

Town of Sullivan's Island
BOARD OF ZONING APPEALS
Thursday, January 10, 2019

A Board of Zoning Appeals Meeting was held on the above date at 6:00 p.m., all requirements of the Freedom of Information Act having been satisfied.

Present were: Elizabeth Tezza, Chairman
Babak Bryan, Board Member
Summer Eudy, Board Member
Michael Koon, Board Member
Jody Latham, Board Member
Joe Henderson, Director of Planning/Zoning Administrator
Randy Robinson, Building Official
Courtney Liles, Town Clerk
John Linton, Town Attorney

A. Freedom of Information Act Requirements

Elizabeth Tezza called the meeting to order at 6:02 p.m. and stated the press and public had been notified in accordance with State Law. There were ten (10) members of the public present and no members of the media present.

B. Approval of Minutes from December 13, 2018

Motion was made by Jody Latham, seconded by Michael Koon, to approve the Board of Zoning Appeals Meeting minutes of December 13, 2018. This motion passed unanimously.

C. Applicant and Participant Oath

D. Administrative Appeal

1. 2624 I'On Avenue: Bruce Berlinsky, applicant, requests an appeal of an administrative decision relating to the residential use of 2624 I'On Avenue and application of Zoning Ordinance Section §21-20 B. (4), *Lots containing two occupied dwellings* (TMS# 529-10-00-026)

Director of Planning/Zoning Administrator Joe Henderson presented this application on behalf of the Town. Mr. Henderson stated that this appeal is essentially a rehearing from the September 8, 2016 hearing when the Board upheld staff's decision to deny the property owners ability to operate and maintain a second dwelling unit within their home

at 2624 I'On Avenue. The BZA Rules of Procedure allow an application that has been ruled on previously, to be presented every two years but cannot do so before that two-year window has expired.

Bruce Berlinsky, applicant, stated that since the September 8, 2016 hearing, he has found new information. The following Exhibits were made part of the record:

- I. Affidavit of Charles Karesh dated January 10, 2019 (Exhibit 1)
- II. Board of Zoning Appeals Staff Report and Application for the May 10, 2018 Hearing (Exhibit 2)
- III. Transcript of Record for the May 10, 2018 Hearing (Exhibit 3)
- IV. Transcript of Record for the September 8, 2016 Hearing (Exhibit 4)
- V. Letter from Bruce Berlinsky to John Linton with attached documents from September 20, 2018 (Exhibit 5)
- VI. Copies of Charleston County Records for 2624 I'On Avenue (Exhibit 6)
- VII. Disclosure Amendment from Diane Schmid dated November 18, 2015 (Exhibit 7)
- VIII. Certificate of Occupancy for 2320 Middle Street, dated April 7, 1978 (Exhibit 8)

The Board held a discussion regarding the relevance of the application's new evidence and the various documents submitted in the staff report. Mr. Henderson explained the procedures of Zoning Ordinance Section 21-20 B. (4) when considering various forms of documentation when staff justifies the existence of a legal nonconforming dwelling unit. Ms. Eudy had several questions relating to the submitted evidence from the September 8, 2016 Board of Zoning Appeals hearing. She explained that because she was not on the BZA at the time of the September 8, 2016 ruling, it would be difficult to make an informed decision regarding the new request and additional evidence presented by the applicants. She requested that the applicant consider providing the Board with the 2016 application materials referenced during their presentation.

After additional deliberation, Mr. Berlinsky requested a deferral to provide the additional materials from the September 8, 2016 hearing. Chairman Tezza granted the request.

2. 2720-B Goldbug Avenue- Paul Boehm, applicant, requests an appeal of an administrative decision related to Zoning Ordinance section §21-150 B. *Nonconforming Uses*. (TMS# 519-07-00-013)

Mr. Henderson presented this application on behalf of the Town. Henderson stated that building permit application #18-0413 was submitted by Paul Boehm on July 31, 2018 for various structure modifications to 2720-B Goldbug Avenue. Town staff denied the permit

application based upon several factors. Zoning Ordinance section §21-150 B. *Nonconforming Uses*, prohibits a nonconforming use from being expanded except to eliminate or reduce the nonconforming aspects. The submitted plans indicated an expansion (emphasis added) of heated square footage, roof height, addition of bedrooms, bathrooms, attached deck spaces and does not identify any areas that would eliminate or reduce the nonconforming use. Also, on January 8, 2015 and November 12, 2015, the BZA upheld Town staff's current interpretation to deny building permits for 2720-B Goldbug Avenue for similar structural expansions. Mr. Henderson explained that several aspects of building permit #18-0413 could be permitted, if compliant to lot coverage limitations and building codes. These permissible changes could possibly include addition of the access improvements, such as an elevator shaft and handicapped ramps, swimming pool, pool decking, fire pit if all coverage limitations are met for the property, and if they comply with current building codes.

Alice Paylor presented on behalf of the applicant. The following exhibits were made part of the record:

- I. The State of South Carolina Court of Appeals: Paul Boehm v. Town of Sullivan's Island Board of Zoning Appeals and Town of Sullivan's Island. Appellate Case No. 2015-001230 (Exhibit 9)
- II. Affidavit of Melinda Lucka Kelley dated January 10, 2019 (Exhibit 10)
- III. Affidavit of Sam Schirmer dated January 7, 2019 (Exhibit 11)
- IV. Affidavit of Bob Rawers dated January 4, 2019 (Exhibit 12)
- V. Signatures of Property Owners and Residents Approving Paul Boehm's Plans for Enlargements to his Property at 2720-B Goldbug Avenue (Exhibit 13)

The Board held a discussion regarding the South Carolina Court of Appeals ruling on April 11, 2017 (Exhibit 9). Ms. Eudy stated that after reading the Court of Appeals ruling, she interprets that the second principal building could expand in the way presented in Mr. Boehm's application because the use would still remain a single-family residence. She added that the ruling articulates that by increasing the square footage or adding a second floor, it does not increase the nonconforming use.

Mr. Koon suggested that the Board follow the SC Court of Appeals decision to the extent that the application before the Board is not wholly apart from what was being discussed under Mr. Boehm's previous BZA hearings. Mr. Bryan stated it is difficult to render a decision with the current information and suggested waiting for the Supreme Court decision to address the Town's appeal related to the expansion of nonconforming uses. Ms. Eudy stated that it is a change to the structure, not a change to the use and essentially the changes to the structure do not change the residential use within a second principal

building. She added that the ruling states none of the alterations increased the nonconformity or expanded the nonconforming use.

A motion was made by Michael Koon, seconded by Summer Eudy, that the Board of Zoning Appeals grant the appeal from the administrative decision for Zoning Ordinance Section §21-150 B. *Nonconforming Uses*, in this case subject to the two deed restrictions that have been discussed either in the application materials or here in this hearing tonight.

Michael Koon renews the motion with the following provisions: the deed restrictions that were referenced in the prior motion be specifically identified as those restricting the total occupancy of the unit to not more than six persons; and the second deed restriction that would limit the square footage, volume, and configuration of the house so that it has been presented by way of a building permit application. Summer Eudy seconded this motion.

This motion passed by a vote of 3-2, with Babak Bryan and Jody Latham opposed.

E. Variance Request

1. 2720-B Goldbug Avenue: Paul Boehm, applicant, requests a variance from Zoning Ordinance section §21-150 B. *Nonconforming Uses*. (TMS# 519-07-00-013)

The applicant withdrew this request.

F. Public Input

G. Adjourn

Motion was made by Michael Koon, seconded by Summer Eudy, to adjourn at 8:51 p.m. This motion passed unanimously.

Respectfully submitted,



Courtney Liles