

In the Matter Of:

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

Public Meeting
March 12, 2015

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TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS

HEARING BEFORE: ELIZABETH TEZZA, CHAIRPERSON
DATE: March 12, 2015
TIME: 6:00 PM
LOCATION: Sullivan's Island Town Hall
2050-B Middle Street
Sullivan's Island, SC
REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 APPEARANCES :

2 ELIZABETH TEZZA, CHAIRPERSON
3 CARLIN TIMMONS, BOARD MEMBER
4 DELORES SCHWEITZER, BOARD MEMBER
5 SARAH CHURCH, BOARD MEMBER
6 BACHMAN SMITH, IV, BOARD MEMBER
7 JIMMY HIERS, BOARD MEMBER
8 RANDY ROBINSON, BUILDING OFFICIAL
9 ELLEN MILLER, TOWN CLERK
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18
19
20
21
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23
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(INDEX AT REAR OF TRANSCRIPT)

1 THE CHAIRPERSON: I'd like to call this
2 meeting to order. And the Freedom Of Information Act
3 requirement has been met?

4 MS. MILLER: They have.

5 THE CHAIRPERSON: We're going to move onto
6 the approval of the minutes from January 8, 2015.
7 Everybody have a chance to review them? Were there
8 any --

9 MS. MILLER: I thought they were from
10 February 12th.

11 THE CHAIRPERSON: Oh, because this says
12 Thursday, February 12th.

13 MS. CHURCH: I didn't get to make any
14 corrections on my, you know --

15 MR. SMITH: The errata sheet.

16 MS. CHURCH: Can we defer it to next time
17 so I have a chance?

18 THE CHAIRPERSON: I'll entertain.

19 MR. SMITH: Make a motion to amend until
20 our next meeting.

21 THE CHAIRPERSON: Is there a second?

22 MS. CHURCH: Second.

23 THE CHAIRPERSON: Any discussion? All in
24 favor signify by saying aye.

25 (All board members stated aye.)

1 THE CHAIRPERSON: Likewise, oppose? That ⁴
2 carries.

3 We'll now do the applicant and participant
4 opening. Any member of the public or staff that will
5 be speaking before the Board of Zoning Appeals,
6 please stand, raise your right hand.

7 AUDIENCE AND STAFF
8 being first duly sworn, testified as follows:

9 2714 MIDDLE STREET

10 THE CHAIRPERSON: We are now going to hear
11 an administrative appeal on 2714 Middle Street. I'll
12 ask Randy Robinson to present for the town.

13 MR. ROBINSON: On February 4th of this
14 year, I rode by 2714 Middle Street and observed some
15 guys out there building a pergola, four posts and had
16 a couple of boards going across the top.

17 I stopped and questioned whether they had
18 a permit. They said they did not. And so I asked
19 them to stop work on it.

20 Came back here. Joe and I had a
21 discussion on it, whether it was an accessory
22 structure. We felt that we had a lot of back and
23 forth on this. We felt like it was probably a little
24 bit larger than what we had approved in the past.

25 What we approved in the past were pergolas

1 over an entrance to a house, say, on a sidewalk or
2 something like that; feeling that was a landscape
3 feature. And so we've approved that in the past.

4 We feel like this being 100 square feet,
5 that it probably fit in the accessory structure
6 ordinances and -- I'm sorry -- 80 square feet is how
7 big it is. It fit in the accessory structure
8 ordinance, and we should follow through with the stop
9 work order.

10 The applicants came in, and we had a
11 discussion about whether this was or not an accessory
12 structure. We felt like we didn't have really a line
13 in the sand of what was accessory structure, what was
14 a landscape feature. So we felt like we should err
15 on the side of caution and go ahead and uphold that
16 stop work order.

17 Hence, they come to y'all for an
18 administrative appeal, looking for some clarification
19 on this and approval to do this pergola.

20 And with that, I'll let the applicant go
21 ahead.

22 THE CHAIRPERSON: Thank you, Randy.

23 Who's going to present for the applicant?
24 Would you please state your name for the record
25 before you speak.

1 MS. ROKES: My name is Johanna Rokes. We
2 really do feel like the pergola that we're building
3 is a landscape feature versus an accessory structure.
4 It's not going to have any real roof to speak of.
5 There's no floor. It's really designed more to hold
6 up vines and really be a feature in the landscape
7 that we're creating.

8 I brought some pictures, if you guys would
9 entertain some pictures. These are pergolas in
10 landscapes to kind of give you an idea that they
11 really can be quite beautiful and part of the
12 landscape.

