TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS

HEARING BEFORE:  CHAIRMAN ELIZABETH TEZZA

DATE:  April 13, 2017

TIME:  6:00 PM

LOCATION:  Sullivan's Island Town Hall
2056 Middle Street
Sullivan's Island, SC

REPORTED BY:  Priscilla Nay,
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
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APPEARANCES:

ELIZABETH TEZZA, CHAIRMAN
PETER KOEPKE, BOARD MEMBER
EMILY BRASHER, BOARD MEMBER
JODY M. LATHAM, BOARD MEMBER
JAMES ELLIOTT, BOARD MEMBER
JOE HENDERSON, ZONING ADMINISTRATOR
RANDY ROBINSON, BUILDING OFFICIAL
COURTNEY LILES, TOWN CLERK
BRIAN HELLMAN, ESQUIRE
ROSS APPEL, ESQUIRE
BEAU CLOWNEY
KATE CAMPBELL
BILL MULBRY
MARY DECKER MULBRY, MD
DEL SCHUTTE
BUDDY INABINET
JONGYE WURTHMANN
Polly Wurthmann
REBECCA UFKES
DAVID POULNOT
PAT MARR
TIM REESE
MARK HOWARD

THE CHAIRMAN: I'd like to call this meeting of the Board of Zoning Appeals to order, please. Have the Freedom of Information Act requirements been met?

MS. LILES: They have.

THE CHAIRMAN: My microphone is on. It might not be up. Is that good? There we go.

First, a few announcements. If you intend to speak before this Board will you please sign in so that we have your name and address. If you have a cell phone, please turn it off or put it on vibrate. If it rings you will be walking out of the Board.

You can come back in, but you'll have to make sure it's turned off, and I will be enforcing time limitations according to our Rules of Procedure, Article 4. The presentation by the Town official, the applicant and opponents will be 10 minutes each.

The applicant will also have five minutes for rebuttal and we will increase the time as needed. There will be public comment after the applicant's rebuttal.

When we close public comment I would ask that you refrain from speaking to the Board members and if you have a point of information or something you'd like to bring before us during that time you can raise your hand and we will get to you at an appropriate time. I will now ask for approval of the minutes from December 8th.

We have not met since December. So I assume you've all read them. And do I hear a motion to approve?

MS. LATHAM: I move to approve the minutes of the December 8th meeting.

THE CHAIRMAN: Is there a second?

MR. RICHARDSON: Second.

THE CHAIRMAN: All in favor, signify by saying aye.

(Board members stated aye.)

THE CHAIRMAN: Like sign opposed?

(No response.)

THE CHAIRMAN: The minutes are approved.

THE CHAIRMAN: I'll ask Joe Henderson, the Zoning Administrator, to present. I believe Special Exception, Item D, has been withdrawn.

MR. HENDERSON: That's correct.

THE CHAIRMAN: So we would move to Item E, a variance request, for 2928 Jasper Boulevard.

MR. HENDERSON: Thank you. Members of the Board, Agenda Item E-1 is a variance request for 2928 Jasper Boulevard. The applicants and Beau Clowney Architects are requesting dimensional variances from two provisions of the ordinance that require setbacks from the RC-2 Zoning District and also the OCRM critical line.

These are two subsections of that portion of the ordinance and I'll just go through those very quickly. Subsection 21-23 E (1) A is a 30-foot setback requirement from the RC-2 Zone. This property is encompassed on multiple sides. I'll just pull a PDF here. The request is for the property owners to develop the property with the single family residence. As you can see, if you reference your screen on the right-hand side...
1. is Jasper Boulevard. On the left-hand side is the
2. RC-2 Zoning District.
3. The billable area if you apply the
4. 30-foot critical line setback is within the dotted line you can see there. So the first request from
5. the applicant is an encroachment into that 30-foot line by only five feet, six inches on one portion
6. of the east elevation; then 11 feet, six inches on another portion of the east elevation.
7. The second request is Subsection B and
8. that is to request encroachment beyond the build-to line. This requires that no structure be built any
9. closer to the marsh than the structure built closest within that block. What that refers to, if
10. you look at the screen you will see on the right-hand side Jasper Boulevard.
11. You see the marsh front homes and then
12. the creek on the left. The subject parcel is here
13. between the creek and also the homes; and so the
14. build-to line would run just along the leading edge
15. of this home here where the cursor is.
16. Just to give a little background on a previous variance request, on May 13th of 2010 a variance was requested for these two very sections of the ordinance in order to construct a single
17. family residence. During the BZA's deliberations
18. the BZA approved the variance to 21-23 E (1) B, the
19. build-to line provision, and it decided that
20. without the variance for this lot that it would be unbuildable.
21. However, they denied the request for encroachment into the 30-foot OCRM setback. So
22. with that, Madam Chair, I'll turn it over to the Board for any questions that you might have from
23. the applicants might have and the applicants' presentation.
24. THE CHAIRMAN: Do we have any questions
25. for Joe at this time?
26. MR. RICHARDSON: Joe, where is the original setback line for the concrete pads?
27. Do you know that?
28. MR. HENDERSON: The concrete pads were where the previous house existed and so --
29. MR. RICHARDSON: So where was the setback line for those --
30. MR. HENDERSON: Well, more than likely those structures were built before the current zoning ordinance, long before. So if we take a look at the survey what Peter is referring to is the concrete pad here that leads to the dock and then a concrete pad here on the right side of the parcel. So, Peter, it's likely that they didn't have any setbacks back then.
31. THE CHAIRMAN: What will happen to those concrete pads?
32. MR. HENDERSON: They are to be removed.
33. MS. BRASHER: Joe, so this setback line by OCRM is typically -- they put those lines in the areas that are subject to flooding? Yes or no.
34. MR. HENDERSON: Not necessarily. The OCRM line is determined through on-site inspections where the marsh begins. I think that's pretty accurate. I'm looking for Randy Robinson.
35. I think that's done probably every eight to ten years. DHEC-OCRM will come out and inspect where that line falls because it's a dynamic environment that's subject to change.
36. So this is based upon the current survey of the OCRM line.
37. MS. BRASHER: What is the date of that current survey? Is it like nine years ago or is it just a couple of years ago?
38. MR. HENDERSON: It has to have been done within 12 months.
39. MS. BRASHER: Okay.
most extraordinary, exceptional properties that exists on the island.

As we all know, there are just a handful of these properties that exist on the backside, that whether they were filled or just the natural design of concrete and some of the other areas we have this flag-shaped lot that as you see sits out well beyond what the other lots do.

If you sort of follow this line here this is a photograph from 1941. We've got them in your handouts I think, too, so you can see closer. In 1941 you can see there was a house that was very close to the Jasper Boulevard side of the property. In 1963 we can see that there's a house that sits basically right in the middle of this property. Again, in 1967 we see a dock appears, a house in the center.

In 1992 the house is gone and we're not quite sure what this -- this was probably the pad of where the house sits, but it was -- it was -- as we can see in some of these other pictures this was the house that was there and these pictures were taken immediately after Hugo.

It was low to the ground and it looks like some of the other houses on the back of the island suffered some damages. But to go along with the extraordinary and exceptional conditions that exist here, this being the platted lot, I think that's in your package.

This is a survey that John Way did and you can see in the survey that the OCRM critical line is on three sides of this property and because of the three sides we end up with something that's very different from what -- just about every other property.

I mean, one -- one similar property or two similar properties that come to mind were the Town's lots that they got married for on Raven when that -- when Raven Drive was opened up.

So when we look at this -- and maybe it's sort of better to see this with the marsh in the back. If we see this light gray area, if we didn't have marsh on either side and this was like a typical back-of-the-island lot we would have about 30 feet from the property line plus or minus on the back.

This line right here shows us about 30 feet from where the OCRM setback from the rear of the property is. What's extraordinary and exceptional about this property is because it sits out so far and it has the marsh on either side we don't have this light gray buildable area like about every other house on the back of the island does.

We have this carrot-shaped, very narrow piece. The OCRM and the 30-foot setback didn't exist when this lot was platted and it didn't exist when some of the houses were built on it before. So we've got a situation where the zoning ordinance changed and now we've got an extraordinary, exceptional lot.

Because of these extraordinary, exceptional conditions we're basically unreasonably restricted and almost effectively prohibited from building something on this lot because when you look at what's here it's very narrow and it builds to a triangle.

So is it possible to build something on this? Not under the zoning ordinance because the zoning ordinance doesn't just say this is where you have to build. It sets out a number of design criteria and those design criteria can't be met either.

So to some extent one has to look and say, well, what variance do we need here? Are we going to design a house -- and Kate can talk about that in a little bit -- that just doesn't meet the community standards that Sullivan's Island has set in its ordinance or do we design something that needs about four percent encroachment, about less than 400 feet.

If you're still working in the gray area, if you lived on either side of this lot and you weren't with this -- with the situation that we have, if we were one of just about every other lot on the back of the island you would have a 10-foot to a 15-foot setback but because of this encroachment we have more than even 30 feet because of the way the OCRM lines cut into the property.

So basically we've got extraordinary, exceptional. We've got extraordinary, exceptional conditions that exist on the this lot that really don't exist on most of the other lots. It's very rare that -- at this rate we've got a handful of them. Only one comes to mind.

Then lastly because of the odd-shaped carrot-shaped piece we're unreasonably prohibited or effectively prohibited and unreasonably restricted from being able to build something on the island.
So we're left with really the fourth part of the test, which is benefit neighbors. So like downtown or the neighborhood on Sullivan's Island and to provide a buffer zone for runoff before entering the water surrounding the island. There we go. So, again, this is the view from the front, breaking up the entrance massing. This is that one-story porch which you can again see here. Then these are not all in the same planning. So we're stepping back as much as we can in order to break up that massing. So...

MR. HELLMAN: So, lastly, in terms of the fourth part of the test, the public good, the purpose of the OCRM setback is a little different from the architectural setbacks that serve to benefit neighbors.

So like downtown or the neighborhood on I'on where you can almost reach out your window and pass a cup of sugar to your neighbor the regular setbacks we see in the light gray are really there to give enough space between properties.

The purpose of the OCRM buffer zone and the RC-2 setback according to the ordinance is to allow for the passive treatment of stormwater runoff before entering the water surrounding Sullivan's Island and to provide a buffer zone for floodwater and erosion caused by storms, sea level rise and other natural conditions.
To that end our client retained the services of Bowman Consulting. Their letter is in your package. Cameron Baker with Bowman was tasked to say, first of all, if we are eliminating this 22 percent encroachment that we see in the existing concrete slabs and we come back and we have a four percent encroachment what can be done to satisfy the requirements of -- or the purpose of that ordinance?

What Mr. Baker said is through best management practices, through buyer retention, infiltration, and enhanced filter strips along with the existing bulkhead that surrounds this property and improvements and repairs to it that measures can be taken so that this four percent encroachment which is significantly less which -- which it's already been -- it's already there right now would actually not affect the waters and would serve the purpose of the ordinance.

So we think that for those reasons that the test for variance is met in this is a very exceptional property and we believe that this meeting test should hopefully receive a fair review from you and hopefully a variance. So if there are any questions that we could answer...

MR. KOEPEKE: How big is the house?

MS. CAMPBELL: That's also in your packet and that's something that -- the second page back. Based on all the coverages and square footage allowed with the properties on Sullivan's Island the property owners are calculated by island acreage.

So all these properties are calculated by Highland Acres which is about 20,000 -- just over 20,000 square feet. So the overall square footage of the house that's proposed is just over 3,000 square feet. Based upon Highland Acres and the footprint and the buildable area it is around 4,000 square feet. I think. We'd be allowed 3,900. So we're well under what is allowed for the property and we wouldn't have to ask the DRB for any sort of relief in terms of square footages on that account.

MR. HELLMAN: It is basically just over 3,000 square feet.

MR. ELLIOTT: Heated space?

MR. ELLIOTT: Mr. Hellman, did your client recently buy the --

MR. HELLMAN: They have the house under contract. My client lives on Middle Street right now and would like to move from Middle Street to live on the backside of the island with a dock.

MR. ELLIOTT: So they have a contract?

MR. HELLMAN: Correct.

MR. ELLIOTT: And then you said in your opening statement something about meeting the design criteria required for zoning. I don't think I understood that.

MR. HELLMAN: So the zoning ordinance has certain criteria that has to be met and the DRB typically would be the one that would give -- I guess they're not technically variances but could give variances from that.

So because of the odd shape of this lot most of the important design criteria Ms. Campbell had a very difficult time -- in fact, an impossible time meeting. So it would have been basically a house that looks like a large carrot-shaped aircraft carrier.

MR. ELLIOTT: And you're referring to design criteria that would be overseen by the Design Review Board?

MR. HELLMAN: Correct. That's correct.

The Design Review Board would give relief from that, but that relief would end up in something that I think in our estimation is that carrot-shaped aircraft carrier --

MS. CAMPBELL: And may not be appropriate.

