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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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Page 2

1 APPEARANCES:
 2 ELIZABETH TEZZA, CHAIRMAN
 3 PETER KOEPKE, BOARD MEMBER
 4 EMILY BRASHER, BOARD MEMBER
 5 PETER RICHARDSON, BOARD MEMBER
 6 JODY M. LATHAM, BOARD MEMBER
 7 JAMES ELLIOTT, BOARD MEMBER
 8 JOE HENDERSON, ZONING ADMINISTRATOR
 9 RANDY ROBINSON, BUILDING OFFICIAL
 10 COURTNEY LILES, TOWN CLERK
 11 BRIAN HELLMAN, ESQUIRE
 12 ROSS APPEL, ESQUIRE
 13 BEAU CLOWNEY
 14 KATE CAMPBELL
 15 BILL MULBRY
 16 MARY DECKER MULBRY, MD
 17 DEL SCHUTTE
 18 BUDDY INABINET
 19 JONSYE WURTHMANN
 20 POLLY WURTHMANN
 21 REBECCA UFKES
 22 DAVID POULNOT
 23 PAT MARR
 24 TIM REESE
 25 ALSO PRESENT:
 MARK HOWARD

Page 4

1 members and if you have a point of information or
 2 something you'd like to bring before us during that
 3 time you can raise your hand and we will get to you
 4 at an appropriate time. I will now ask for
 5 approval of the minutes from December 8th.
 6 We have not met since December. So I
 7 assume you've all read them. And do I hear a
 8 motion to approve?
 9 MS. LATHAM: I move to approve the
 10 minutes of the December 8th meeting.
 11 THE CHAIRMAN: Okay. So one more
 12 announcement for the BZA members. So because
 13 they've been having problems with the mics pushed
 14 on you're going to have to like eat the mic.
 15 MS. LATHAM: I move to approve the
 16 minutes of the December 8th meeting.
 17 THE CHAIRMAN: Is there a second?
 18 MR. RICHARDSON: Second.
 19 THE CHAIRMAN: All in favor, signify by
 20 saying aye.
 21 (Board members stated aye.)
 22 THE CHAIRMAN: Like sign opposed?
 23 (No response.)
 24 THE CHAIRMAN: The minutes are
 25 approved.

Page 3

1 THE CHAIRMAN: I'd like to call this
 2 meeting of the Board of Zoning Appeals to order,
 3 please. Have the Freedom of Information Act
 4 requirements been met?
 5 MS. LILES: They have.
 6 THE CHAIRMAN: My microphone is on. It
 7 might not be up. Is that good? There we go.
 8 First, a few announcements. If you
 9 intend to speak before this Board will you please
 10 sign in so that we have your name and address. If
 11 you have a cell phone, please turn it off or put it
 12 on vibrate. If it rings you will be walking out of
 13 the Board.
 14 You can come back in, but you'll have
 15 to make sure it's turned off, and I will be
 16 enforcing time limitations according to our Rules
 17 of Procedure, Article 4. The presentation by the
 18 Town official, the applicant and opponents will be
 19 10 minutes each.
 20 The applicant will also have five
 21 minutes for rebuttal and we will increase the time
 22 as needed. There will be public comment after the
 23 applicant's rebuttal.
 24 When we close public comment I would
 25 ask that you refrain from speaking to the Board

Page 5

1 1730 THOMPSON AVENUE
 2 THE CHAIRMAN: I'll ask Joe Henderson,
 3 the Zoning Administrator, to present. I believe
 4 Special Exception, Item D, has been withdrawn.
 5 MR. HENDERSON: That's correct.
 6 2928 JASPER BOULEVARD
 7 THE CHAIRMAN: So we would move to
 8 Item E, a variance request, for 2928 Jasper
 9 Boulevard.
 10 MR. HENDERSON: Thank you. Members of
 11 the Board, Agenda Item E-1 is a variance request
 12 for 2928 Jasper Boulevard. The applicants and Beau
 13 Clowney Architects are requesting dimensional
 14 variances from two provisions of the ordinance that
 15 require setbacks from the RC-2 Zoning District and
 16 also the OCRM critical line.
 17 These are two subsections of that
 18 portion of the ordinance and I'll just go through
 19 those very quickly. Subsection 21-23 E (1) A is a
 20 30-foot setback requirement from the RC-2 Zone.
 21 This property is encompassed on multiple sides.
 22 I'll just pull a PDF here. The request
 23 is for the property owners to develop the property
 24 with the single family residence. As you can see,
 25 if you reference your screen on the right-hand side

Page 6

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
 5 line you can see there. So the first request from
 6 the applicant is an encroachment into that 30-foot
 7 line by only five feet, six inches on one portion
 8 of the east elevation; then 11 feet, six inches on
 9 another portion of the east elevation.
 10 The second request is Subsection B and
 11 that is to request encroachment beyond the build-to
 12 line. This requires that no structure be built any
 13 closer to the marsh than the structure built
 14 closest within that block. What that refers to, if
 15 you look at the screen you will see on the
 16 right-hand side Jasper Boulevard.
 17 You see the marsh front homes and then
 18 the creek on the left. The subject parcel is here
 19 between the creek and also the homes; and so the
 20 build-to line would run just along the leading edge
 21 of this home here where the cursor is.
 22 Just to give a little background on a
 23 previous variance request, on May 13th of 2010 a
 24 variance was requested for these two very sections
 25 of the ordinance in order to construct a single

Page 8

1 then a concrete pad here on the right side of the
 2 parcel. So, Peter, it's likely that they didn't
 3 have any setbacks back then.
 4 THE CHAIRMAN: What will happen to
 5 those concrete pads?
 6 MR. HENDERSON: They are to be removed.
 7 MS. BRASHER: Joe, so this setback line
 8 by OCRM is typically -- they put those lines in the
 9 areas that are subject to flooding? Yes or no.
 10 MR. HENDERSON: Not necessarily. The
 11 OCRM line is determined through on-site inspections
 12 where the marsh begins. I think that's pretty
 13 accurate. I'm looking for Randy Robinson.
 14 I think that's done probably every
 15 eight to ten years. DHEC-OCRM will come out and
 16 inspect where that line falls because it's a
 17 dynamic environment that's subject to change.
 18 So this is based upon the current survey of the
 19 OCRM line.
 20 MS. BRASHER: What is the date of that
 21 current survey? Is it like nine years ago or is it
 22 just a couple of years ago?
 23 MR. HENDERSON: It has to have been
 24 done within 12 months.
 25 MS. BRASHER: Okay.

Page 7

1 family residence. During the BZA's deliberations
 2 the BZA approved the variance to 21-23 E (1) B, the
 3 build-to line provision, and it decided that
 4 without the variance for this lot that it would be
 5 unbuildable.
 6 However, they denied the request for
 7 encroachment into the 30-foot OCRM setback. So
 8 with that, Madam Chair, I'll turn it over to the
 9 Board for any questions that you might have from
 10 the applicants might have and the applicants'
 11 presentation.
 12 THE CHAIRMAN: Do we have any questions
 13 for Joe at this time?
 14 MR. RICHARDSON: Joe, where is the
 15 original setback line for the concrete pads?
 16 Do you know that?
 17 MR. HENDERSON: The concrete pads were
 18 where the previous house existed and so --
 19 MR. RICHARDSON: So where was the
 20 setback line for those --
 21 MR. HENDERSON: Well, more than likely
 22 those structures were built before the current
 23 zoning ordinance, long before. So if we take a
 24 look at the survey what Peter is referring to is
 25 the concrete pad here that leads to the dock and

Page 9

1 THE CHAIRMAN: Any more questions for
 2 Joe?
 3 (No response.)
 4 THE CHAIRMAN: Okay. The applicant may
 5 now present.
 6 MR. HELLMAN: Hi. I'm Brian Hellman on
 7 behalf of Beau Clowney and Kate Campbell and the
 8 Lelands who own this property. Just as an
 9 introductory matter, this -- what we're applying
 10 for is very different.
 11 I'll get wired here. Is that better?
 12 Can you hear me?
 13 MR. HENDERSON: Yes.
 14 MR. HELLMAN: So, again, I'm Brian
 15 Hellman. Just to set the record straight, the
 16 variance that was requested many, many months ago
 17 is not part of this group. From our understanding
 18 it was a variance for 10 feet all the way around
 19 the entire property. This is a very different
 20 animal from that.
 21 There were no plans, I believe, that
 22 were submitted. Kay Campbell with Beau Clowney
 23 Architects has drafted some beautiful plans that
 24 she'll go over shortly. But just to walk you
 25 through this property, this is probably one of the

Page 10

1 most extraordinary, exceptional properties that
2 exists on the island.
3 As we all know, there are just a
4 handful of these properties that exist on the
5 backside, that whether they were filled or just the
6 natural design of concrete and some of the other
7 areas we have this flag-shaped lot that as you see
8 sits out well beyond what the other lots do.
9 If you sort of follow this line here
10 this is a photograph from 1941. We've got them in
11 your handouts I think, too, so you can see closer.
12 In 1941 you can see there was a house that was very
13 close to the Jasper Boulevard side of the property.
14 In 1963 we can see that there's a house
15 that sits basically right in the middle of this
16 property. Again, in 1967 we see a dock appears, a
17 house in the center.
18 In 1992 the house is gone and we're not
19 quite sure what this -- this was probably the pad
20 of where the house sits, but it was -- it was -- as
21 we can see in some of these other pictures this was
22 the house that was there and these pictures were
23 taken immediately after Hugo.
24 It was low to the ground and it looks
25 like some of the other houses on the back of the

Page 12

1 out so far and it has the marsh on either side we
2 don't have this light gray buildable area like
3 about every other house on the back of the island
4 does.
5 We have this carrot-shaped, very narrow
6 piece. The OCRM and the 30-foot setback didn't
7 exist when this lot was platted and it didn't exist
8 when some of the houses were built on it before.
9 So we've got a situation where the zoning ordinance
10 changed and now we've got an extraordinary,
11 exceptional lot.
12 Because of these extraordinary,
13 exceptional conditions we're basically unreasonably
14 restricted and almost effectively prohibited from
15 building something on this lot because when you
16 look at what's here it's very narrow and it builds
17 to a triangle.
18 So is it possible to build something on
19 this? Not under the zoning ordinance because the
20 zoning ordinance doesn't just say this is where you
21 have to build. It sets out a number of design
22 criteria and those design criteria can't be met
23 either.
24 So to some extent one has to look and
25 say, well, what variance do we need here? Are we

Page 11

1 island suffered some damages. But to go along with
2 the extraordinary and exceptional conditions that
3 exist here, this being the platted lot, I think
4 that's in your package.
5 This is a survey that John Way did and
6 you can see in the survey that the OCRM critical
7 line is on three sides of this property and because
8 of the three sides we end up with something that's
9 very different from what -- just about every other
10 property.
11 I mean, one -- one similar property or
12 two similar properties that come to mind were the
13 Town's lots that they got married for on Raven when
14 that -- when Raven Drive was opened up.
15 So when we look at this -- and maybe
16 it's sort of better to see this with the marsh in
17 the back. If we see this light gray area, if we
18 didn't have marsh on either side and this was like
19 a typical back-of-the-island lot we would have
20 about 30 feet from the property line plus or minus
21 on the back.
22 This line right here shows us about 30
23 feet from where the OCRM setback from the rear of
24 the property is. What's extraordinary and
25 exceptional about this property is because it sits

Page 13

1 going to design a house -- and Kate can talk about
2 that in a little bit -- that just doesn't meet the
3 community standards that Sullivan's Island has set
4 in its ordinance or do we design something that
5 needs about four percent encroachment, about less
6 than 400 feet.
7 If you're still working in the gray
8 area, if you lived on either side of this lot and
9 you weren't with this -- with the situation that
10 we have, if we were one of just about every other
11 lot on the back of the island you would have a
12 10-foot to a 15-foot setback but because of this
13 encroachment we have more than even 30 feet because
14 of the way the OCRM lines cut into the property.
15 So basically we've got extraordinary,
16 exceptional. We've got extraordinary, exceptional
17 conditions that exist on the this lot that really
18 don't exist on most of the other lots. It's very
19 rare that -- at this rate we've got a handful of
20 them. Only one comes to mind.
21 Then lastly because of the odd-shaped
22 carrot-shaped piece we're unreasonably prohibited
23 or effectively prohibited and unreasonably
24 restricted from being able to build something
25 on the island.

Page 14

1 So we're left with really the fourth
2 part of the test and how we get there. So to that
3 end I want Kate to walk through what's being
4 proposed here so that you can see the house and the
5 extent of that encroachment into this OCRM setback.
6 MS. CAMPBELL: Hi. I'm Kate Campbell
7 of Beau Clowney Architects. All right. Is that
8 okay?
9 In your packet we submitted a few
10 elevations from the south and the east side, but in
11 concept, you know, when we started looking at this
12 property obviously it's got some pretty interesting
13 exceptional site conditions. Is that -- can you
14 hear me okay? Okay.
15 So, I mean, there are three options
16 really in our minds as architects. You know, could
17 we go back and ask for what was there before which
18 on this property the house existed -- you can see
19 in your packet there's a front picture at the
20 right-hand side that is that existing concrete slab
21 that's there now.
22 So that house really was in this
23 general vicinity. This is a guesstimate just based
24 on those photographs. So do you come back,
25 encroach way into the critical line setback also

Page 16

1 Yes, we are asking for this very
2 minimal four percent encroachment. Just for the
3 record, the slabs that exist currently, the overall
4 footprint of the critical line buffer is about
5 9,900 square feet.
6 The slabs that are in the buffer
7 currently amount to 1,642 square feet, which is a
8 16 percent encroachment. That would go away and
9 based on -- you know, generally this house
10 footprint which is maybe around 600 square feet.
11 So all in total it's around the 200
12 square feet encroachment on the current critical
13 line buffer. A portion of this design -- the
14 most -- the area with the most encroachment is
15 actually a one-story porch in this zone here.
16 Part of the steps don't count because
17 you can have steps into the setback less than six
18 feet. So this darker area here is the most amount
19 of encroachment and that's at five and a half feet
20 into that line buffer.
21 Generally the house plan is very
22 simple, again taking advantage of the width from
23 the Jasper Boulevard side of the lot and then
24 having just a one-room-wide living room out that
25 distance.

Page 15

1 affecting the neighbor to the left or do we built
2 within this carrot-shaped buildable area which
3 doesn't meet -- might meet the buildable area but
4 it doesn't -- it's really going to restrict the
5 design aesthetics of it which the zoning ordinance
6 also speaks to.
7 So we came around to something that
8 instead of trucking it along this long length of
9 setback we said, okay, well, how can we take the
10 most advantage of the width of the carrot on the
11 backside of the lot therefore pulling the house as
12 far as possible to not affect anybody's view as
13 much as possible but also make it dimensionally
14 appropriate in terms of a massing?
15 So in meeting some of those other
16 aspects of the zoning code that the Design Review
17 Board will be looking at in terms of the
18 neighborhood compatibility and just overall
19 aesthetics of the island, breaking up the massing
20 and not having long, more than 30-foot, walls.
21 So, yes, we can certainly build a very
22 boxy further-out-type house, but we really felt
23 like the intention of the zoning ordinance was to
24 build something that was further back from the
25 concrete.

Page 17

1 So, again, we're trying to break this
2 down into the massing that's appropriate for the
3 island. There we go. So, again, this is the view
4 from the front, breaking up the entrance massing.
5 This is that one-story porch which you
6 can again see here. Then these are not all in the
7 same planning. So we're stepping back as much as
8 we can in order to break up that massing. So...
9 MR. HELLMAN: So, lastly, in terms of
10 the fourth part of the test, the public good, the
11 purpose of the OCRM setback is a little different
12 from the architectural setbacks that serve to
13 benefit neighbors.
14 So like downtown or the neighborhood on
15 I'on where you can almost reach out your window and
16 pass a cup of sugar to your neighbor the regular
17 setbacks we see in the light gray are really there
18 to give enough space between properties.
19 The purpose of the OCRM buffer zone
20 and the RC-2 setback according to the ordinance is
21 to allow for the passive treatment of stormwater
22 runoff before entering the water surrounding
23 Sullivan's Island and to provide a buffer zone for
24 floodwater and erosion caused by storms, sea level
25 rise and other natural conditions.

Page 18

1 To that end our client retained the
2 services of Bowman Consulting. Their letter is in
3 your package. Cameron Baker with Bowman was tasked
4 to say, first of all, if we are eliminating this
5 22 percent encroachment that we see in the existing
6 concrete slabs and we come back and we have a four
7 percent encroachment what can be done to satisfy
8 the requirements of -- or the purpose of that
9 ordinance?
10 What Mr. Baker said is through best
11 management practices, through buyer retention,
12 infiltration, and enhanced filter strips along with
13 the existing bulkhead that surrounds this property
14 and improvements and repairs to it that measures
15 can be taken so that this four percent encroachment
16 which is significantly less which -- which it's
17 already been -- it's already there right now would
18 actually not affect the waters and would serve the
19 purpose of the ordinance.
20 So we think that for those reasons that
21 the test for variance is met in this is a very
22 exceptional property and we believe that this
23 meeting test should hopefully receive a fair review
24 from you and hopefully a variance. So if there are
25 any questions that we could answer...

Page 20

1 contract. My client lives on Middle Street right
2 now and would like to move from Middle Street to
3 live on the backside of the island with a dock.
4 MR. ELLIOTT: So they have a contract?
5 MR. HELLMAN: Correct.
6 MR. ELLIOTT: And then you said in your
7 opening statement something about meeting the
8 design criteria required for zoning. I don't think
9 I understood that.
10 MR. HELLMAN: So the zoning ordinance
11 has certain criteria that has to be met and the DRB
12 typically would be the one that would give -- I
13 guess they're not technically variances but could
14 give variances from that.
15 So because of the odd shape of
16 this lot most of the important design criteria
17 Ms. Campbell had a very difficult time -- in fact,
18 an impossible time meeting. So it would have been
19 basically a house that looks like a large
20 carrot-shaped aircraft carrier.
21 MR. ELLIOTT: And you're referring to
22 design criteria that would be overseen by the
23 Design Review Board?
24 MR. HELLMAN: Correct. That's correct.
25 The Design Review Board would give relief from

Page 19

1 MR. KOEPKE: How big is the house?
2 MS. CAMPBELL: That's also in your
3 packet and that's something that -- the second
4 page back. Based on all the coverages and square
5 footages allowed with the properties on Sullivan's
6 Island the property owners are calculated by island
7 acreage.
8 So all these properties are calculated
9 by Highland Acres which is about 20,000 -- just
10 over 20,000 square feet. So the overall square
11 footage of the house that's proposed is just over
12 3,000 square feet. Based upon Highland Acres and
13 the footprint and the buildable area it is around
14 4,000 square feet, I think. We'd be allowed 3,900.
15 So we're well under what is allowed for
16 the property and we wouldn't have to ask the DRB
17 for any sort of relief in terms of square footages
18 on that account.
19 MR. HELLMAN: It is basically just over
20 3,000 square feet.
21 MR. ELLIOTT: Heated space?
22 MS. CAMPBELL: Heated space.
23 MR. ELLIOTT: Mr. Hellman, did your
24 client recently buy the --
25 MR. HELLMAN: They have the house under

Page 21

1 that, but that relief would end up in something
2 that I think in our estimation is that
3 carrot-shaped aircraft carrier --
4 MS. CAMPBELL: And may not be
5 appropriate.
6 MR. HELLMAN: -- and may not be
7 appropriate.
8 MR. HENDERSON: I would add that there
9 is a DRB application pending for April 18th. On
10 that application they're requesting multiple
11 architectural relief. One example of that if you
12 look at the screens before you is the second story
13 side setback.
14 The ordinance requires that any length
15 of wall more than 10 feet has to be set back from
16 the first story two feet. The DRB can grant
17 relief, architectural relief, to maximize that
18 square footage.
19 So there are no lot coverage requests
20 for this application before the DRB. I think they
21 just mentioned that, but there are lots of areas on
22 the house that need that architectural relief.
23 THE CHAIRMAN: Because it's so pinned
24 in?
25 MR. HENDERSON: That's right.

Page 22

1 MR. HELLMAN: Otherwise that bottom
2 floor would have to stick out two more feet. So
3 we're trying to keep it as tight as possible there.
4 MR. ELLIOTT: If the variance for
5 21-23 E (1) B is granted but not 21-23 E (1) A
6 would you still satisfy the utilization requirement
7 meaning that would still be the case that if the
8 property would be such that the use is basically
9 prohibited that you couldn't build something on it?
10 MR. HELLMAN: I think -- I think
11 that, you know, there's two parts to the third. It
12 is either unreasonably restricts or effectively
13 prohibits and certainly if we look at the line of
14 all the houses that -- that effectively prohibits.
15 There's no disputing that.
16 I think as to the other aspects with
17 the 30-foot setback that's that's an unreasonable
18 restriction. It may go so far as to -- depending
19 on what the DRB does and depending on what can be
20 designed effectively prohibit it as well. It is
21 certainly an unreasonable restriction given that
22 when this lot was platted none of this was in
23 place.
24 So we've got a situation that -- that,
25 you know, by the time you get here you're going to

Page 24

1 that fill in this area, which don't exist on this
2 side.
3 MS. BRASHER: Would that lot be called
4 a shallow lot?
5 MR. HENDERSON: It's certainly flagged
6 on a shallow lot when --
7 MS. BRASHER: As defined with the
8 ordinance?
9 MR. HELLMAN: That's a good question.
10 I may want to defer to Joe on that since he'd have
11 to make that determination.
12 MR. CHAIRMAN: I don't believe so
13 because it's a flagged lot.
14 MS. CAMPBELL: I think a shallow lot
15 has to front the street. I don't know.
16 MR. HENDERSON: That's right.
17 MR. KOEPKE: Do I understand this
18 correctly, that I think you're also asking for the
19 variance on the site where you are not actually
20 cutting into the site plan? Is that right?
21 There's the forest there anyway on that side.
22 MS. CAMPBELL: Right.
23 MR. HENDERSON: Here. (Pointing to
24 diagram)
25 MR. KOEPKE: Right.

Page 23

1 have to build a very long, narrow house and what --
2 what that -- what that really does is it pushes
3 that house in an area where you really don't want
4 it to be, where I don't think any of the neighbors
5 want it to be because if we can bring it as far
6 back here as possible and that -- that takes -- a
7 little bit of pushing it out closer to Jasper it
8 eliminates having to go out into, you know, closer
9 in concrete, which really is less desirable if you
10 think about what the purpose of the OCRM and the
11 RC-2 setback is in the first place.
12 MS. CAMPBELL: I think another thing to
13 point out, too, is that the main reason we decided
14 to, you know, ask for the encroachment on this side
15 is because then you can see this critical line
16 winds around the actual property line.
17 So if this critical line was actually
18 an inch to the outside we'd have a ten-foot setback
19 on that side. So we chose to kind of put it on the
20 side where there's the most amount of land and it
21 also doesn't affect the most adjacent neighbor
22 because that's basically maintaining that required
23 30-foot on the critical line on that side. So --
24 MR. HELLMAN: Not to mention this
25 property has a very significant number of oak trees

Page 25

1 THE CHAIRMAN: Are there any other
2 questions of the applicant?
3 (No response.)
4 THE CHAIRMAN: Thank you. We may have
5 more questions.
6 MR. HELLMAN: Certainly. Thank you.
7 THE CHAIRMAN: Now, I will -- okay. I
8 will ask if there are any opponents to either of
9 the variance requests to please come forward and
10 state your name and your address.
11 Can I ask how many people would like to
12 speak in opposition?
13 (Audience members raise hands.)
14 I would ask that you keep it to two
15 minutes, please. Any opponents to this variance
16 request may speak now. I think there are three
17 people who raised their hands. So please try and
18 limit yourself to two minutes.
19 MR. POULNOT: Good evening. Thank you
20 for serving. I know that your decisions usually
21 leave someone disappointed; so I appreciate your
22 efforts.
23 My name is David Poulnot. I live on
24 Marshall Boulevard with my wife, Susan. Our family
25 owns the lot on the east side of the lot.

Page 26

1 So in addition to the two of us, I
 2 represent our three children and my sisters
 3 (inaudible), my mother Joan, and five grandchildren
 4 of (inaudible) and my late father Edwin Poulnot.
 5 Our dock is very important to us as
 6 it's been essentially part of the lives of the
 7 Poulnot family since my grandfather bought the
 8 lot from a member of the Bagwood family over 75
 9 years ago.
 10 No one here wishes to desire the sale
 11 of this property or the destruction of the home on
 12 the property, but everyone here knows the rules and
 13 regulations developed over many years by concerned
 14 citizens of the island.
 15 Granting a variance of a foot here or
 16 there for unusual circumstances or for granting the
 17 right to build a home is somewhat in front of the
 18 neighbors as in this case is not something that a
 19 reasonable person could object to. However, I feel
 20 that all the neighbors need more information.
 21 I received a variance request packet
 22 and cannot make a fair decision based on that. My
 23 biggest fear is that if these variances are granted
 24 the plans for the house may change. Is there an
 25 assurance that I can receive from the committee

Page 28

1 property in the sense that when we're out on our
 2 dock we've got, you know, someone right there.
 3 So I would like the house to be built
 4 as far back as possible, as far back away from the
 5 creek as possible.
 6 I recognize again there may not be a
 7 perfect solution for all of the neighbors but it's
 8 a small lot and -- it's a small lot and these rules
 9 and regulations were painstakingly crafted over a
 10 long period of time and that's just the way it is.
 11 So thank you very much for your time.
 12 THE CHAIRMAN: Thank you for your
 13 comments.
 14 MR. MARR: Hi. I'm Pat Marr. I reside
 15 at 3030 Jasper which is four houses down. You
 16 know, a variance to me should not be made part of
 17 economic hardship. The current owner of this
 18 property does not live on the island.
 19 It is all about what is the price that
 20 they're going to get for this land and I hope
 21 you're aware that what goes on here -- the
 22 applicant has already submitted to the DRB and I
 23 know because I'm one of the last houses to build on
 24 the creek. I had to follow that critical line. I
 25 was told there's no way, 30 feet.