13 We also, in our zoning appeal, have
14 pictures of our pergola. I don't know if you-all had
15 a chance to look at those. You know, it's really not
16 very invasive, you know. It's not very tall. And by
17 the time the landscape fills in, you're not even
18 going to see it from outside the property.

19 You know, like Randy said, it's only, you
20 know, eight by ten. So 80 square feet, less than 100
21 square feet. I don't know if there's any other
22 details.

23 MR. ULMER: I'm Laurie Ulmer. And I
24 didn't bring the ordinance. The ordinance talks
25 about the accessory structure and, when addressing a

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

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

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

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

25 THE CHAIRPERSON: Thank you, Randy. Does

1 anyone on the board have any questions of the
2 applicants or Randy?

3 MS. CHURCH: I do, for you guys. Is this
4 picture that came with our application, is that what
5 you're intending the finish to be?

6 MS. ROKES: Yes.

7 MS. CHURCH: I rode by it.

8 MS. ROKES: All we need is --

9 MS. TIMMONS: Cross pieces.

10 MS. CHURCH: Are you going to hang
11 anything?

12 MS. ROKES: Our intention is to hang a
13 swing from it. More of a large Charleston swing, not
14 a kid's, a child's swing. It's more of a relaxation
15 area and, again, a focal piece looking from the pool.

16 THE CHAIRPERSON: Any other questions?

17 MR. HIERS: The slats that are going on
18 top, let's look at the dimensions of the structure.
19 Nine feet tall by --

20 MS. ROKES: It's eight feet by ten feet.

21 MR. HIERS: How about the slats at the
22 top? How many, roughly, do you think y'all --

23 MS. ROKES: Roughly 18 inches apart.

24 THE CHAIRPERSON: Any more questions?

25 Okay. We're going to close public comment and

1 proceed to deliberate on this administrative appeal.

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

5 THE CHAIRPERSON: Okay, Randy, go ahead.

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

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

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

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

1 THE CHAIRPERSON: So our decision would
2 basically set a precedent for future pergolas?

3 MR. ROBINSON: It would.

4 THE CHAIRPERSON: Thanks for that
5 clarification. Anyone like to start the discussion?

6 MR. SMITH: Yes, I don't think it's an
7 accessory structure. I don't have a problem with it.
8 I'm inclined to overturn the town's decision. I do
9 appreciate that there might be some precedent being
10 set here. I don't think that our decision
11 necessarily creates a precedent as past decisions do
12 not always set precedents.

13 I want to be careful about decisions or
14 using decisions we make as precedents because we have
15 found that simple changes offer varying degrees of
16 interpretation. For instance, in this case, I'm not
17 inclined to define the spacing between the joists
18 running across the top 'cause I don't want to limit
19 someone's vision but, at the same time, I don't want
20 to limit our ability to make decisions because of the
21 minutia of varying degrees of how someone goes about
22 building any type of structure.

23 I am all for offering some guidelines,
24 perhaps a ceiling as far as what we would consider,
25 considering square feet. But looking at this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 THE CHAIRPERSON: Point well taken.
20 Further, we've already established over the years
21 every lot on this island is unique in some way, shape
22 or form. This lot happens to be at elevation. I
23 don't think they have a problem with water. We
24 wouldn't see this exact same thing again.

25 I think the precedent for, in a general

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

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

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

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

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

1 make recommendation that they take another look at
2 what we have and, you know, just think about further
3 clarifying the -- we're called to clarify tonight.
4 But just because these things are starting to come
5 up, would this be an appropriate thing to make a
6 recommendation about to them?

7 THE CHAIRPERSON: We could. We did make a
8 recommendation on the last accessory structure that
9 was before us that we determined was an accessory
10 structure.

11 MS. CHURCH: That one had a roof, floor,
12 walls.

13 MS. SCHWEITZER: I know it's very
14 different. If the questions are there, they may
15 continue to come up without making any kind -- if
16 they know the questions are there, it's more their
17 place.

18 THE CHAIRPERSON: I think it would be very
19 difficult to have a list of every type of accessory
20 structure that anybody might want to construct on
21 this island. That's why we're here.

22 MS. CHURCH: I think that's why it's
23 written the way it is: Any other structure having a
24 roof. That was meant to be our gauge.

25 It definitely leaves some room for wiggle

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

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

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

10 THE CHAIRPERSON: Anyone ready to make a
11 motion?

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

21 THE CHAIRPERSON: Is there a second?

22 MS. CHURCH: I'll second. Just waiting to
23 see if you were done.

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

1 (All board members stated aye.)