MR. HELLMAN: -- and may not be appropriate.

MR. HENDERSON: I would add that there is a DRB application pending for April 18th. On that application they're requesting multiple architectural relief. One example of that if you look at the screens before you is the second story side setback.

The ordinance requires that any length of wall more than 10 feet has to be set back from the first story two feet. The DRB can grant relief, architectural relief, to maximize that square footage.

So there are no lot coverage requests for this application before the DRB. I think they just mentioned that, but there are lots of areas on the house that need that architectural relief.

THE CHAIRMAN: Because it's so pinned in?

MR. HENDERSON: That's right.
MR. HELLMAN: Otherwise that bottom floor would have to stick out two more feet. So we're trying to keep it as tight as possible there.

MR. ELLIOTT: If the variance for 21-23 E (1) B is granted but not 21-23 E (1) A would you still satisfy the utilization requirement meaning that would still be the case that if the property would be such that the use is basically prohibited that you couldn't build something on it?

MR. HELLMAN: I think -- I think that, you know, there's two parts to the third. It is either unreasonably restricts or effectively prohibits and certainly if we look at the line of all the houses that -- that effectively prohibits.

There's no disputing that.

I think as to the other aspects with the 30-foot setback that's an unreasonable restriction. It may go so far as to -- depending on what the DRB does and depending on what can be designed effectively prohibit it as well. It is certainly an unreasonable restriction given that when this lot was platted none of this was in place.

So we've got a situation that -- that, you know, by the time you get here you're going to have to build a very long, narrow house and what --

That fill in this area, which don't exist on this side.

MS. BRASHER: Would that lot be called a shallow lot?

MR. HENDERSON: It's certainly flagged on a shallow lot when --

MS. BRASHER: As defined with the ordinance?

MR. HELLMAN: That's a good question.

I may want to defer to Joe on that since he'd have to make that determination.

MR. CHAIRMAN: I don't believe so because it's a flagged lot.

MS. CAMPBELL: Right.

MR. HENDERSON: That's right.

MR. KOEPKE: Do I understand this correctly, that I think you're also asking for the variance on the site where you are not actually cutting into the site plan? Is that right?

There's the forest there anyway on that side.

MS. CAMPBELL: Right.

MR. HENDERSON: Here. (Pointing to diagram)

MR. KOEPKE: Right.
Mr. MARR: Hi. I'm Pat Marr. I reside at 3030 Jasper which is four houses down. You know, a variance to me should not be made part of the build-to provision, if that variance is not granted that lot is unbuildable. My biggest fear is that if these variances are granted, the variance being requested under 21-23 E (1) B, the build-to provision, if that variance is not granted that lot is unbuildable.

MR. POULNOT: Right, and I remember when the other house was there and it wasn't a problem. I think Hugo flooded it so badly that it was considered unlivable and they tore it down. What I object to on the sketches that I have seen is the porch on the top is really stretching out and could be right on top of our dock we've got, you know, someone right there. It's a small lot and -- it's a small lot and these rules and regulations developed over many years by concerned citizens of the island.

Granting a variance of a foot here or there for unusual circumstances or for granting the right to build a home is somewhat in front of the neighbors as in this case is not something that a reasonable person could object to. However, I feel that all the neighbors need more information. I received a variance request packet and cannot make a fair decision based on that. My biggest fear is that if these variances are granted, the plans for the house may change. Is there an assurance that I can receive from the committee that the final plans are these just sketches. How do we know that the plans might not change and the variances that are granted for the setbacks?

THE CHAIRMAN: Our variances are final and even though they're not final plans the final plan cannot affect the variance that we give. They would have to come back if their final plan encroached anymore into the -- into the setback. I will state for you going further that the variance being requested under 21-23 E (1) A?

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<td>1 Mr. Fisher's house was just bought for over $3 million. People came in and leveled the house.</td>
<td>1 plans because they were notified at the last second. I think that the instruction to the homeowner was -- and the proposed builder was that they could contact the neighbors. That was, I believe -- as far as I can tell I was the only one contacted.</td>
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<td>2 Okay. You're going to see that this land goes up for deep water. You're going to see people building bigger and bigger houses on this creek which is going to put pressure on stormwater.</td>
<td>2 As they get older or downsize people are just going to come in and say, I'll pay $4 million. We're going to level that house because what's the difference if they pay $4 million for a house or if they have the wherewithal to do a $6 million property for an extra million?</td>
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<td>3 Okay. I'm going to make line and they're going to push it, I guarantee.</td>
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<td>4 Lelands' property so that we could basically square the angle. Maybe you can see it there -- we asked for a small variance, nothing to do with the critical line but next to that -- next to the Lelands' property so that we could basically square the end of the house and move it far from the end of our neighbors at the left.</td>
<td>4 So, please remember that this is going to be precedent-setting for the next couple of years of what we're going to see. We need to stop it now.</td>
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**THE CHAIRMAN:** Okay. I'm going to make a comment. First of all, economic hardship and dollars and cents are not considerations of this Board. We're not allowed to consider that even as part of the hardship test.

**Mr. HELLMAN:** The house is under 3,100 square feet and the actual buildable size that the ordinance will allow is almost 4,000 square feet.

So this is 25 percent smaller than what the ordinance allows.

**Mr. SCHUTTE:** I'm Del Schutte and I'm the house next door just to the west, I guess. I think there are a number of concerns with this. First off, I'd like to address the process.

I think two weeks is too short a time. Several people speaking tonight have changed their minds about docks, 15 by 15 pierhead -- okay -- and I understand maybe some day a long time ago they had another dock there.

So all of a sudden a couple of years ago here comes a 2,400-foot almost commercial dock on our creek. Everybody else is -- is at fault, right? And now they want to put this house that -- you know, was I notified? No.

Very few people on the creek were notified about this and the reason is is because if you sit out on your dock this house will block the sunset. Okay. I'm not saying that there can't be a house there, but make them work within the critical line that this Town has outlined.

The last thing I want to make is the home prices for deep water -- there's only about 14 of them on the island. Okay. The cove is tidal. It gets low. The kind of prices they're getting for land -- and people -- you're going to set a precedent.

There's a lot under contract next to me that's 7,000 square feet and it's got a critical line and they're going to push it, I guarantee.

---

**THE CHAIRMAN:** Thank you. Would anyone else like to speak to this variance, either for or against?

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There's a lot under contract next to me that's 7,000 square feet and it's got a critical line and they're going to push it, I guarantee.
are dramatically different than what they asked and
were denied in 2010 at which point the variance
requests to be able to build out of line, which is
a huge concession already.

It was granted, but the other variance
says they're going to be able to ignore the
setbacks were denied on the basis that the house
had a buildable lot as is without any setback,
without any setback variances. So I'm really
concerned as to why this would even -- even be a
question.

This is a flagrantly nonconforming lot.
The reason there was a purpose of the bigger lot, I
mean, whether it's grandfathered in or not it
definitely changes the function. You could have a
fraternity party out there while everyone else gets
a picnic on theirs.

I mean, the activity increases changes.
You've got a lot that is out of line which is a
major concession. You've got a lot that's filled
in with the same thing and a lot this is
essentially under water at very high tides
completely.

So I do not see how this will be
buildable without a concession so that you can go
up one foot. The comments by the architect I find
quite concerning. Their comment was, we don't want
to build a box. But the variances requested under
the DBA are to eliminate that setback.

If they get the first variance then
they want a second accommodation so that they don't
have to narrow the second story. It doesn't look
very much like a box to me. So I don't know how
many things you have to allow.

I don't know how you ever say no to
anything if we allow it on this lot when we built
and others build knowing we build next to a lot
that was out of line but assuming that a Town would
be consistent in their application of the rules as
they were with us.

We would have loved to have built
closer to the marsh. We would love to have an
extra two months in the sunset. I'm sure the
Poulnots would love -- everyone would love to be
build closer and out of line, but I think it is an
incredibly bold move and a somewhat inconsiderate
attempt even.

This house is buildable as is. You
know, there are other lots that are very unique.
The other night I drove by the Goldbug lot with the
big goldbug tree. You couldn't build a 4,000
square-foot house on that lot without destroying
the tree, but it is what it is.

I agree this is a special lot. It is
special because it will be the only one, if not the
only one, that on the backside is surrounded on
three sides by water. Even if you pitched a tent
out there you'd have 270-degree views that no one
else will have, but you also have the restrictions
that come with that.

I think the main premise is that
somehow that living on Sullivan's Island entitles
you to a 3,000 or 4,000 square-foot house, porches
included or not. I don't -- I don't get that.

I mean, why is it that everybody on
Sullivan's -- you know, are we going to say
you've got a 3,000 or 4,000 square-foot house
with -- I lived the first 15 years here in a 1,400
square-foot house and our house was partially
complete and still is much less than 2,000 square
feet.

So I don't understand this kind of
entitlement that we are allowed somehow and if
we're not allowed to build this house, you know, if
we don't get the variance for the second floor that
keeps us from going out even further on the first
floor. Well, the other option is to build the
first floor in line and come up with some creative
design which I'm sure could be done. We told them,
look, we would be happy to downsize.

We would be very -- we would be
thrilled with a lot on Sullivan's Island that was
1,500 square foot and had 270-degree views. That
is not a hardship for anybody.

The house would still sell for
extravagantly more than it ever was purchased for
and I just cannot see where these variances either
are consistent with the past history or protective
of the future of Sullivan's Island.

THE CHAIRMAN: Thank you.

MR. ELLIOTT: Mr. Schutte, can I ask
you a question?

MR. SCHUTTE: Yes.

MR. ELLIOTT: Which is your house?

MR. SCHUTTE: Can you go to the
diagram, Joe? The plat line.

MR. HENDERSON: This house right there.

MR. ELLIOTT: On this plat line?

MR. SCHUTTE: Right. I sent pictures
to Joe where the -- this won't affect the views of
<table>
<thead>
<tr>
<th>Page 38</th>
<th>Page 39</th>
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<td>1-3</td>
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<td>the building on the east side dramatically affects our views far greater than the variance or -- that we would have affected the value of this property or the earlier variance would have affected our value. This is a major leap forward.</td>
<td>MR. SCHUTTE: I mean, you know, you all drive by this house on Isle of Palms all the time. It sticks out. I mean, it just kind of is what it is.</td>
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<td>MR. ELLIOTT: We've got your pictures.</td>
<td>MR. ELLIOTT: Mr. Schutte, I did want to say something. I've been a member of this Board for maybe a year or so and almost every time we have a meeting someone mentions the precedential value of something that happened in the past, some ruling by this previous Board or precedential value of the rules of this Board in the future.</td>
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<td>MR. SCHUTTE: Okay.</td>
<td>The fact is that we're sort of like a trial court here in that we make a decision and then it's not binding on the next trial court, the next Board. Now, if our ruling is appealed to the Circuit Court and they make some decision that's binding on us.</td>
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<td>MR. ELLIOTT: Another question.</td>
<td>MR. SCHUTTE: I understand.</td>
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<td>MR. SCHUTTE: You can see on ours -- well, you can see on the edge where both of the houses angle. I mean, it's to accommodate the variances, to build within the rules which shouldn't be a stretch anywhere on the island.</td>
<td>MR. ELLIOTT: It is binding on the next board, but what we do in the past isn't necessarily binding on what some future board does.</td>
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<th>Page 39</th>
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<td>We didn't have the size of the pool. We really wanted a pool. We understood the critical lines. We understood the setbacks. We understood the rules were for a reason.</td>
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<td>THE CHAIRMAN: And we do mention that in our motions they are not precedent-setting.</td>
<td>So as a result we did develop a pool where we very creatively went, you know, underneath our house. We stayed within the critical lines.</td>
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<td>MR. SCHUTTE: It is binding on the next board, but what we do here isn't necessarily binding on what some future board does.</td>
<td>We had to rip up our driveway to get a more permeable surface so we worked in consideration for our neighbors to get what we wanted within the size of the lot that we bought by choice.</td>
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<th>Page 40</th>
<th>Page 41</th>
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<td>12</td>
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<td>THE CHAIRMAN: And we do mention that in our motions they are not precedent-setting.</td>
<td>So I believe that these rules are there for a reason and I believe that keeps everything fair play for all the people who live here.</td>
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<td>MR. SCHUTTE: I understand, but I do know that a number of these issues do end up before the courts --</td>
<td>So I would hope that you would follow some of the guidelines that were set forth and in consideration for all of us who live there.</td>
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<td>THE CHAIRMAN: And we do mention that in our motions they are not precedent-setting.</td>
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<td>THE CHAIRMAN: That was Mayor Riley's lot.</td>
<td>In addition, lastly the line of site is an issue. You know, if I go out on my porch that structure -- that big, bulky structure will block pretty much half of our view of the bridge. So that's all I have to say. Thank you.</td>
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THE CHAIRMAN: Thank you. Is there anyone else who would like to speak to this variance request?