Page 27

1 that the final plans are -- these are just
 2 sketches.
 3 How do we know that the plans might not
 4 change and the variances that are granted for the
 5 setbacks?
 6 THE CHAIRMAN: Our variances are final
 7 and even though they're not final plans the final
 8 plan cannot affect the variance that we give. They
 9 would have to come back if their final plan
 10 encroached anymore into the -- into the setback.
 11 I will state for you going further that
 12 the variance being requested under 21-23 E (1) B,
 13 the build-to provision, if that variance is not
 14 granted that lot is unbuildable.
 15 MR. POULNOT: I understand and I'm fine
 16 with that.
 17 THE CHAIRMAN: So you are protesting
 18 21-23 E (1) A?
 19 MR. POULNOT: Right, and I remember
 20 when the other house was there and it wasn't a
 21 problem. I think Hugo flooded it so badly that it
 22 was considered unlivable and they tore it down.
 23 What I object to on the sketches that
 24 I've seen is the porch on the top is really
 25 stretching out and could be right on top of our

Page 29

1 I've heard the representative of the
 2 applicant say this is one of the best lots in the
 3 city, one of the best lots on the island, and
 4 that's because it has three sides to the peninsula.
 5 Bob Faith who was building his house
 6 two years ago which is the next house next to me
 7 had a peninsula as well and he had to abide by the
 8 critical line. What you're trying to do is you're
 9 allowing a house that probably should be 2,000 or
 10 2,500 feet which is a lot smaller -- I get it --
 11 than what the applicant's proposing which if you
 12 go to the DRB is about 3,600 square feet.
 13 You know, I was told it was stormwater
 14 and I just don't know how you can say this is such
 15 a great lot. But you've got to fit it in. I had
 16 to go closer to Jasper on my house at 3030. It was
 17 a shallow lot. I had to -- I'm right on the edge
 18 of that 30 feet and it impacted me.
 19 We've all had to work with it and to be
 20 able to tell somebody to go ahead and build a
 21 bigger house -- because from what I understand if
 22 you can build a 3,600 square-foot house that owner
 23 of the property is going to get a lot more money if
 24 you're going to build a 2,500 square-foot house.
 25 So this is an economic hardship.

Page 30

1 And, you know, finally -- you know, I
2 think it's the design. Okay. We've all been told
3 about docks, 15 by 15 pierhead -- okay -- and I
4 understand maybe some day a long time ago they had
5 another dock there.
6 So all of a sudden a couple of years
7 ago here comes a 2,400-foot almost commercial dock
8 on our creek. Everybody else is -- is at fault,
9 right? And now they want to put this house that --
10 you know, was I notified? No.
11 Very few people on the creek were
12 notified about this and the reason is is because if
13 you sit out on your dock this house will block the
14 sunset. Okay. I'm not saying that there can't be
15 a house there, but make them work within the
16 critical line that this Town has outlined.
17 The last thing I want to make is the
18 home prices for deep water -- there's only about 14
19 of them on the island. Okay. The cove is tidal.
20 It gets low. The kind of prices they're getting
21 for land -- and people -- you're going to set a
22 precedent.
23 There's a lot under contract next to me
24 that's 7,000 square feet and it's got a critical
25 line and they're going to push it, I guarantee.

Page 32

1 THE CHAIRMAN: Okay. I'm going to make
2 a comment. First of all, economic hardship and
3 dollars and cents are not considerations of this
4 Board. We're not allowed to consider that even as
5 part of the hardship test.
6 We're also not allowed to consider
7 prices. I want to reconfirm the square footage of
8 this house. You said it was just over 3,000?
9 MR. HELLMAN: The house is under 3,100
10 square feet and the actual buildable size that the
11 ordinance will allow is almost 4,000 square feet.
12 So this is 25 percent smaller than what the
13 ordinance allows.
14 So I guess you could even go to the DRB
15 and ask for even larger than 4,000 square feet.
16 That's not what this house is.
17 THE CHAIRMAN: Thank you. Would anyone
18 else like to speak to this variance, either for or
19 against?
20 MR. SCHUTTE: I'm Del Schutte and I'm
21 the house next door just to the west, I guess. I
22 think there are a number of concerns with this.
23 First off, I'd like to address the process.
24 I think two weeks is too short a time.
25 Several people speaking tonight have changed their

Page 31

1 Mr. Fisher's house was just bought for over \$3
2 million. People came in and leveled the house.
3 Okay. You're going to see that this
4 land goes up for deep water. You're going to see
5 people building bigger and bigger houses on this
6 creek which is going to put pressure on stormwater.
7 It's going to take away the care of the
8 island. I will tell you that it's going to set a
9 bad precedent for the other -- people are going to
10 sell.
11 As they get older or downsize people
12 are just going to come in and say, I'll pay \$4
13 million. We're going to level that house because
14 what's the difference if they pay \$4 million for
15 a house or if they have the wherewithal to do a
16 \$6 million property for an extra million?
17 The next thing that's going to happen,
18 most of the people on that dock or those docks, is
19 they all have 30-foot boats or less and we're going
20 to see big docks out here with 40 and 50-foot boats
21 of people coming back into that creek.
22 So, please remember that this is going
23 to be precedent-setting for the next couple of
24 years of what we're going to see. We need to stop
25 it now.

Page 33

1 plans because they were notified at the last
2 second. I think that the instruction to the
3 homeowner was -- and the proposed builder was that
4 they could contact the neighbors. That was, I
5 believe -- as far as I can tell I was the only one
6 contacted.
7 I was informed that they wanted a
8 five-foot setback which in reality is about 12 feet
9 when you -- with porches which is a significant
10 difference. I hope Council will always consider
11 the precedent. In 2010, as you know, you have in
12 records this came up.
13 As you know, in 2004 -- I don't know,
14 Joe, if you can go back to the plot that just shows
15 the angle. Maybe you can see it there -- we asked
16 for a small variance, nothing to do with the
17 critical line but next to that -- next to the
18 Lelands' property so that we could basically square
19 the end of the house and move it far from the end
20 of our neighbors at the left.
21 It was five feet or less. That was
22 denied by the current property owners -- the
23 house has not been sold yet -- on the grounds that
24 would significantly diminish the value on their
25 property. The variances they're asking currently

Page 34

1 are dramatically different than what they asked and
 2 were denied in 2010 at which point the variance
 3 requests to be able to build out of line, which is
 4 a huge concession already.
 5 It was granted, but the other variance
 6 says they're going to be able to ignore the
 7 setbacks were denied on the basis that the house
 8 had a buildable lot as is without any setback,
 9 without any setback variances. So I'm really
 10 concerned as to why this would even -- even be a
 11 question.
 12 This is a flagrantly nonconforming lot.
 13 The reason there was a purpose of the bigger lot, I
 14 mean, whether it's grandfathered in or not it
 15 definitely changes the function. You could have a
 16 fraternity party out there while everyone else gets
 17 a picnic on theirs.
 18 I mean, the activity increases changes.
 19 You've got a lot that is out of line which is a
 20 major concession. You've got a lot that's filled
 21 in with the same thing and a lot this is
 22 essentially under water at very high tides
 23 completely.
 24 So I do not see how this will be
 25 buildable without a concession so that you can go

Page 36

1 big goldbug tree. You couldn't build a 4,000
 2 square-foot house on that lot without destroying
 3 the tree, but it is what it is.
 4 I agree this is a special lot. It is
 5 special because it will be the only one, if not the
 6 only one, that on the backside is surrounded on
 7 three sides by water. Even if you pitched a tent
 8 out there you'd have 270-degree views that no one
 9 else will have, but you also have the restrictions
 10 that come with that.
 11 I think the main premise is that
 12 somehow that living on Sullivan's Island entitles
 13 you to a 3,000 or 4,000 square-foot house, porches
 14 included or not. I don't -- I don't get that.
 15 I mean, why is it that everybody on
 16 Sullivan's -- you know, are we going to say
 17 you've got a 3,000 or 4,000 square-foot house
 18 with -- I lived the first 15 years here in a 1,400
 19 square-foot house and our house was partially
 20 complete and still is much less than 2,000 square
 21 feet.
 22 So I don't understand this kind of
 23 entitlement that we are allowed somehow and if
 24 we're not allowed to build this house, you know, if
 25 we don't get the variance for the second floor that

Page 35

1 up one foot. The comments by the architect I find
 2 quite concerning. Their comment was, we don't want
 3 to build a box. But the variances requested under
 4 the DBA are to eliminate that setback.
 5 If they get the first variance then
 6 they want a second accommodation so that they don't
 7 have to narrow the second story. It doesn't look
 8 very much like a box to me. So I don't know how
 9 many things you have to allow.
 10 I don't know how you ever say no to
 11 anything if we allow it on this lot when we built
 12 and others build knowing we build next to a lot
 13 that was out of line but assuming that a Town would
 14 be consistent in their application of the rules as
 15 they were with us.
 16 We would have loved to have built
 17 closer to the marsh. We would love to have an
 18 extra two months in the sunset. I'm sure the
 19 Poulnots would love -- everyone would love to be
 20 build closer and out of line, but I think it is an
 21 incredibly bold move and a somewhat inconsiderate
 22 attempt even.
 23 This house is buildable as is. You
 24 know, there are other lots that are very unique.
 25 The other night I drove by the Goldbug lot with the

Page 37

1 keeps us from going out even further on the first
 2 floor. Well, the other option is to build the
 3 first floor in line and come up with some creative
 4 design which I'm sure could be done. We told them,
 5 look, we would be happy to downsize.
 6 We would be very -- we would be
 7 thrilled with a lot on Sullivan's Island that was
 8 1,500 square foot and had 270-degree views. That
 9 is not a hardship for anybody.
 10 The house would still sell for
 11 extravagantly more than it ever was purchased for
 12 and I just cannot see where these variances either
 13 are consistent with the past history or protective
 14 of the future of Sullivan's Island.
 15 THE CHAIRMAN: Thank you.
 16 MR. ELLIOTT: Mr. Schutte, can I ask
 17 you a question?
 18 MR. SCHUTTE: Yes.
 19 MR. ELLIOTT: Which is your house?
 20 MR. SCHUTTE: Can you go to the
 21 diagram, Joe? The plat line.
 22 MR. HENDERSON: This house right there.
 23 MR. ELLIOTT: On this plat line?
 24 MR. SCHUTTE: Right. I sent pictures
 25 to Joe where the -- this won't affect the views of

Page 38

1 the -- the building on the east side dramatically
2 affects our views far greater than the variance
3 or -- that we would have affected the value of this
4 property or the earlier variance would have
5 affected our value. This is a major leap forward.
6 MR. ELLIOTT: We've got your pictures.
7 MR. SCHUTTE: Okay.
8 MR. ELLIOTT: Another question.
9 MR. SCHUTTE: You can see on ours --
10 well, you can see on the edge where both of the
11 houses angle. I mean, it's to accommodate the
12 variances, to build within the rules which
13 shouldn't be a stretch anywhere on the island.
14 MR. ELLIOTT: Joe, do we know where the
15 Faith house was that mentioned?
16 MR. HENDERSON: I do not.
17 MR. POULNOT: It is a concrete slab on
18 the -- right where you just had the arrow. Just to
19 the left, the back concrete slab.
20 MR. ELLIOTT: Did you mention that the
21 Faith house was built on a peninsula close by?
22 AUDIENCE MEMBER: Right there. Come
23 west.
24 THE CHAIRMAN: That was Mayor Riley's
25 lot.

Page 40

1 the courts --
2 THE CHAIRMAN: They do.
3 MR. SCHUTTE: -- and so I think that --
4 MR. ELLIOTT: And --
5 MR. SCHUTTE: With respect to those of
6 us that are ruled against to ask to build within
7 the lines and accommodate -- I mean, this is a
8 rectangular lot as-is without any accommodations.
9 MR. ELLIOTT: I think you're right.
10 What boards do in the past is instructive and helps
11 us make a decision. I just want to make it clear
12 it doesn't have to do with what we do but we do
13 look at these decisions in making our own.
14 MR. SCHUTTE: Thank you.
15 THE CHAIRMAN: Thank you. Is there
16 anyone else who would like to speak to these
17 variance requests?
18 MS. UFKES: Yes. My name is Rebecca
19 Ufkes. I live at 3024 Jasper. So I'm basically
20 between Pat and the Wurthmanns and the -- so three
21 lots over from that lot. So I won't reiterate
22 everything that's been said although my husband and
23 I agree with it 100 percent.
24 We have built -- for example, we moved
25 our lot. In the beginning -- and our lot really

Page 39

1 MR. SCHUTTE: I mean, you know, you all
2 drive by this house on Isle of Palms all the time.
3 It sticks out. I mean, it just kind of is what it
4 is.
5 MR. ELLIOTT: Mr. Schutte, I did want
6 to say something. I've been a member of this Board
7 for maybe a year or so and almost every time we
8 have a meeting someone mentions the precedential
9 value of something that happened in the past, some
10 ruling by this previous Board or precedential value
11 of the rules of this Board in the future.
12 The fact is that we're sort of like a
13 trial court here in that we make a decision and
14 then it's not binding on the next trial court, the
15 next Board. Now, if our ruling is appealed to the
16 Circuit Court and they make some decision that's
17 binding on us.
18 MR. SCHUTTE: I understand.
19 MR. ELLIOTT: It is binding on the next
20 board, but what we do here isn't necessarily
21 binding on what some future board does.
22 THE CHAIRMAN: And we do mention that
23 in our motions they are not precedent-setting.
24 MR. SCHUTTE: I understand, but I do
25 know that a number of these issues do end up before

Page 41

1 didn't have the size of the pool. We really wanted
2 a pool. We understood the critical lines. We
3 understood the setbacks. We understood the rules
4 were for a reason.
5 So as a result we did develop a pool
6 where we very creatively went, you know, underneath
7 our house. We stayed within the critical lines.
8 We had to rip up our driveway to get a more
9 permeable surface so we worked in consideration of
10 our neighbors to get what we wanted within the size
11 of the lot that we bought by choice.
12 So I believe that these rules are there
13 for a reason and I believe that keeps everything
14 fair play for all the people who live here. I
15 think that if we're not going to have those rules
16 then -- then why are we doing any of this? I mean
17 it just seems, you know, it's a big charade.
18 So I would hope that you would follow
19 some of the guidelines that were set forth and in
20 consideration for all of us who live there.
21 In addition, lastly the line of site is
22 an issue. You know, if I go out on my porch that
23 structure -- that big, bulky structure will block
24 pretty much half of our view of the bridge. So
25 that's all I have to say. Thank you.

Page 42

1 THE CHAIRMAN: Thank you. Is there
2 anyone else who would like to speak to this
3 variance request?
4 MS. WURTHMANN: I would like to speak.
5 I have a lot of family here. We've been on the
6 island --
7 THE CHAIRMAN: Your name. Your name
8 and address.
9 MS. WURTHMANN: My name is Polly
10 Wurthmann. I live at 2508 Jasper, but I own a lot
11 on the property on the other side of the property
12 we're talking about on the island. In addition, my
13 sister and my mom live very close. They're in the
14 screen or at the top of the screen.
15 My sister built a house following all
16 of the setbacks. It's a 1,300 square-foot home
17 that she's lived in and raised children in and
18 still lives in. She didn't request a variance or
19 any accommodations in order for her home to be
20 bigger.
21 I own two lots side by side, on the
22 creek down from this and they are simply
23 unbuildable together because of the setbacks. So
24 we respect the setbacks and we also respect the
25 decisions you guys made. You have a great

Page 44

1 amount of what is now currently encroaching the
2 OCRM setback area. But what's also important when
3 we look at the dark gray area which is the
4 buildable area and we look at where the proposed
5 house would -- that's not the right one.
6 I need the one that shows the house.
7 We want to show the one with house with this.
8 Okay.
9 So if we see the carrot this small
10 little area over here is where that encroachment
11 is. It amounts to 396 square feet.
12 What that allows and, you know, what
13 really speaks to what everyone in opposition said
14 tonight is it allows the house that's 25 percent
15 smaller than it could be to be built as close to
16 Jasper because without the variance 4,000 square
17 feet can still be built but all that does is push
18 the house exactly where people don't want it to go.
19 So let's just walk through, as
20 Ms. Wurthmann said, respectful of the setbacks.
21 But to be respectful of the setbacks pushes the
22 house to the creek. So by allowing this small
23 variance here it allows a reasonable-sized house.
24 I think it's 3,000 square feet. I have
25 a house that I'm building at 2,714.

Page 43

1 responsibility. I think the architects made a
2 great point of how exceptional and extraordinary
3 their property is because it is out there. It is
4 out there. It is a peninsula.
5 My mom was there when it was built in
6 and we watched it being built in. We knew a home
7 was being built there. I think it would be nice to
8 be respectful of the setback because it is so far
9 out. Thank you for your hard work.
10 THE CHAIRMAN: Thank you. Are there
11 any other comments?
12 (No response.)
13 THE CHAIRMAN: I'll now ask the
14 applicant if he would like to rebut.
15 MR. HELLMAN: Thank you. I think it is
16 important for us to remember what the purpose of
17 the 30-foot setback is. The 30-foot setback is not
18 an Architectural Review Board setback. Its purpose
19 is as set forth in (audible) letter as we discussed
20 for stormwater runoff.
21 Right now there is an over 16 percent
22 encroachment in that -- with the cement pads that
23 would go away and would get reduced to four
24 percent. So technically in allowing this to be
25 built it would actually reduce a pretty substantial

Page 45

1 I live in 1,600 square feet right now
2 on my lot and I can tell you even with a family of
3 three it's a bit tight from time to time. So 3,000
4 square feet in the current context of Sullivan's
5 Island we could probably say is miniscule, but it
6 allows the house to be pushed back.
7 As it relates to the comments about
8 line of site, again, the house is being pushed
9 back. As Mr. Schutte pointed out, it's a
10 flagrantly nonconforming lot. He talked about
11 the view from his dock, but on Mr. Schutte's side
12 there is no variance request.
13 Mr. Schutte actually benefits from the
14 variance request because there is no variance
15 request whatsoever on his side of the property.
16 Now, it is on David Poulnot's side of the property.
17 Again, it's very small. As he talked
18 about as Mr. Poulnot did with his dock on the
19 back the house close to the dock -- this enables
20 again the house to be closer to Jasper. So if we
21 go through everyone's comments, Mr. Poulnot's,
22 Mr. Marr's, and Mr. Schutte's the house is far
23 back.
24 So I think when we talk about the
25 concerns here everyone I think agrees this is an

Page 46

1 extraordinarily exceptional. I think it would be
 2 appropriate for the variance to be granted.
 3 We're not asking for economic hardship.
 4 We're merely trying to build as close to Jasper as
 5 possible and this small variance allows that to
 6 occur. I can answer any further questions you may
 7 have.
 8 MS. BRASHER: I have a question. I
 9 have heard so many people say that this lot is
 10 unbuildable unless you have these variances, but is
 11 that correct?
 12 If you did not have a variance you
 13 could build what size within that right triangle
 14 area that we're talking about?
 15 MR. HELLMAN: So 4,000 square feet
 16 would be allowed to be built in that right triangle
 17 area.
 18 MS. BRASHER: And you're saying it
 19 would jut it out to the point which on the other
 20 sheets which are in gray that would probably block
 21 more of the view?
 22 MR. HELLMAN: Well, it would or it
 23 could. That's not to say that my client would
 24 build that if the variance were granted, but he
 25 may not at all.

Page 48

1 than their neighbors. Now, I'm not an attorney and
 2 I may misunderstand what that means and what we're
 3 all saying is that even a house that's slightly
 4 under 3,100 feet where you propose to put it is an
 5 eyesore.
 6 It's my understanding that all of these
 7 committees on Sullivan's Island and elsewhere
 8 throughout the country exist to protect the
 9 Wurthmanns, the Poulnots and others from having
 10 their values, the enjoyment, and the posterity of
 11 their property from being affected.
 12 So, Brian, one day you and I are going
 13 to be the same side of an issue, maybe another
 14 issue with the Town. But I'm afraid I have to
 15 object again to your latest proposal.
 16 THE CHAIRMAN: I'm going to clarify
 17 something. There are two variances under
 18 consideration.
 19 MR. POULNOT: Right.
 20 THE CHAIRMAN: This property has
 21 already received in the past a variance from 21-23
 22 E (1) B which is the build-to line. If this Board
 23 does not grant such a variance that lot does become
 24 unbuildable completely. Now, we will be taking
 25 this in two separate motions.

Page 47

1 Who knows what the next person would --
 2 if the variance can't be granted and this is the
 3 buildable area. So we're basically -- if you look
 4 at the line in these plans the house that my client
 5 is proposing stops basically right at this line
 6 right here. That's where the house stops, but this
 7 is all lawfully buildable area out here.
 8 The house is stopping right there. So,
 9 again, it's basically just compressing. It widens
 10 but compresses. If we again look at this light
 11 gray area that's where if we were like all of the
 12 other people that spoke tonight that had -- that
 13 had lots that aren't exceptionally extraordinarily
 14 that don't have this situation the light gray is
 15 where they can build.
 16 This lot cannot -- with the marsh on
 17 either side that's where it can be built and the
 18 house fits well within. It's well within that. So
 19 I hope that helps. Does that answer your question?
 20 THE CHAIRMAN: Mr. Poulnot, I'm going
 21 to allow you to make a statement.
 22 MR. POULNOT: Well, actually, Brian if
 23 you tried to build a 4,000 square foot house out
 24 further then I would object to that variance being
 25 granted allowing you to build closer to the marsh

Page 49

1 We're going to discuss the build-to
 2 first because we have to grant that variance before
 3 we consider granting another one. So this is going
 4 to be done in two parts.
 5 I have every hope and I'll state it for
 6 the record that I'm going to support immediately a
 7 variance from 21-23 E (1) B so if this lot is built
 8 we will then move to a discussion of 2123 E (1) A
 9 which is the 396 square-foot variance into the
 10 setback which replaces -- I don't know -- a 1,200
 11 square foot encroachment that's already there
 12 that's going to be removed. So we're going to do
 13 this in two parts.
 14 MR. HELLMAN: And if I may add to what
 15 Mr. Poulnot said, certainly my client doesn't
 16 intend to build anything farther back than what
 17 their proposal said.
 18 Perhaps one way this Board could
 19 address this concern is that if the variance were
 20 to be granted to allow the 396-foot buffer that a
 21 condition this Board could put on that is that
 22 given the what sight plan is proposed that we would
 23 have to come back the Board.
 24 I think that would -- that includes
 25 what we've got in there already. We show in our

Page 50

1 site plan everything we are proposing to build to
2 the carrot and --
3 THE CHAIRMAN: We will definitely make
4 that a condition of the variance, should it be
5 granted.
6 MR. HENDERSON: A condition of the
7 variance, removal of the design elements as well.
8 MR. HELLMAN: So what I was saying is
9 that in theory you could grant this variance and my
10 client could still come back and build all the way
11 to the tip of the carrot after the fact.
12 So what I'm saying is we have in our
13 site plan the house that you see that shows an
14 inground pool in front of that, correct? Then
15 beyond that it stops and it's landscaped. The
16 Board can address that because what I really hear
17 as a concern is something being built closer to
18 concrete. Thank you.
19 THE CHAIRMAN: Mr. Marr.
20 MR. MARR: But where the concrete is,
21 how high is -- I don't everybody think it's
22 buildable. It's not an issue. They say they're
23 giving up this and doing that for stormwater. I
24 mean, the question --
25 THE CHAIRMAN: That's the purpose of

Page 52

1 THE CHAIRMAN: If it's inground I don't
2 think that --
3 MS. CAMPBELL: It is inground.
4 THE CHAIRMAN: -- would. Not
5 with inground. Are there any other comments?
6 Mr. Schutte. Then we're going to close public
7 comment because we need to get on to the
8 deliberations.
9 MR. SCHUTTE: I think the comment that
10 the current structure does not affect line of sight
11 and does not affect us is just simply inaccurate.
12 You have the (inaudible) and it is
13 simply -- it significantly -- it is a significant
14 disadvantage much less than the variance that we
15 requested 12 or some years ago to the (inaudible)
16 property value. That was the basis for not
17 granting that variance was that it (inaudible) the
18 value of the lot.
19 Secondly, I don't know what the
20 purpose of the OCRM setbacks are but whether it's
21 for stormwater or this line of site it certainly
22 serves both purposes, particularly in a triangular
23 build-out lot.
24 Without those variances whether they
25 affect stormwater runoff or not I can promise you

Page 51

1 the OCRM with setbacks.
2 MR. MARR: Right so you know on DRB
3 with the principal building coverage they're saying
4 3,068 square feet. The principal building square
5 footage is 3,900 feet. What are the difference
6 between the two? Can somebody explain to us what
7 the difference is.
8 MR. HENDERSON: The principal building
9 coverage is the heated -- the footprint of the
10 heated square footage; so from above what that
11 footprint is. The principal building square
12 footage is the entirety of all the heated space of
13 all floors combined.
14 MR. MARR: So it's really 3,100 feet,
15 but it's not. It's close to 4,000 feet. It is not
16 a hardship.
17 MR. HELLMAN: Just to clarify my last
18 comment about what was built, there is -- in the
19 site plan there is a pool. I understand the
20 current dimensions before the Design Review Board
21 are slightly longer and narrower than what's being
22 proposed than in the site plan that's here.
23 So we would probably want what's before
24 the DRB -- is that right -- to be what the pool
25 dimensions would be.