2 THE CHAIRPERSON: All those oppose
3 likewise?

4 Ayes have it. And the decision of the
5 zoning administrator is hereby overturned.

6 THE CHAIRPERSON: Is there anything
7 further?

8 MR. ROBINSON: Nothing further.

9 MR. SMITH: Motion to adjourn.

10 THE CHAIRPERSON: Motion to second?

11 MS. TIMMONS: Second.

12 THE CHAIRPERSON: All those in favor
13 signify by saying aye.

14 (All board members stated aye.)

15 THE CHAIRPERSON: Thank you. This meeting
16 is adjourned.

17 (The meeting was concluded at 6:28 p.m.)

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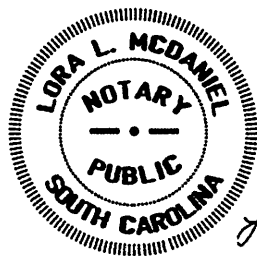
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CERTIFICATE OF REPORTER

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

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

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



Lora McDaniel

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

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page

2714 MIDDLE STREET

3

CERTIFICATE OF REPORTER

18

1	administrator 11:16 17:5 agree 11:10 16:7 ahead 5:15,21 9:5 appeal 4:11 5:18 6:13 7:18 9:1 Appeals 4:5 appears 16:18 applicant 4:3 5:20,23 12:9 applicants 5:10 8:2 application 8:4 applied 9:8 apply 9:15 appropriately 11:3,4,8 approval 5:19 approve 16:9 approved 4:24,25 5:3 arbor 14:8 arbors 14:16 area 8:15 9:24 argument's 12:20 assess 13:5 attached 16:16 attaching 9:11 AUDIENCE 4:7 aware 9:14 aye 16:25 17:1,13,14 Ayes 17:4	B	16:10,21,24 17:2, 6,10,12,15 chance 6:15 Charleston 8:13 child's 8:14 12:6 CHURCH 8:3,7,10 12:24 15:11,22 16:22 circumstances 11:9 clarification 5:18 10:5 clarify 15:3 clarifying 15:3 close 8:25 closer 16:19 code 7:16 comfortable 12:17 comment 8:25 12:12 commission 14:25 concern 12:2 concerned 11:23,25 concluded 17:17 conjunction 11:1 constitute 9:23 construct 15:20 constructing 12:4 continue 15:15 couple 4:16 12:6 covers 16:17 craft 11:19	create 7:8,10 13:16 creates 10:11 creating 6:7 Cross 8:9 curtains 7:22 <hr/> D <hr/> days' 12:6 decide 7:18 decision 10:1,8,10 12:16 13:2 16:14 17:4 decisions 10:11,13,14,20 13:18 define 10:17 defining 14:4,9 definition 13:7 definitions 14:7 degrees 10:15,21 deliberate 9:1 designed 6:5 detailed 12:17 details 6:22 determined 15:9 difference 9:20 difficult 15:19 dimensions 8:18 discussion 4:21 5:11 7:14 10:5 16:24 duck 11:12
2	2714 4:9,11,14	C	called 15:3 careful 10:13 carries 4:2 case 10:16 12:25 13:4 14:19 categories 13:12 caution 5:15 14:13 ceiling 10:24 center 16:19 CHAIRPERSON 4:1,10 5:22 7:4,25 8:16,24 9:5 10:1,4 13:19 15:7,18	
4	400 7:9 4th 4:13			
6	6:28 17:17			
8	80 5:6 6:20 7:7 11:20			
A	ability 10:20 11:22 accessory 4:21 5:5,7,11,13 6:3,25 7:2 10:7 11:14 12:23 13:6, 13 14:10,23 15:8, 9,19 add 7:5,6 addressing 6:25 adjourn 17:9 adjourned 17:16 administrative 4:11 5:18 9:1			