MS. WURTHMANN: I would like to speak. I have a lot of family here. We've been on the island --

THE CHAIRMAN: Your name. Your name and address.

MS. WURTHMANN: My name is Polly Wurthmann. I live at 2508 Jasper, but I own a lot on the property on the other side of the property we're talking about on the island. In addition, my sister and my mom live very close. They're in the screen or at the top of the screen. My sister built a house following all of the setbacks. It's a 1,300 square-foot home that she's lived in and raised children in and still lives in. She didn't request a variance or any accommodations in order for her home to be bigger.

I own two lots side by side, on the creek down from this and they are simply unbuildable together because of the setbacks. So we respect the setbacks and we also respect the decisions you guys made. You have a great responsibility. I think the architects made a great point of how exceptional and extraordinary their property is because it is out there. It is a peninsula. My mom was there when it was built in and we watched it being built in. We knew a home was being built there. I think it would be nice to be respectful of the setback because it is so far out. Thank you for your hard work.

THE CHAIRMAN: Thank you. Are there any other comments?

(No response.)

THE CHAIRMAN: I'll now ask the applicant if he would like to rebut.

MR. HELLMAN: Thank you. I think it is important for us to remember what the purpose of the 30-foot setback is. The 30-foot setback is not an Architectural Review Board setback. Its purpose is as set forth in (audible) letter as we discussed for stormwater runoff.

Right now there is an over 16 percent encroachment in that -- with the cement pads that would go away and would get reduced to four percent. So technically in allowing this to be built it would actually reduce a pretty substantial amount of what is now currently encroaching the OCRM setback area. But what's also important when we look at the dark gray area which is the buildable area and we look at where the proposed house would -- that's not the right one.

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THE CHAIRMAN: Thank you. Are there any other comments?

(No response.)

THE CHAIRMAN: I'll now ask the applicant if he would like to rebut.
extraordinarily exceptional. I think it would be appropriate for the variance to be granted.

We're not asking for economic hardship. We're merely trying to build as close to Jasper as possible and this small variance allows that to occur. I can answer any further questions you may have.

MS. BRASHER: I have a question. I have heard so many people say that this lot is unbuildable unless you have these variances, but is that correct?

If you did not have a variance you could build what size within that right triangle area that we're talking about?

MR. HELLMAN: So 4,000 square feet would be allowed to be built in that right triangle area.

MS. BRASHER: And you're saying it would jut it out to the point which on the other sheets which are in gray that would probably block more of the view?

MR. HELLMAN: Well, it would or it could. That's not to say that my client would build that if the variance were granted, but he may not at all.

than their neighbors. Now, I'm not an attorney and I may misunderstand what that means and what we're all saying is that even a house that's slightly under 3,100 feet where you propose to put it is an eyesore. It's my understanding that all of these committees on Sullivan's Island and elsewhere throughout the country exist to protect the Wurthmanns, the Poulnots and others from having their values, the enjoyment, and the posterity of their property from being affected. So, Brian, one day you and I are going to be the same side of an issue, maybe another issue with the Town. But I'm afraid I have to object again to your latest proposal. THE CHAIRMAN: I'm going to clarity something. There are two variances under consideration.

MR. POULTON: Right.

THE CHAIRMAN: This property has already received in the past a variance from 21-23 E (1) B which is the build-to line. If this Board does not grant such a variance that lot does become unbuildable completely. Now, we will be taking this in two separate motions.
site plan everything we are proposing to build to
the carrot and --
THE CHAIRMAN: We will definitely make
that a condition of the variance, should it be
granted.
MR. HENDERSON: A condition of the
variance, removal of the design elements as well.
MR. HELLMAN: So what I was saying is
that in theory you could grant this variance and my
client could still come back and build all the way
to the tip of the carrot after the fact.
So what I'm saying is we have in our
site plan the house that you see that shows an
inground pool in front of that, correct? Then
beyond that it stops and it's landscaped. The
Board can address that because what I really hear
as a concern is something being built closer to
concrete. Thank you.
THE CHAIRMAN: Mr. Marr.
MR. MARR: But where the concrete is,
how high is -- I don't everybody think it's
buildable. It's not an issue. They say they're
giving up this and doing that for stormwater. I
mean, the question --
THE CHAIRMAN: That's the purpose of
the OCRM with setbacks.
MR. MARR: Right so you know on DRB
with the principal building coverage they're saying
3,068 square feet. The principal building square
footage is 3,900 feet. What are the difference
between the two? Can somebody explain to us what
the difference is.
MR. HENDERSON: The principal building
coverage is the heated -- the footprint of the
heated square footage; so from above what that
footprint is. The principal building square
footage is the entirety of all the heated space of
all floors combined.
MR. MARR: So it's really 3,100 feet,
but it's not. It's close to 4,000 feet. It is not
a hardship.
MR. HELLMAN: Just to clarify my last
comment about what was built, there is -- in the
site plan there is a pool. I understand the
current dimensions before the Design Review Board
are slightly longer and narrower than what's being
proposed than in the site plan that's here.
So we would probably want what's before
the DRB -- is that right -- to be what the pool
dimensions would be.
THE CHAIRMAN: If it's inground I don't
think that --
MS. CAMPBELL: It is inground.
THE CHAIRMAN: -- would. Not
with inground. Are there any other comments?
Mr. Schutte. Then we're going to close public
comment because we need to get on to the
deliberations.
MR. SCHUTTE: I think the comment that
the current structure does not affect line of sight
and does not affect us is just simply inaccurate.
You have the (inaudible) and it is
simply -- it significantly -- it is a significant
disadvantage much less than the variance that we
requested 12 or some years ago to the (inaudible)
property value. That was the basis for not
granting that variance was that it (inaudible) the
value of the lot.
Secondly, I don't know what the
purpose of the OCRM setbacks are but whether it's
for stormwater or this line of sight it certainly
serves both purposes, particularly in a triangular
build-out lot.
Without those variances whether they
affect stormwater runoff or not I can promise you
everybody up and down the creek would rather have
the concrete slab than something 40 feet high. It
is not even close.
THE CHAIRMAN: When we -- we'll talk
about lines of sight when we deliberate. I am
going to close public comment so that the Board --
excuse me -- so that the Board can discuss -- if
you have something urgent you can raise your hand,
Mr. Reese.
MR. REESE: Yes. Tim Reese (inaudible)
and I don't have a dog in this fight but just
looking at it I think you've got to be careful on
the high ground that's here with the critical line
because of the quote, unquote neck of the carrot.
You've got to have a certain width in order to
build the house.
So a lot of the area they can say is
buildable, but it's not. If you look where the
pool is there's no -- there's no dimensions on
there except how wide that area is. I think if you
look at where that line is right now on the house
is probably about as far as you could build anyway.
Based on the width of a home you're not
going to build a five-foot wide -- you can't. So
that's what I'm saying. Not all that is usable

even though they're saying it is usable. I don't
know if there's any -- again, I taught this before.
I don't know if there's anything in y'all's
purview.
If you look at that 25-foot -- and it
is called the -- I guess the rear setback. If you
look at it I don't know if there's anything you can
do there or if that can be pushed back in a
variance there on the backside. Then the whole
doggone thing would fit in there almost. I don't
know.
The CHAIRMAN: It also would impact the
neighbor's property. They have a property line
that --
THE CHAIRMAN: That's not --
Mr. Reese: That's not what's under
consideration. Yes, sir. Then that is the last
comment.
Mr. Inabinet: George Inabinet. I live
next door to the next to the Schuttes and I also
have a lot that's in front of the Schuttes and I
would like to say that I support the homeowners.
THE CHAIRMAN: You support which side?
Mr. Inabinet: The homeowners. The
Schuttes, Wurthmanns, and --
Could you maximize the full 3,945 in
that footprint?
Ms. Campbell: The buildable area, the
footprint of this area, is about 23. It's just
over 2,300 square feet.
So, I mean, if you did a one-story
house with 2,300 and two-story house with 4,600
square feet. The DRB allows 39 -- over 30 is
(inaudible) but 3,945 total heated square footage
and then they also can grant a 25 percent variance
on top of that. That's just base zoning.
Mr. Henderson: And can you maximum all
of that square footage under the 38 feet from
grade?
Ms. Campbell: Correct.
Mr. Henderson: So we're talking about
a very irregularly designed home.
Ms. Campbell: Correct.
Mr. Henderson: Straight walls. A big
carrot.
THE CHAIRMAN: That would be closer to
the 30.
Ms. Campbell: And also closer or
further out towards the water.
Mr. Henderson: So -- but I haven't
seen any figures. They haven't designed anything
that would maximize that.
The CHAIRMAN: We'll start discussion.
In the microphones, please.
Ms. Brasher: As a point of reference,
is it correct that the minimum size house that is
permissible to be built is 1,000 square feet?
Mr. Henderson: That's correct.
Ms. Brasher: Because we keep talking
about the larger so just to give us a frame of
reference that's -- I just wanted to make sure that
was covered.
Mr. Elliott: Joe, let me make sure I'm
clear. The staff's position is that without any
variance it is unbuildable, the lot?
Mr. Henderson: Without either one,
yes, sir. Without a variance to the build-to
provision.
THE CHAIRMAN: Would y'all like to take
up the -- let's talk about the build-to variance
request.
Mr. Elliott: I haven't heard anything
that indicates that if we don't grant 21-23 E (1) B
that we wouldn't effectively prohibit or reasonably
restrict the (inaudible).
THE CHAIRMAN: That's quite clear to me. What are y'all's feelings? We're just going to talk about the build-to provision. That's the variance that has been granted before on this lot but expired because there was nothing built. If we don't grant that variance they would not be able to build anything on the lot. So we have had this before where a lot would be rendered unbuildable should this particular variance not be granted. That's why I'm suggesting we take this in two parts.

So if anybody would care to make a motion or have a discussion about that only --

MR. RICHARDSON: I just have a question for Joe.

MR. HENDERSON: Sure.

MR. RICHARDSON: So if you have a platted lot you have to legally be able to build on it, correct?

MR. HENDERSON: If you have a platted lot on road frontage then, yes. Most of the lots on Sullivan's Island are buildable lots. However, there are several or a handful of parcels that are platted that don't have any access to utilities or road frontage. Those, of course, are not buildable.

THE CHAIRMAN: Those are owned by the Town?

MR. HENDERSON: There are some owned by the Town. There are some privately owned as well.

MS. LATHAM: This has utilities in it and obviously it has --

THE CHAIRMAN: The house, yes.

MS. LATHAM: It obviously has utilities. So --

MR. HENDERSON: Uh-huh. It has road frontage and access. So --

MS. LATHAM: I don't have an issue with that variance as -- without granting that you cannot use the lot for the purpose for which it was intended.

THE CHAIRMAN: Correct.

MS. LATHAM: So for that portion I can't see the -- any reason not to grant it.

THE CHAIRMAN: Thank you. Is everybody in agreement?

MR. RICHARDSON: Yes.

MS. BRASHER: Maybe there's a reason why some lots are not buildable. Maybe the OCRM line is important because --

THE CHAIRMAN: We're not --

MS. BRASHER: -- with flooding --

THE CHAIRMAN: But we're not talking about the OCRM. We're talking about the build-to line. That's a completely different issue.

MS. BRASHER: Thank you.

MR. ELLIOTT: The question we have to decide is if we don't grant 21-23 E (1) B are we unreasonably restricting it? It's not an absolute.

In our minds do we conclude if we don't grant that we are unreasonably restricting the utilization? To me (inaudible)

MR. HELLMAN: Could we (inaudible)

THE CHAIRMAN: We have to --

MR. HENDERSON: You really have to lean into those microphones.

MR. KOEPKE: Yes. I think it would be unreasonable. I think this is a property that has been there, that is there, and they should have a right to build the property.

MR. RICHARDSON: So James gets to make the motion.

THE CHAIRMAN: Yes. James get to make the motion.

MR. ELLIOTT: Okay. I will move that -- well, we have held the hearing. We have considered the appeal for a variance. On 2123 E (1) B and after consideration of the evidence and the arguments presented I would move that the Board has concluded the applicant has an unnecessary hardship and extraordinary and exceptional conditions pertaining to the particular piece of property because without that variance use of the property is unreasonable restricted.

We conclude that these conditions do apply -- do not apply to other property in the vicinity, that the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property in that the variance will give substantial detriment to the -- will not give substantial detriment to the adjacent property but the building and the character of the district will not be harmed by this variance. I so move.

THE CHAIRMAN: Is there a second?

MS. LATHAM: I second.

THE CHAIRMAN: Any further discussion?

All in favor signify by saying aye.

(Board members stated aye.)

THE CHAIRMAN: Like sign opposed.
THE CHAIRMAN: The request for variance to 21-23 E (1) B, the build-to provision, is granted for 2829 Jasper Boulevard, BZA Case Number 2017-4.