Page 53

1 everybody up and down the creek would rather have
2 the concrete slab than something 40 feet high. It
3 is not even close.
4 THE CHAIRMAN: When we -- we'll talk
5 about lines of sight when we deliberate. I am
6 going to close public comment so that the Board --
7 excuse me -- so that the Board can discuss -- if
8 you have something urgent you can raise your hand,
9 Mr. Reese.
10 MR. REESE: Yes. Tim Reese (inaudible)
11 and I don't have a dog in this fight but just
12 looking at it I think you've got to be careful on
13 the high ground that's here with the critical line
14 because of the quote, unquote neck of the carrot.
15 You've got to have a certain width in order to
16 build the house.
17 So a lot of the area they can say is
18 buildable, but it's not. If you look where the
19 pool is there's no -- there's no dimensions on
20 there except how wide that area is. I think if you
21 look at where that line is right now on the house
22 is probably about as far as you could build anyway.
23 Based on the width of a home you're not
24 going to build a five-foot wide -- you can't. So
25 that's what I'm saying. Not all that is usable

Page 54

1 even though they're saying it is usable. I don't
2 know if there's any -- again, I taught this before.
3 I don't know if there's anything in y'all's
4 purview.
5 If you look at that 25-foot -- and it
6 is called the -- I guess the rear setback. If you
7 look at it I don't know if there's anything you can
8 do there or if that can be pushed back in a
9 variance there on the backside. Then the whole
10 doggone thing would fit in there almost. I don't
11 know.
12 THE CHAIRMAN: It also would impact the
13 neighbor's property. They have a property line
14 that --
15 MR. REESE: That's not --
16 THE CHAIRMAN: That's not what's under
17 consideration. Yes, sir. Then that is the last
18 comment.
19 MR. INABINET: George Inabinet. I live
20 next door to the next to the Schuttes and I also
21 have a lot that's in front of the Schuttes and I
22 would like to say that I support the homeowners.
23 THE CHAIRMAN: You support which side?
24 MR. INABINET: The homeowners. The
25 Schuttes, Wurthmanns, and --

Page 56

1 Could you maximize the full 3,945 in
2 that footprint?
3 MS. CAMPBELL: The buildable area, the
4 footprint of this area, is about 23. It's just
5 over 2,300 square feet.
6 So, I mean, if you did a one-story
7 house with 2,300 and two-story house with 4,600
8 square feet. The DRB allows 39 -- over 30 is
9 (inaudible) but 3,945 total heated square footage
10 and then they also can grant a 25 percent variance
11 on top of that. That's just base zoning.
12 MR. HENDERSON: And can you maximum all
13 of that square footage under the 38 feet from
14 grade?
15 MS. CAMPBELL: Correct.
16 MR. HENDERSON: So we're talking about
17 a very irregularly designed home.
18 MS. CAMPBELL: Correct.
19 MR. HENDERSON: Straight walls. A big
20 carrot.
21 THE CHAIRMAN: That would be closer to
22 the 30.
23 MS. CAMPBELL: And also closer or
24 further out towards the water.
25 MR. HENDERSON: So -- but I haven't

Page 55

1 THE CHAIRMAN: Thank you.
2 MR. INABINET: The Poulnots.
3 THE CHAIRMAN: Thank you. Public
4 comment is now closed and we will begin
5 deliberations.
6 MS. LATHAM: I have a question for Joe.
7 MR. HENDERSON: Yes.
8 MS. LATHAM: Without the setback how
9 big a house -- I know you said in the initial
10 package, but what is the size of the house that
11 could be built without any variance other than the
12 build-to line?
13 MR. HENDERSON: I'm not entirely sure.
14 The proposed is just over 3,100. Is that correct?
15 THE CHAIRMAN: I think it was 4,000.
16 MS. LATHAM: So theoretically without
17 it you could still get the 2,400 square-foot house
18 without the 396 feet, correct?
19 MR. HENDERSON: I think you're asking
20 within that building footprint without any relief
21 from this Board if granted what is the maximum you
22 could design within that footprint.
23 MS. LATHAM: Correct.
24 MR. HENDERSON: Is that right?
25 Have you calculated that?

Page 57

1 seen any figures. They haven't designed anything
2 that would maximize that.
3 THE CHAIRMAN: We'll start discussion.
4 In the microphones, please.
5 MS. BRASHER: As a point of reference,
6 is it correct that the minimum size house that is
7 permissible to be built is 1,000 square feet?
8 MR. HENDERSON: That's correct.
9 MS. BRASHER: Because we keep talking
10 about the larger so just to give us a frame of
11 reference that's -- I just wanted to make sure that
12 was covered.
13 MR. ELLIOTT: Joe, let me make sure I'm
14 clear. The staff's position is that without any
15 variance it is unbuildable, the lot?
16 MR. HENDERSON: Without either one,
17 yes, sir. Without a variance to the build-to
18 provision.
19 THE CHAIRMAN: Would y'all like to take
20 up the -- let's talk about the build-to variance
21 request.
22 MR. ELLIOTT: I haven't heard anything
23 that indicates that if we don't grant 21-23 E (1) B
24 that we wouldn't effectively prohibit or reasonably
25 restrict the (inaudible).

Page 58

1 THE CHAIRMAN: That's quite clear to
2 me. What are y'all's feelings? We're just going
3 to talk about the build-to provision. That's the
4 variance that has been granted before on this lot
5 but expired because there was nothing built.
6 If we don't grant that variance they
7 would not be able to build anything on the lot. So
8 we have had this before where a lot would be
9 rendered unbuildable should this particular
10 variance not be granted. That's why I'm suggesting
11 we take this in two parts.
12 So if anybody would care to make a
13 motion or have a discussion about that only --
14 MR. RICHARDSON: I just have a question
15 for Joe.
16 MR. HENDERSON: Sure.
17 MR. RICHARDSON: So if you have a
18 platted lot you have to legally be able to build on
19 it, correct?
20 MR. HENDERSON: If you have a
21 platted lot on road frontage then, yes. Most of
22 the lots on Sullivan's Island are buildable lots.
23 However, there are several or a handful of parcels
24 that are platted that don't have any access
25 to utilities or road frontage. Those, of course,

Page 60

1 THE CHAIRMAN: We're not --
2 MS. BRASHER: -- with flooding --
3 THE CHAIRMAN: But we're not talking
4 about the OCRM. We're talking about the build-to
5 line. That's a completely different issue.
6 MS. BRASHER: Thank you.
7 MR. ELLIOTT: The question we have to
8 decide is if we don't grant 21-23 E (1) B are we
9 unreasonably restricting it? It's not an absolute.
10 In our minds do we conclude if we don't grant that
11 we are unreasonably restricting the utilization?
12 To me (inaudible)
13 MR. HELLMAN: Could we (inaudible)
14 THE CHAIRMAN: We have to --
15 MR. HENDERSON: You really have to lean
16 into those microphones.
17 MR. KOEPKE: Yes. I think it would be
18 unreasonable. I think this is a property that has
19 been there, that is there, and they should have a
20 right to build the property.
21 MR. RICHARDSON: So James gets to make
22 the motion.
23 THE CHAIRMAN: Yes. James get to make
24 the motion.
25 MR. ELLIOTT: Okay. I will move

Page 59

1 are not buildable.
2 THE CHAIRMAN: Those are owned by the
3 Town?
4 MR. HENDERSON: There are some owned by
5 the Town. There are some privately owned as well.
6 MS. LATHAM: This has utilities in it
7 and obviously it has --
8 THE CHAIRMAN: The house, yes.
9 MS. LATHAM: It obviously has
10 utilities. So --
11 MR. HENDERSON: Uh-huh. It has road
12 frontage and access. So --
13 MS. LATHAM: I don't have an issue with
14 that variance as -- without granting that you
15 cannot use the lot for the purpose for which it was
16 intended.
17 THE CHAIRMAN: Correct.
18 MS. LATHAM: So for that portion I
19 can't see the -- any reason not to grant it.
20 THE CHAIRMAN: Thank you. Is everybody
21 in agreement?
22 MR. RICHARDSON: Yes.
23 MS. BRASHER: Maybe there's a reason
24 why some lots are not buildable. Maybe the OCRM
25 line is important because --

Page 61

1 that -- well, we have held the hearing. We
2 have considered the appeal for a variance.
3 On 2123 E (1) B and after consideration
4 of the evidence and the arguments presented I would
5 move that the Board has concluded the applicant has
6 an unnecessary hardship and extraordinary and
7 exceptional conditions pertaining to the particular
8 piece of property because without that variance use
9 of the property is unreasonable restricted.
10 We conclude that these conditions do
11 apply -- do not apply to other property in the
12 vicinity, that the application of the ordinance to
13 the particular piece of property would effectively
14 prohibit or unreasonably restrict utilization of
15 the property in that the variance will give
16 substantial detriment to the -- will not give
17 substantial detriment to the adjacent property but
18 the building and the character of the district will
19 not be harmed by this variance. I so move.
20 THE CHAIRMAN: Is there a second?
21 MS. LATHAM: I second.
22 THE CHAIRMAN: Any further discussion?
23 All in favor signify by saying aye.
24 (Board members stated aye.)
25 THE CHAIRMAN: Like sign opposed.

Page 62

1 (No response.)
2 THE CHAIRMAN: The request for variance
3 to 21-23 E (1) B, the build-to provision, is
4 granted for 2829 Jasper Boulevard, BZA Case Number
5 2017-4.
6 Now we shall move onto deliberation of
7 the second variance request which is for a variance
8 under 21-23 E (1) A.
9 MR. ELLIOTT: Well, you know I've
10 listened to the evidence from the moving party and
11 from the opposition and I could be convinced
12 otherwise but so far I don't think I've heard the
13 evidence, that, you know, the condition of this
14 piece of property would be effectively prohibited
15 or unreasonably -- excuse me.
16 If we don't grant the variance I
17 don't see that the use of the property would be
18 unreasonably prohibitive or effectively --
19 unreasonable restrictive. I don't know if you guys
20 have anything.
21 MS. LATHAM: My issue is that we're
22 talking about a variance of -- of 396 square feet
23 and it is (inaudible) and you're trying to make
24 this argument that you cannot design a house that
25 would -- that would be somewhat proportionately

Page 64

1 structurally impossible. It just -- there are
2 other considerations with the ordinance with regard
3 to design that it limits -- it would limit what we
4 can do to meet the other portions of the ordinance
5 in terms of massing. You know, there's a
6 requirement for the length of wall.
7 There's a requirement for, you know,
8 different massing and architectural standards that
9 are also in support of this. So it is kind of --
10 we're trying to address as much as we can.
11 THE CHAIRMAN: What is the width of the
12 house on the creek side --
13 MS. CAMPBELL: It is --
14 THE CHAIRMAN: -- as currently
15 designed?
16 MS. CAMPBELL: It is about 16 feet
17 THE CHAIRMAN: So it would go to 11?
18 MS. CAMPBELL: Pardon?
19 THE CHAIRMAN: So it would go to 11 for
20 the five feet and --
21 MS. CAMPBELL: Potentially, and that
22 five feet also -- I mean, you have stairs and
23 elevator. So it would potentially push it out and
24 skinnier if that makes sense --
25 THE CHAIRMAN: Yes.

Page 63

1 reduced in size to fit essentially where you've
2 got that within the existing variance.
3 You're really -- you're saying that
4 that's not structurally possible is sort of how I
5 took it. You're saying, well, I couldn't do it
6 without building restrictions.
7 Well, can't you just reduce the width
8 of the building by five feet? I mean, the
9 proportions could be the same if generally you're
10 losing 800 square feet. I mean, it is still
11 greater than the 2,400 square feet that Sullivan's
12 Island says is a reasonable house for a lot on the
13 island.
14 So I guess my question is: Are you, in
15 fact, saying you couldn't reduce the size of the
16 house?
17 MR. HENDERSON: It's an academic
18 question.
19 MS. LATHAM: Basically, how I heard the
20 presentation from the architect was that if the
21 house wasn't at least this wide it was structurally
22 impossible to make it not sort of like a box and to
23 me that just doesn't make sense.
24 MR. HELLMAN: Well, I --
25 MS. CAMPBELL: I think it wasn't

Page 65

1 MS. CAMPBELL: -- because where you
2 come in you may have to go out if --
3 THE CHAIRMAN: I get you.
4 MS. CAMPBELL: Did I answer your
5 question?
6 THE CHAIRMAN: The audience is asked
7 not to talk to each other.
8 MR. MARR: Do we need to rebut? Do we
9 get to rebut?
10 THE CHAIRMAN: Rebut the architects?
11 MR. MARR: Rebut the --
12 THE CHAIRMAN: I asked a question of
13 the architect and she answered it. I don't think
14 the rebuttal is allowed. She's the one that drew
15 plans.
16 MR. SCHUTTE: But the comments are
17 all about the box and that's the one that's
18 proposing --
19 THE CHAIRMAN: Thank you. Public
20 comment is closed. We asked a question of the
21 architect. Her answer is not up for debate.
22 The reason that I am leaning toward the
23 variance is because if it's not granted and they
24 need to use the full buildable carrot that brings
25 the house closer to the creek, which is something

Page 66

1 that the neighbors do not want. The setback on the
 2 rear -- on the front is 25 feet, correct?
 3 MR. HENDERSON: On the Marshall -- I
 4 mean on the Jasper Boulevard side, yes.
 5 THE CHAIRMAN: Yes, because that's
 6 called the front.
 7 MR. HENDERSON: That's correct.
 8 THE CHAIRMAN: So they're not
 9 requesting a variance in that setback. That would
 10 affect Mr. Schutte's lot as well. The variance is
 11 possibly on the Poulnot's land side.
 12 MR. ELLIOTT: How much -- how wide is
 13 the little carrot toward the creek?
 14 Could you actually built anything on
 15 that?
 16 THE CHAIRMAN: I think they can put a
 17 deck there. They could put a porch there because
 18 the width of the house right there is 16 feet. So
 19 that's probably at that point --
 20 MR. HENDERSON: Maybe five to eight
 21 feet.
 22 THE CHAIRMAN: Just -- yeah. So, I
 23 mean, they could -- they could technically -- and
 24 it narrows here. They could build a deck all the
 25 way out.

Page 68

1 can't hear you.
 2 THE CHAIRMAN: Make sure it is on.
 3 MS. BRASHER: In essence I agree with
 4 my colleague.
 5 MR. RICHARDSON: I would go ahead and
 6 say the same.
 7 MR. ELLIOTT: I'm going to make a
 8 motion that the Board denies --
 9 MR. HELLMAN: Before there's -- before
 10 there's any action -- I'm sorry.
 11 THE CHAIRMAN: Excuse me.
 12 AUDIENCE MEMBER: It's not appropriate
 13 that --
 14 THE CHAIRMAN: Excuse me. Would
 15 everybody please sit down. Outbursts are not
 16 allowed. This is a quasi-judicial board.
 17 MR. HENDERSON: If I could approach and
 18 show you --
 19 THE CHAIRMAN: Thank you.
 20 MR. HENDERSON: -- the BZA bylaws here.
 21 So here in Article 3 we have a finding to withdraw
 22 the appeal.
 23 MR. ELLIOTT: I'm sorry. Where are we?
 24 MR. HENDERSON: The applicants are
 25 requesting to withdraw. That references an appeal,

Page 67

1 MR. ELLIOTT: I come back at it from
 2 this perspective. We've granted the 23-21 B, so
 3 the next question is if we deny the 23-21 (E) 1 A
 4 would their property be effectively prohibited from
 5 the use or unreasonably restricted? I just don't
 6 see that.
 7 I don't see where they satisfy Number 3
 8 to get that variance. I mean, I guess they can
 9 build a porch if they want with a deck on it and
 10 the variance was given and I guess that's their
 11 right. But leaving them with what they have does
 12 not effectively prohibit or unreasonably restrict
 13 the use of the property in my mind.
 14 MS. BRASHER: I think if something
 15 (inaudible) --
 16 THE COURT REPORTER: I'm sorry. I
 17 can't hear.
 18 MS. BRASHER: (Inaudible.)
 19 THE CHAIRMAN: (Inaudible) and talk
 20 into the mic, please.
 21 MS. BRASHER: I think if the architect
 22 is to create something beautiful in the space
 23 allowed (inaudible) and I would have to agree with
 24 you (inaudible).
 25 THE COURT REPORTER: I'm sorry. I

Page 69

1 but it doesn't say anything about a variance. I
 2 think that he has to request that from --
 3 MR. ELLIOTT: It says an appeal or
 4 application may be withdrawn by written -- hold on.
 5 (Board members and Zoning Administrator
 6 confer off the record.)
 7 MR. HENDERSON: We're just having a
 8 discussion about the by-laws for the BZA. There is
 9 a request to withdraw the application. We need to
 10 see procedurally how we can actually handle that.
 11 (Board members and Zoning Administrator
 12 confer off the record.)
 13 THE CHAIRMAN: Okay. The applicant has
 14 submitted a written request delivered to the Zoning
 15 Administrator to withdraw the variance request for
 16 21-23 E (1) A. Our rules of procedure allow such
 17 withdrawal and the withdrawal is granted.
 18 MR. HELLMAN: Thank you.
 19 THE CHAIRMAN: I ask for quiet, please.
 20 We're going to move to the next item on our agenda.
 21 I'm asking for quiet, please.
 22 2880 MARSHALL BOULEVARD
 23 MR. HENDERSON: Okay. The next item
 24 on our agenda is an administrative appeal of
 25 2880 Marshall Boulevard. Joe, will you please

Page 70

1 present for the Town.
 2 MR. HENDERSON: Yes. Thank you,
 3 members of the Board. Okay. The is Agenda Item
 4 F-1. This is an administrative appeal for a
 5 property located at 2880 Marshall Boulevard. The
 6 applicant is Ms. Mary Decker Mulbry.
 7 She is requesting an appeal of Zoning
 8 Ordinance Section 21-123 B. This is from a section
 9 of the ordinance pertaining to vacation rentals.
 10 The Town staff decision was registered here
 11 recently regarding that address.
 12 Just to give you a little background on
 13 this issue in January of this year our Town staff
 14 was approached by Carroll Realty, the real estate
 15 company contracted for Ms. Mulbry to handle the
 16 property management of 2880 Marshall Boulevard.
 17 They inquired about establishing the
 18 vacation rental license for the property which they
 19 have had in years past. Upon getting this request
 20 Town staff looked into the records of Town Hall and
 21 discovered that they had not had the vacation
 22 rental license since 2013, that the Town had not
 23 issued it in 2014, 2015 and 2016.
 24 Upon finding this information out I
 25 denied the request to reestablish the vacation

Page 72

1 their nonconforming status which led to my decision
 2 under 21-123 B. That is the suspension,
 3 revocation, or abandonment of the termination for
 4 this property.
 5 So in order to be issued a certificate
 6 of zoning compliance you have to have a business
 7 license. If you don't have a business license and
 8 no certificate of zoning compliance then you have
 9 abandoned your use or your legal nonconforming use
 10 and you've lost your status.
 11 Furthermore, when presented with
 12 information related to 2880 Marshall Boulevard the
 13 property owners mentioned that they have continued
 14 to rent short term and long term at this property.
 15 It is further defined under 21-124 under the
 16 violations that this is a misdemeanor offense.
 17 For every day you're in violation of
 18 the zoning ordinance that's a criminal offense. So
 19 we required them to cease and desist all rental
 20 activity until we could determine how to rule or
 21 review what's been happening on this property.
 22 So with that I'll yield to the Board
 23 for any questions and turn it over to the
 24 applicant's presentation.
 25 THE CHAIRMAN: All right. Any

Page 71

1 rental license and that's based upon several
 2 sections of Article 13 of the zoning ordinance. So
 3 just to explain this section of the ordinance, this
 4 is a separate and distinct chapter of the zoning
 5 ordinance and it addresses about 50 or so legal
 6 nonconforming vacation rentals that we have on the
 7 island.
 8 So we recognized these grandfathered
 9 or nonconforming uses and allowed them to continue
 10 to their nonconforming status provided they meet
 11 certain conditions to operate that use. So first
 12 they need to have a certificate of zoning
 13 compliance. Then they need to have a business
 14 license issued every year.
 15 So based upon these facts and these
 16 requirements of the vacation rental staff took the
 17 interpretation that I have that in front of you on
 18 the screens. 21-119 B determines that every
 19 vacation rental has to have a business license for
 20 the previous calendar year and we determined that
 21 they didn't have one in 2014, '15 or '16.
 22 So in order to be issued a certificate
 23 of zoning compliance which is required under
 24 21-20 A they have to comply with 21-119. So if
 25 they do not file a business license then they lose

Page 73

1 questions for Joe before the applicant presents?
 2 The applicant can go ahead and present.
 3 MR. RICHARDSON: So were there rents,
 4 Joe, in 2014, '15, and '16?
 5 THE CHAIRMAN: Yes.
 6 MR. HENDERSON: Yes, sir. We inquired
 7 about what kind of rental activity or residential
 8 activity has been going on. We were provided with
 9 receipts and revenue generated over the three-year
 10 period from Carroll Realty and that's under
 11 investigation by the Town staff and the zoning.
 12 MS. LATHAM: Were the property taxes
 13 paid out of that of a vacation rental or were they
 14 the standard resident property taxes?
 15 MR. HENDERSON: From what I've been
 16 told by Counsel, by Ms. Mulbry's counsel, she has
 17 paid taxes --
 18 MR. APPEL: That's right.
 19 MR. HENDERSON: -- on the revenue
 20 generated for vacation rental and long term rental
 21 as well.
 22 THE CHAIRMAN: Well, six percent or
 23 four percent? I mean, she's --
 24 MR. HENDERSON: It would be six
 25 percent, but we haven't -- I don't think we have

Page 74

1 received any of that documentation or any research
 2 to find out how they have paid their taxes.
 3 THE CHAIRMAN: Go ahead and proceed.
 4 MR. APPEL: Hello, everybody. My
 5 name is Ross Appel. I'm with the law firm of
 6 McCullough Khan in Charleston. I'm on the City
 7 of Charleston's Board of Zoning Appeals; so I can
 8 totally relate how it feels to be last on the
 9 agenda.
 10 I'll do my best to try to cut to the
 11 chase here and try to do our best to explain the
 12 position we find ourselves in. We regret that we
 13 find ourselves in this position. It is an
 14 unfortunate situation that we are in right now.
 15 Joe has been nothing but
 16 professional and courteous with us as we have
 17 been attempting to work through this process. We
 18 understand that everyone has a job to do.
 19 Joe has interpreted the ordinance
 20 the way he sees it and we are here today to just
 21 provide an alternative view that we believe would
 22 allow us to continue the lawful nonconforming
 23 vacation rental use that the Mulbrys, my clients,
 24 have been performing at the property since the
 25 late '90s.

