, went back to really read the definitions and the pergola is really more like an arbor. It is a landscape feature. The roof is the defining. If it had a solid roof and vines growing up, it would be an accessory structure. By having open slats, it's not.

But I'm glad you brought it. You did what you did and erred on the side of caution. Because, again, that made sense.

And the other thing is that there are so many little arbors all over the island and this one doesn't -- esthetically it's plain. It goes with the landscape. Goes with the house. I don't have a problem in making it very specific to this case, too. I think that's what we need to do.

MS. SCHWEITZER: Speaking about what Sarah said to the fact this is second time questions have come up with accessory structures, would it be appropriate to make recommendations -- is it the planning commission that came up with these -- to

1	make recommendation that they take another look at		
2	what we have and, you know, just think about further		
3	clarifying the we're called to clarify tonight.		
4	But just because these things are starting to come		
5	up, would this be an appropriate thing to make a		
6	recommendation about to them?		
7	THE CHAIRPERSON: We could. We did make a		
8	recommendation on the last accessory structure that		
9	was before us that we determined was an accessory		
10	structure.		
11	MS. CHURCH: That one had a roof, floor,		
12	walls.		
13	MS. SCHWEITZER: I know it's very		
14	different. If the questions are there, they may		
15	continue to come up without making any kind if		
16	they know the questions are there, it's more their		
17	place.		
18	THE CHAIRPERSON: I think it would be very		
19	difficult to have a list of every type of accessory		
20	structure that anybody might want to construct on		
21	this island. That's why we're here.		
22	MS. CHURCH: I think that's why it's		
23	written the way it is: Any other structure having a		
24	roof. That was meant to be our gauge.		

It definitely leaves some room for wiggle

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1 room: Well, I'll just take the roof off. I think
2 that was the intention.

As long as that's the way it's written, our job is not to try to interpret what they might have meant but left off. We have to take it for what it is, how it's written. That's how it reads.

And I agree. I think they were right to stop and question it and think about it and bring it to us. I think we should approve it.

THE CHAIRPERSON: Anyone ready to make a motion?

MR. SMITH: I'll make the motion. I'm ready to. I think we should make a motion. I'll make the motion to overturn the staff decision to stop work on the pergola and allow it to go forward as submitted with the attached pergola specification showing that it covers a space of eight by ten feet and runs nine feet to what appears to be bottom (or) joist space no closer than 12 inches on center, with no walls and no floor.

THE CHAIRPERSON: Is there a second?

MS. CHURCH: I'll second. Just waiting to

see if you were done.

THE CHAIRPERSON: Any further discussion?
All those in favor signify by saying aye.

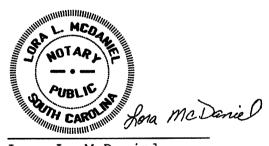
1	maron ray acro			
1	(All board members stated aye.)			
2	THE CHAIRPERSON: All those oppose			
3	likewise?			
4	Ayes have it. And the decision of the			
5	zoning administrator is hereby overturned.			
6	THE CHAIRPERSON: Is there anything			
7	further?			
8	MR. ROBINSON: Nothing further.			
9	MR. SMITH: Motion to adjourn.			
10	THE CHAIRPERSON: Motion to second?			
11	MS. TIMMONS: Second.			
12	THE CHAIRPERSON: All those in favor			
13	signify by saying aye.			
14	(All board members stated aye.)			
15	THE CHAIRPERSON: Thank you. This meeting			
16	is adjourned.			
17	(The meeting was concluded at 6:28 p.m.)			
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## CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional
Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate, and
complete record.

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

Witness my hand, I have hereunto affixed my official seal this 25th day of March, 2015 at Charleston, Charleston County, South Carolina.



Lora L. McDaniel, Registered Professional Reporter My Commission expires: September 18, 2016

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