Now we shall move onto deliberation of the second variance request which is for a variance under 21-23 E (1) A.

MR. ELLIOTT: Well, you know I've listened to the evidence from the moving party and from the opposition and I could be convinced otherwise but so far I don't think I've heard the evidence, that, you know, the condition of this piece of property would be effectively prohibited or unreasonably -- excuse me.

If we don't grant the variance I don't see that the use of the property would be unreasonably prohibitive or effectively -- unreasonable restrictive. I don't know if you guys have anything.

MS. LATHAM: My issue is that we're talking about a variance of -- of 396 square feet and it is (inaudible) and you're trying to make this argument that you cannot design a house that would -- that would be somewhat proportionately reduced in size to fit essentially where you've got that within the existing variance.

You're really -- you're saying that that's not structurally possible is sort of how I took it. You're saying, well, I couldn't do it without building restrictions.

Well, can't you just reduce the width of the building by five feet? I mean, the proportions could be the same if generally you're losing 800 square feet. I mean, it is still greater than the 2,400 square feet that Sullivan's Island says is a reasonable house for a lot on the island.

So I guess my question is: Are you, in fact, saying you couldn't reduce the size of the house?

MR. HENDERSON: It's an academic question.

MS. LATHAM: Basically, how I heard the presentation from the architect was that if the house wasn't at least this wide it was structurally impossible to make it not sort of like a box and to me that just doesn't make sense.

MR. HELLMAN: Well, I --

MS. CAMPBELL: I think it wasn't structurally impossible. It just -- there are other considerations with the ordinance with regard to design that it limits -- it would limit what we can do to meet the other portions of the ordinance in terms of massing. You know, there's a requirement for the length of wall.

There's a requirement for, you know, different massing and architectural standards that are also in support of this. So it is kind of -- we're trying to address as much as we can.

THE CHAIRMAN: What is the width of the house on the creek side --

MS. CAMPBELL: It is --

THE CHAIRMAN: -- as currently designed?

MS. CAMPBELL: It is about 16 feet.

THE CHAIRMAN: So it would go to 11?

MS. CAMPBELL: Pardon?

THE CHAIRMAN: So it would go to 11 for the five feet and --

MS. CAMPBELL: Potentially, and that five feet also -- I mean, you have stairs and elevator. So it would potentially push it out and skinnier if that makes sense --

THE CHAIRMAN: Yes.

MS. CAMPBELL: -- because where you come in you may have to go out if --

THE CHAIRMAN: I get you.

MS. CAMPBELL: Did I answer your question?

THE CHAIRMAN: The audience is asked not to talk to each other.

MR. MARR: Do we need to rebut? Do we get to rebut?

THE CHAIRMAN: Rebut the architects?

MR. MARR: Rebut the --

THE CHAIRMAN: I asked a question of the architect and she answered it. I don't think the rebuttal is allowed. She's the one that drew plans.

MR. SCHUTTE: But the comments are all about the box and that's the one that's proposing --

THE CHAIRMAN: Thank you. Public comment is closed. We asked a question of the architect. Her answer is not up for debate.

The reason that I am leaning toward the variance is because if it's not granted and they need to use the full buildable carrot that brings the house closer to the creek, which is something...
that the neighbors do not want. The setback on the
rear -- on the front is 25 feet, correct?

MR. HENDERSON: On the Marshall -- I
mean on the Jasper Boulevard side, yes.

THE CHAIRMAN: Yes, because that's
called the front.

MR. HENDERSON: That's correct.

THE CHAIRMAN: Yes, because that's
called the front.

MR. ELLIOTT: How much -- how wide is
the little carrot toward the creek?

Could you actually built anything on
that?

THE CHAIRMAN: I think they can put a
deer there. They could put a porch there because
the width of the house right there is 16 feet. So
that's probably at that point --

MR. HENDERSON: Maybe five to eight
feet.

THE CHAIRMAN: Just -- yeah. So, I
mean, they could -- they could technically -- and
it narrows here. They could build a deck all the
way out.

MR. ELLIOTT: I come back at it from
this perspective. We've granted the 23-21 B, so
the next question is if we deny the 23-21 (E) 1 A
would their property be effectively prohibited from
the use or unreasonably restricted? I just don't
see that.

I don't see where they satisfy Number 3
to get that variance. I mean, I guess they can
build a porch if they want with a deck on it and
the variance was given and I guess that's their
right. But leaving them with what they have does
not effectively prohibit or unreasonably restrict
the use of the property in my mind.

MS. BRASHER: I think if something
(inaudible) --

THE COURT REPORTER: I'm sorry. I
can't hear.

MS. BRASHER: (Inaudible.)

THE CHAIRMAN: (Inaudible) and talk
into the mic, please.

MS. BRASHER: I think if the architect
is to create something beautiful in the space
allowed (inaudible) and I would have to agree with
you (inaudible).

THE COURT REPORTER: I'm sorry. I
can't hear you.

THE CHAIRMAN: Make sure it is on.

MS. BRASHER: In essence I agree with
my colleague.

MR. RICHARDSON: I would go ahead and
say the same.

MR. ELLIOTT: I'm going to make a
motion that the Board denies --

MR. HELLMAN: Before there's -- before
there's any action -- I'm sorry.

THE CHAIRMAN: Excuse me.

AUDIENCE MEMBER: It's not appropriate
that --

THE CHAIRMAN: Excuse me. Would
everybody please sit down. Outbursts are not
allowed. This is a quasi-judicial board.

MR. HENDERSON: If I could approach and
show you --

THE CHAIRMAN: Thank you.

MR. HENDERSON: -- the BZA bylaws here.

So here in Article 3 we have a finding to withdraw
the appeal.

MR. ELLIOTT: I'm sorry. Where are we?

MR. HENDERSON: The applicants are
requesting to withdraw. That references an appeal,
present for the Town.

MR. HENDERSON: Yes. Thank you, members of the Board. Okay. This is Agenda Item F-1. This is an administrative appeal for a property located at 2880 Marshall Boulevard. The applicant is Ms. Mary Decker Mulbry. She is requesting an appeal of Zoning Ordinance Section 21-123 B. This is from a section of the ordinance pertaining to vacation rentals. The Town staff decision was registered here recently regarding that address. Just to give you a little background on this issue in January of this year our Town staff was approached by Carroll Realty, the real estate company contracted for Ms. Mulbry to handle the property management of 2880 Marshall Boulevard. They inquired about establishing the vacation rental license for the property which they have had in years past. Upon getting this request Town staff looked into the records of Town Hall and discovered that they had not had the vacation rental license since 2013, that the Town had not issued it in 2014, '15 or '16. Upon finding this information out I denied the request to reestablish the vacation license and that's based upon several sections of Article 13 of the zoning ordinance. So just to explain this section of the ordinance, this is a separate and distinct chapter of the zoning ordinance and it addresses about 50 or so legal nonconforming vacation rentals that we have on the island. So we recognized these grandfathered or nonconforming uses and allowed them to continue to their nonconforming status provided they meet certain conditions to operate that use. So first they need to have a certificate of zoning compliance. Then they need to have a business license issued every year. So based upon these facts and these requirements of the vacation rental staff took the interpretation that I have that in front of you on the screens. 21-119 B determines that every vacation rental has to have a business license for the previous calendar year and we determined that they didn't have one in 2014, '15 or '16. So in order to be issued a certificate of zoning compliance which is required under 21-20 A they have to comply with 21-119. So if they do not file a business license then they lose their noncomforming status which led to my decision under 21-123 B. That is the suspension, revocation, or abandonment of the termination for this property. So in order to be issued a certificate of zoning compliance you have to have a business license. If you don't have a business license and no certificate of zoning compliance then you have abandoned your use or your legal nonconforming use and you've lost your status. Furthermore, when presented with information related to 2880 Marshall Boulevard the property owners mentioned that they have continued to rent short term and long term at this property. It is further defined under 21-124 under the violations that this is a misdemeanor offense. For every day you're in violation of the zoning ordinance that's a criminal offense. So we required them to cease and desist all rental activity until we could determine how to rule or review what's been happening on this property. So with that I'll yield to the Board for any questions and turn it over to the applicant's presentation.

THE CHAIRMAN: All right. Any questions for Joe before the applicant presents? The applicant can go ahead and present.

MR. RICHARDSON: So were there rents, Joe, in 2014, '15, and '16?

MR. HENDERSON: Yes, sir. We inquired about what kind of rental activity or residential activity has been going on. We were provided with receipts and revenue generated over the three-year period from Carroll Realty and that's under investigation by the Town staff and the zoning. MS. LATHAM: Were the property taxes paid out of that of a vacation rental or were they the standard resident property taxes?

MR. HENDERSON: From what I've been told by Counsel, by Ms. Mulbry's counsel, she has paid taxes --

THE CHAIRMAN: That's right.

MR. HENDERSON: -- on the revenue generated for vacation rental and long term rental as well.

THE CHAIRMAN: Well, six percent or four percent? I mean, she's --

MR. HENDERSON: It would be six percent, but we haven't -- I don't think we have
They purchased the property in 1998.
They have been renting the property occasionally on a short-term basis ever since that time period.
Can y'all here me okay? Okay. That really strikes at the heart of some of our legal issues that we have here.
I want to just get a couple of housekeeping items out of the way. Number one, they have been exemplary participants. Other than this paperwork issue we're going to talk about they have never been written up for any type of noise violation, trash, or any kind of thing that you could imagine that would anger the neighbors.
From my understanding the neighbors are fully supportive of this continuation of use.
Unfortunately, the first time Ms. Mulbry or Dr. Mulbry and her husband were informed of this problem was in January of this year.
Like many folks on the island and like many busy professionals, we delegate certain responsibilities to other people to take care of tasks, especially difficult tasks like completing this application yearly.
In this case that responsibility fell on Carroll Realty who my clients have contracted with for a number of years who had filed this paperwork for them in the past. And, you know, my clients were proceeding as if there was no problem because they had been told there was no problem.
They were not notified in 2014, 2015, and 2016 that there was a problem. Had they been notified that there was a problem we would have gotten involved with this much, much sooner and we wouldn't have had as much time on the problem.
So that's a little bit of our background. One of the things I requested the Town to provide and they have been so gracious to provide this is an itemization of what it would cost for a business license, retroactively from 2014, 2015, 2016.
That is based upon the rental information that we have submitted to show that there were ongoing rentals during this period of time under the good faith, reasonable view that all the paperwork had been taken care of. The bottom line is it would take $14,264.22 to bring the property back in to good standing and that's including penalties and interest.
I've got the check here right now for that amount and I say that because my clients stand totally relate how it feels to be last on the agenda.
I'll do my best to try to cut to the chase here and try to do our best to explain the position we find ourselves in. We regret that we find ourselves in this position. It is an unfortunate situation that we are in right now.
Joe has been nothing but professional and courteous with us as we have been attempting to work through this process. We understand that everyone has a job to do.
Joe has interpreted the ordinance the way he sees it and we are here today to just provide an alternative view that we believe would allow us to continue the lawful nonconforming vacation rental use that the Mulbrys, my clients, have been performing at the property since the late '90s.
With a number of years who had filed this paperwork for them in the past. And, you know, my clients were proceeding as if there was no problem because they had been told there was no problem.
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I've got the check here right now for that amount and I say that because my clients stand...
to stop and we have stopped since then, January of 2017.

So if you go to vacation rentals ordinance and you look at 21-123 B that is the section that's cited in Joe's e-mails stating why the Town would not accept this application for 2017. The vacation rental ordinance does not define the word abandonment.

It doesn't define the word abandonment.

So what do we do when something is not defined in the particular ordinance? We look at the real ordinance itself too gain clarity as to what abandon means.

Fortunately, the Town did define abandonment elsewhere in the code. So if you turn to 21-150 E -- and I've got this quoted in a memo I sent over to the Town. I'm not sure if you have it in front of you, but I'm happy to read it.

THE CHAIRMAN: No. We have it.

MR. APPEL: I've got a copy here. I can refer you to the page so you can all follow along here. It starts on Page 3 of 5 at the bottom.

Before we got into this, this section is the governing criteria relevant to this case because the vacation rental ordinance at 21-117 states that, quote, all illegally established vacation rentals are interpreted to be nonconforming uses.

The vacation rental ordinance does not define the word abandonment.