Page 76

1 with for a number of years who had filed this
 2 paperwork for them in the past. And, you know, my
 3 clients were proceeding as if there was no problem
 4 because they had been told there was no problem.
 5 They were not notified in 2014, 2015,
 6 and 2016 that there was a problem. Had they been
 7 notified that there was a problem we would have
 8 gotten involved with this much, much sooner and we
 9 wouldn't have had as much time on the problem.
 10 So that's a little bit of our
 11 background. One of the things I requested the
 12 Town to provide and they have been so gracious to
 13 provide this is an itemization of what it would
 14 cost for a business license, retroactively from
 15 2014, 2015, 2016.
 16 That is based upon the rental
 17 information that we have submitted to show that
 18 there were ongoing rentals during this period of
 19 time under the good faith, reasonable view that all
 20 the paperwork had been taken care of. The bottom
 21 line is it would take \$14,264.22 to bring the
 22 property back in to good standing and that's
 23 including penalties and interest.
 24 I've got the check here right now for
 25 that amount and I say that because my clients stand

Page 75

1 They purchased the property in 1998.
 2 They have been renting the property occasionally on
 3 a short-term basis ever since that time period.
 4 Can y'all here me okay? Okay. That really strikes
 5 at the heart of some of our legal issues that we
 6 have here.
 7 I want to just get a couple of
 8 housekeeping items out of the way. Number one,
 9 they have been exemplary participants. Other than
 10 this paperwork issue we're going to talk about they
 11 have never been written up for any type of noise
 12 violation, trash, or any kind of thing that you
 13 could imagine that would anger the neighbors.
 14 From my understanding the neighbors
 15 are fully supportive of this continuation of use.
 16 Unfortunately, the first time Ms. Mulbry or
 17 Dr. Mulbry and her husband were informed of this
 18 problem was in January of this year.
 19 Like many folks on the island and like
 20 many busy professionals, we delegate certain
 21 responsibilities to other people to take care of
 22 tasks, especially difficult tasks like completing
 23 this application yearly.
 24 In this case that responsibility fell
 25 on Carroll Realty who my clients have contracted

Page 77

1 ready, willing, and able to accept full
 2 responsibility for paying everything that they owe
 3 the Town.
 4 They are not trying to skirt the
 5 requirements of the Town. They paid their business
 6 license for 2000, 2001, and all the way up to 2013.
 7 We want to be good neighbors. We want to be good
 8 citizens of the Town of Sullivan's Island.
 9 So that is the background. Again, it
 10 is unfortunate we find ourselves in this situation.
 11 Now, I'm going to do the lawyer thing and get into
 12 some of the legal issues.
 13 I have had a chance to familiarize
 14 myself with the vacation rental ordinance, a lot of
 15 moving parts, but I really want to drill in on this
 16 one word that I really think is absolutely critical
 17 to the resolution of this case and that is the term
 18 abandonment.
 19 The e-mail correspondence from the
 20 Town's Zoning Administrator indicates the denial on
 21 is on the basis that the use had been quote,
 22 unquote, abandoned and our central legal argument
 23 is here is that the vacation rental use has never
 24 been abandoned. The vacation rental use has
 25 continued uninterrupted from 1998 until Joe told us

Page 78

1 to stop and we have stopped since then, January of
2 2017.

3 So if you go to vacation rentals
4 ordinance and you look at 21-123 B that is the
5 section that's cited in Joe's e-mails stating why
6 the Town would not accept this application for
7 2017. The vacation rental ordinance does not
8 define the word abandonment.

9 It doesn't define the word abandonment.
10 So what do we do when something is not defined in
11 the particular ordinance? We look at the real
12 ordinance itself too gain clarity as to what
13 abandon means.

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

19 THE CHAIRMAN: No. We have it.
20 MR. APPEL: I've got a copy here. I
21 can refer you to the page so you can all follow
22 along here. It starts on Page 3 of 5 at the
23 bottom.

24 Before we got into this, this section
25 is the governing criteria relevant to this case

Page 80

1 Criteria D, this gets into equipment
2 and furnishings being moved. This is like a
3 restaurant burning down. This is nonconforming use
4 of a restaurant. You can't -- you can't restart a
5 restaurant if it hasn't been replaced within 90
6 days.

7 Subsection E: The nonconforming use
8 has been replaced by now a conforming use. That's
9 not what we have here. Subsection F talks about
10 certificates of zoning compliance, but it does so
11 in a very specific context.

12 It does so in the context of a
13 situation which is the most common situation when
14 you're talking about abandonment and nonconforming
15 uses; that is when Hurricane Hugo comes through or
16 a fire comes through or termites come through where
17 there's actually been destruction of the structure
18 and there's the need to quickly establish that
19 structure in order to obtain and lock in that
20 lawful nonconforming use status.

21 These six criteria we just talked
22 about, those are the only rules in the Sullivan's
23 Island Zoning Code in the failure to abandon.
24 Failure to pay business licenses or failure to
25 obtain certificates of zoning requirements may be

Page 79

1 because the vacation rental ordinance at 21-117
2 states that, quote, all illegally established
3 vacation rentals are interpreted to be
4 nonconforming uses.

5 So turning back to 21-150 E this is the
6 section that defines, quote, abandonment of a
7 nonconforming use. And it goes on to say: A
8 nonconforming use shall be considered abandoned
9 when any of the following occur. It lists out two,
10 four, six separate criteria.

11 The first criteria we would argue has
12 not been established here and that is the one that
13 is the most consistent with South Carolina Supreme
14 Court case law on the issue of abandonment and
15 nonconforming uses; that is that there has been an
16 intent to discontinue the use which is apparent.

17 As I mentioned before, there is no
18 intent by Dr. Mulbry and her husband to discontinue
19 this vacation rental use. It has persisted since
20 1998.

21 The rest of the criteria have similarly
22 not been met. B: The use has been discontinued
23 for a period 20 months or more, that hasn't been
24 met. Criteria C: A demolition permit has been
25 applied for. That hasn't been satisfied.

Page 81

1 something. It may be that you have failed to do
2 something and that that is wrongful, but it's not
3 abandonment. It is not abandonment.

4 Abandonment is key because abandonment
5 is the grounds by which the decision was made to
6 not accept this application until 2017.

7 That is consistent with the case law on
8 nonconforming uses because this is one of the few
9 areas where the South Carolina appellate courts
10 have actually stepped in and opined on a zoning law
11 because when folks have been conducting the use for
12 a period of time and then a zoning regulation comes
13 in on top and seeks to stop that use there's a
14 balance there.

15 There's a balance between private
16 property rights, private property interests, and
17 the Town's legitimate, you know, desire to regulate
18 for the benefit of the health, welfare, safety,
19 et cetera of everybody else.

20 So I think that we've established that
21 there hasn't been an abandonment of the property.
22 We have not lost our nonconforming use status.

23 There's a check on this desk right now
24 for \$14,000 and change. We are ready to get back
25 into full compliance with the Town and never let

Page 82

1 this happen again and do everything we can to
2 prevent this from happening.
3 There is another section of the memo
4 that I would like to discuss. We're getting
5 admittedly a bit into the weeds here on the
6 ordinance, but I would beg your indulgence. I'm
7 getting to the end.
8 Y'all have got a beautiful vacation
9 rental ordinance. It has been crafted to try and
10 address a very difficult situation. I'm sure it
11 was an unbelievable sight to see this passed when
12 it was passed in 2001 or whatever the case may
13 be. As comprehensive as it is there is nowhere in
14 this ordinance that says that a business license or
15 a certificate of zoning -- I forget what --
16 THE CHAIRMAN: Certificate --
17 MR. APPEL: Certificate of zoning
18 compliance has to be obtained in the year that it's
19 required. If you look at Section 21-118 F it says,
20 quote, a certificate of zoning compliance shall be
21 obtained for each calendar year. For.
22 The word for is used, not the word in.
23 For I would submit does not have a temporal
24 component whereas in does have a temporal
25 component. The same language is used in 21-119 B

Page 84

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.

Page 83

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

Page 85

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

Page 86

1 Section 21-19 have not been met, i.e. the issuance
 2 of a business license in the previous calendar
 3 year, then the Zoning Administrator shall deny the
 4 applicant the certificate of zoning compliance.
 5 If they don't have a certificate of
 6 zoning compliance then that use -- that's what
 7 establishes your right to use your property in a
 8 certain way.
 9 If they don't have that certificate
 10 from the Town saying, you may continue this
 11 nonconforming use then the status is --
 12 MR. ELLIOTT: Joe, is what you've
 13 highlighted for us Section 21-20? I'm looking at
 14 the actual document.
 15 MR. HENDERSON: The highlighted
 16 document in front of you.
 17 MR. ELLIOTT: You have -- you
 18 summarized 120-A. I'm sorry. Let me back up. In
 19 21-119 B you have summarized it --
 20 MR. HENDERSON: Yes. That's correct.
 21 MR. ELLIOTT: -- and 119 has one
 22 through A under B and 1 through 11 under B.
 23 MR. HENDERSON: That's right. I should
 24 have said -- yeah, B-1. That's what I was
 25 referring to. In B 1 it states the Sullivan's

Page 88

1 I think you missed 2015. So that was
 2 our thought process there.
 3 THE CHAIRMAN: They had long term
 4 rental licenses for every year?
 5 MR. HENDERSON: In 2014 and 2016.
 6 MR. ELLIOTT: Not '15.
 7 MR. HENDERSON: And Carroll Realty
 8 submitted for the long term rental business
 9 licenses.
 10 THE CHAIRMAN: They might not have had
 11 a long term tenant in 2015. That could be a
 12 reason.
 13 MR. ELLIOTT: Ross.
 14 MR. APPEL: Yes.
 15 MR. ELLIOTT: When you read the
 16 section of the ordinance about the definition
 17 abandonment --
 18 MR. APPEL: Yes.
 19 MR. ELLIOTT: -- and you focused us on
 20 E (1) B with the use being discontinued for a
 21 period of 12 months and you said that's not
 22 happened do you think that the rules contemplated
 23 or these ordinances contemplate this use being a
 24 legal use rather than an illegal use?
 25 MR. APPEL: It doesn't say and --

Page 87

1 Island vacation rental business license was issued
 2 for the vacation rental for the previous calendar
 3 year. That so that's a requirement of 21-119.
 4 Then 21-120 A states that if any of
 5 those of 21-119 have not been met then they don't
 6 get the certificate of zoning compliance.
 7 Now, that cross-references to 21-123 B
 8 and if we -- if you look on the highlighted
 9 ordinance section there it states in 21-123,
 10 suspension or revocation: The abandonment or
 11 failure to use the property as a vacation rental
 12 for a period of 12 consecutive months.
 13 You can't use a vacation rental on this
 14 island without a certificate of zoning compliance
 15 or a business license. So they have met those
 16 conditions. They have determined that they wanted
 17 it suspended or revoked or abandoned.
 18 To add to that, we've had business
 19 licenses for the long term use of the property. So
 20 if we're a staff member looking at the long term
 21 business licenses isn't it reasonable to assume
 22 that, hey, they want to get out of the short term
 23 rental business license and go full time into the
 24 long term? Here are the long term rental licenses
 25 for 2014 and 2016.

Page 89

1 MR. ELLIOTT: So would you agree that
 2 it is our job to interpret what these ordinances
 3 say?
 4 MR. APPEL: I would never --
 5 MR. ELLIOTT: They can say we're wrong,
 6 the Circuit Court, but it is our job to determine
 7 whether or not the use having been discontinued for
 8 a period of 12 months meaning if you're not using
 9 it legally you're not using it.
 10 MR. APPEL: I would respectfully say
 11 that the term legal does not appear in that
 12 ordinance. That would be something that we are
 13 reading into the ordinance.
 14 MR. HENDERSON: I did paraphrase that
 15 on --
 16 MR. APPEL: And speaking of reading
 17 into the ordinance I want to refer us -- it is very
 18 important to like really get into the weeds on
 19 these words here on 21-120 A. Follow your screen.
 20 Staff says that this ordinance, Section
 21 21-120 A says -- he's paraphrasing right there. It
 22 says: If the standard of 21-119 have not been met
 23 then the certificate of zoning compliance shall be
 24 denied and the owner therefore loses his
 25 nonconforming status.

Page 90

1 This whole thing about losing
2 nonconforming status is made up. It is not a new
3 ordinance. I'm looking at the ordinance right now.
4 The word loss and the word
5 nonconforming status, none of it is there. I get
6 that there is a plausible, common sense view that
7 if you're not in compliance each year -- that if
8 you're not in compliance for a year, boom, you're
9 out of the program. I get that is a plausible way
10 that you may think this program works.
11 It is not what the ordinance says.
12 It's just not and the burden and the standard is on
13 the Town to have that ordinance say what they want
14 it to do. It doesn't do that. You can continue a
15 use and not necessarily have all the right
16 paperwork. That's our position.
17 It doesn't say legal. It doesn't say
18 you have to have it paid up every year. I would
19 argue that the vacation rental ordinance trumps
20 language that's not even in the zoning code talking
21 about business licenses in general.
22 This is a unique program for a unique
23 set of circumstances and you know, there is just a
24 good faith disagreement as to what the legal
25 criteria -- well -- Number 1, what the applicable

Page 92

1 taxes. The Mulbrys have proceeded through this
2 whole ordeal feeling thinking that they have done
3 everything right.
4 They relied on Carroll Realty to do
5 this as they've done in the past. Carroll Realty
6 has submitted other paperwork for them that
7 demonstrates this is what they do. The ball got
8 dropped.
9 I'm not trying to deny responsibility
10 that the ball got dropped. There's no question
11 about it. We're just asking to pick up the ball,
12 pay the penalty and keep on our way.
13 You know, as it relates to the policy
14 and intent behind this whole thing the Mulbrys are
15 exemplary participants in this whole program. They
16 have done nothing to interfere with their
17 neighbors. They have done nothing to interfere
18 with the Town.
19 They are ready to interject some money
20 into the Town's budget tonight or tomorrow if the
21 Board would be so inclined. We would just ask for
22 consideration of our view as to what the ordinance
23 says.
24 MR. ELLIOTT: I'm not trying to argue
25 with questions here, but I'm just trying to make

Page 91

1 or legal criteria are and then what the applicable
2 or legal criteria actually said.
3 Our position here going back to the
4 whole number of cases is that there has been no
5 abandonment as defined by the Town's nonconforming
6 use regulations or the Supreme Court of South
7 Carolina's definition of abandonment which has set
8 -- the Supreme Court has repeatedly said that
9 abandonment requires an intent to abandon the use.
10 Abandonment of nonconforming use is,
11 you know, you're operating some corner store. You
12 know, someone throws a bottle through the window
13 and you close for six months and you never reopen
14 or you don't reopen within the specified time
15 period of the ordinance and, boom, you've not lost
16 your nonconforming use status.
17 We have not ever demonstrated an intent
18 to cease the use. In fact, the use has continued
19 and we're not trying to do this use under the table
20 to circumvent the Town which if you ever go on the
21 DRB's -- there's people renting stuff in downtown
22 Charleston.
23 Our Board sees that all the time and it
24 is a problem with every government that the United
25 States is dealing with. But the Mulbrys paid their

Page 93

1 sense of --
2 MR. APPEL: Sure.
3 MR. ELLIOTT: -- what your argument is
4 in a format for me in making my decision because I
5 haven't determined what -- but I also -- whenever I
6 see these cases I try to think about what's going
7 to happen next time when somebody else comes in
8 front of us. It's making the similar argument but
9 maybe a little bit different.
10 Everything that I've heard indicates
11 that -- have no evidence that your clients are --
12 that they intended to do something improper, but I
13 want to make sure I understand. You focused this
14 on the abandonment definition. I haven't read the
15 Supreme Court case, but I know what this says.
16 In our definition and what you want us
17 to look at it doesn't rise and fall on intent.
18 That is one item that can determine whether or not
19 abandonment is occurring. This is the very first
20 one. It says the nonconforming use shall be
21 considered abandonment when any of the following
22 occur.
23 Number 1: The intent of the owner to
24 discontinue the use is apparent. So that's one
25 factor. But the next one I keep getting hung up

Page 94

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,
15 you know, maybe it's justified 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

Page 96

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

Page 95

1 these uses. So --
2 MR. ELLIOTT: So this is an ongoing?
3 Their rental agent had been having it ever since --
4 MR. APPEL: Turnkey.
5 MS. LATHAM: I have -- okay. You
6 transferred it to a real estate professional
7 who I'm assuming purports themselves to be
8 knowledgeable of real estate and zoning laws for
9 the areas in which they operate. You prior to that
10 had always made sure you had your business license.
11 My question is if I'm a property
12 owner I'm -- you know, that's a critical thing.
13 You know as to the understanding of the zoning
14 ordinance, the business license is extremely
15 critical for a vacation rental on Sullivan's
16 Island.
17 Why did you not confirm that the real
18 estate had, in fact, done that? It is a critical
19 thing that -- I mean that to me seems like a
20 no-brainer and not doing that I think is
21 abandonment.
22 MR. APPEL: Let me address your concern
23 there and I don't want to leave this question of
24 use in Subsection B unaddressed because this is --
25 as a zoning ordinance this is what we're born for.

Page 97

1 know, it's a joint situation where we have to take
2 some responsibility. But, you know, there was
3 delay and I say this respectfully for three years
4 from the Town to notify these -- these renters or
5 these property owners that their property was about
6 to fall off the roll and -- and the Town actually
7 keeps a roll.
8 There is documents that I've seen and,
9 you know, we get into some potential due process
10 issues frankly about if you're in violation of the
11 ordinance. Constitutionally speaking you have to
12 be notified, you know, as it relates to the
13 preservation of property rights.
14 Listen, we're taking responsibility. I
15 don't want to come up here and say that -- you
16 know, that -- yes, ma'am.
17 THE CHAIRMAN: Also, I mean they had
18 the long term -- they did have the business license
19 for the long term and so I don't think the onus is
20 on the Town to call everybody and say, oh, are you
21 going to renew your business license for a short
22 term rental? They were just sent, you know --
23 MS. LATHAM: That is my question. Is
24 there anything in the ordinance that says the Town
25 is responsible for notifying somebody --

Page 98

1 MR. HENDERSON: No, there isn't.
2 MS. LATHAM: -- to grandfather in --
3 MR. APPEL: I'm saying --
4 MS. LATHAM: You're saying the Town
5 should have called and said --
6 MR. APPEL: I would submit that it is
7 irrelevant whether it's in the ordinance.
8 MR. HENDERSON: And if I could, in
9 actuality the Town by the submittal of a long term
10 business license or business license for the long
11 term rental the property owners were notifying us
12 that they were moving from a nonconforming use or
13 short term vacation rental to a conforming business
14 license to grant long term.
15 So we received the message that they
16 were discontinuing the nonconforming use.
17 MR. APPEL: Well, it is completely
18 consistent to have short term and long term rental
19 uses of the property.
20 THE CHAIRMAN: Exactly.
21 MR. APPEL: So let's just --
22 MR. HENDERSON: With the absence of --
23 MR. APPEL: And the idea that anybody
24 is the control switches on Sullivan's Island
25 saying, oh, we took the position it was off the

Page 100

1 nonconforming use is a protected property interest.
2 I would submit here today that frankly and
3 respectfully I don't care whether there was a
4 requirement in the Town's ordinance that the
5 property owner be required.
6 Under the Constitution of the United
7 States of America and under the Constitution of the
8 State of South Carolina and the case law that has
9 been interpreted for hundreds of year there is a
10 due process notification requirement that we can
11 read into this ordinance.
12 This actually piggybacks into a
13 question that was raised by Mr. Elliot that has not
14 been responded to and I want to respond to it right
15 now.
16 The Town's definition of abandonment of
17 nonconforming uses to the extent it conflicts with
18 the state planning act that defines nonconformities
19 and the Supreme Court case law that defines
20 nonconformities and the abandonment of
21 nonconformities to the extent the Town goes
22 further we pick that up and we throw it away. It
23 is irrelevant.
24 It does not have that authority. If
25 this gets appealed and I hope it doesn't get

Page 99

1 rolls, I mean, the Town didn't even know this
2 was --
3 MR. HENDERSON: Again --
4 MR. APPEL: -- until 2017.
5 MR. HENDERSON: I mean, the Town
6 recognizes when one of those 50 nonconforming uses
7 falls off the list, but it is not the Town's
8 responsibility to reach out and encourage what --
9 you know, what's described as a prohibited use.
10 The first line of the vacation rental
11 ordinance says vacation rentals are prohibited uses
12 on Sullivan's Island. So, I mean, is it incumbent
13 upon staff to notify everyone on the island who has
14 a nonconformity on their property or commercial
15 property? To notify them?
16 MR. APPEL: I would --
17 MR. HENDERSON: -- that they need to
18 continue that nonconforming status? Nowhere does
19 it codify that.
20 MR. APPEL: Can I mention one thing
21 about this notice? I think it is very important.
22 First off, the Mulbrys had a lawful nonconforming
23 use. They were doing their vacation rental use
24 before the ordinance came into effect. The Supreme
25 Court case law is crystal clear that a lawful

Page 101

1 appealed -- and I'm not making a threat that it
2 gets appealed. But it is a major property right
3 interest of significant value to my clients that is
4 potentially being deprived and this ordinance and
5 the Town's nonconforming use definition will be
6 under assault.
7 You know, if this is the case and we're
8 going to contest this -- and again I want to work
9 this out and I want this -- the \$14,000 check is on
10 the desk. We can pay this and get this back in
11 good standing and on our way. But, you know, it's
12 not -- the law controls here and it is not just the
13 Town's ordinance.
14 I would submit that the Town's
15 ordinance is a little tough in places and --
16 THE CHAIRMAN: And for those of us who
17 live here, rightfully so. I feel for them and I'm
18 going to say personally right now I want to find a
19 way to overturn the Zoning Administrator's decision
20 without abandoning our current definition of
21 abandonment as the Town operates.
22 You've put the check on the desk.
23 That's very helpful. We know that things happen.
24 So we're trying to find a way without overturning
25 the normal business operations of the Town and the

Page 102

1 other codes under which the Town operates which Joe
2 has supplied us with.
3 I personally do not want to see them
4 lose their license, but we have to craft it in a
5 way that we are comfortable with if we do so
6 because, you know, Joe is a zoning expert and that
7 is why he is our Zoning Administrator. It is
8 extremely rare that we overturn his decision and
9 then when we do we have to do have a good reason
10 for doing so.
11 As I said, I feel for your clients.
12 I would like to do this. We're trying to figure
13 out a way to do it, a way to make that motion so
14 that we don't set -- because that would be
15 precedent-setting no matter what anybody else said.
16 You know, we can say it's not precedent
17 setting but we're talking about the Zoning
18 Administrator's decision and we're talking about
19 business licenses and we're talking about
20 nonconforming use. There are a lot of parts here.
21 What I'm going to do right now -- would
22 the Mulbrys like to say anything? What I would
23 like to do is I would like to have you say
24 something and then I'd like to go ahead and close
25 so that we can talk about this.

Page 104

1 '16 have they been long term or short term?
2 MS. MULBRY: Both.
3 THE COURT: So the application for a
4 long term rental license was also inappropriate?
5 THE CHAIRMAN: No. You have to have
6 both when you do long term and short term, you have
7 to go have two because it's different ordinances.
8 They had the long term. They didn't have the short
9 term.
10 The long term is the conforming use.
11 The short term is the nonconforming use.
12 MR. ELLIOTT: And, Ross, your point is
13 that your clients continued using the property as a
14 rental property and you have given us evidence to
15 show that there was no intent of them to abandon.
16 So you're asking us based on the
17 evidence to decide that here although the fees
18 weren't paid they didn't intend -- that was not
19 proof, sufficient proof of intent.
20 Therefore, if we -- your position is
21 we've got to find intent and if we don't then we
22 violate the Supreme Court and the laws of South
23 Carolina regardless of how I feel about what that
24 word use means.
25 MR. APPEL: That's precisely correct.