duly 4:8	fit 5:5,7 13:11	<hr/> H <hr/>	Joe 4:20 7:14 9:3	<hr/> M <hr/>
<hr/> E <hr/>	floor 6:5 7:21 11:21 12:1,8,10,20 13:11 15:11 16:20	hand 4:6	Johanna 6:1	made 14:14
elevation 13:22	focal 8:15	hang 8:10,12 9:19	joist 16:19	make 10:14,20 12:16 14:24 15:1,5,7 16:10,12,13,14
Elizabeth 9:2	follow 5:8	heads 13:2	joists 10:17	making 12:15 14:19 15:15
entertain 6:9	foot 7:9 11:6,7,20	hear 4:10	<hr/> K <hr/>	manner 12:2
entrance 5:1 14:2	form 13:22	HIERS 8:17,21 11:10 12:9,19	kid's 8:14	manufacture 13:16
err 5:14	forward 9:24 16:15	hold 6:5 12:3	kind 6:10 9:22 15:15	mass 7:8,11
erred 14:13	found 10:15	house 5:1 11:1,6 12:5 14:18	<hr/> L <hr/>	massed 11:3,4,8
established 13:20	free-standing 14:4	<hr/> I <hr/>	landscape 5:2,14 6:3,6,12,17 7:23 11:14,21 14:8,18	maximum 11:20
esthetically 14:17	front 7:10 9:16,19 12:5	idea 6:10	landscapes 6:10	meant 15:24 16:5
exact 13:24	fully 12:16	important 12:19	large 8:13	meeting 17:15,17
<hr/> F <hr/>	future 10:2 13:18	inches 8:23 16:19	larger 4:24 11:5	meetings 13:17
fact 14:22	<hr/> G <hr/>	inclined 10:8,17	Laurie 6:23	member 4:4
favor 16:25 17:12	gate 14:2	includes 11:20	laws 13:17	members 17:1,14
feathers 11:13	gauge 15:24	instance 10:16 11:6 12:2	leaves 15:25	mention 9:4
feature 5:3,14 6:3,6 11:14, 21 14:8	general 13:25	instructive 13:18	left 16:5	mentioned 11:24
February 4:13	give 6:10	intending 8:5	likewise 4:1 17:3	Middle 4:9,11,14
feel 5:4 6:2	glad 14:12	intention 8:12 16:2	limit 10:18,20	minutes 13:17
feeling 5:2	grant 7:18 9:7	interpret 16:4	limiting 11:25	minutia 10:21
feet 5:4,6 6:20,21 7:7, 16,20 8:19,20 9:9, 15 10:25 16:17,18	granting 7:19 9:10,12	interpretation 10:16	list 15:19	months 13:5
felt 4:22,23 5:12,14	growing 7:23 14:10	invasive 6:16	located 12:5	motion 16:11,12,13,14 17:9,10
fence 7:24	guidance 7:12	island 13:21 14:3,16 15:21	long 16:3	<hr/> N <hr/>
fills 6:17	guidelines 7:19 10:23	<hr/> J <hr/>	looked 13:7	nature 14:1
finish 8:5	guys 4:15 6:8 8:3	job 16:4	lot 4:22 7:8,10 11:2 13:21,22	necessarily 10:11