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25. This is one of the criteria that Joe referenced.
24. It was one of the -- you know, violation criteria.
23. That criteria says a Sullivan's Island vacation
22. rental business license was issued for the vacation
21. rental and for the previous calendar year.
20. Now, it says the previous calendar
19. year, but we could take care of all of that in two
18. seconds by immediately paying for 2001, for 2015,
17. for 2016 in order to come into compliance.
16. You know, that -- you know, as lawyers
15. we have to be careful sometimes not to get too cute
14. for our own good and I know that I am -- if there
13. is a line I've got a couple of toes on it right
12. now. I get that.
11. I'm not trying to -- the reality of it
10. is this Board has de novo review over appeals from
9. the zoning administrator. You get to have a 100
8. percent fresh look at this.
7. Joe is great. He has done -- he has
6. done a great -- you know, he's done his job in
5. addressing this admittedly touchy issue, but y'all
4. get a fresh look at this. As part of that job your
3. decision has to be based on the way the ordinance
2. is written. It has to be based on the definition
1. of abandonment in the nonconforming use section and

1. it has to be based on the vacation rentals
2. ordinance itself.
3. It does not specifically require that
4. business licenses and zoning certificates be
5. obtained in each of the years that are in question.
6. There is a lot of case law there that talks about
7. how regulations governing nonconforming uses are
8. strictly construed.
9. There are private property rights at
10. issue in this case. We want to be good neighbors.
11. We want to pay what's owed. We want to pay the
12. penalties.
13. We want to get back into good standing.
14. We would request that the Board give us a fresh
15. look under this unique set of circumstances and
16. I'll be happy to answer any questions that y'all
17. have.
18. THE CHAIRMAN: Thank you very much. Is
19. there anybody else that would like to speak? Joe.
20. MR. HENDERSON: Can I just respond to
21. some of the things that were brought up?
22. THE CHAIRMAN: Yes.
23. MR. HENDERSON: So the first thing that
24. I would like to hand out is a section of the Town's
25. code of ordinances under the chapter -- Chapter 20.

1. This is one of the criteria that Joe referenced.
2. It addresses business licensing requirements. So
3. this is for any of business of the Town operating
4. in the Town. It must be issued or licensed with
5. the expiration -- this is stated in 10-3.
6. So anyone raising revenue for general
7. fund shall be issued a business license for one
8. year. That shall expire on December 31st. Section
9. 10-4 describes that the license -- required license
10. fee shall be paid applicable to its classification
11. made on or before the first day of February of year
12. each year.
13. So this very clearly establishes that
14. every business has to have a business license.
15. This isn't noted in the zoning ordinance. This is
16. a function of generating revenue for the Town. So
17. this is in the code of ordinances. So that's the
18. first thing.
19. The second thing I'd like to point
20. out is that there's no need to deviate from these
21. three sections. This is how I arrived at my
22. interpretation to deny the application.
23. Under 21-20 it states -- in Zoning
24. Ordinance 21-20 -- 21-120 A it states: If the
25. Zoning Administrator finds substantial and credible
Section 21-19 have not been met, i.e. the issuance of a business license in the previous calendar year, then the Zoning Administrator shall deny the applicant the certificate of zoning compliance.

If they don't have a certificate of zoning compliance then that use -- that's what establishes your right to use your property in a certain way.

If they don't have that certificate from the Town saying, you may continue this nonconforming use then the status is --

MR. ELLIOTT: Joe, is what you've highlighted for us Section 21-20? I'm looking at the actual document.

MR. HENDERSON: The highlighted document in front of you.

MR. ELLIOTT: You have -- you summarized 120-A. I'm sorry. Let me back up. In 21-119 B you have summarized it --

MR. HENDERSON: Yes. That's correct.

through A under B and 1 through 11 under B.

MR. HENDERSON: That's right. I should have said -- yeah, B-1. That's what I was referring to. In B 1 it states the Sullivan's Island vacation rental business license was issued for the vacation rental for the previous calendar year. That so that's a requirement of 21-119.

Now, that cross-references to 21-123 B and if we -- if you look on the highlighted ordinance section there it states in 21-123, suspension or revocation: The abandonment or failure to use the property as a vacation rental for a period of 12 consecutive months.

You can't use a vacation rental on this island without a certificate of zoning compliance or a business license. So they have met those conditions. They have determined that they wanted it suspended or revoked or abandoned.

To add to that, we've had business licenses for the long term use of the property. So if we're a staff member looking at the long term business licenses isn't it reasonable to assume that, hey, they want to get out of the short term rental business license and go full time into the long term? Here are the long term rental licenses for 2014 and 2016.

I think you missed 2015. So that was our thought process there.

THE CHAIRMAN: They had long term rental licenses for every year?

MR. HENDERSON: In 2014 and 2016.

MR. ELLIOTT: Not '15.

MR. HENDERSON: And Carroll Realty submitted for the long term rental business licenses.

THE CHAIRMAN: They might not have had a long term tenant in 2015. That could be a reason.

MR. ELLIOTT: Ross.

MR. APPEL: Yes.

MR. ELLIOTT: When you read the section of the ordinance about the definition abandonment --

MR. APPEL: Yes.

MR. ELLIOTT: -- and you focused us on E (1) B with the use being discontinued for a period of 12 months and you said that's not happened do you think that the rules contemplated or these ordinances contemplate this use being a legal use rather than an illegal use?

MR. APPEL: It doesn't say and --
This whole thing about losing nonconforming status is made up. It is not a new ordinance. I'm looking at the ordinance right now. The word loss and the word nonconforming status, none of it is there. I get that there is a plausible, common sense view that if you're not in compliance each year -- that if you're not in compliance for a year, boom, you're out of the program. I get that is a plausible way that you may think this program works. It is not what the ordinance says. It's just not and the burden and the standard is on the Town to have that ordinance say what they want it to do. It doesn't do that. You can continue a use and not necessarily have all the right paperwork. That's our position. It doesn't say legal. It doesn't say you have to have it paid up every year. I would argue that the vacation rental ordinance trumps language that's not even in the zoning code talking about business licenses in general. This is a unique program for a unique set of circumstances and you know, there is just a good faith disagreement as to what the legal criteria -- well -- Number 1, what the applicable taxes. The Mulbrys have proceeded through this whole ordeal feeling thinking that they have done everything right. They relied on Carroll Realty to do this as they've done in the past. Carroll Realty has submitted other paperwork for them that demonstrates this is what they do. The ball got dropped. I'm not trying to deny responsibility that the ball got dropped. There's no question about it. We're just asking to pick up the ball, pay the penalty and keep on our way. You know, as it relates to the policy and intent behind this whole thing the Mulbrys are exemplary participants in this whole program. They have done nothing to interfere with their neighbors. They have done nothing to interfere with the Town. They are ready to interject some money into the Town's budget tonight or tomorrow if the Board would be so inclined. We would just ask for consideration of our view as to what the ordinance says. MR. ELLIOTT: I'm not trying to argue with questions here, but I'm just trying to make some sense of --

MR. APPEL: Sure.

MR. ELLIOTT: -- what your argument is in a format for me in making my decision because I haven't determined what -- but I also -- whenever I see these cases I try to think about what's going to happen next time when somebody else comes in front of us. It's making the similar argument but maybe a little bit different. Everything that I've heard indicates that -- have no evidence that your clients are -- that they intended to do something improper, but I want to make sure I understand. You focused this Supreme Court case, but I know what this says. In our definition and what you want us to look at it doesn't rise and fall on intent. That is one item that can determine whether or not abandonment is occurring. This is the very first one. It says the nonconforming use shall be considered abandonment when any of the following occur. Number 1: The intent of the owner to discontinue the use is apparent. So that's one factor. But the next one I keep getting hung up on what the applicable or legal criteria are and then what the applicable whole number of cases is that there has been no abandonment as defined by the Town's nonconforming use regulations or the Supreme Court of South Carolina's definition of abandonment which has set -- the Supreme Court has repeatedly said that abandonment requires an intent to abandon the use. Abandonment of nonconforming use is, you know, you're operating some corner store. You know, someone throws a bottle through the window and you close for six months and you never reopen or you don't reopen within the specified time period of the ordinance and, boom, you've not lost your nonconforming use status. We have not ever demonstrated an intent to cease the use. In fact, the use has continued and we're not trying to do this use under the table to circumvent the Town which if you ever go on the DRB's -- there's people renting stuff in downtown Charleston. Our Board sees that all the time and it is a problem with every government that the United States is dealing with. But the Mulbrys paid their...
Town of Sullivan's Island v
In Re: Board of Zoning Appeals

1. on, is if the use be discontinued for a period of
2. 12 months or (inaudible) right and then there's a
3. whole host of others ones.
4. Like I said, I haven't read the
5. Supreme Court opinion and I don't want to. The way
6. you've described it I think whatever facts go in
7. that case -- I know what our facts here are. We
8. have a law that looks at more than just intent, if
9. we can look at whether or not the use is
10. discontinued.
11. The way I read it is that use has to be
12. a legal use and your use, I think, intentional or
13. not was not -- your client's use -- with the rental
14. property I don't think was an illegal use. But, you
15. know, maybe it's justifiable in that they gave
16. all their information to their Realtor and he
17. didn't do what he was supposed to.
18. What I've heard is you're telling us --
19. and I think the evidence is -- that in order to get
20. the certificate of zoning compliance and the
21. vacation rental business license they gave the
22. information to the Realtor. Is that right?
23. MR. APPEL: The Realtor has all the
24. information. They're the ones that are conducting
25. and marketing and receiving payments for all of

1. This is where we make our hay, getting
2. into this and interpreting what these requirements
3. mean. All we can say is and Dr. Mulbry and her
4. husband have the opportunity to address the Board
5. and to explain maybe their personal perspective as
6. to what happened here.
7. From my conversations with my clients
8. all I can tell you here is you hire people to do a
9. good job. They do a good job for 13 years or more.
10. Joe will tell you what it is exactly. But they
11. bought it in 1999 and I'm told they immediately
12. started a vacation rental.
13. There's never been a problem at least
14. that their -- her predecessor has never picked up a
15. phone, shot up any memo and said, guys, there's a
16. problem. Had she told the -- what happened in this
17. case was Carroll replied. Carroll replied as they
18. had done presumably forever.
19. Lisa then informed the Carrolls
20. there's a problem here. We have looked back at the
21. records. They haven't been permitted since 2013.
22. Carroll immediately told the Mulbrys that's how
23. we're here. It's just one of those things.
24. It's -- I'm not going to say the dog
25. ate my homework. It fell through the cracks. You
MR. HENDERSON: No, there isn't.

MS. LATHAM: -- to grandfather in --

MR. APPEL: I'm saying --

MS. LATHAM: You're saying the Town should have called and said --

MR. APPEL: I would submit that it is irrelevant whether it's in the ordinance.

MR. HENDERSON: And if I could, in actuality the Town by the submittal of a long term business license or business license for the long term rental the property owners were notifying us that they were moving from a nonconforming use or short term vacation rental to a conforming business license to grant long term.

So we received the message that they were discontinuing the nonconforming use.

MR. APPEL: Well, it is completely consistent to have short term and long term rental uses of the property.

THE CHAIRMAN: Exactly.

MR. APPEL: So let's just --

MR. HENDERSON: With the absence of --

MR. APPEL: And the idea that anybody is the control switches on Sullivan's Island saying, oh, we took the position it was off the rolls, I mean, the Town didn't even know this was --

MR. HENDERSON: Again --


MR. HENDERSON: I mean, the Town recognizes when one of those 50 nonconforming uses falls off the list, but it is not the Town's responsibility to reach out and encourage what --

you know, what's described as a prohibited use.

The first line of the vacation rental ordinance says vacation rentals are prohibited uses on Sullivan's Island. So, I mean, it is incumbent upon staff to notify everyone on the island who has a nonconformity on their property or commercial property? To notify them?

MR. APPEL: I would --

MR. HENDERSON: -- that they need to continue that nonconforming status? Nowhere does it codify that.

MR. APPEL: Can I mention one thing about this notice? I think it is very important.

First off, the Mulbrys had a lawful nonconforming use. They were doing their vacation rental use before the ordinance came into effect. The Supreme Court case law is crystal clear that a lawful nonconforming use is a protected property interest.

I would submit here today that frankly and respectfully I don't care whether there was a requirement in the Town's ordinance that the property owner be required.

Under the Constitution of the United States of America and under the Constitution of the State of South Carolina and the case law that has been interpreted for hundreds of year there is a due process notification requirement that we can read into this ordinance.

This actually piggybacks into a question that was raised by Mr. Elliot that has not been responded to and I want to respond to it right now.

The Town's definition of abandonment of nonconforming uses to the extent it conflicts with the state planning act that defines nonconformities and the Supreme Court case law that defines noncomformities and the abandonment of noncomformities to the extent the Town goes further we pick that up and we throw it away. It is irrelevant.

It does not have that authority. If this gets appealed and I hope it doesn't get appealed -- and I'm not making a threat that it gets appealed. But it is a major property right interest of significant value to my clients that is potentially being deprived and this ordinance and the Town's nonconforming use definition will be under assault.

You know, if this is the case and we're going to contest this -- and again I want to work this out and I want this -- the $14,000 check is on the desk. We can pay this and get this back in good standing and on our way. But, you know, it's not the law controls here and it is not just the Town's ordinance.