Page 103

1 MR. MULBRY: I wanted to make one
2 comment. We have received letters from the Town of
3 Sullivan's Island when our license was about to
4 expire. I have those letters in the file and I
5 just found them today.
6 The last one I had was 2009 and it
7 lists in parentheses: Certified. So, you know, I
8 do think that was something that you cannot get
9 back once it's gone.
10 You know, it's different if I lose my
11 monthly or yearly license. I can reapply for that.
12 If I'm a reasonable participant of a reasonable
13 home and, you know, comply with the laws I can get
14 that back, but this which I've had since we've
15 moved here has been very precious to us would be
16 gone forever.
17 So my argument would be that as a
18 citizen if for any reason my paperwork is not
19 correct I do think the government has some
20 responsibilities to let me know I'm about to lose
21 something that I cannot get back.
22 THE CHAIRMAN: Thank you for your
23 comment.
24 MR. RICHARDSON: So can I just ask?
25 The rentals that have gone on for '14, '15, and

Page 105

1 Let me just throw another bone at my colleague or
2 friend Joe here. When Joe made his determination
3 we had this much evidence. All Joe knew is there
4 was no application and there's no paperwork for
5 2014 and 2015 and 2016.
6 Now, we have been able to supply the
7 Town with one memo and all of the testimony tonight
8 and the exhibits that we have submitted in support
9 of the record -- there is more information now
10 to draw -- to get at this critical issue of intent
11 and -- and the intent requirement runs through
12 every single criteria.
13 I mean, the Supreme Court says that is
14 the criteria. For example, I try not to go down
15 another rabbit hole here, but when a house burns
16 down in its nonconforming use and it is not rebuilt
17 within the statutory period of time that's intent.
18 If you don't rebuild it within a
19 certain time -- obviously notice is not a problem
20 in that case. There's the burning embers, you
21 know, all around. This was just a situation where
22 notice was delayed and there was no intent to
23 abandon the nonconforming use.
24 I want to make sure I address Ms.
25 Tezza's comment about a path forward. I've got

Page 106

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

Page 108

1 making decisions about when a vacation rental falls
2 off that list. If you overturn my interpretation
3 of these sections then we change the way that we
4 regulate -- okay -- from now on.
5 MR. RICHARDSON: I don't think that is
6 true, Joe.
7 MR. HENDERSON: That is absolutely
8 true.
9 MR. RICHARDSON: No.
10 MR. HENDERSON: If you overturn my
11 interpretation of that ordinance then from that
12 point on --
13 MR. RICHARDSON: It depends on the
14 reason for the overturning.
15 THE CHAIRMAN: No.
16 MR. RICHARDSON: Yes.
17 MR. HENDERSON: A variance is
18 difference from an appeal. You have to be very
19 specific with the conditions that you apply to the
20 variance correctly all along. But an appeal as
21 stated on this application challenging my
22 interpretation of when a property falls off that
23 list.
24 We began with about 80 to 90 vacation
25 rentals on Sullivan's Island and the way that they

Page 107

1 You can affirm him, say Joe is right,
2 that he interpreted the facts right. All the other
3 stuff he said is legal, you can reverse him which I
4 think would be the extreme result and the
5 precedential result you're concerned about.
6 Ms. Tezza, there's another option and
7 that option is you can send this back to Joe with
8 the instructions in terms of how y'all interpret
9 the ordinance based on this more robust body of
10 facts that we know now have plus the opportunity to
11 maybe dig into some more facts that maybe the world
12 will want to see us out there.
13 We'll chase it down. We'll do whatever
14 is necessary to make this as fully informed of a
15 decision as humanly possible. I just want to make
16 sure that y'all have all those information options
17 in front of you.
18 MR. HENDERSON: So that is absolutely
19 correct and what is on your only application,
20 though, is an appeal of the Zoning Administrator's
21 interpretation of 21-123, that specific section. I
22 arrived at my determination of 21-123 by using 119,
23 120; so various definitions of this ordinance.
24 So for years the Town has been
25 interpreting an ordinance in a certain way and

Page 109

1 fall off that list is that they don't do something
2 from 119. Let's get the business license.
3 Let's -- you have too many parties, too many
4 noise violations, you didn't get zoning compliance,
5 somebody dropped the ball. That's how you fall off
6 the list.
7 You need to be very careful that we
8 don't open the Town back up to the vacation rental
9 that fell off the list five years ago but now says
10 I want to do what they did. But it's now three
11 years ago and then it's five years or six years ago
12 and I'll leave it at that.
13 So if we can work it out in some other
14 way that I don't know about then more power to you.
15 I don't see a way to -- let's just be very cautious
16 here.
17 THE CHAIRMAN: That's what I'm trying
18 to be. I'm going to turn my mic off, Randy and
19 Joe. We're in a brief recess.
20 (A recess transpired.)
21 THE CHAIRMAN: We are back on the
22 record. We have two things we can do. We can
23 affirm the Zoning Administrator's decision or
24 overturn it. Overturning it would set a precedent
25 for every nonconforming use, vacation rental that

Page 110

1 has fallen in place.
2 MR. RICHARDSON: For variances we can
3 put conditions.
4 THE CHAIRMAN: No. It is different.
5 This is an appeal of the Zoning Administrator's
6 decision. We can only affirm it or overturn it.
7 MR. RICHARDSON: But don't we have a
8 basis on which to overturn?
9 THE CHAIRMAN: No. If we overturn it
10 we would say why. If we affirm it we are affirming
11 the decision that he made --
12 MR. RICHARDSON: Right.
13 THE CHAIRMAN: -- and we really don't
14 have to -- we don't have to have a rationale for
15 that.
16 MR. ELLIOTT: And the basis for
17 overturning it would be what? That they forgot
18 to --
19 MR. RICHARDSON: No.
20 MR. ELLIOTT: That the Realtor didn't
21 send in any fees?
22 MR. RICHARDSON: That it was the
23 Realtor's responsibility. I mean, the real
24 recourse was to go to the Realtor, but --
25 THE CHAIRMAN: But there -- but

Page 112

1 additional legal thoughts as to the interpretation
2 of the ordinance, the applicability of some
3 constitutional due processes requirements, et
4 cetera. So I just want to make sure that the Board
5 has everything in its favor on the record.
6 MR. HENDERSON: So what he's saying is
7 that there was a failure of due process on behalf
8 of staff in notifying the applicants. Is that what
9 you're getting at?
10 MR. APPEL: Yes.
11 MR. HENDERSON: It is saying that the
12 Board can remand it back to the Town staff based
13 upon the fact that we failed to notify the
14 applicants and we should have done that three years
15 ago to allow the continuation. Then that doesn't
16 effect Town staff's interpretation of those
17 sections of the ordinance. Is that --
18 MR. APPEL: Well --
19 MR. HENDERSON: What are you getting
20 at?
21 MR. APPEL: As Mr. Elliot remarked in
22 the agenda item before this, nothing that y'all do
23 before this Board has any precedent. Nothing I do
24 on the Charleston Board of Zoning Appeals has any
25 precedent.

Page 111

1 unfortunately the property owner is ultimately
2 responsible.
3 MR. RICHARDSON: But there are
4 different things that --
5 THE CHAIRMAN: You can't -- I
6 understand, but unfortunately we have to go by
7 the law.
8 MR. APPEL: Can I set the record
9 straight on the law? There is a misstatement of
10 the law and I need to clarify this. I just pulled
11 up the planning app on my phone right here.
12 I'm referring everyone to Section
13 6-29-800 and -- hang on. I'm on the iPhone here.
14 It appears this is B. Sorry. All right.
15 We can pull the exact cite later, but
16 it says that one of the powers of the BZA is to,
17 quote, remand the matter to the administrative
18 official upon motion by the party or the Board's
19 own motion or if the Board determines the record is
20 insufficient for review.
21 So it is not the case that it is either
22 thumbs up or thumbs down. You can remand the
23 matter back. There has been has been more evidence
24 in the record since Judge Patterson made his own
25 determination, whatever it was, and there are some

Page 113

1 I'll tell you what does have precedent
2 is the Supreme Court of South Carolina, the Board
3 of Appeals of South Carolina, and the Supreme Court
4 of South Carolina could reach the issue for the
5 first time and create law and have effect of going
6 through the Town's ordinance and taking a pen to
7 certain sections essentially if they are to be
8 deemed unconstitutional facially and/or
9 unconstitutional as applied to this particular
10 instance.
11 Frankly this is not a good test case.
12 I know I am representing the appellant here and
13 this is not a good test case to represent this
14 ordinance. I will have to say that.
15 THE CHAIRMAN: Well, I can't have you
16 dictate my decision.
17 MR. ELLIOTT: Well, listen, though. I
18 don't know why we can't couldn't remand it or for
19 me or Joe to do further investigation. I mean,
20 I -- to look more into what happened are with
21 Realtors or -- you know, we've heard from you that
22 it was rented for, you know, each year.
23 I'd like to see more evidence of that.
24 I'm not limited to that. I think the record should
25 be more developed. So I think we have a -- I think

Page 114

1 we should remand it back to Joe to do further
2 investigations per the discussion with you and
3 clarify some questions that I think all of us have
4 about the facts of this particular case.
5 THE CHAIRMAN: Okay. And with our --
6 and with the Town attorney as well.
7 MR. HENDERSON: And would that
8 requirement a resubmittal or another presentation
9 to you about this case?
10 THE CHAIRMAN: Only if it needed to
11 come back before us.
12 MR. APPEL: Well, just to be clear, if
13 it is denied again all these arguments for tonight
14 are still there. The remand is purely to buttress
15 the facts.
16 THE CHAIRMAN: It would be different.
17 Actually, it could come back or then it might not
18 come back.
19 MR. APPEL: That's right, but I just
20 wanted to make sure -- you know, this is my
21 understanding of the way this works is, you know,
22 there's a factual record that was before you
23 tonight and there's, you know, what Joe said, what
24 I've said, what I have submitted. The Town has in
25 its records, et cetera.

Page 116

1 So those documents are gone and I've
2 been very forthcoming with Counsel here and -- so
3 we don't have anything to look at as far as the
4 record goes.
5 I would just -- I don't know if -- if
6 sending it back to Town Staff to consider new
7 evidence is going to change our interpretation
8 because, again, we don't have a business license
9 from the previous year and the certificate of
10 zoning compliance.
11 I think it would have to be instead
12 some type of motion from the Board that says Town
13 Staff did not notify or prompt the applicant can't
14 to come in. But then how is that different from
15 all the other vacation rentals that have fallen off
16 the list in years past?
17 You know, what's stopping them from
18 saying, hey, we never got a letter either and let's
19 go through that same process. So I'm trying to
20 figure out a way to do this as well in a certain
21 instance, but I don't know. I know I'm not
22 offering a solution to you.
23 MR. RICHARDSON: So can't we say that
24 there is inadequate records to fully explore and we
25 would -- we'd just table it for now about see if we

Page 115

1 We have asked for a lot of the records.
2 One of the things that I have asked for just so
3 everyone knows is all the paperwork. This may be
4 important, Mr. Elliot, and you may want to know
5 this.
6 One of the things I have asked for is
7 all the records for this property, specifically the
8 submittals and the applications prior to 2014 when
9 this fell off the face of the Earth because I
10 wanted to see who was submitting this paperwork.
11 The response I got from the Town was that they
12 don't know where any of these documents are.
13 So I'll let Joe speak to that because
14 he was the one that told me that, but -- and I'm
15 just saying that for the purpose of -- if there is
16 a factual record to be developed we may be going
17 back to the drawing Board and not having much of a
18 draw.
19 MR. HENDERSON: That is accurate. When
20 we were moving from the trailers to the new Town
21 Hall we had a scanning project of scanning all
22 documents. We had interns working on it. All the
23 documents predating 2013 were saved on the hard
24 drive of the computer and we could not find that
25 computer.

Page 117

1 can find them and collect the check?
2 MR. HENDERSON: We can't find them. We
3 can't find them. We can't find any records.
4 MS. LATHAM: And that again opens it up
5 for every single one of the prior --
6 MS. BRASHER: I support the Town
7 Administrator. I really feel for my neighbors, but
8 I support the Town Administrator and I think that I
9 support the people of this Town because it is a
10 nonconforming structure because this is not a
11 resort.
12 This is the people of this island who
13 like it to be a neighborhood. Our neighbors would
14 still be allowed to do long term rentals.
15 MR. MULBRY: We are not welcome with --
16 we are not welcome with -- the rentals are --
17 support the house. We wouldn't have a house
18 largely because of the rentals. I mean, it's going
19 to -- it is worth -- it is -- it's worth a fair
20 amount.
21 In 20 years we both retired there, but
22 I don't know that we can just make up that loss.
23 MS. BRASHER: I'm not sure what to say
24 then because I'm told we are entitled to take this
25 type of consideration into account and there are --

Page 118

1 so I'm sorry.
 2 MR. MULBRY: We want to make it up to
 3 you.
 4 MS. BRASHER: You know, there are --
 5 yes. So I'm sorry.
 6 We just want to make it up to you.
 7 Don't know what happened ever since. We always
 8 played by the rules. We tried to do everything
 9 that was right. We rented it.
 10 We didn't know it for God's sake and
 11 now all a sudden boom, hey, we're on double secret
 12 probation and it fell through. All of a sudden
 13 here we are and -- and as you know -- and I'm not
 14 making that up.
 15 Three months of a short term rental,
 16 you know, the reality of this is that -- that
 17 supports the house. You get nothing the rest of
 18 the year to make -- make as much.
 19 MR. ELLIOTT: Well, whenever all this
 20 gets complicated I go back to the rules that govern
 21 our action and in looking at 21-118 and 21-119 and
 22 2020 -- and 23 the way I interpret the requirements
 23 for this property is that the -- they continued
 24 having the right to rent and they shall have these
 25 things: The zoning compliance certificate and the

Page 120

1 but the Town also has to follow the laws of the
 2 United States and the laws of the State of South
 3 Carolina and if the decision is to -- not in that
 4 realm I would submit that that is just a pretty
 5 easy target.
 6 THE CHAIRMAN: I understand what you're
 7 saying and that's grounds for appeal of our
 8 decision. We have to go by what's written in front
 9 of us and by what the Town and how the Town is
 10 operated for every other person that lost a
 11 certificate of -- through nonconforming use.
 12 MR. ELLIOTT: What is the date of that
 13 case?
 14 MR. APPEL: It is 1970 and there have
 15 been some others since that time.
 16 MR. ELLIOTT: So --
 17 MR. RICHARDSON: For other people that
 18 this issue will arise from and people in the past
 19 this issue has arisen can they demonstrate intent
 20 as well as this? I mean, this is classic intent.
 21 MR. ELLIOTT: I don't want to
 22 (inaudible) but the way I read the -- Ross' point
 23 to us, our definition of abandonment, how are you
 24 going to establish abandonment?
 25 Has he shown the intent to abandon?

Page 119

1 vacation rental business license. I get Ross'
 2 review of the abandonment, the nonconforming use
 3 section, but intent is not the only means of means
 4 of determining whether or not the abandonment
 5 occurred.
 6 It is also the use of the 12 months
 7 and I can't with the use with a right mind conclude
 8 that means designating a use compliant with
 9 21-18 -- excuse me -- 21-18-21 and 19 and so forth
 10 which I -- which I understand the -- to mean in
 11 order to use it the certificate is in compliance
 12 and the certificate -- and they did that. So my
 13 way of looking at it is that the appeal be denied.
 14 MR. APPEL: Can I just say one sentence
 15 real quick?
 16 THE CHAIRMAN: Okay.
 17 MR. APPEL: In the 1970 The Supreme
 18 Court case of Conway versus City of Greenville the
 19 Supreme Court stated: The question of abandonment
 20 and nonconforming use is one that must be intended
 21 from all surrounding facts and circumstances.
 22 To the extent the Town's ordinance
 23 deviates in any respect from intent it is invalid.
 24 I would submit today and I think I may have said
 25 earlier the Town interprets the zoning ordinance

Page 121

1 All these other things are -- you know,
 2 not using the thing for 12 months is one of the
 3 definitions of abandonment.
 4 MS. LATHAM: Okay. In interpreting
 5 zoning laws you use the reasonable (inaudible)
 6 standard, correct?
 7 THE COURT REPORTER: I'm sorry. I
 8 can't hear you.
 9 MS. LATHAM: I'm sorry. When
 10 interpreting zoning we use the reasonable man
 11 interpretation, correct? So --
 12 MR. ELLIOTT: You know, I'm not the
 13 lawyer. I'm not a lawyer for the Board. I don't
 14 know.
 15 MR. HENDERSON: I'm sorry. What was
 16 the question?
 17 MS. LATHAM: When interpreting zoning
 18 ordinances don't you use the reasonable man
 19 interpretation?
 20 MR. HENDERSON: Reasonable...
 21 MS. LATHAM: The conclusion that a
 22 reasonable man would arrive at is, in fact, the way
 23 it that it would be viewed from a legal standpoint.
 24 THE CHAIRMAN: Well, unfortunately
 25 that's subjective and we have -- we try not to

Page 122

1 deviate from the way -- unfortunately we did not
 2 write the zoning ordinance and we were not
 3 consulted. I mean, we have run one against things
 4 like this in the past.
 5 We are not allowed to be liberally
 6 interpretive of the zoning ordinance because we can
 7 be sued on either side of that. So I understand
 8 what you're saying, but unfortunately to me that's
 9 subjective and we're not allowed to be subjective
 10 in that way.
 11 MS. LATHAM: My point had to do with
 12 the fact that if -- in reading this statement to me
 13 it says a legal use, even though the word legal is
 14 not there because any reasonable person would
 15 assume that --
 16 THE CHAIRMAN: No. I agree with that.
 17 MR. ELLIOTT: You read the language
 18 and, you know, if the plain --
 19 MS. LATHAM: The plain interpretation.
 20 MR. ELLIOTT: Well, yeah. The language
 21 is what it is. You read it and you conclude what
 22 it means.
 23 THE CHAIRMAN: Is anyone ready to make
 24 a motion?
 25 MR. KOEPKE: I think what you see is

Page 124


1 Administrator's decision is affirmed.
 2 MR. APPEL: Do y'all submit written
 3 orders?
 4 THE CHAIRMAN: Yes.
 5 MR. HENDERSON: We'll get that to you.
 6 THE CHAIRMAN: Thank you for your time.
 7 And since there is no further business before the
 8 Board, I will happily entertain a motion to
 9 adjourn. We will adjourn. There being no further
 10 discussion, we are adjourned.
 11 (The hearing was adjourned at 8:45 PM.)
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Page 123

1 the discomfort everybody feels with it, but I think
 2 there is no choice because the alternative choice
 3 is so dreadful. It sounds like everybody is
 4 totally uncomfortable with the decision, but I
 5 can't see how we could make another one.
 6 MR. ELLIOTT: All right. Well, I will
 7 make the motion that we deny the applicant's appeal
 8 of the Zoning Administrator's interpretation of
 9 zoning ordinance Section 21-123 B pertaining to the
 10 suspension, revocation and abandonment of a legal
 11 nonconforming vacation rental use, because the
 12 property -- excuse me -- the owners did not obtain
 13 the proper certification in zoning compliance
 14 and they -- the certificate of zoning compliance
 15 and the vacation rental business license.
 16 MR. KOEPKE: I second it.
 17 THE CHAIRMAN: Any further discussion?
 18 (No response.)
 19 THE CHAIRMAN: All those in favor,
 20 signify by saying aye.
 21 (Board members stated aye.)
 22 THE CHAIRMAN: Like sign opposed?
 23 MR. RICHARDSON: No.
 24 THE CHAIRMAN: There is one no. There
 25 is one "no" from Mr. Richardson. The Zoning

Page 125

1 CERTIFICATE OF REPORTER
 2
 3 I, Priscilla Nay, Court Reporter and
 4 Notary Public for the State of South Carolina, do
 5 hereby certify that the foregoing transcript is a
 6 true, accurate, and complete record.
 7 I further certify that I am neither
 8 related to nor counsel for any party to the cause
 9 pending or interested in the events thereof.
 10 Witness my hand, I have hereunto
 11 affixed my official seal this 28th day of April,
 12 2017 at Charleston, Charleston County, South
 13 Carolina.
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Priscilla Nay

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

1	I N D E X	Page 126
2		
3		Page
4	1730 THOMPSON AVENUE	5
5	2928 JASPER BOULEVARD	5
6	2880 MARSHALL BOULEVARD	69
7	CERTIFICATE OF REPORTER	122
8		
9	E X H I B I T S	
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\$14,000 81:24 101:9	119 86:21 107:22 109:2	2,400-foot 30:7	21-124 72:15	3,100 32:9 48:4 51:14 55:14
\$14,264.22 76:21	12 8:24 33:8 52:15 87:12 88:21 89:8 94:2 119:6 121:2	2,500 29:10,24	21-150 78:16 79:5	3,600 29:12,22
\$3 31:1	120 107:23	2,714 44:25	21-18 119:9	3,900 19:14 51:5
\$4 31:12,14	120-A 86:18	20 79:23 84:25 117:21	21-18-21 119:9	3,945 56:1,9
\$6 31:16	13 71:2 96:9	20,000 19:9,10	21-19 86:1	30 11:20,22 13:13 28:25 29:18 56:8,22
<hr/> (<hr/>	13th 6:23	200 16:11	21-20 71:24 85:22,23 86:13	30-foot 5:20 6:4,6 7:7 12:6 15:20 22:17 23:23 31:19 43:17
(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	14 30:18 103:25	2000 77:6	21-23 5:19 7:2 22:5 27:12, 18 48:21 49:7 57:23 60:8 62:3,8 69:16	3024 40:19
(E) 67:3	15-foot 13:12	2001 77:6 82:12 83:8	2123 49:8 61:3	3030 28:15 29:16
<hr/> 1 <hr/>	16 16:8 43:21 64:16 66:18 71:21 73:4 104:1	2009 103:6	22 18:5	31st 85:7
1 67:3 83:1 86:22,25 90:25 93:23	1730 5:1	2010 6:23 33:11 34:2	23 56:4 118:22	38 56:13
1,000 57:7	18th 21:9	2013 70:22 77:6 96:21 115:23	23-21 67:2,3	39 56:8
1,200 49:10	19 119:9	2014 70:23 71:21 73:4 76:5,15 87:25 88:5 105:5 115:8	25 32:12 44:14 56:10 66:2	396 44:11 49:9 55:18 62:22
1,300 42:16	1941 10:10,12	2015 70:23 76:5,15 83:8 88:1,11 105:5	25-foot 54:5	396-foot 49:20
1,400 36:18	1963 10:14	2016 70:23 76:6,15 83:9 87:25 88:5 105:5	2508 42:10	<hr/> 4 <hr/>
1,500 37:8	1967 10:16	2017 78:2,7 81:6 99:4	270-degree 36:8 37:8	4,000 19:14 32:11,15 36:1,13,17 44:16 46:15 47:23 51:15 55:15
1,600 45:1	1970 119:17 120:14	2017-4 62:5	2829 62:4	4,600 56:7
1,642 16:7	1992 10:18	2020 118:22	2880 69:22,25 70:5,16 72:12	40 31:20 53:2
10 9:18 21:15	1998 75:1 77:25 79:20	21-117 79:1	2928 5:6,8,12	400 13:6
10-3 85:4	1999 96:11	21-118 82:19 118:21	<hr/> 3 <hr/>	<hr/> 5 <hr/>
10-4 85:8	<hr/> 2 <hr/>	21-119 71:18,24 82:25 86:19 87:3,5 89:22 118:21	3 67:7 68:21 78:22	5 78:22
10-foot 13:12	2,000 29:9 36:20	21-120 85:23 87:4 89:19,21	3,000 19:12,20 32:8 36:13 44:24 45:3	50 71:5 99:6
100 40:23 83:17	2,300 56:5,7		3,0000 36:17	
11				



<p>50-foot 31:20</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6-29-800 111:13</p> <p>600 16:10</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7,000 30:24</p> <p>75 26:8</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>80 108:24</p> <p>800 63:10</p> <p>8th 4:5,10,16</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9,900 16:5</p> <p>90 80:5 108:24</p> <p>90s 74:25</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>abandon 78:13 80:23 91:9 104:15 105:23 120:25</p> <p>abandoned 72:9 77:22,24 79:8 87:17</p> <p>abandoning 101:20</p> <p>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</p>	<p>abide 29:7</p> <p>absence 98:22</p> <p>absolute 60:9</p> <p>absolutely 77:16 107:18 108:7</p> <p>academic 63:17</p> <p>accept 77:1 78:6 81:6</p> <p>access 58:24 59:12</p> <p>accommodate 38:11 40:7</p> <p>accommodation 35:6</p> <p>accommodations 40:8 42:19</p> <p>account 19:18 117:25</p> <p>accurate 8:13 115:19</p> <p>achieve 106:3</p> <p>acreage 19:7</p> <p>Acres 19:9,12</p> <p>act 100:18</p> <p>action 68:10 118:21</p> <p>activity 34:18 72:20 73:7,8</p> <p>actual 23:16 32:10 86:14</p> <p>actuality 98:9</p> <p>add 21:8 49:14 87:18</p> <p>addition 26:1 41:21 42:12</p> <p>additional 112:1</p> <p>address 25:10 32:23 42:8 49:19 50:16 64:10 70:11 82:10 95:22 96:4 105:24 106:9</p> <p>addresses 71:5 85:1</p>	<p>addressing 83:21</p> <p>adjacent 23:21 61:17</p> <p>administrative 69:24 70:4 111:17</p> <p>administrator 5:3 69:5,11,15 77:20 83:17 85:24 86:3 102:7 106:18, 20,23 117:7,8</p> <p>Administrator's 101:19 102:18 107:20 109:23 110:5</p> <p>admittedly 82:5 83:21</p> <p>adopt 106:24</p> <p>advantage 15:10 16:22</p> <p>aesthetics 15:5,19</p> <p>affect 15:12 18:18 23:21 27:8 37:25 52:10, 11,25 66:10</p> <p>affected 38:3,5 48:11</p> <p>affecting 15:1</p> <p>affects 38:2</p> <p>affirm 107:1 109:23 110:6, 10</p> <p>affirming 110:10</p> <p>afraid 48:14</p> <p>agenda 5:11 69:20,24 70:3 74:9 112:22</p> <p>agent 95:3</p> <p>agree 36:4 40:23 67:23 68:3 89:1</p> <p>agreement 59:21</p> <p>agrees 45:25</p> <p>ahead 29:20 68:5 73:2</p>	<p>74:3 102:24</p> <p>aircraft 20:20 21:3</p> <p>allowed 19:5,14,15 32:4,6 36:23,24 46:16 65:14 67:23 68:16 71:9 117:14</p> <p>allowing 29:9 43:24 44:22 47:25</p> <p>alternative 74:21</p> <p>America 100:7</p> <p>amount 16:7,18 23:20 44:1 76:25 117:20</p> <p>amounts 44:11</p> <p>and/or 113:8</p> <p>anger 75:13</p> <p>angle 33:15 38:11</p> <p>animal 9:20</p> <p>announcement 4:12</p> <p>anybody's 15:12</p> <p>anymore 27:10</p> <p>app 111:11</p> <p>apparent 79:16 93:24</p> <p>appeal 61:2 68:22,25 69:3, 24 70:4,7 107:20 108:18,20 110:5 119:13 120:7</p> <p>appealed 39:15 100:25 101:1, 2</p> <p>appeals 74:7 83:16 112:24 113:3</p> <p>appears 10:16 111:14</p> <p>Appel 73:18 74:4,5 78:20 82:17 88:14,18,25</p>	<p>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</p> <p>appellant 113:12</p> <p>appellate 81:9</p> <p>applicability 112:2</p> <p>applicable 85:9 90:25 91:1</p> <p>applicant 6:6 9:4 25:2 28:22 29:2 43:14 61:5 69:13 70:6 73:1,2 86:4 116:13</p> <p>applicant's 29:11 72:24</p> <p>applicants 5:12 7:10 68:24 112:8,14</p> <p>applicants' 7:10</p> <p>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</p> <p>applications 115:8</p> <p>applied 79:25 113:9</p> <p>apply 6:3 61:11 108:19</p> <p>applying 9:9</p> <p>approach 68:17</p> <p>approached 70:14</p> <p>approval 4:5</p> <p>approve 4:8,9,15</p> <p>approved 4:25 7:2</p> <p>April 21:9</p> <p>architect 35:1 63:20 65:13,21</p>
---	---	--	---	---