O	<p>piece 8:15</p> <p>pieces 8:9</p> <p>place 13:16 15:17</p> <p>plain 14:17</p> <p>planning 14:25</p> <p>Point 13:19</p> <p>pool 8:15</p> <p>porch 9:19,23</p> <p>possibly 7:13 12:23</p> <p>posts 4:15</p> <p>precedent 10:2,9,11 12:15,25 13:15,25</p> <p>precedents 10:12,14</p> <p>present 4:12 5:23</p> <p>pretty 13:7</p> <p>principal 9:24</p> <p>problem 9:13 10:7 13:12,23 14:19</p> <p>proceed 9:1 11:22</p> <p>property 6:18</p> <p>public 4:4 8:25</p> <p>put 7:18 11:7 12:13,20</p>	R	<p>route 11:17</p> <p>running 10:18</p> <p>runs 16:18</p>	<p>10:19</p> <p>space 16:17,19</p> <p>spacing 10:17</p> <p>speak 5:25 6:4</p> <p>speaking 4:5 14:21</p> <p>specific 13:8 14:19</p> <p>specification 16:16</p> <p>spell 13:3</p> <p>square 5:4,6 6:20,21 7:7, 9,16,20 9:9,15 10:25 11:6,7,20</p> <p>staff 4:4,7 16:14</p> <p>stand 4:6</p> <p>start 10:5</p> <p>starting 15:4</p> <p>state 5:24</p> <p>stated 17:1,14</p> <p>stipulation 13:9</p> <p>stop 4:19 5:8,16 16:8, 15</p> <p>stopped 4:17</p> <p>storage 11:22</p> <p>street 4:9,11,14 7:9</p> <p>strict 7:19</p> <p>structure 4:22 5:5,7,12,13 6:3,25 7:1,2,7,15 8:18 9:8 10:7,22 11:1,14 13:6,9,13 14:10 15:8,10,20, 23</p> <p>structure-type 12:23</p>
	Q		S	
P	<p>quacks 11:12</p> <p>question 16:8</p> <p>questioned 4:17</p> <p>questions 8:1,16,24 14:22 15:14,16</p>	<p>rain 12:6</p> <p>raise 4:6</p> <p>Randy 4:12 5:22 6:19 7:4, 25 8:2 9:5</p> <p>read 14:7</p> <p>reads 16:6</p> <p>ready 16:10,13</p> <p>real 6:4</p> <p>reason 9:12</p> <p>recommendation 15:1,6,8</p> <p>recommendations 14:24</p> <p>record 5:24</p> <p>recreational 9:24</p> <p>relaxation 8:14</p> <p>require 7:17</p> <p>responding 12:12</p> <p>Restriction 12:13</p> <p>restrictions 12:13</p> <p>Robinson 4:12,13 7:6 9:2,6 10:3 17:8</p> <p>rode 4:14 8:7</p> <p>Rokes 6:1 8:6,8,12,20,23</p> <p>roof 6:4 7:2,3,21 11:22 12:21 13:9,10 14:8,9 15:11,24 16:1</p> <p>room 15:25 16:1</p> <p>roughly 8:22,23 13:5</p>	<p>sake 12:20</p> <p>sand 5:13</p> <p>Sarah 14:21</p> <p>SCHWEITZER 14:21 15:13</p> <p>sense 14:14</p> <p>set 10:2,10,12 12:6,24</p> <p>setting 12:12</p> <p>shape 13:21</p> <p>showing 16:17</p> <p>side 5:15 12:21 14:13</p> <p>sidewalk 5:1</p> <p>signify 16:25 17:13</p> <p>similar 7:23</p> <p>simple 10:15</p> <p>situation 14:5</p> <p>size 11:2,4,15</p> <p>slat 12:8</p> <p>slats 8:17,21 14:11</p> <p>SMITH 10:6 11:24 12:11 13:14 16:12 17:9</p> <p>solely 11:21</p> <p>solid 14:9</p> <p>someone's</p>	
<p>observed 4:14</p> <p>offer 10:15</p> <p>offering 10:23</p> <p>official 11:17</p> <p>open 14:11</p> <p>opening 4:4</p> <p>oppose 4:1 17:2</p> <p>opposed 13:15</p> <p>order 5:9,16 9:12</p> <p>ordinance 5:8 6:24</p> <p>ordinances 5:6</p> <p>overturn 10:8 16:14</p> <p>overturned 17:5</p> <p>p.m. 17:17</p> <p>part 6:11 9:11 14:1</p> <p>participant 4:3</p> <p>past 4:24,25 5:3 10:11</p> <p>pergola 4:15 5:19 6:2,14 7:1,10 9:8,10,15 11:7 12:22 14:1,4, 7 16:15,16</p> <p>pergolas 4:25 6:9 10:2</p> <p>permit 4:18 7:17</p> <p>picture 8:4</p> <p>pictures 6:8,9,14</p>				

<p>structures 12:21 14:23</p> <p>submitted 16:16</p> <p>swayed 12:18</p> <p>swing 8:13,14 9:18,19,23 12:6</p> <p>sworn 4:8</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>talks 6:24</p> <p>tall 6:16 8:19</p> <p>technically 7:16</p> <p>ten 6:20 8:20 16:17</p> <p>testified 4:8</p> <p>thing 9:3 12:23 13:24 14:15 15:5</p> <p>things 11:11 15:4</p> <p>thought 9:17,21,22</p> <p>throw 9:21</p> <p>time 6:17 10:19 14:22</p> <p>TIMMONS 8:9 14:6 17:11</p> <p>tonight 15:3</p> <p>top 4:16 8:18,22 10:18</p> <p>town 4:12 11:16</p> <p>town's 10:8</p> <p>type 7:1 10:22 12:8 15:19</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Ulmer 6:23</p>	<p>underneath 9:18</p> <p>understand 11:16 12:11</p> <p>unique 13:21</p> <p>uphold 5:15</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>varying 10:15,21</p> <p>versus 6:3</p> <p>vines 6:6 14:9</p> <p>vision 10:19</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waiting 16:22</p> <p>walkway 14:1</p> <p>walls 7:21 13:11 15:12 16:20</p> <p>wanted 7:9 9:3,19,21</p> <p>water 12:3 13:23</p> <p>weeks 12:7</p> <p>wiggle 15:25</p> <p>word 9:16</p> <p>work 4:19 5:9,16 16:15</p> <p>written 15:23 16:3,6</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>y'all 5:17 7:11,17,18 8:22 9:7,16</p> <p>y'all's 9:12</p> <p>yard 7:10 9:16</p>	<p>yards 12:3</p> <p>year 4:14</p> <p>years 13:20</p> <p>you-all 6:14</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoning 4:5 6:13 11:17 17:5</p>
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