I would submit that the Town's ordinance is a little tough in places and --

THE CHAIRMAN: And for those of us who live here, rightfully so. I feel for them and I'm going to say personally right now I want to find a way to overturn the Zoning Administrator's decision without abandoning our current definition of abandonment as the Town operates.

You've put the check on the desk.

That's very helpful. We know that things happen.

So we're trying to find a way without overturning the normal business operations of the Town and the
other codes under which the Town operates which Joe has supplied us with.

I personally do not want to see them lose their license, but we have to craft it in a way that we are comfortable with if we do so because, you know, Joe is a zoning expert and that is why he is our Zoning Administrator. It is extremely rare that we overturn his decision and then when we do we have to do have a good reason for doing so.

As I said, I feel for your clients. I would like to do this. We're trying to figure out a way to do it, a way to make that motion so that we don't set -- because that would be precedent-setting no matter what anybody else said.

You know, we can say it's not precedent setting but we're talking about the Zoning Administrator's decision and we're talking about business licenses and we're talking about nonconforming use. There are a lot of parts here. What I'm going to do right now -- would the Mulbrys like to say anything? What I would like to do is I would like to have you say something and then I'd like to go ahead and close so that we can talk about this.

MR. MULBRY: I wanted to make one comment. We have received letters from the Town of Sullivan's Island when our license was about to expire. I have those letters in the file and I just found them today.

The last one I had was 2009 and it lists in parentheses: Certified. So, you know, I do think that was something that you cannot get back once it's gone.

You know, it's different if I lose my monthly or yearly license. I can reapply for that. If I'm a reasonable participant of a reasonable home and, you know, comply with the laws I can get that back, but this which I've had since we've moved here has been very precious to us would be gone forever.

So my argument would be that as a citizen if for any reason my paperwork is not correct I do think the government has some responsibilities to let me know I'm about to lose something that I cannot get back.

So let me just throw another bone at my colleague or friend Joe here. When Joe made his determination we had this much evidence. All Joe knew is there was no application and there's no paperwork for 2014 and 2015 and 2016.

Now, we have been able to supply the Town with one memo and all of the testimony tonight and the exhibits that we have submitted in support of the record -- there is more information now to draw -- to get at this critical issue of intent and -- and the intent requirement runs through every single criteria.

I mean, the Supreme Court says that is the criteria. For example, I try not to go down another rabbit hole here, but when a house burns down in its nonconforming use and it is not rebuilt within the statutory period of time that's intent.

If you don't rebuild it within a certain time -- obviously notice is not a problem in that case. There's the burning embers, you know, all around. This was just a situation where notice was delayed and there was no intent to abandon the nonconforming use.

I want to make sure I address Ms. Tezza's comment about a path forward. I've got

MR. APPEL: That's precisely correct.
some thoughts on that when the time is appropriate
that we could perhaps strike a compromise that
allows to us to achieve our ends or our goals here
while at the same time not doing violence to the
town's ongoing operations. When it is appropriate
for that I want to make sure --
THE CHAIRMAN: We'll have to craft a
decision. So...
MR. HENDERSON: If I could address one
thing -- I'm sorry.
THE CHAIRMAN: Were you going to
finish?
MR. APPEL: Well, before it slips my
mind I'm going to tell you what it is. What are
the powers y'all have? Y'all are essentially Joe
Henderson tonight, all two, four, six of you.
MR. HENDERSON: You are the Zoning
Administrator.
MR. APPEL: You are the zoning
administrator tonight if you've seen the movie by
John Malcovich, you're Joe Henderson, going around
up there you need to get to make the decision as
the Zoning Administrator and under the case law and
I believe y'all's ordinances adopt this as well.
There's a lot of things you can do tonight.

making decisions about when a vacation rental falls
off that list. If you overturn my interpretation
of these sections then we change the way that we
regulate -- okay -- from now on.
MR. RICHARDSON: I don't think that is
true, Joe.
MR. HENDERSON: That is absolutely
true.
MR. RICHARDSON: No.
MR. HENDERSON: If you overturn my
interpretation of that ordinance then from that
point on --
MR. RICHARDSON: It depends on the
reason for the overturning.
THE CHAIRMAN: No.
MR. RICHARDSON: Yes.
MR. HENDERSON: A variance is
difference from an appeal. You have to be very
specific with the conditions that you apply to the
variance correctly all along. But an appeal as
stated on this application challenging my
interpretation of when a property falls off that
list.
We began with about 80 to 90 vacation
rentals on Sullivan's Island and the way that they
fall off that list is that they don't do something
from 119. Let's get the business license.
Let's -- you have too many parties, too many
noise violations, you didn't get zoning compliance,
somebody dropped the ball. That's how you fall off
the list.
You need to be very careful that we
don't open the Town back up to the vacation rental
that fell off the list five years ago but now says
I want to do what they did. But it's now three
years ago and then it's five years or six years ago
and I'll leave it at that.
So if we can work it out in some other
way that I don't know about then more power to you.
I don't see a way to -- let's just be very cautious
here.
THE CHAIRMAN: That's what I'm trying
to be. I'm going to turn my mic off, Randy and
Joe. We're in a brief recess.
(A recess transpired.)
THE CHAIRMAN: We are back on the
record. We have two things we can do. We can
affirm the Zoning Administrator's decision or
overturn it. Overturning it would set a precedent
for every nonconforming use, vacation rental that
<table>
<thead>
<tr>
<th>Page 110</th>
<th>Page 111</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 has fallen in place.</td>
<td>1 unfortunately the property owner is ultimately responsible.</td>
</tr>
<tr>
<td>2 MR. RICHARDSON: For variances we can put conditions.</td>
<td>3 MR. RICHARDSON: But there are different things that --</td>
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<td>4 THE CHAIRMAN: No. It is different.</td>
<td>5 THE CHAIRMAN: You can't -- I understand, but unfortunately we have to go by the law.</td>
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<td>5 This is an appeal of the Zoning Administrator's decision. We can only affirm it or overturn it.</td>
<td>6</td>
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<td>7 MR. RICHARDSON: But don't we have a basis on which to overturn?</td>
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<td>8 THE CHAIRMAN: No. If we overturn it we would say why. If we affirm it we are affirming the decision that he made --</td>
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<td>9 MR. RICHARDSON: Right.</td>
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<td>10 THE CHAIRMAN: -- and we really don't have to -- we don't have to have a rationale for that.</td>
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<td>11 MR. ELLIOTT: And the basis for overturning it would be what? That they forgot to --</td>
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<td>12 MR. RICHARDSON: No.</td>
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<td>13 MR. ELLIOTT: That the Realtor didn't send in any fees?</td>
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<td>14 MR. RICHARDSON: That it was the Realtor's responsibility. I mean, the real recourse was to go to the Realtor, but --</td>
<td>15</td>
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<td>15 THE CHAIRMAN: But there -- but</td>
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<td>16 additional legal thoughts as to the interpretation of the ordinance, the applicability of some constitutional due processes requirements, etc has everything in its favor on the record.</td>
<td>17</td>
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<td>17 MR. HENDERSON: So what he's saying is that there was a failure of due process on behalf of staff in notifying the applicants. Is that what you're getting at?</td>
<td>18</td>
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<td>18 MR. APPEL: Yes.</td>
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<td>19 MR. HENDERSON: It is saying that the Board can remand it back to the Town staff based upon the fact that we failed to notify the applicants and we should have done that three years ago to allow the continuation. Then that doesn't effect Town staff's interpretation of those sections of the ordinance. Is that --</td>
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<td>20 MR. APPEL: Well --</td>
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<td>21 MR. HENDERSON: What are you getting at?</td>
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<td>22 MR. APPEL: As Mr. Elliot remarked in the agenda item before this, nothing that y'all do before this Board has any precedent. Nothing I do on the Charleston Board of Zoning Appeals has any precedent.</td>
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<td>23 I'll tell you what does have precedent is the Supreme Court of South Carolina, the Board of Appeals of South Carolina, and the Supreme Court of South Carolina could reach the issue for the first time and create law and have effect of going through the Town's ordinance and taking a pen to certain sections essentially if they are to be deemed unconstitutional facially and/or unconstitutional as applied to this particular instance.</td>
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<td>24 Frankly this is not a good test case.</td>
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<td>25 I know I am representing the appellant here and this is not a good test case to represent this ordinance. I will have to say that.</td>
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<td>26 THE CHAIRMAN: Well, I can't have you dictate my decision.</td>
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<td>27 MR. ELLIOTT: Well, listen, though. I don't know why we can't remand it or for me or Joe to do further investigation. I mean, I -- to look more into what happened are with Realtors or -- you know, we've heard from you that it was rented for, you know, each year.</td>
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<td>28 I'd like to see more evidence of that.</td>
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<td>29 I'm not limited to that. I think the record should be more developed. So I think we have a --</td>
<td>30</td>
</tr>
<tr>
<td>30 A. WILLIAM ROBERTS, JR., &amp; ASSOCIATES (800) 743-DEPO scheduledepo.com Pages 110–113</td>
<td></td>
</tr>
</tbody>
</table>
we should remand it back to Joe to do further investigations per the discussion with you and clarify some questions that I think all of us have about the facts of this particular case.

THE CHAIRMAN: Okay. And with our -- and with the Town attorney as well.

MR. HENDERSON: And would that requirement a resubmittal or another presentation to you about this case?

THE CHAIRMAN: Only if it needed to come back before us.

MR. APPEL: Well, just to be clear, if it is denied again all these arguments for tonight are still there. The remand is purely to buttress the facts. Actually, it could come back or then it might not come back.

MR. APPEL: That's right, but I just wanted to make sure -- you know, this is my understanding of the way this works is, you know, there's a factual record that was before you tonight and there's, you know, what Joe said, what I've said, what I have submitted. The Town has in its records, et cetera.

So those documents are gone and I've been very forthcoming with Counsel here and -- so we don't have anything to look at as far as the record goes.

I would just -- I don't know if -- if sending it back to Town Staff to consider new evidence is going to change our interpretation because, again, we don't have a business license from the previous year and the certificate of zoning compliance.

I think it would have to be instead some type of motion from the Board that says Town Staff did not notify or prompt the applicant can't to come in. But then how is that different from all the other vacation rentals that have fallen off the list in years past?

You know, what's stopping them from saying, hey, we never got a letter either and let's go through that same process. So I'm trying to figure out a way to do this as well in a certain instance, but I don't know. I know I'm not offering a solution to you.

MR. RICHARDSON: So can't we say that there is inadequate records to fully explore and we would -- we'd just table it for now about see if we can find them and collect the check?

MR. HENDERSON: We can't find them. We can't find them. We can't find any records.

MS. LATHAM: And that again opens it up for every single one of the prior --

MS. BRASHER: I support the Town Administrator. I really feel for my neighbors, but I support the Town Administrator and I think that I support the people of this Town because it is a nonconforming structure because this is not a resort.

This is the people of this island who like it to be a neighborhood. Our neighbors would still be allowed to do long term rentals.

In 20 years we both retired there, but I don't know that we can just make up that loss.

MS. BRASHER: I'm not sure what to say then because I'm told we are entitled to take this type of consideration into account and there are --
so I'm sorry.

MR. MULBRY: We want to make it up to you.

MS. BRASHER: You know, there are -- yes. So I'm sorry.

We just want to make it up to you.

Don't know what happened ever since. We always played by the rules. We tried to do everything that was right. We rented it.

We didn't know it for God's sake and now all a sudden boom, hey, we're on double secret probation and it fell through. All of a sudden here we are and -- as you know -- and I'm not making that up.

Three months of a short term rental, you know, the reality of this is that -- that supports the house. You get nothing the rest of the year to make -- make as much.

MR. ELLIOTT: Well, whenever all this gets complicated I go back to the rules that govern our action and in looking at 21-118 and 21-119 and 2020 -- and 23 the way I interpret the requirements for this property is that the -- they continued having the right to rent and they shall have these things: The zoning compliance certificate and the

but the Town also has to follow the laws of the United States and the laws of the State of South Carolina and if the decision is to -- not in that realm I would submit that that is just a pretty easy target.

THE CHAIRMAN: I understand what you're saying and that's grounds for appeal of our decision. We have to go by what's written in front of us and by what the Town and how the Town is operated for every other person that lost a certificate of -- through nonconforming use.

MR. ELLIOTT: What is the date of that case?

MR. APPEL: It is 1970 and there have been some others since that time.

MR. RICHARDSON: For other people that this issue will arise from and people in the past this issue has arisen can they demonstrate intent as well as this? I mean, this is classic intent.

MR. ELLIOTT: I don't want to (inaudible) but the way I read the -- Ross' point to us, our definition of abandonment, how are you going to establish abandonment?

Has he shown the intent to abandon?

vacation rental business license. I get Ross'
review of the abandonment, the nonconforming use section, but intent is not the only means of means of determining whether or not the abandonment occurred.