67:21	attorney 48:1 114:6	ball 92:7,10,11 109:5	block 6:14 30:13 41:23 46:20	46:8,18 57:5,9 59:23 60:2,6 67:14, 18,21 68:3 117:6,23 118:4
architects 5:13 9:23 14:7,16 43:1 65:10	audible 43:19	base 56:11	board 4:21 5:11 7:9 15:17 20:23,25 32:4 39:6, 10,11,15,20,21 43:18 48:22 49:18, 21,23 50:16 51:20 53:6,7 55:21 61:5, 24 68:8,16 69:5,11 70:3 72:22 74:7 83:16 84:14 91:23 92:21 96:4 111:19 112:4,12,23,24 113:2 115:17 116:12 121:13	break 17:1,8
architectural 17:12 21:11,17,22 43:18 64:8	audience 25:13 38:22 65:6 68:12	based 8:18 14:23 16:9 19:4,12 26:22 53:23 71:1,15 76:16 83:23,24 84:1 104:16 107:9 112:12	Board's 111:18	breaking 15:19 17:4
area 6:3 11:17 12:2 13:8 15:2,3 16:14,18 19:13 23:3 24:1 44:2,3,4,10 46:14, 17 47:3,7,11 53:17, 20 56:3,4	authority 100:24	basically 10:15 12:13 13:15 19:19 20:19 22:8 23:22 33:18 40:19 47:3,5,9 63:19	boards 40:10	Brian 9:6,14 47:22 48:12
areas 8:9 10:7 21:21 81:9 95:9	AVENUE 5:1	basis 34:7 52:16 75:3 77:21 110:8,16	boats 31:19,20	bridge 41:24
argue 79:11 90:19 92:24	aware 28:21	Beau 5:12 9:7,22 14:7	Bob 29:5	bring 4:2 23:5 76:21
argument 62:24 77:22 93:3,8 103:17	aye 4:20,21 61:23,24	beautiful 9:23 67:22 82:8	body 107:9	brings 65:24
arguments 61:4 114:13	B	begin 55:4	bold 35:21	brought 84:21
arise 120:18	B-1 86:24	beginning 40:25	boom 90:8 91:15 118:11	budget 92:20
arisen 120:19	back 8:3 10:25 11:17,21 12:3 13:11 14:17,24 15:24 17:7 18:6 19:4 21:15 23:6 27:9 28:4 31:21 33:14 38:19 45:6,9, 19,23 49:16,23 50:10 54:8 67:1 76:22 79:5 81:24 84:13 86:18 91:3 96:20 101:10 103:9, 14,21 107:7 109:8, 21 111:23 112:12 114:1,11,17,18 115:17 116:6 118:20	begins 8:12	born 95:25	buffer 16:4,6,13,20 17:19, 23 49:20
arrive 121:22	back-of-the-island 11:19	behalf 9:7 112:7	bottle 91:12	build 12:18,21 13:24 15:21,24 22:9 23:1 26:17 28:23 29:20, 22,24 34:3 35:3,12, 20 36:1,24 37:2 38:12 40:6 46:4,13, 24 47:15,23,25 49:16 50:1,10 53:16,22,24 58:7,18 60:20 66:24 67:9
arrived 85:20 107:22	background 6:22 70:12 76:11 77:9	benefit 17:13 81:18	bottom 22:1 76:20 78:23	build-out 52:23
arrow 38:18	backside 10:5 15:11 20:3 36:6 54:9	benefits 45:13	bought 26:7 31:1 41:11 96:11	build-to 6:11,20 7:3 27:13 48:22 49:1 55:12 57:17,20 58:3 60:4 62:3
Article 68:21 71:2	bad 31:9	big 19:1 31:20 36:1 41:17,23 55:9 56:19	Boulevard 5:6,9,12 6:1,16 10:13 16:23 25:24 62:4 66:4 69:22,25 70:5,16 72:12	buildable 12:2 15:2,3 19:13 32:10 34:8,25 35:23 44:4 47:3,7 50:22 53:18 56:3 58:22 59:1,24 65:24
as-is 40:8	badly 27:21	bigger 29:21 31:5 34:13 42:20	Bowman 18:2,3	builder 33:3
aspects 15:16 22:16	Bagwood 26:8	biggest 26:23	box 35:3,8 63:22 65:17	building 12:15 29:5 31:5 38:1 44:25 51:3,4,8, 11 55:20 61:18 63:6,8
assault 101:6	Baker 18:3,10	billable 6:3	boxy 15:22	builds 12:16
assume 4:7 87:21	balance 81:14,15	binding 39:14,17,19,21	BRASHER 8:7,20,25 24:3,7	
assuming 35:13 95:7		bit 13:2 23:7 45:3 76:10 82:5 93:9		
assurance 26:25				
ate 96:25				
attempt 35:22				
attempting 74:17				

<p>built 6:12,13 7:22 12:8 15:1 28:3 35:11,16 38:21 40:24 42:15 43:5,6,7,25 44:15, 17 46:16 47:17 49:7 50:17 51:18 55:11 57:7 58:5 66:14</p> <p>bulkhead 18:13</p> <p>bulky 41:23</p> <p>burden 90:12</p> <p>burning 80:3 105:20</p> <p>burns 105:15</p> <p>business 71:13,19,25 72:6,7 76:14 77:5 80:24 82:14 83:4 84:4 85:1,2,6,13 86:2 87:1,15,18,21,23 88:8 90:21 94:21 95:10,14 97:18,21 98:10,13 101:25 102:19 109:2 116:8 119:1</p> <p>busy 75:20</p> <p>buttruss 114:14</p> <p>buy 19:24</p> <p>buyer 18:11</p> <p>by-laws 69:8</p> <p>bylaws 68:20</p> <p>BZA 4:12 7:2 62:4 68:20 69:8 111:16</p> <p>BZA'S 7:1</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculated 19:6,8 55:25</p> <p>calendar 71:20 82:21 83:5,6 86:2 87:2</p> <p>call 97:20</p>	<p>called 24:3 54:6 66:6 98:5</p> <p>Cameron 18:3</p> <p>Campbell 9:7,22 14:6 19:2,22 20:17 21:4 23:12 24:14,22 52:3 56:3, 15,18,23 63:25 64:13,16,18,21 65:1,4</p> <p>care 31:7 58:12 75:21 76:20 83:7 100:3</p> <p>careful 53:12 83:11 109:7</p> <p>Carolina 79:13 81:9 100:8 104:23 113:2,3,4 120:3</p> <p>Carolina's 91:7</p> <p>carrier 20:20 21:3</p> <p>Carroll 70:14 73:10 75:25 88:7 92:4,5 96:17, 22</p> <p>Carrolls 96:19</p> <p>carrot 15:10 44:9 50:2,11 53:14 56:20 65:24 66:13</p> <p>carrot-shaped 12:5 13:22 15:2 20:20 21:3</p> <p>case 22:7 26:18 62:4 75:24 77:17 78:25 79:14 81:7 82:12 84:6,10 93:15 94:7 96:17 99:25 100:8, 19 101:7 105:20 106:23 111:21 113:11,13 114:4,9 119:18 120:13</p> <p>cases 91:4 93:6</p> <p>caused 17:24</p> <p>cautious 109:15</p> <p>cease 72:19 91:18</p>	<p>cement 43:22</p> <p>center 10:17</p> <p>central 77:22</p> <p>cents 32:3</p> <p>certificate 71:12,22 72:5,8 82:15,16,17,20 86:4,5,9 87:6,14 89:23 94:20 116:9 118:25 119:11,12 120:11</p> <p>certificates 80:10,25 84:4</p> <p>Certified 103:7</p> <p>cetera 81:19 112:4 114:25</p> <p>Chair 7:8</p> <p>CHAIRMAN 4:11,17,19,22,24 5:2,7 7:12 8:4 9:1,4 21:23 24:12 25:1,4, 7 27:6,17 28:12 32:1,17 37:15 38:24 39:22 40:2,15 42:1, 7 43:10,13 47:20 48:16,20 50:3,19,25 52:1,4 53:4 54:12, 16,23 55:1,3,15 56:21 57:3,19 58:1 59:2,8,17,20 60:1,3, 14,23 61:20,22,25 62:2 64:11,14,17, 19,25 65:3,6,10,12, 19 66:5,8,16,22 67:19 68:2,11,14,19 69:13,19 72:25 73:5,22 74:3 78:19 82:16 84:18,22 88:3,10 97:17 98:20 101:16 103:22 104:5 106:7,11 108:15 109:17,21 110:4,9,13,25 111:5 113:15 114:5,10,16 119:16 120:6 121:24</p> <p>challenging 108:21</p> <p>chance 77:13</p> <p>change 8:17 26:24 27:4</p>	<p>81:24 108:3 116:7</p> <p>changed 12:10 32:25</p> <p>chapter 71:4 84:25</p> <p>character 61:18</p> <p>charade 41:17</p> <p>Charleston 74:6 91:22 112:24</p> <p>Charleston's 74:7</p> <p>chase 74:11 107:13</p> <p>check 76:24 81:23 101:9, 22 117:1</p> <p>children 26:2 42:17</p> <p>choice 41:11</p> <p>chose 23:19</p> <p>Circuit 39:16 89:6</p> <p>circumstances 26:16 84:15 90:23 119:21</p> <p>circumvent 91:20</p> <p>cite 111:15</p> <p>cited 78:5</p> <p>citizen 103:18</p> <p>citizens 26:14 77:8</p> <p>city 29:3 74:6 119:18</p> <p>clarify 51:17 111:10 114:3</p> <p>clarity 48:16 78:12</p> <p>classic 120:20</p> <p>classification 85:9</p> <p>clear 40:11 57:14 58:1 99:25 114:12</p>	<p>client 18:1 19:24 20:1 46:23 47:4 49:15 50:10</p> <p>client's 94:13</p> <p>clients 74:23 75:25 76:3,25 93:11 96:7 101:3 102:11 104:13</p> <p>close 10:13 38:21 42:13 44:15 45:19 46:4 51:15 52:6 53:3,6 91:13 102:24</p> <p>closed 55:4 65:20</p> <p>closer 6:13 10:11 23:7,8 29:16 35:17,20 45:20 47:25 50:17 56:21,23 65:25</p> <p>closest 6:14</p> <p>Clowney 5:13 9:7,22 14:7</p> <p>code 15:16 78:15 80:23 84:25 85:16 90:20</p> <p>codes 102:1</p> <p>codify 99:19</p> <p>colleague 68:4 105:1</p> <p>collect 117:1</p> <p>combined 51:13</p> <p>comfortable 102:5</p> <p>comment 32:2 35:2 51:18 52:7,9 53:6 54:18 55:4 65:20 103:2,23 105:25</p> <p>comments 28:13 35:1 43:11 45:7,21 52:5 65:16</p> <p>commercial 30:7 99:14</p> <p>committee 26:25</p> <p>committees 48:7</p>
---	--	---	---	--

common 80:13 90:6	conclusion 121:21	contemplate 88:23	country 48:8	33:17 41:2,7 53:13 77:16 95:12,15,18 105:10
community 13:3	concrete 7:15,17,25 8:1,5 10:6 14:20 15:25	contemplated 88:22	couple 8:22 30:6 31:23 75:7 83:13	cross-references 87:7
company 70:15	18:6 23:9 38:17,19 50:18,20 53:2	contest 101:8	court 39:13,14,16 67:16, 25 79:14 89:6 91:6, 8 93:15 94:5 99:25 100:19 104:3,22 105:13 113:2,3 119:18,19 121:7	crystal 99:25
compatibility 15:18	condition 49:21 50:4,6 62:13	context 45:4 80:11,12	courteous 74:16	cup 17:16
complete 36:20	conditions 11:2 12:13 13:17 14:13 17:25 61:7,10 71:11 87:16 108:19 110:3	continuation 75:15 112:15	courts 40:1 81:9	current 7:22 8:18,21 16:12 28:17 33:22 45:4 51:20 52:10 101:20
completely 34:23 48:24 60:5 98:17	conducting 81:11 94:24	continue 71:9 74:22 86:10 90:14 99:18	covered 57:12	cursor 6:21
completing 75:22	confer 69:6,12	continued 72:13 77:25 91:18 104:13 118:23	cove 30:19	cut 13:14 74:10
compliance 71:13,23 72:6,8 80:10 81:25 82:18, 20 83:9 86:4,6 87:6, 14 89:23 90:7,8 94:20 109:4 116:10 118:25 119:11	confirm 95:17	contract 20:1,4 30:23	coverage 21:19 51:3,9	cute 83:11
compliant 119:8	conflicts 100:17	contracted 70:15 75:25	coverages 19:4	cutting 24:20
complicated 118:20	conforming 80:8 98:13 104:10	control 98:24	cracks 96:25	D
comply 71:24 103:13	confer 69:6,12	controls 101:12	craft 102:4 106:7	damages 11:1
component 82:24,25	consecutive 87:12	conversations 96:7	crafted 28:9 82:9	dark 44:3
comprehensive 82:13	consideration 41:9,20 48:18 54:17 61:3 92:22 117:25	convinced 62:11	create 67:22 113:5	darker 16:18
compresses 47:10	considerations 32:3 64:2	Conway 119:18	creative 37:3	date 8:20 120:12
compressing 47:9	considered 27:22 61:2 79:8 93:21	copy 78:20	creatively 41:6	David 25:23 45:16
compromise 106:2	consistent 35:14 37:13 79:13 81:7 98:18	corner 91:11	credible 85:24	day 30:4 48:12 72:17 85:10
computer 115:24,25	Constitution 100:6,7	correct 5:5 20:5,24 46:11 50:14 55:14,18,23 56:15,18 57:6,8 58:19 59:17 66:2,7 86:20 103:19 104:25 107:19 121:6,11	creek 6:18,19 28:5,24 30:8,11 31:6,21 42:22 44:22 53:1 64:12 65:25 66:13	days 80:6
concept 14:11	constitutional 112:3	correctly 24:18 108:20	criminal 72:18	DBA 35:4
concern 49:19 50:17 95:22	Constitutionally 97:11	correspondence 77:19	criteria 12:22 20:8,11,16,22 78:25 79:10,11,21, 24 80:1,21 83:1,2,3 90:25 91:1,2 105:12,14	de 83:16
concerned 26:13 34:10 107:5	construct 6:25	cost 76:14	critical 5:16 6:4 11:6 14:25 16:4,12 23:15,17,23 28:24 29:8 30:16,24	dealing 91:25
concerns 32:22 45:25	construed 84:8	Council 33:10	count 16:16	debate 65:21
concession 34:4,20,25	Consulting 18:2	counsel 73:16 116:2		December 4:5,6,10,16 85:7
conclude 60:10 61:10 119:7	contact 33:4			decide 60:8 104:17
concluded 61:5	contacted 33:6			decided 7:3 23:13

<p>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</p> <p>decisions 25:20 40:13 42:25 108:1</p> <p>deck 66:17,24 67:9</p> <p>Decker 70:6</p> <p>deemed 113:8</p> <p>deep 30:18 31:4</p> <p>defer 24:10</p> <p>define 78:8,9,14</p> <p>defined 24:7 72:15 78:10 91:5</p> <p>defines 79:6 100:18,19</p> <p>definition 83:24 88:16 91:7 93:14,16 100:16 101:5,20 120:23</p> <p>definitions 107:23 121:3</p> <p>Del 32:20</p> <p>delay 97:3</p> <p>delayed 105:22</p> <p>delegate 75:20</p> <p>deliberate 53:5</p> <p>deliberation 62:6</p> <p>deliberations 7:1 52:8 55:5</p> <p>delivered 69:14</p> <p>demolition 79:24</p> <p>demonstrate 120:19</p>	<p>demonstrated 91:17</p> <p>demonstrates 92:7</p> <p>denial 77:20</p> <p>denied 7:6 33:22 34:2,7 70:25 89:24 114:13 119:13</p> <p>denies 68:8</p> <p>deny 67:3 85:21 86:3 92:9</p> <p>depending 22:18,19</p> <p>depends 108:13</p> <p>deprived 101:4</p> <p>describes 85:8</p> <p>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</p> <p>designating 119:8</p> <p>designed 22:20 56:17 57:1 64:15</p> <p>desirable 23:9</p> <p>desire 26:10 81:17</p> <p>desist 72:19</p> <p>desk 81:23 101:10,22</p> <p>destroying 36:2</p> <p>destruction 26:11 80:17</p> <p>determination 24:11 105:2 107:22 111:25</p> <p>determine 72:20 89:6 93:18</p> <p>determined 8:11 71:20 87:16</p>	<p>93:5</p> <p>determines 71:18 111:19</p> <p>determining 119:4</p> <p>detriment 61:16,17</p> <p>develop 5:23 41:5</p> <p>developed 26:13 113:25 115:16</p> <p>deviate 85:19</p> <p>deviates 119:23</p> <p>DHEC-OCRM 8:15</p> <p>diagram 24:24 37:21</p> <p>dictate 113:16</p> <p>difference 31:14 33:10 51:5,7 108:18</p> <p>difficult 20:17 75:22 82:10</p> <p>dig 107:11</p> <p>dimensional 5:13</p> <p>dimensionally 15:13</p> <p>dimensions 51:20,25 53:19</p> <p>diminish 33:24</p> <p>disadvantage 52:14</p> <p>disagreement 90:24</p> <p>disappointed 25:21</p> <p>discontinue 79:16,18 93:24</p> <p>discontinued 79:22 88:20 89:7 94:1,10</p> <p>discontinuing 98:16</p> <p>discovered 70:21</p>	<p>discuss 49:1 53:7 82:4</p> <p>discussed 43:19</p> <p>discussion 49:8 57:3 58:13 61:22 69:8 114:2</p> <p>disputing 22:15</p> <p>distance 16:25</p> <p>distinct 71:4</p> <p>district 5:15 6:2 61:18</p> <p>dock 7:25 10:16 20:3 26:5 28:2 30:5,7,13 31:18 45:11,18,19</p> <p>docks 30:3 31:18,20</p> <p>document 86:14,16</p> <p>documentation 74:1</p> <p>documents 97:8 115:12,22,23 116:1</p> <p>dog 53:11 96:24</p> <p>doggone 54:10</p> <p>dollars 32:3</p> <p>door 32:21 54:20</p> <p>dotted 6:4</p> <p>double 118:11</p> <p>downsize 31:11 37:5</p> <p>downtown 17:14 91:21</p> <p>drafted 9:23</p> <p>dramatically 34:1 38:1</p> <p>draw 105:10 115:18</p> <p>drawing 115:17</p> <p>DRB</p>	<p>19:16 20:11 21:9, 16,20 22:19 28:22 29:12 32:14 51:2,24 56:8</p> <p>DRB'S 91:21</p> <p>drew 65:14</p> <p>drill 77:15</p> <p>drive 11:14 39:2 115:24</p> <p>driveway 41:8</p> <p>dropped 92:8,10 109:5</p> <p>drove 35:25</p> <p>due 97:9 100:10 112:3,7</p> <p>dynamic 8:17</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E-1 5:11</p> <p>e-mail 77:19</p> <p>e-mails 78:5</p> <p>earlier 38:4 119:25</p> <p>Earth 115:9</p> <p>east 6:8,9 14:10 25:25 38:1</p> <p>easy 120:5</p> <p>eat 4:14</p> <p>economic 28:17 29:25 32:2 46:3</p> <p>edge 6:20 29:17 38:10</p> <p>Edwin 26:4</p> <p>effect 99:24 112:16 113:5</p> <p>effectively 12:14 13:23 22:12, 14,20 57:24 61:13</p>
---	--	---	---	---

62:14,18 67:4,12	33:19 39:25 82:7	exact 111:15	extreme 107:4	30:8
efforts 25:22	ends 106:3	Exception 5:4	extremely 95:14 102:8	favor 4:19 61:23 112:5
elements 50:7	enhanced 18:12	exceptional 10:1 11:2,25 12:11, 13 13:16 14:13 18:22 43:2 46:1 61:7	eyesore 48:5	fear 26:23
elevation 6:8,9	enjoyment 48:10			February 85:10
elevations 14:10	entering 17:22		F	fee 85:9
elevator 64:23	entire 9:19	exceptionally 47:13	F-1 70:4	feel 26:19 101:17 102:11 104:23 117:7
eliminate 35:4	entirety 51:12	excuse 53:7 62:15 68:11,14 119:9	face 115:9	feeling 92:2
eliminates 23:8	entitled 117:24	exemplary 75:9 92:15	facially 113:8	feelings 58:2
eliminating 18:4	entitlement 36:23	exhibits 105:8	fact 20:17 39:12 50:11 63:15 91:18 95:18 112:13 121:22	feels 74:8
Elliot 100:13 112:21 115:4	entitles 36:12	exist 10:4 11:3 12:7 13:17,18 16:3 24:1 48:8	factor 93:25	fees 104:17 110:21
ELLIOTT 19:21,23 20:4,6,21 22:4 37:16,19,23 38:6,8,14,20 39:5, 19 40:4,9 57:13,22 60:7,25 62:9 66:12 67:1 68:7,23 69:3 86:12,17,21 88:6, 13,15,19 89:1,5 92:24 93:3 95:2 104:12 110:16,20 113:17 118:19 120:12,16,21 121:12	entrance 17:4	existed 7:18 14:18	facts 71:15 94:6,7 107:2, 10,11 114:4,15 119:21	feet 6:7,8 11:20,23 13:6, 13 16:5,7,10,12,18, 19 19:10,12,14,20 21:15,16 22:2 28:25 29:10,12,18 30:24 32:10,11,15 33:8,21 36:21 44:11,17,24 45:1,4 46:15 48:4 51:4,5,14,15 53:2 55:18 56:5,8,13 57:7 62:22 63:8,10, 11 64:16,20 66:2, 18,21
embers 105:20	environment 8:17	existing 14:20 18:5,13 63:2	factual 114:22 115:16	feet all 9:18
enables 45:19	equipment 80:1	exists 10:2	failed 81:1 112:13	feet also 64:22
encompassed 5:21	erosion 17:24	expert 102:6	failure 80:23,24 87:11 112:7	fell 75:24 96:25 109:9 115:9 118:12
encourage 99:8	essence 68:3	expiration 85:4	fair 18:23 26:22 41:14 117:19	felt 15:22
encroach 14:25	essentially 26:6 34:22 63:1 106:15 113:7	expire 85:7 103:4	faith 29:5 38:15,21 76:19 90:24	fight 53:11
encroached 27:10	establish 80:18 120:24	expired 58:5	fall 93:17 97:6 109:1,5	figure 102:12 116:20
encroaching 44:1	established 79:2,12 81:20	explain 51:6 71:3 74:11 96:5	fallen 110:1 116:15	figures 57:1
encroachment 6:6,11 7:7 13:5,13 14:5 16:2,8,12,14, 19 18:5,7,15 23:14 43:22 44:10 49:11	establishes 85:12 86:7	explore 116:24	falls 8:16 99:7 108:1,22	file 71:25 103:4
end 11:8 14:3 18:1 21:1	establishing 70:17	extent 12:24 14:5 100:17, 21 119:22	familiarize 77:13	filed 76:1
	estate 70:14 95:6,8,18	extra 31:16 35:18	family 5:24 7:1 25:24 26:7, 8 42:5 45:2	
	estimation 21:2	extraordinarily 46:1 47:13	farther 49:16	
	evening 25:19	extraordinary 10:1 11:2,24 12:10, 12 13:15,16 43:2 61:6	father 26:4	
	everyone's 45:21	extravagantly 37:11	fault	
	evidence 61:4 62:10,13 85:25 93:11 94:19 104:14, 17 105:3 111:23 113:23 116:7			