It is also the use of the 12 months and I can't with the use with a right mind conclude that means designating a use compliant with 21-18 -- excuse me -- 21-18-21 and 19 and so forth which I -- which I understand the -- to mean in order to use it the certificate is in compliance and the certificate -- and they did that. So my way of looking at it is that the appeal be denied.

MR. APPEL: Can I just say one sentence real quick?

THE CHAIRMAN: Okay.

MR. APPEL: In the 1970 The Supreme Court case of Conway versus City of Greenville the Supreme Court stated: The question of abandonment and nonconforming use is one that must be intended from all surrounding facts and circumstances. To the extent the Town's ordinance deviates in any respect from intent it is invalid.

I would submit today and I think I may have said earlier the Town interprets the zoning ordinance but the Town also has to follow the laws of the United States and the laws of the State of South Carolina and if the decision is to -- not in that realm I would submit that that is just a pretty easy target.

THE COURT REPORTER: I'm sorry. I can't hear you.

MS. LATHAM: Okay. In interpreting zoning laws you use the reasonable (inaudible) standard, correct?

MR. ELLIOTT: Reasonable... the conclusion that a reasonable man would arrive at is, in fact, the way it would be viewed from a legal standpoint.

THE CHAIRMAN: Well, unfortunately that's subjective and we have -- we try not to
deviate from the way -- unfortunately we did not
write the zoning ordinance and we were not
consulted. I mean, we have run one against things
like this in the past.
We are not allowed to be liberally
interpretive of the zoning ordinance because we can
be sued on either side of that. So I understand
what you're saying, but unfortunately to me that's
subjective and we're not allowed to be subjective
in that way.
MS. LATHAM: My point had to do with
the fact that if -- in reading this statement to me
it says a legal use, even though the word legal is
not there because any reasonable person would
assume that --
THE CHAIRMAN: No. I agree with that.
MR. ELLIOTT: You read the language
and, you know, if the plain --
MS. LATHAM: The plain interpretation.
MR. ELLIOTT: Well, yeah. The language
is what it is. You read it and you conclude what
it means.
THE CHAIRMAN: Is anyone ready to make
a motion?
MR. KOEPKE: I think what you see is
Administrator's decision is affirmed.
MR. APPEL: Do y'all submit written
orders?
THE CHAIRMAN: We'll get that to you.
MR. HENDERSON: Thank you for your time.
And since there is no further business before the
Board, I will happily entertain a motion to
adjourn. We will adjourn. There being no further
discussion, we are adjourned.
(The hearing was adjourned at 8:45 PM.)

CERTIFICATE OF REPORTER
I, Priscilla Nay, Court Reporter and
Notary Public for the State of South Carolina, 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 28th day of April,
2017 at Charleston, Charleston County, South
Carolina.

Priscilla Nay,
Court Reporter
My Commission expires
December 2, 2021
## INDEX

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>1730 THOMPSON AVENUE Page 5</td>
</tr>
<tr>
<td>5</td>
<td>2928 JASPER BOULEVARD Page 5</td>
</tr>
<tr>
<td>6</td>
<td>2880 MARSHALL BOULEVARD Page 69</td>
</tr>
<tr>
<td>7</td>
<td>CERTIFICATE OF REPORTER Page 122</td>
</tr>
</tbody>
</table>

## EXHIBITS

(No Exhibits Proffered)
<table>
<thead>
<tr>
<th>Town of Sullivan's Island v</th>
<th>Board of Zoning Appeals Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Re: Board of Zoning Appeals</td>
<td>April 13, 2017</td>
</tr>
</tbody>
</table>

| $14,000 | 81:24 101:9 |
| $14,264.22 | 76:21 |
| $3 | 31:1 |
| $4 | 31:12,14 |
| $6 | 31:16 |

(1)
5:19 7:2 22:5 27:12, 18 48:22 49:7,8
57:23 60:8 61:3
62:3,8 69:16 88:20

(E)
67:3

1231
1 67:3 83:1 86:22,25
90:25 93:23
1,000 | 57:7 |
1,200 | 49:10 |
1,300 | 42:16 |
1,400 | 36:18 |
1,500 | 37:8 |
1,600 | 45:1 |
1,642 | 16:7 |
10 | 9:18 21:15 |
10-3 | 85:4 |
10-4 | 85:8 |
10-foot | 13:12 |
100 | 40:23 83:17 |
11 | 68 64:17 19 86:22
119 | 86:21 107:22 109:2 |
12 | 8:24 33:8 52:15
87:12 88:21 89:8
94:2 119:6 121:2 |
120 | 107:23 |
120-A | 86:18 |
13 | 71:2 96:9 |
13th | 6:23 |
14 | 30:18 103:25 |
15 | 30:3 36:18 71:21
73:4 88:6 103:25 |
15-foot | 13:12 |
16 | 16:8 43:21 64:16
66:18 71:21 73:4
104:1 |
1730 | 5:1 |
18th | 21:9 |
19 | 119:9 |
1941 | 10:10,12 |
1963 | 10:14 |
1967 | 10:16 |
1970 | 119:17 120:14 |
1992 | 10:18 |
1998 | 75:1 77:25 79:20 |
1999 | 96:11 |
2,400 | 55:17 63:11 |
2,400-foot | 30:7 |
2,500 | 29:10,24 |
2,714 | 44:25 |
20 | 79:23 84:25 117:21 |
20,000 | 19:9,10 |
200 | 16:11 |
2000 | 77:6 |
2001 | 77:6 82:12 83:8 |
2004 | 33:13 |
2009 | 103:6 |
2010 | 6:23 33:11 34:2 |
2013 | 70:22 77:6 96:21
115:23 |
2014 | 70:23 71:21 73:4
76:5,15 87:25 88:5
105:5 115:8 |
2015 | 70:23 76:5,15 83:8
88:1,11 105:5 |
2016 | 70:23 76:6,15 83:9
87:25 88:5 105:5 |
2017 | 78:2,7 81:6 99:4 |
2017-4 | 62:5 |
2020 | 118:22 |
21-117 | 79:1 |
21-118 | 82:19 118:21 |
21-119 | 71:18,24 82:25
86:19 87:3,5 89:22
118:21 |
21-120 | 85:23 87:4 89:19,21 |
21-123 | 70:8 72:2 78:4 87:7,9
107:21,22 |
21-124 | 72:15 |
21-150 | 78:16 79:5 |
21-18 | 119:9 |
21-18-21 | 119:9 |
21-19 | 86:1 |
21-20 | 71:24 85:22,23
86:13 |
21-23 | 5:19 7:2 22:5 27:12
18 48:21 49:7 57:23
60:8 62:3,8 69:16 |
2123 | 49:8 61:3 |
22 | 18:5 |
23 | 56:4 118:22 |
23-21 | 67:2,3 |
25 | 32:12 44:14 56:10
66:2 |
25-foot | 54:5 |
2508 | 42:10 |
270-degree | 36:8 37:8 |
2829 | 62:4 |
2880 | 69:22,25 70:5,16
72:12 |
2928 | 5:6,8,12 |
3,068 | 51:4 |
3,100 | 32:9 48:4 51:14
55:14 |
3,600 | 29:12,22 |
3,900 | 19:14 51:5 |
3,945 | 56:1,9 |
30 | 11:20,22 13:13
28:25 29:18 56:8,22 |
30-foot | 5:20 6:4,6 7:7 12:6
15:20 22:17 23:23
31:19 43:17 |
3024 | 40:19 |
3030 | 28:15 29:16 |
31st | 85:7 |
38 | 56:13 |
39 | 56:8 |
396 | 44:11 49:9 55:18
62:22 |
396-foot | 49:20 |
4,000 | 19:14 32:11,15
36:1,13,17 44:16
46:15 47:23 51:15
55:15 |
4,600 | 56:7 |
40 | 31:20 53:2 |
400 | 13:6 |
5 | 78:22 |
50 | 71:5 99:6 |

AWR

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com
50-foot
31:20

6

6-29-800
111:13
600
16:10

7

7,000
30:24
75
26:8

8

80
108:24
800
63:10
8th
4:5,10,16

9

9,900
16:5
90
80:5 108:24
90s
74:25

A

abandon
78:13 80:23 91:9
104:15 105:23
120:25
abandoned
72:9 77:22,24 79:8
87:17
abandoning
101:20
abandonment
72:3 77:18 78:8,9,
15 79:6,14 80:14
81:3,4,21 83:25
87:10 88:17 91:5,7,
9,10 93:14,19,21
95:21 100:16,20
101:21 119:2,4,19
120:23,24 121:3
addressing
83:21
adjacent
23:21 61:17
administrative
69:24 70:4 111:17
administrator
5:3 69:5,11,15
77:20 83:17 85:24
86:3 102:7 106:18,
20,23 117:7,8
Administrator's
101:19 102:18
107:20 109:23
110:5
admittedly
82:5 83:21
adopt
106:24
advantage
15:10 16:22
aesthetics
15:3,19
affect
15:12 18:18 23:21
27:8 37:25 52:10,
11,25 66:10
affected
38:3,5 48:11
affecting
15:1
affects
38:2
affirm
107:1 109:23 110:6,
10
affirming
110:10
afraid
48:14
agenda
5:11 69:20,24 70:3
74:9 112:22
agent
95:3
agree
36:4 40:23 67:23
68:3 89:1
agreement
59:21
agrees
45:25
ahead
29:20 68:5 73:2
74:3 102:24
aircraft
20:20 21:3
allowed
19:5,14,15 32:4,6
36:23,24 46:16
65:14 67:23 68:16
71:9 117:14
allowing
29:9 43:24 44:22
47:25
alternative
74:21
America
100:7
amount
16:7,18 23:20 44:1
76:25 117:20
amounts
44:11
and/or
113:8
anger
75:13
angle
33:15 38:11
animal
9:20
announcement
4:12
anybody's
15:12
anymore
27:10
app
111:11
apparent
79:16 93:24
appeal
61:2 68:22,25 69:3,
24 70:4,7 107:20
108:18,20 110:5
119:13 120:7
appealed
39:15 100:25 101:1,
2
appeals
74:7 83:16 112:24
113:3
appears
10:16 111:14
Appel
73:18 74:4,5 78:20
82:17 88:14,18,25
89:4,10,16 93:2,
94:23 95:4,22 98:3,
6,17,21,23 99:4,16,
20 104:25 106:13,
19 111:8 112:10,18,
21 114:12,19
119:14,17 120:14
appellant
113:12
appeulate
81:9
applicability
112:2
applicable
85:9 90:25 91:1
applicant
29:2 43:14 61:5
69:13 70:6 73:1,2
86:4 116:13
applicant's
29:11 72:24
applicants
5:12 7:10 68:24
112:8,14
applicants'
7:10
application
21:9,10,20 35:14
61:12 69:4,9 75:23
78:6 81:6 85:21
104:3 105:4 107:19
108:21
applications
115:8
applied
79:25 113:9
apply
6:3 61:11 108:19
applying
9:9
approach
68:17
approached
70:14
approval
4:5
approve
8:4,9,15
approved
4:25 7:2
April
21:9
architect
35:1 63:20 65:13,21