<p>fill 24:1</p> <p>filled 10:5 34:20</p> <p>filter 18:12</p> <p>final 27:1,6,7,9</p> <p>finally 30:1</p> <p>find 35:1 74:2,12,13 77:10 101:18,24 104:21 115:24 117:1,2,3</p> <p>finding 68:21 70:24</p> <p>finds 85:24</p> <p>fine 27:15</p> <p>finish 106:12</p> <p>fire 80:16</p> <p>firm 74:5</p> <p>Fisher's 31:1</p> <p>fit 29:15 54:10 63:1</p> <p>fits 47:18</p> <p>five-foot 33:8 53:24</p> <p>flag-shaped 10:7</p> <p>flagged 24:5,13</p> <p>flagrantly 34:12 45:10</p> <p>flooded 27:21</p> <p>flooding 8:9 60:2</p> <p>floodwater 17:24</p> <p>floor 22:2 36:25 37:2,3</p> <p>floors 51:13</p> <p>focused 88:19 93:13</p>	<p>folks 75:19 81:11</p> <p>follow 10:9 28:24 41:18 78:21 89:19 120:1</p> <p>foot 26:15 35:1 37:8 47:23 49:11</p> <p>footage 19:11 21:18 32:7 51:5,10,12 56:9,13</p> <p>footages 19:5,17</p> <p>footprint 16:4,10 19:13 51:9, 11 55:20,22 56:2,4</p> <p>forest 24:21</p> <p>forever 96:18 103:16</p> <p>forget 82:15</p> <p>forgot 110:17</p> <p>format 93:4</p> <p>forthcoming 116:2</p> <p>Fortunately 78:14</p> <p>forward 25:9 38:5 105:25</p> <p>found 103:5</p> <p>fourth 14:1 17:10</p> <p>frame 57:10</p> <p>frankly 97:10 100:2 113:11</p> <p>fraternity 34:16</p> <p>fresh 83:18,22 84:14</p> <p>friend 105:2</p> <p>front 6:17 14:19 17:4 24:15 26:17 50:14 54:21 66:2,6 71:17 78:18 86:16 93:8 107:17 120:8</p> <p>frontage 58:21,25 59:12</p>	<p>full 56:1 65:24 77:1 81:25 87:23</p> <p>fully 75:15 107:14 116:24</p> <p>function 34:15 85:15</p> <p>fund 85:6</p> <p>furnishings 80:2</p> <p>further-out-type 15:22</p> <p>future 37:14 39:11,21</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 78:12</p> <p>gave 94:15,21</p> <p>general 14:23 85:5 90:21</p> <p>generally 16:9,21 63:9</p> <p>generated 73:9,20</p> <p>generating 85:15</p> <p>George 54:19</p> <p>give 6:22 17:18 20:12, 14,25 27:8 57:10 61:15,16 70:12 84:14</p> <p>giving 50:23</p> <p>goals 106:3</p> <p>God's 118:10</p> <p>goldbug 35:25 36:1</p> <p>good 17:10 24:9 25:19 76:19,22 77:7 83:12 84:10,13 90:24 96:9 101:11 102:9 113:11,13</p> <p>govern 118:20</p>	<p>governing 78:25 84:7</p> <p>government 91:24 103:19</p> <p>gracious 76:12</p> <p>grade 56:14</p> <p>grandchildren 26:3</p> <p>grandfather 26:7 98:2</p> <p>grandfathered 34:14 71:8</p> <p>grant 21:16 48:23 49:2 50:9 56:10 57:23 58:6 59:19 60:8,10 62:16 98:14</p> <p>granted 22:5 26:23 27:4,14 34:5 46:2,24 47:2, 25 49:20 50:5 55:21 58:4,10 62:4 65:23 67:2 69:17</p> <p>granting 26:15,16 49:3 52:17 59:14</p> <p>gray 11:17 12:2 13:7 17:17 44:3 46:20 47:11,14</p> <p>great 29:15 42:25 43:2 83:19,20</p> <p>greater 38:2 63:11</p> <p>Greenville 119:18</p> <p>ground 10:24 53:13</p> <p>grounds 33:23 81:5 120:7</p> <p>group 9:17</p> <p>guarantee 30:25</p> <p>guess 20:13 32:14,21 54:6 63:14 67:8,10</p> <p>guesstimate 14:23</p> <p>guidelines 41:19</p>	<p>guys 42:25 62:19 96:15</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 16:19 41:24</p> <p>Hall 70:20 115:21</p> <p>hand 4:3 53:8 84:24</p> <p>handful 10:4 13:19 58:23</p> <p>handle 69:10 70:15</p> <p>handouts 10:11</p> <p>hands 25:13,17</p> <p>hang 111:13</p> <p>happen 8:4 31:17 82:1 93:7 101:23</p> <p>happened 39:9 88:22 96:6,16 113:20 118:7</p> <p>happening 72:21 82:2</p> <p>happy 37:5 78:18 84:16</p> <p>hard 43:9 115:23</p> <p>hardship 28:17 29:25 32:2,5 37:9 46:3 51:16 61:6</p> <p>harmed 61:19</p> <p>hay 96:1</p> <p>health 81:18</p> <p>hear 4:7 9:12 14:14 50:16 67:17 68:1 121:8</p> <p>heard 29:1 46:9 57:22 62:12 63:19 93:10 94:18 113:21</p> <p>hearing 61:1</p> <p>heart</p>
--	---	---	---	--

<p>75:5 heated 19:21,22 51:9,10,12 56:9 held 61:1 Hellman 9:6,14,15 17:9 19:19,23,25 20:5, 10,24 21:6 22:1,10 23:24 24:9 25:6 32:9 43:15 46:15,22 49:14 50:8 51:17 60:13 63:24 68:9 69:18 helpful 101:23 helps 40:10 47:19 Henderson 5:2,5,10 7:17,21 8:6,10,23 9:13 21:8, 25 24:5,16,23 37:22 38:16 50:6 51:8 55:7,13,19,24 56:12,16,19,25 57:8,16 58:16,20 59:4,11 60:15 63:17 66:3,7,20 68:17,20, 24 69:7,23 70:2 73:6,15,19,24 84:20,23 86:15,20, 23 88:5,7 89:14 98:1,8,22 99:3,5,17 106:9,16,17,21 107:18 108:7,10,17 112:6,11,19 114:7 115:19 117:2 121:15,20 hey 87:22 116:18 118:11 high 34:22 50:21 53:2,13 Highland 19:9,12 highlighted 86:13,15 87:8 hire 96:8 history 37:13 hold 69:4 hole 105:15</p>	<p>home 6:21 26:11,17 30:18 42:16,19 43:6 53:23 56:17 103:13 homeowner 33:3 homeowners 54:22,24 homes 6:17,19 homework 96:25 hope 28:20 33:10 41:18 47:19 49:5 100:25 host 94:3 house 7:18 10:12,14,17, 18,20,22 12:3 13:1 14:4,18,22 15:11,22 16:9,21 19:1,11,25 20:19 21:22 23:1,3 26:24 27:20 28:3 29:5,6,9,16,21,22, 24 30:9,13,15 31:1, 2,13,15 32:8,9,16, 21 33:19,23 34:7 35:23 36:2,13,17, 19,24 37:10,19,22 38:15,21 39:2 41:7 42:15 44:5,6,7,14, 18,22,23,25 45:6,8, 19,20,22 47:4,6,8, 18,23 48:3 50:13 53:16,21 55:9,10,17 56:7 57:6 59:8 62:24 63:12,16,21 64:12 65:25 66:18 105:15 117:17 118:17 housekeeping 75:8 houses 10:25 12:8 22:14 28:15,23 31:5 38:11 huge 34:4 Hugo 10:23 27:21 80:15 humanly 107:15 hundreds 100:9 hung 93:25</p>	<p>Hurricane 80:15 husband 40:22 75:17 79:18 96:4 <hr/>I<hr/>I'on 17:15 i.e. 86:1 idea 98:23 ignore 34:6 illegal 88:24 94:14 illegally 79:2 imagine 75:13 immediately 10:23 49:6 83:8 96:11,22 impact 54:12 impacted 29:18 important 20:16 26:5 43:16 44:2 59:25 89:18 99:21 115:4 impossible 20:18 63:22 64:1 improper 93:12 improvements 18:14 Inabinet 54:19,24 55:2 inaccurate 52:11 inadequate 116:24 inappropriate 104:4 inaudible 26:3,4 52:12,15,17 53:10 56:9 57:25 60:12,13 62:23 67:15,18,19,23,24 94:2 120:22 121:5 inch</p>	<p>23:18 inches 6:7,8 inclined 92:21 included 36:14 includes 49:24 including 76:23 inconsiderate 35:21 increases 34:18 incredibly 35:21 incumbent 99:12 indulgence 82:6 infiltration 18:12 information 4:1 26:20 70:24 72:12 76:17 94:16, 22,24 105:9 107:16 informed 33:7 75:17 96:19 107:14 inground 50:14 52:1,3,5 initial 55:9 inquired 70:17 73:6 inspect 8:16 inspections 8:11 instance 113:10 116:21 instruction 33:2 instructions 107:8 instructive 40:10 insufficient 111:20 intend 49:16 104:18</p>	<p>intended 59:16 93:12 119:20 intent 79:16,18 91:9,17 92:14 93:17,23 94:8 104:15,19,21 105:10,11,17,22 119:3,23 120:19,20, 25 intention 15:23 intentional 94:12 interest 76:23 100:1 101:3 interesting 14:12 interests 81:16 interfere 92:16,17 interject 92:19 interns 115:22 interpret 89:2 107:8 118:22 interpretation 71:17 85:21 107:21 108:2,11,22 112:1, 16 116:7 121:11,19 interpreted 74:19 79:3 100:9 107:2 interpreting 96:2 107:25 121:4, 10,17 interprets 119:25 introductory 9:9 invalid 119:23 investigation 73:11 113:19 investigations 114:2 involved 76:8 iphone 111:13 irregularly 56:17</p>
--	---	---	---	--

<p>irrelevant 98:7 100:23</p> <p>island 10:2 11:1 12:3 13:3, 11,25 15:19 17:3,23 19:6 20:3 26:14 28:18 29:3 30:19 31:8 36:12 37:7,14 38:13 42:6,12 45:5 48:7 58:22 63:12,13 71:7 75:19 77:8 80:23 83:3 87:1,14 95:16 98:24 99:12, 13 103:3 108:25 117:12</p> <p>Isle 39:2</p> <p>issuance 86:1</p> <p>issue 41:22 48:13,14 50:22 59:13 60:5 62:21 70:13 75:10 79:14 83:21 84:10 105:10 113:4 120:18,19</p> <p>issued 70:23 71:14,22 72:5 83:4 85:3,6 87:1</p> <p>issues 39:25 75:5 77:12 97:10</p> <p>item 5:4,8,11 69:20,23 70:3 93:18 112:22</p> <p>itemization 76:13</p> <p>items 75:8</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>James 60:21,23</p> <p>January 70:13 75:18 78:1</p> <p>Jasper 5:6,8,12 6:1,16 10:13 16:23 23:7 28:15 29:16 40:19 42:10 44:16 45:20 46:4 62:4 66:4</p> <p>Joan 26:3</p> <p>job 74:18 83:20,22 89:2,6 96:9</p>	<p>Joe 5:2 7:13,14 8:7 9:2 24:10 33:14 37:21, 25 38:14 55:6 57:13 58:15 69:25 73:1,4 74:15,19 77:25 83:1,19 84:19 86:12 96:10 102:1,6 105:2,3 106:15,21 107:1,7 108:6 109:19 113:19 114:1,23 115:13</p> <p>Joe's 78:5</p> <p>John 11:5 106:21</p> <p>joint 97:1</p> <p>Judge 111:24</p> <p>justified 94:15</p> <p>jut 46:19</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kate 9:7 13:1 14:3,6</p> <p>Kay 9:22</p> <p>key 81:4</p> <p>Khan 74:6</p> <p>kind 23:19 30:20 36:22 39:3 64:9 73:7 75:12</p> <p>knew 43:6 105:3</p> <p>knowing 35:12</p> <p>knowledgeable 95:8</p> <p>KOEPKE 19:1 24:17,25 60:17</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>land 23:20 28:20 30:21 31:4 66:11</p> <p>landscaped 50:15</p>	<p>language 82:25 90:20</p> <p>large 20:19</p> <p>largely 117:18</p> <p>larger 32:15 57:10</p> <p>lastly 13:21 17:9 41:21</p> <p>late 26:4 74:25</p> <p>latest 48:15</p> <p>LATHAM 4:9,15 55:6,8,16,23 59:6,9,13,18 61:21 62:21 63:19 73:12 95:5 97:23 98:2,4 117:4 121:4,9,17,21</p> <p>law 74:5 79:14 81:7,10 84:6 94:8 99:25 100:8,19 101:12 106:23 111:7,9,10 113:5</p> <p>lawful 74:22 80:20 99:22, 25</p> <p>lawfully 47:7</p> <p>laws 95:8 103:13 104:22 120:1,2 121:5</p> <p>lawyer 77:11 121:13</p> <p>lawyers 83:10</p> <p>leading 6:20</p> <p>leads 7:25</p> <p>lean 60:15</p> <p>leaning 65:22</p> <p>leap 38:5</p> <p>leave 25:21 95:23 109:12</p> <p>leaving 67:11</p> <p>led 72:1</p>	<p>left 6:18 14:1 15:1 33:20 38:19</p> <p>left-hand 6:1</p> <p>legal 71:5 72:9 75:5 77:12,22 88:24 89:11 90:17,24 91:1,2 94:12 107:3 112:1 121:23</p> <p>legally 58:18 89:9</p> <p>legitimate 81:17</p> <p>Lelands 9:8</p> <p>Lelands' 33:18</p> <p>length 15:8 21:14 64:6</p> <p>letter 18:2 43:19 116:18</p> <p>letters 103:2,4</p> <p>level 17:24 31:13</p> <p>leveled 31:2</p> <p>license 70:18,22 71:1,14, 19,25 72:7 76:14 77:6 82:14 83:4 85:6,8,13 86:2 87:1, 15,23 94:21 95:10, 14 97:18,21 98:10, 14 102:4 103:3,11 104:4 109:2 116:8 119:1</p> <p>licensed 85:3</p> <p>licenses 80:24 84:4 87:19, 21,24 88:4,9 90:21 102:19</p> <p>licensing 85:1</p> <p>light 11:17 12:2 17:17 47:10,14</p> <p>limit 25:18 64:3</p> <p>limited 113:24</p>	<p>limits 64:3</p> <p>lines 8:8 13:14 40:7 41:2, 7 53:5</p> <p>Lisa 96:19</p> <p>list 99:7 108:2,23 109:1,6,9 116:16</p> <p>listen 97:14 113:17</p> <p>listened 62:10</p> <p>lists 79:9 103:7</p> <p>live 20:3 25:23 28:18 40:19 41:14,20 42:10,13 45:1 54:19 101:17</p> <p>lived 13:8 36:18 42:17</p> <p>lives 20:1 26:6 42:18</p> <p>living 16:24 36:12</p> <p>located 70:5</p> <p>lock 80:19</p> <p>long 7:23 15:8,20 23:1 28:10 30:4 72:14 73:20 87:19,20,24 88:3,8,11 97:18,19 98:9,10,14,18 104:1,4,6,8,10 117:14</p> <p>longer 51:21</p> <p>looked 70:20 96:20</p> <p>lose 71:25 102:4 103:10, 20</p> <p>loses 89:24</p> <p>losing 63:10 90:1</p> <p>loss 90:4 117:22</p> <p>lost 72:10 81:22 91:15 120:10</p>
---	--	--	--	--

<p>lot 7:4 10:7 11:3,19 12:7,11,15 13:8,11, 17 15:11 16:23 20:16 21:19 22:22 24:3,4,6,13,14 25:25 26:8 27:14 28:8 29:10,15,17,23 30:23 34:8,12,13, 19,20,21 35:11,12, 25 36:2,4 37:7 38:25 40:8,21,25 41:11 42:5,10 45:2, 10 46:9 47:16 48:23 49:7 52:18,23 53:17 54:21 57:15 58:4,7, 8,18,21 59:15 63:12 66:10 77:14 84:6 102:20 106:25 115:1</p> <p>lots 10:8 11:13 13:18 21:21 29:2,3 35:24 40:21 42:21 47:13 58:22 59:24</p> <p>love 35:17,19</p> <p>loved 35:16</p> <p>low 10:24 30:20</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>Madam 7:8</p> <p>made 28:16 42:25 43:1 81:5 85:10 90:2 95:10 105:2 110:11 111:24</p> <p>main 23:13 36:11</p> <p>maintaining 23:22</p> <p>major 34:20 38:5 101:2</p> <p>make 15:13 24:11 26:22 30:15,17 32:1 39:13,16 40:11 47:21 50:3 57:11,13 58:12 60:21,23 62:23 63:22,23 68:2,7 92:25 93:13 96:1 102:13 103:1 105:24 106:6,22 107:14,15 112:4</p>	<p>114:20 117:22 118:2,6,18</p> <p>makes 64:24</p> <p>making 40:13 93:4,8 101:1 108:1 118:14</p> <p>Malcovich 106:21</p> <p>man 121:10,18,22</p> <p>management 18:11 70:16</p> <p>marketing 94:25</p> <p>Marr 28:14 50:19,20 51:2,14 65:8,11</p> <p>Marr's 45:22</p> <p>married 11:13</p> <p>marsh 6:13,17 8:12 11:16, 18 12:1 35:17 47:16,25</p> <p>Marshall 25:24 66:3 69:22,25 70:5,16 72:12</p> <p>Mary 70:6</p> <p>massing 15:14,19 17:2,4,8 64:5,8</p> <p>matter 9:9 102:15 111:17, 23</p> <p>maximize 21:17 56:1 57:2</p> <p>maximum 55:21 56:12</p> <p>Mayor 38:24</p> <p>Mccullough 74:6</p> <p>meaning 22:7 89:8</p> <p>means 48:2 78:13 104:24 119:3,8</p> <p>measures 18:14</p> <p>meet 13:2 15:3 64:4</p>	<p>71:10</p> <p>meeting 4:10,16 15:15 18:23 20:7,18 39:8</p> <p>member 26:8 38:22 39:6 68:12 87:20</p> <p>members 4:1,12,21 5:10 25:13 61:24 69:5,11 70:3</p> <p>memo 78:16 82:3 96:15 105:7</p> <p>mention 23:24 38:20 39:22 99:20</p> <p>mentioned 21:21 38:15 72:13 79:17</p> <p>mentions 39:8</p> <p>message 98:15</p> <p>met 4:6 12:22 18:21 20:11 79:22,24 86:1 87:5,15 89:22</p> <p>mic 4:14 67:20 109:18</p> <p>microphones 57:4 60:16</p> <p>mics 4:13</p> <p>middle 10:15 20:1,2</p> <p>million 31:2,13,14,16</p> <p>mind 11:12 13:20 67:13 106:14 119:7</p> <p>minds 14:16 60:10</p> <p>minimal 16:2</p> <p>minimum 57:6</p> <p>miniscule 45:5</p> <p>minus 11:20</p> <p>minutes 4:5,10,16,24 25:15, 18</p>	<p>misdeemeanor 72:16</p> <p>missed 88:1</p> <p>misstatement 111:9</p> <p>misunderstand 48:2</p> <p>mom 42:13 43:5</p> <p>money 29:23 92:19</p> <p>monthly 103:11</p> <p>months 8:24 9:16 35:18 79:23 87:12 88:21 89:8 91:13 94:2 118:15 119:6 121:2</p> <p>mother 26:3</p> <p>motion 4:8 58:13 60:22,24 68:8 102:13 111:18, 19 116:12</p> <p>motions 39:23 48:25</p> <p>move 4:9,15 5:7 20:2 33:19 35:21 49:8 60:25 61:5,19 62:6 69:20</p> <p>moved 40:24 80:2 103:15</p> <p>movie 106:20</p> <p>moving 62:10 77:15 98:12 115:20</p> <p>Mulbry 70:6,15 75:16,17 79:18 96:3 103:1 104:2 117:15 118:2</p> <p>Mulbry's 73:16</p> <p>Mulbrys 74:23 91:25 92:1,14 96:22 99:22 102:22</p> <p>multiple 5:21 21:10</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>narrow 12:5,16 23:1 35:7</p>	<p>narrower 51:21</p> <p>narrows 66:24</p> <p>natural 10:6 17:25</p> <p>necessarily 8:10 39:20 90:15</p> <p>neck 53:14</p> <p>needed 114:10</p> <p>neighbor 15:1 17:16 23:21</p> <p>neighbor's 54:13</p> <p>neighborhood 15:18 17:14 117:13</p> <p>neighbors 17:13 23:4 26:18,20 28:7 33:4,20 41:10 48:1 66:1 75:13,14 77:7 84:10 92:17 117:7,13</p> <p>nice 43:7</p> <p>night 35:25</p> <p>no-brainer 95:20</p> <p>noise 75:11 109:4</p> <p>nonconforming 72:1 101:5</p> <p>nonconformities 100:20</p> <p>nonconforming 34:12 45:10 71:6,9, 10 72:9 74:22 79:4, 7,8,15 80:3,7,14,20 81:8,22 83:25 84:7 86:11 89:25 90:2,5 91:5,10,16 93:20 98:12,16 99:6,18,22 100:1,17 102:20 104:11 105:16,23 109:25 117:10 119:2,20 120:11</p> <p>nonconformities 100:18</p> <p>nonconformity 99:14</p> <p>nonfcomformities 100:21</p>
---	--	---	---	--

<p>normal 101:25</p> <p>noted 85:14</p> <p>notice 99:21 105:19,22</p> <p>notification 100:10</p> <p>notified 30:10,12 33:1 76:5, 7 97:12</p> <p>notify 97:4 99:13,15 112:13 116:13</p> <p>notifying 97:25 98:11 112:8</p> <p>novo 83:16</p> <p>number 12:21 23:25 32:22 39:25 62:4 67:7 75:8 76:1 90:25 91:4 93:23</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oak 23:25</p> <p>object 26:19 27:23 47:24 48:15</p> <p>obtain 80:19,25</p> <p>obtained 82:18,21 84:5</p> <p>occasionally 75:2</p> <p>occur 46:6 79:9 93:22</p> <p>occurred 119:5</p> <p>occurring 93:19</p> <p>OCRM 5:16 7:7 8:8,11,19 11:6,23 12:6 13:14 14:5 17:11,19 23:10 44:2 51:1 52:20 59:24 60:4</p> <p>odd 20:15</p> <p>odd-shaped 13:21</p> <p>offense 72:16,18</p>	<p>offering 116:22</p> <p>official 111:18</p> <p>older 31:11</p> <p>on-site 8:11</p> <p>one-room-wide 16:24</p> <p>one-story 16:15 17:5 56:6</p> <p>ongoing 76:18 95:2 106:5</p> <p>onus 97:19</p> <p>open 109:8</p> <p>opened 11:14</p> <p>opening 20:7</p> <p>opens 117:4</p> <p>operate 71:11 95:9</p> <p>operated 120:10</p> <p>operates 101:21 102:1</p> <p>operating 85:2 91:11</p> <p>operations 101:25 106:5</p> <p>opined 81:10</p> <p>opinion 94:5</p> <p>opponents 25:8,15</p> <p>opportunity 96:4 107:10</p> <p>opposed 4:22 61:25</p> <p>opposition 25:12 44:13 62:11</p> <p>option 37:2 107:6,7</p> <p>options 14:15 107:16</p> <p>ordeal 92:2</p>	<p>order 6:25 17:8 42:19 53:15 71:22 72:5 80:19 83:9 94:19 119:11</p> <p>ordinance 5:14,18 6:25 7:23 12:9,19,20 13:4 15:5,23 17:20 18:9, 19 20:10 21:14 24:8 32:11,13 61:12 64:2,4 70:8,9 71:2, 3,5 72:18 74:19 77:14 78:4,7,11,12 79:1 82:6,9,14 83:23 84:2 85:14,23 87:9 88:16 89:12, 13,17,20 90:3,11, 13,19 91:15 92:22 95:14,25 97:11,24 98:7 99:11,24 100:4,11 101:4,13, 15 107:9,25 108:11 112:2,17 113:6,14 119:22,25</p> <p>ordinances 84:25 85:16 88:23 89:2 104:7 106:24 121:18</p> <p>ordnance 107:23</p> <p>original 7:15</p> <p>Outbursts 68:15</p> <p>outlined 30:16</p> <p>overseen 20:22</p> <p>overturn 101:19 102:8 108:2, 10 109:24 110:6,8,9</p> <p>overturning 101:24 108:14 109:24 110:17</p> <p>owe 77:2</p> <p>owed 84:11</p> <p>owned 59:2,4,5</p> <p>owner 28:17 29:22 89:24 93:23 95:12 100:5 111:1</p> <p>owners 5:23 19:6 33:22</p>	<p>72:13 97:5 98:11</p> <p>owns 25:25</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>package 11:4 18:3 55:10</p> <p>packet 14:9,19 19:3 26:21</p> <p>pad 7:25 8:1 10:19</p> <p>pads 7:15,17 8:5 43:22</p> <p>paid 73:13,17 74:2 77:5 85:9 90:18 91:25 104:18</p> <p>painstakingly 28:9</p> <p>Palms 39:2</p> <p>paperwork 75:10 76:2,20 90:16 92:6 103:18 105:4 115:3,10</p> <p>paraphrase 89:14</p> <p>paraphrasing 89:21</p> <p>parcel 6:18 8:2</p> <p>parcels 58:23</p> <p>Pardon 64:18</p> <p>parentheses 103:7</p> <p>part 9:17 14:2 16:16 17:10 26:6 28:16 32:5 83:22</p> <p>partially 36:19</p> <p>participant 103:12</p> <p>participants 75:9 92:15</p> <p>parties 109:3</p> <p>parts 22:11 49:4,13 58:11 77:15 102:20</p>	<p>party 34:16 62:10 111:18</p> <p>pass 17:16</p> <p>passed 82:11,12</p> <p>passive 17:21</p> <p>past 37:13 39:9 40:10 48:21 70:19 76:2 92:5 116:16 120:18</p> <p>Pat 28:14 40:20</p> <p>path 105:25</p> <p>Patterson 111:24</p> <p>pay 31:12,14 80:24 84:11 92:12 101:10</p> <p>paying 77:2 83:8</p> <p>payments 94:25</p> <p>PDF 5:22</p> <p>pen 113:6</p> <p>penalties 76:23 84:12</p> <p>penalty 92:12</p> <p>pending 21:9</p> <p>peninsula 29:4,7 38:21 43:4</p> <p>people 25:11,17 30:11,21 31:2,5,9,11,18,21 32:25 41:14 44:18 46:9 47:12 75:21 91:21 96:8 117:9,12 120:17,18</p> <p>percent 13:5 16:2,8 18:5,7, 15 32:12 40:23 43:21,24 44:14 56:10 73:22,23,25 83:18</p> <p>perfect 28:7</p> <p>performing 74:24</p>
--	--	--	---	--