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com
argue
79:25 90:19 92:24
argument
62:24 77:22 93:3,8 103:17
arguments
61:4 114:13
arise
120:18
arisen
120:19
arrive
121:22
arrived
85:20 107:22
arrow
38:18
Article
68:21 71:2
as-is
40:1
aspects
15:16 22:16
assault
101:6
assume
4:7 87:21
assuming
35:13 95:7
assurance
26:25
ate
96:25
attempt
35:22
attempting
74:17
attorney
48:1 114:6
audible
43:19
audience
25:13 38:22 65:6 68:12
authority
100:24
AVENUE
5:1
aware
28:21
aye
4:20,21 61:23,24
B
B-1
86:24
back
back-of-the-island
11:19
background
6:22 70:12 76:11 77:9
backside
10:5 15:11 20:3 36:6 54:9
bad
31:9
badly
27:21
Bagwood
26:8
Baker
18:3,10
balance
81:14,15
ball
92:7,10,11 109:5
base
56:11
based
basically
basis
34:7 52:16 75:3 77:21 110:8,16
Beau
5:12 9:7,22 14:7
beautiful
9:23 67:22 82:8
beg
82:6
began
108:24
begin
55:4
beginning
40:25
begins
8:12
behalf
9:7 112:7
benefit
17:13 81:18
benefits
45:13
big
19:1 31:20 36:1 41:17,23 55:9 56:19
bigger
29:21 31:5 34:13 42:20
biggest
26:23
billable
6:3
binding
39:14,17,19,21
bit
13:2 23:7 45:3 76:10 82:5 93:9
block
6:14 30:13 41:23 46:20
board
111:18 boards
40:10 boats
31:19,20 Bob
29:5 body
107:9 bold
35:21 bone
105:1 boom
90:8 91:5 118:11 born
95:25 bottle
91:12 bottom
22:1 76:20 78:23 bought
26:7 31:1 41:11 96:11 Boulevard
18:2,3 box
35:3,8 63:22 65:17 boxy
15:22 BRASHER
8:7,20,25 24:3,7 build
46:8,18 57:5,9 59:23 60:2,6 67:14,18,21 68:3 117:6,23 118:4 break
17:1,8 breaking
15:19 17:4 Brian
9:6,14 47:22 48:12 bridge
41:24 bring
4:2 23:5 76:21 brings
65:24 brought
84:21 budget
92:20 buffer
16:4,6,13,20 17:19,23 49:20 build
52:23 build-to
33:3 building
12:15 29:5 31:5 38:1 44:25 51:3,4,8,11 55:20 61:18 63:6,8 builds
12:16
<table>
<thead>
<tr>
<th>Word</th>
<th>Page References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town of Sullivan's Island v Board of Zoning Appeals</td>
<td></td>
</tr>
<tr>
<td>In Re: Board of Zoning Appeals</td>
<td>April 13, 2017</td>
</tr>
<tr>
<td>Term</td>
<td>Page Numbers</td>
</tr>
<tr>
<td>-----------------</td>
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<tr>
<td>Town of Sullivan's Island v Board of Zoning Appeals</td>
<td>1</td>
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<tr>
<td>In Re: Board of Zoning Appeals</td>
<td>1</td>
</tr>
<tr>
<td>April 13, 2017</td>
<td>1</td>
</tr>
</tbody>
</table>
| decision       | 26:22 39:13,16  
40:11 70:10 72:1  
81:5 83:23 93:4  
101:19 102:8,18  
106:8,22 107:15  
109:23 110:6,11  
113:16 120:3,8 | 1 |
| deck           | 66:17,24 67:9 | 1 |
| Decker         | 70:6      | 1 |
| deemed         | 113:8     | 1 |
| deep           | 30:18 31:4 | 1 |
| defer          | 24:10     | 1 |
| define         | 78:8,9,14 | 1 |
| defined        | 24:7 72:15 78:10  
91:5 | 1 |
| defines        | 79:6 100:18,19 | 1 |
| definition     | 83:24 88:16 91:7  
93:14,16 100:16  
101:5,20 120:23 | 1 |
| definitions    | 107:23 121:3 | 1 |
| Del            | 32:20     | 1 |
| delay          | 97:3      | 1 |
| delayed        | 105:22    | 1 |
| delegate       | 75:20     | 1 |
| deliberate     | 53:5      | 1 |
| deliberation   | 62:6      | 1 |
| deliberations  | 7:1 52:8 55:5 | 1 |
| delivered      | 69:14     | 1 |
| demolition     | 79:24     | 1 |
| demonstrate    | 120:19    | 1 |
| demonstrated   | 91:17     | 1 |
| demonstrates   | 92:7      | 1 |
| denial         | 77:20     | 1 |
| denied         | 7:6 33:22 34:2,7  
70:25 89:24 114:13  
119:13 | 1 |
| denies         | 68:8      | 1 |
| deny           | 67:3 85:21 86:3  
92:9 | 1 |
| depending      | 22:18,19  | 1 |
| depends        | 108:13    | 1 |
| deprived       | 101:4     | 1 |
| describes      | 85:8      | 1 |
| design         | 10:6 12:21,22 13:1,  
4 15:5,16 16:13  
20:8,16,22,23,25  
30:2 37:4 50:7  
51:20 55:22 62:24  
64:3 | 1 |
| designating    | 119:8     | 1 |
| designed       | 22:20 56:17 57:1  
64:15 | 1 |
| desirable      | 23:9      | 1 |
| desire         | 26:10 81:17  | 1 |
| desist         | 72:19     | 1 |
| desk           | 81:23 101:10,22 | 1 |
| destroying     | 36:2      | 1 |
| destruction    | 26:11 80:17 | 1 |
| determination  | 24:11 105:2 107:22  
111:25 | 1 |
| determine      | 72:20 89:6 93:18 | 1 |
| determined     | 8:11 71:20 87:16 | 1 |
| discuss        | 49:1 53:7 82:4 | 1 |
| discussed      | 43:19     | 1 |
| discussion     | 49:8 57:3 58:13  
61:22 69:8 114:2 | 1 |
| disputing      | 22:15     | 1 |
| distance       | 16:25     | 1 |
| distinct       | 71:4      | 1 |
| district       | 5:15 6:2 61:18 | 1 |
| dock           | 7:25 10:16 20:3  
26:5 28:2 30:5,7,13  
31:18 45:11,18,19 | 1 |
| docks          | 30:3 31:18,20 | 1 |
| document       | 86:14,16  | 1 |
| documentation  | 74:1      | 1 |
| documents      | 97:8 115:12,22,23  
116:1 | 1 |
| dog            | 53:11 96:24 | 1 |
| doggone        | 54:10     | 1 |
| dollars        | 32:3      | 1 |
| door           | 32:21 54:20 | 1 |
| dotted         | 6:4       | 1 |
| double         | 118:11    | 1 |
| downside       | 31:11 37:5 | 1 |
| downtown       | 17:14 91:21 | 1 |
| drafted        | 9:23      | 1 |
| dramatically   | 34:1 38:1 | 1 |
| draw           | 105:10 115:18 | 1 |
| drawing        | 115:17    | 1 |
| DRB            | 19:16 20:11 21:9,  
16:20 22:19 28:22  
29:12 32:14 51:2,24  
56:8 | 1 |
| DRB's          | 91:21     | 1 |
| drew           | 65:14     | 1 |
| drill          | 77:15     | 1 |
| drive          | 11:14 39:2 115:24 | 1 |
| driveway       | 41:8      | 1 |
| dropped        | 92:8,10 109:5 | 1 |
| drove          | 35:25     | 1 |
| due            | 97:9 100:10 112:3,7 | 1 |
| dynamic        | 8:17      | 1 |

**E**

<table>
<thead>
<tr>
<th>Term</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-1</td>
<td>5:11</td>
</tr>
<tr>
<td>e-mail</td>
<td>77:19</td>
</tr>
<tr>
<td>e-mails</td>
<td>78:5</td>
</tr>
<tr>
<td>earlier</td>
<td>38:4 119:25</td>
</tr>
<tr>
<td>Earth</td>
<td>115:9</td>
</tr>
</tbody>
</table>
| east | 6:8,9 14:10 25:25  
38:1 | 1 |
| easy | 120:5       |
| eat  | 4:14        |
| economic | 28:17 29:25 32:2  
46:3 | 1 |
| edge | 6:20 29:17 38:10 | 1 |
| Edwin | 26:4       |
| effect | 99:24 112:16 113:5 | 1 |
| effectively | 12:14 13:23 22:12,  
14:20 57:24 61:13 | 1 |
<table>
<thead>
<tr>
<th>Page 1</th>
<th>Page 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town of Sullivan's Island v Board of Zoning Appeals</td>
<td>Board of Zoning Appeals Meeting April 13, 2017</td>
</tr>
<tr>
<td>lot</td>
<td>narrower</td>
</tr>
<tr>
<td>114:20 117:22</td>
<td>115:21</td>
</tr>
<tr>
<td>118:2,6,18</td>
<td>narrower</td>
</tr>
<tr>
<td>makes</td>
<td>narrower</td>
</tr>
<tr>
<td>64:24</td>
<td>narrower</td>
</tr>
<tr>
<td>making</td>
<td>66:24</td>
</tr>
<tr>
<td>40:13 93:4,8 101:1 108:1 118:14</td>
<td>natural</td>
</tr>
<tr>
<td>Malovich</td>
<td>10:6 17:25</td>
</tr>
<tr>
<td>106:21</td>
<td>necessarily</td>
</tr>
<tr>
<td>man</td>
<td>8:10 39:20 90:15</td>
</tr>
<tr>
<td>121:10,18,22</td>
<td>neck</td>
</tr>
<tr>
<td>management</td>
<td>53:14</td>
</tr>
<tr>
<td>18:11 70:16</td>
<td>needed</td>
</tr>
<tr>
<td>marketing</td>
<td>114:10</td>
</tr>
<tr>
<td>94:25</td>
<td>neighbor</td>
</tr>
<tr>
<td>Marr</td>
<td>15:1 17:16 23:21</td>
</tr>
<tr>
<td>28:14 50:19,20</td>
<td>neighbor's</td>
</tr>
<tr>
<td>51:2,14 65:8,11</td>
<td>54:13</td>
</tr>
<tr>
<td>Marr's</td>
<td>neighborhood</td>
</tr>
<tr>
<td>45:22</td>
<td>15:18 17:14 117:13</td>
</tr>
<tr>
<td>married</td>
<td>neighbors</td>
</tr>
<tr>
<td>11:13</td>
<td>17:13 24:26 18:20</td>
</tr>
<tr>
<td>marsh</td>
<td>28:7 33:4,20 41:10</td>
</tr>
<tr>
<td>47:16,25</td>
<td>77:7 84:10 92:17</td>
</tr>
<tr>
<td>Marshall</td>
<td>117:7,13</td>
</tr>
<tr>
<td>25:24 66:3 69:22,25</td>
<td>nice</td>
</tr>
<tr>
<td>70:5,16 72:12</td>
<td>43:7</td>
</tr>
<tr>
<td>Mary</td>
<td>night</td>
</tr>
<tr>
<td>70:6</td>
<td>35:25</td>
</tr>
<tr>
<td>massing</td>
<td>no-brainer</td>
</tr>
<tr>
<td>15:14,19 17:2,4,8</td>
<td>95:20</td>
</tr>
<tr>
<td>64:5,8</td>
<td>noise</td>
</tr>
<tr>
<td>matter</td>
<td>75:11 109:4</td>
</tr>
<tr>
<td>9:9 102:15 111:17,23</td>
<td>nonconforming</td>
</tr>
<tr>
<td>maximize</td>
<td>72:1 101:5</td>
</tr>
<tr>
<td>21:17 56:1 57:2</td>
<td>nonconformities</td>
</tr>
<tr>
<td>maximum</td>
<td>100:20</td>
</tr>
<tr>
<td>55:21 56:12</td>
<td>34:12 45:10 71:6,9</td>
</tr>
<tr>
<td>Mayor</td>
<td>10 72:9 74:22 79:4</td>
</tr>
<tr>
<td>38:24</td>
<td>7,8,15 80:3,7,14,20</td>
</tr>
<tr>
<td>Mccullough</td>
<td>81:8,22 83:25 84:7</td>
</tr>
<tr>
<td>74:6</td>
<td>86:11 89:25 90:2,5</td>
</tr>
<tr>
<td>meaning</td>
<td>91:5,10,16 93:20</td>
</tr>
<tr>
<td>22:7 89:8</td>
<td>98:12,16 99:6,18,22</td>
</tr>
<tr>
<td>means</td>
<td>100:1,17 102:20</td>
</tr>
<tr>
<td>48:2 78:13 104:24 119:3,8</td>
<td>104:11 105:16,23</td>
</tr>
<tr>
<td>measures</td>
<td>109:25 117:10</td>
</tr>
<tr>
<td>18:14</td>
<td>119:2,20 120:11</td>
</tr>
<tr>
<td>meet</td>
<td>nonconformities</td>
</tr>
<tr>
<td>13:2 15:3 64:4</td>
<td>100:18</td>
</tr>
<tr>
<td>misdemeanor</td>
<td>nonconformity</td>
</tr>
<tr>
<td>72:16</td>
<td>99:14</td>
</tr>
<tr>
<td>missed</td>
<td>noncomformities</td>
</tr>
<tr>
<td>88:1</td>
<td>100:21</td>
</tr>
<tr>
<td>misstatement</td>
<td></td>
</tr>
<tr>
<td>Type</td>
<td>Unsanitary</td>
</tr>
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<tr>
<td>town</td>
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**Vacation**

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<tbody>
<tr>
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</tr>
<tr>
<td>Leisure</td>
<td>Window</td>
</tr>
<tr>
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<td>Violation</td>
</tr>
<tr>
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<td>Violation</td>
</tr>
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</table>

**Board of Zoning Appeals**

**April 13, 2017**

**Town of Sullivan's Island v. Klippenstein**

<table>
<thead>
<tr>
<th>Town's Attorney</th>
<th>Klippenstein Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>1137212811:17</td>
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<td>Urban</td>
<td>1191</td>
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</tbody>
</table>

**U**

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td>Unusual</td>
</tr>
<tr>
<td>Vacation</td>
</tr>
<tr>
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</tr>
<tr>
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</tr>
</tbody>
</table>

**V**

<table>
<thead>
<tr>
<th>V</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation</td>
</tr>
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**Board of Zoning Appeals**

**April 13, 2017**

**Town of Sullivan's Island v. Klippenstein**

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