<p>period 28:10 73:10 75:3 76:18 79:23 81:12 87:12 88:21 89:8 91:15 94:1 105:17</p> <p>permeable 41:9</p> <p>permissible 57:7</p> <p>permit 79:24</p> <p>permitted 96:21</p> <p>persisted 79:19</p> <p>person 26:19 47:1 120:10</p> <p>personal 96:5</p> <p>personally 101:18 102:3</p> <p>perspective 67:2 96:5</p> <p>pertaining 61:7 70:9</p> <p>Peter 7:24 8:2</p> <p>phone 96:15 111:11</p> <p>photograph 10:10</p> <p>photographs 14:24</p> <p>pick 92:11 100:22</p> <p>picked 96:14</p> <p>picnic 34:17</p> <p>picture 14:19</p> <p>pictures 10:21,22 37:24 38:6</p> <p>piece 12:6 13:22 61:8,13 62:14</p> <p>pierhead 30:3</p> <p>piggybacks 100:12</p> <p>pinned 21:23</p> <p>pitched</p>	<p>36:7</p> <p>place 22:23 23:11 110:1</p> <p>places 101:15</p> <p>plan 16:21 24:20 27:8,9 49:22 50:1,13 51:19,22</p> <p>planning 17:7 100:18 111:11</p> <p>plans 9:21,23 26:24 27:1, 3,7 33:1 47:4 65:15</p> <p>plat 37:21,23</p> <p>platted 11:3 12:7 22:22 58:18,21,24</p> <p>plausible 90:6,9</p> <p>play 41:14</p> <p>played 118:8</p> <p>plot 33:14</p> <p>point 4:1 23:13 34:2 43:2 46:19 57:5 66:19 85:18 104:12 108:12 120:22</p> <p>pointed 45:9</p> <p>pointing 24:23</p> <p>policy 92:13</p> <p>Polly 42:9</p> <p>pool 41:1,2,5 50:14 51:19,24 53:19</p> <p>porch 16:15 17:5 27:24 41:22 66:17 67:9</p> <p>porches 33:9 36:13</p> <p>portion 5:18 6:7,9 16:13 59:18</p> <p>portions 64:4</p>	<p>position 57:14 74:12,13 90:16 91:3 98:25 104:20</p> <p>possibly 66:11</p> <p>posterity 48:10</p> <p>potential 97:9</p> <p>potentially 64:21,23 101:4</p> <p>Poulnot 25:19,23 26:4,7 27:15,19 38:17 45:18 47:20,22 48:19 49:15</p> <p>Poulnot's 45:16,21 66:11</p> <p>Poulnots 35:19 48:9 55:2</p> <p>power 109:14</p> <p>powers 106:15 111:16</p> <p>practices 18:11</p> <p>precedent 30:22 31:9 33:11 102:16 109:24 112:23,25 113:1</p> <p>precedent-setting 31:23 39:23 102:15</p> <p>precedential 39:8,10 107:5</p> <p>precious 103:15</p> <p>precisely 104:25</p> <p>predating 115:23</p> <p>predecessor 96:14</p> <p>premise 36:11</p> <p>present 5:3 9:5 70:1 73:2</p> <p>presentation 7:11 63:20 72:24 114:8</p> <p>presented 61:4 72:11</p> <p>presents 73:1</p>	<p>preservation 97:13</p> <p>pressure 31:6</p> <p>pretty 8:12 14:12 41:24 43:25 120:4</p> <p>prevent 82:2</p> <p>previous 6:23 7:18 39:10 71:20 83:5,6 86:2 87:2 116:9</p> <p>price 28:19</p> <p>prices 30:18,20 32:7</p> <p>principal 51:3,4,8,11</p> <p>prior 95:9 115:8 117:5</p> <p>private 81:15,16 84:9</p> <p>privately 59:5</p> <p>probation 118:12</p> <p>problem 27:21 75:18 76:3,4, 6,7,9 91:24 96:13, 16,20 105:19</p> <p>problems 4:13</p> <p>procedurally 69:10</p> <p>procedure 69:16</p> <p>proceed 74:3</p> <p>proceeded 92:1</p> <p>proceeding 76:3</p> <p>process 32:23 74:17 88:2 97:9 100:10 112:7 116:19</p> <p>processes 112:3</p> <p>professional 74:16 95:6</p> <p>professionals 75:20</p>	<p>program 90:9,10,22 92:15</p> <p>prohibit 22:20 57:24 61:14 67:12</p> <p>prohibited 12:14 13:22,23 22:9 62:14 67:4 99:9,11</p> <p>prohibitive 62:18</p> <p>prohibits 22:13,14</p> <p>project 115:21</p> <p>promise 52:25</p> <p>prompt 116:13</p> <p>proof 104:19</p> <p>properties 10:1,4 11:12 17:18 19:5,8</p> <p>property 5:21,23 9:8,19,25 10:13,16 11:7,10, 11,20,24,25 13:14 14:12,18 18:13,22 19:6,16 22:8 23:16, 25 26:11,12 28:1,18 29:23 31:16 33:18, 22,25 38:4 42:11 43:3 45:15,16 48:11,20 52:16 54:13 60:18,20 61:8,9,11,13,15,17 62:14,17 67:4,13 70:5,16,18 72:4,13, 14,21 73:12,14 74:24 75:1,2 76:22 81:16,21 84:9 86:7 87:11,19 94:14 95:11 97:5,13 98:11,19 99:14,15 100:1,5 101:2 104:13,14 108:22 111:1 115:7 118:23</p> <p>proportionately 62:25</p> <p>proportions 63:9</p> <p>proposal 48:15 49:17</p> <p>propose 48:4</p> <p>proposed 14:4 19:11 33:3</p>
---	---	--	--	--

<p>44:4 49:22 51:22 55:14</p> <p>proposing 29:11 47:5 50:1 65:18</p> <p>protect 48:8</p> <p>protected 100:1</p> <p>protective 37:13</p> <p>protesting 27:17</p> <p>provide 17:23 74:21 76:12, 13</p> <p>provided 71:10 73:8</p> <p>provision 7:3 27:13 57:18 58:3 62:3</p> <p>provisions 5:14</p> <p>public 17:10 52:6 53:6 55:3 65:19</p> <p>pull 5:22 111:15</p> <p>pulled 111:10</p> <p>pulling 15:11</p> <p>purchased 37:11 75:1</p> <p>purely 114:14</p> <p>purports 95:7</p> <p>purpose 17:11,19 18:8,19 23:10 34:13 43:16, 18 50:25 52:20 59:15 115:15</p> <p>purposes 52:22</p> <p>purview 54:4</p> <p>push 30:25 44:17 64:23</p> <p>pushed 4:13 45:6,8 54:8</p> <p>pushes 23:2 44:21</p>	<p>pushing 23:7</p> <p>put 8:8 23:19 30:9 31:6 48:4 49:21 66:16,17 101:22 110:3</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quasi-judicial 68:16</p> <p>question 24:9 34:11 37:17 38:8 46:8 47:19 50:24 55:6 58:14 60:7 63:14,18 65:5, 12,20 67:3 84:5 92:10 95:11,23 97:23 100:13 119:19 121:16</p> <p>questions 7:9,12 9:1 18:25 25:2,5 46:6 72:23 73:1 84:16 92:25 114:3</p> <p>quick 119:15</p> <p>quickly 5:19 80:18</p> <p>quiet 69:19,21</p> <p>quote 53:14 77:21 79:2,6 82:20 111:17</p> <p>quoted 78:16</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rabbit 105:15</p> <p>raise 4:3 25:13 53:8</p> <p>raised 25:17 42:17 100:13</p> <p>raising 85:5</p> <p>Randy 8:13 109:18</p> <p>rare 13:19 102:8</p> <p>rate 13:19</p> <p>rationale 110:14</p>	<p>Raven 11:13,14</p> <p>RC-2 5:15,20 6:2 17:20 23:11</p> <p>reach 17:15 99:8 113:4</p> <p>read 4:7 78:18 88:15 93:14 94:4,11 100:11 120:22</p> <p>reading 89:13,16</p> <p>ready 77:1 81:24 92:19</p> <p>real 70:14 78:11 95:6,8, 17 110:23 119:15</p> <p>reality 33:8 83:15 118:16</p> <p>realm 120:4</p> <p>Realtor 94:16,22,23 110:20, 24</p> <p>Realtor's 110:23</p> <p>Realtors 113:21</p> <p>Realty 70:14 73:10 75:25 88:7 92:4,5</p> <p>reapply 103:11</p> <p>rear 11:23 54:6 66:2</p> <p>reason 23:13 30:12 34:13 41:4,13 59:19,23 65:22 88:12 102:9 103:18 108:14</p> <p>reasonable 26:19 63:12 76:19 87:21 103:12 121:5, 10,18,20,22</p> <p>reasonable-sized 44:23</p> <p>reasons 18:20</p> <p>Rebecca 40:18</p> <p>rebuild 105:18</p> <p>rebuilt</p>	<p>105:16</p> <p>rebut 43:14 65:8,9,10,11</p> <p>rebuttal 65:14</p> <p>receipts 73:9</p> <p>receive 18:23 26:25</p> <p>received 26:21 48:21 74:1 98:15 103:2</p> <p>receiving 94:25</p> <p>recently 19:24 70:11</p> <p>recess 109:19,20</p> <p>recognize 28:6</p> <p>recognized 71:8</p> <p>recognizes 99:6</p> <p>reconfirm 32:7</p> <p>record 9:15 16:3 49:6 69:6, 12 105:9 109:22 111:8,19,24 112:5 113:24 114:22 115:16 116:4</p> <p>records 33:12 70:20 96:21 114:25 115:1,7 116:24 117:3</p> <p>recourse 110:24</p> <p>rectangular 40:8</p> <p>reduce 43:25 63:7,15</p> <p>reduced 43:23 63:1</p> <p>Reese 53:9,10 54:15</p> <p>reestablish 70:25</p> <p>refer 78:21 89:17</p> <p>reference 5:25 57:5,11</p> <p>referenced 83:1</p>	<p>references 68:25</p> <p>referring 7:24 20:21 86:25 111:12</p> <p>refers 6:14</p> <p>regard 64:2</p> <p>registered 70:10</p> <p>regret 74:12</p> <p>regular 17:16</p> <p>regulate 81:17 108:4</p> <p>regulation 81:12</p> <p>regulations 26:13 28:9 84:7 91:6</p> <p>reiterate 40:21</p> <p>relate 74:8</p> <p>related 72:12</p> <p>relates 45:7 92:13 97:12</p> <p>relevant 78:25</p> <p>relied 92:4</p> <p>relief 19:17 20:25 21:1, 11,17,22 55:20</p> <p>remand 111:17,22 112:12 113:18 114:1,14</p> <p>remarked 112:21</p> <p>remember 27:19 31:22 43:16</p> <p>removal 50:7</p> <p>removed 8:6 49:12</p> <p>rendered 58:9</p> <p>renew 97:21</p> <p>rent</p>
---	--	---	--	--

72:14 118:24	requested 6:24 9:16 27:12 35:3 52:15 76:11	responsibility 43:1 75:24 77:2 92:9 97:2,14 99:8 110:23	RICHARDSON 4:18 7:14,19 58:14, 17 59:22 60:21 68:5 73:3 103:24 108:5, 9,13,16 110:2,7,12, 19,22 111:3 116:23 120:17	<hr/> S <hr/>
rental 70:18,22 71:1,16,19 72:19 73:7,13,20 74:23 76:16 77:14, 23,24 78:7 79:1,19 82:9 83:4,5 87:1,2, 11,13,23,24 88:4,8 90:19 94:13,21 95:3,15 96:12 97:22 98:11,13,18 99:10, 23 104:4,14 108:1 109:8,25 118:15 119:1	requesting 5:13 21:10 66:9 68:25 70:7	responsible 97:25 111:2	right-hand 5:25 6:16 14:20	safety 81:18
rentals 70:9 71:6 76:18 78:3 79:3 84:1 99:11 103:25 108:25 116:15 117:14,16,18	requests 21:19 25:9 34:3 40:17	rest 79:21 118:17	rightfully 101:17	sake 118:10
rented 113:22 118:9	require 5:15 84:3	restart 80:4	rights 81:16 84:9 97:13	sale 26:10
renters 97:4	required 20:8 23:22 71:23 72:19 82:19 85:8 100:5	restaurant 80:3,4,5	Riley's 38:24	Sates 120:2
renting 75:2 91:21	requirement 5:20 22:6 64:6,7 87:3 100:4,10 105:11 114:8	restrict 15:4 57:25 61:14 67:12	rip 41:8	satisfied 79:25
rents 73:3	requirements 18:8 71:16 77:5 80:25 85:1,25 96:2 112:3 118:22	restricted 12:14 13:24 61:9 67:5	rise 17:25 93:17	satisfy 18:7 22:6 67:7
reopen 91:13,14	requires 6:12 21:14 91:9	restricting 60:9,11	road 58:21,25 59:11	saved 115:23
repairs 18:14	research 74:1	restriction 22:18,21	Robinson 8:13	scanning 115:21
repeatedly 91:8	reside 28:14	restrictions 36:9 63:6	robust 107:9	Schutte 32:20 37:16,18,20, 24 38:7,9 39:1,5,18, 24 40:3,5,14 45:9, 13 52:6,9 65:16
replaced 80:5,8	residence 5:24 7:1	restrictive 62:19	roll 97:6,7	Schutte's 45:11,22 66:10
replaces 49:10	resident 73:14	restricts 22:12	rolls 99:1	Schuttes 54:20,21,25
replied 96:17	residential 73:7	resubmittal 114:8	room 16:24	screen 5:25 6:15 42:14 89:19
REPORTER 67:16,25 121:7	resolution 77:17	result 41:5 107:4,5	Ross 74:5 88:13 104:12	screens 21:12 71:18
represent 26:2 113:13	resort 117:11	retained 18:1	Ross' 119:1 120:22	sea 17:24
representative 29:1	respect 40:5 42:24 119:23	retention 18:11	rule 72:20	seconds 83:8
representing 113:12	respectful 43:8 44:20,21	retired 117:21	ruled 40:6	secret 118:11
request 5:8,11,22 6:5,10,11, 23 7:6 25:16 26:21 42:3,18 45:12,14,15 57:21 62:2,7 69:2,9, 14,15 70:19,25 84:14	respectfully 89:10 97:3 100:3	retroactively 76:14	rules 26:12 28:8 35:14 38:12 39:11 41:3, 12,15 69:16 80:22 88:22 118:8,20	section 70:8 71:3 78:5,24 79:6 82:3,19 83:25 84:24 85:7 86:1,13 87:9 88:16 89:20 107:21 111:12 119:3
	respond 84:20 100:14	revenue 73:9,19 85:5,15	ruling 39:10,15	sections 6:24 71:2 85:20 108:3 112:17 113:7
	responded 100:14	reverse 107:3	run 6:20	seeks 81:13
	response 4:23 9:3 25:3 43:12 62:1 115:11	review 15:16 18:23 20:23, 25 43:18 51:20 72:21 83:16 111:20 119:2	runoff 17:22 43:20 52:25	sees 74:20 91:23
	responsibilities 75:21 103:20	revocation 72:3 87:10	runs 105:11	sell 31:10 37:10
		revoked 87:17		

send 107:7 110:21	104:1,6,8,11 118:15	sisters 26:2	25:12,16 32:18 40:16 42:2,4 84:19 115:13	starts 78:22
sending 116:6	short-term 75:3	sit 30:13 68:15	speaking 32:25 89:16 97:11	state 25:10 27:11 49:5 100:8,18 120:2
sense 28:1 63:23 64:24 90:6 93:1	shortly 9:24	site 14:13 24:19,20 41:21 45:8 50:1,13 51:19,22 52:21	speaks 15:6 44:13	stated 4:21 61:24 85:4 108:21 119:19
sentence 119:14	shot 96:15	sits 10:8,15,20 11:25	special 5:4 36:4,5	statement 20:7 47:21
separate 48:25 71:4 79:10	show 44:7 49:25 68:18 76:17 104:15	situation 12:9 13:9 22:24 47:14 74:14 77:10 80:13 82:10 97:1 105:21	specific 80:11 107:21 108:19	states 79:2 85:22,23 86:25 87:4,9 91:25 100:7
serve 17:12 18:18	shown 120:25	size 32:10 41:1,10 46:13 55:10 57:6 63:1,15	specifically 84:3 115:7	stating 78:5
serves 52:22	shows 11:22 33:14 44:6 50:13	sketches 27:2,23	spoke 47:12	status 71:10 72:1,10 80:20 81:22 86:11 89:25 90:2,5 91:16 99:18
services 18:2	side 5:25 6:1,16 8:1 10:13 11:18 12:1 13:8 14:10,20 16:23 21:13 23:14,19,20, 23 24:2,21 25:25 38:1 42:11,21 45:11,15,16 47:17 48:13 54:23 64:12 66:4,11	skinnier 64:24	square 16:5,7,10,12 19:4, 10,12,14,17,20 21:18 29:12 30:24 32:7,10,11,15 33:18 36:20 37:8 44:11, 16,24 45:1,4 46:15 47:23 49:11 51:4, 10,11 56:5,8,9,13 57:7 62:22 63:10,11	statutory 105:17
servicing 25:20	sides 5:21 11:7,8 29:4 36:7	skirt 77:4	square-foot 29:22,24 36:2,13, 17,19 42:16 49:9 55:17	stayed 41:7
set 9:15 13:3 21:15 30:21 31:8 41:19 43:19 84:15 90:23 91:7 102:14 109:24 111:8	sight 49:22 52:10 53:5 82:11	slab 14:20 38:17,19 53:2	staff 70:10,13,20 71:16 73:11 87:20 89:20 99:13 112:8,12 116:6,13	stepped 81:10
setback 5:20 6:4 7:7,15,20 8:7 11:23 12:6 13:12 14:5,25 15:9 16:17 17:11,20 21:13 22:17 23:11, 18 27:10 33:8 34:8, 9 35:4 43:8,17,18 44:2 49:10 54:6 55:8 66:1,9	sign 4:22 61:25	slabs 16:3,6 18:6	staff's 57:14 112:16	stepping 17:7
setbacks 5:15 8:3 17:12,17 27:5 34:7 41:3 42:16,23,24 44:20, 21 51:1 52:20	significant 23:25 33:9 52:13 101:3	slightly 48:3 51:21	stairs 64:22	steps 16:16,17
sets 12:21	significantly 18:16 33:24 52:13	slips 106:13	stand 76:25	stick 22:2
setting 102:17	signify 4:19 61:23	small 28:8 33:16 44:9,22 45:17 46:5	standard 73:14 89:22 90:12 121:6	sticks 39:3
shallow 24:4,6,14 29:17	similar 11:11,12 93:8	smaller 29:10 32:12 44:15	standards 13:3 64:8	stop 31:24 78:1 81:13
shape 20:15	similarly 79:21	sold 33:23	standing 76:22 84:13 101:11	stopped 78:1
she'll 9:24	simple 16:22	solution 28:7 116:22	standpoint 121:23	stopping 47:8 116:17
sheets 46:20	simply 42:22 52:11,13	sooner 76:8	start 57:3	stops 47:5,6 50:15
short 32:24 72:14 87:22 97:21 98:13,18	single 5:24 6:25 105:12 117:5	sort 10:9 11:16 19:17 39:12 63:4,22	started 14:11 96:12	store 91:11
	sir 54:17 57:17 73:6	south 14:10 79:13 81:9 91:6 100:8 104:22 113:2,3,4 120:2		storms 17:24
	sister 42:13,15	space 17:18 19:21,22 51:12 67:22		stormwater 17:21 29:13 31:6 43:20 50:23 52:21, 25
		speak		story 21:12,16 35:7
				straight 9:15 56:19 111:9

<p>street 20:1,2 24:15</p> <p>stretch 38:13</p> <p>stretching 27:25</p> <p>strictly 84:8</p> <p>strike 106:2</p> <p>strikes 75:4</p> <p>strips 18:12</p> <p>structurally 63:4,21 64:1</p> <p>structure 6:12,13 41:23 52:10 80:17,19 117:10</p> <p>structures 7:22</p> <p>stuff 91:21 107:3</p> <p>subject 6:18 8:9,17</p> <p>subjective 121:25</p> <p>submit 82:23 98:6 100:2 101:14 119:24 120:4</p> <p>submittal 98:9</p> <p>submittals 115:8</p> <p>submitted 9:22 14:9 28:22 69:14 76:17 88:8 92:6 105:8 114:24</p> <p>submitting 115:10</p> <p>Subsection 5:19 6:10 80:7,9 95:24</p> <p>subsections 5:17</p> <p>substantial 43:25 61:16,17 85:24</p> <p>sudden 30:6 118:11,12</p> <p>suffered 11:1</p>	<p>sufficient 104:19</p> <p>sugar 17:16</p> <p>suggesting 58:10</p> <p>Sullivan's 13:3 17:23 19:5 36:12,16 37:7,14 45:4 48:7 58:22 63:11 77:8 80:22 83:3 86:25 95:15 98:24 99:12 103:3 108:25</p> <p>summarized 86:18,19</p> <p>sunset 30:14 35:18</p> <p>supplied 102:2</p> <p>supply 105:6</p> <p>support 49:6 54:22,23 64:9 105:8 117:6,8,9,17</p> <p>supportive 75:15</p> <p>supports 118:17</p> <p>supposed 94:17</p> <p>Supreme 79:13 91:6,8 93:15 94:5 99:24 100:19 104:22 105:13 113:2,3 119:17,19</p> <p>surface 41:9</p> <p>surrounded 36:6</p> <p>surrounding 17:22 119:21</p> <p>surrounds 18:13</p> <p>survey 7:24 8:18,21 11:5,6</p> <p>Susan 25:24</p> <p>suspended 87:17</p> <p>suspension 72:2 87:10</p> <p>switches 98:24</p>	<p style="text-align: center;">T</p> <p>table 91:19 116:25</p> <p>takes 23:6</p> <p>taking 16:22 48:24 97:14 113:6</p> <p>talk 13:1 45:24 53:4 57:20 58:3 65:7 67:19 75:10 102:25</p> <p>talked 45:10,17 80:21</p> <p>talking 42:12 46:14 56:16 57:9 60:3,4 62:22 80:14 90:20 102:17, 18,19</p> <p>talks 80:9 84:6</p> <p>target 120:5</p> <p>tasked 18:3</p> <p>tasks 75:22</p> <p>taught 54:2</p> <p>taxes 73:12,14,17 74:2 92:1</p> <p>technically 20:13 43:24 66:23</p> <p>telling 94:18</p> <p>temporal 82:23,24</p> <p>ten 8:15</p> <p>ten-foot 23:18</p> <p>tenant 88:11</p> <p>tent 36:7</p> <p>term 72:14 73:20 77:17 87:19,20,22,24 88:3,8,11 89:11 97:18,19,22 98:9, 11,13,14,18 104:1, 4,6,8,9,10,11</p>	<p>117:14 118:15</p> <p>termination 72:3</p> <p>termites 80:16</p> <p>terms 15:14,17 17:9 19:17 64:5 107:8</p> <p>test 14:2 17:10 18:21,23 32:5 113:11,13</p> <p>testimony 105:7</p> <p>Tezza 107:6</p> <p>Tezza's 105:25</p> <p>theoretically 55:16</p> <p>theory 50:9</p> <p>thing 23:12 30:17 31:17 34:21 54:10 75:12 77:11 84:23 85:17, 18 90:1 92:14 95:12,19 99:20 106:10 121:2</p> <p>things 35:9 76:11 84:21 96:23 101:23 106:25 109:22 111:4 115:2,6 118:25 121:1</p> <p>thinking 92:2</p> <p>THOMPSON 5:1</p> <p>thought 88:2</p> <p>thoughts 106:1 112:1</p> <p>threat 101:1</p> <p>three-year 73:9</p> <p>thrilled 37:7</p> <p>throw 100:22 105:1</p> <p>throws 91:12</p> <p>thumbs 111:22</p>	<p>tidal 30:19</p> <p>tides 34:22</p> <p>tight 22:3 45:3</p> <p>Tim 53:10</p> <p>time 4:3,4 7:13 20:17,18 22:25 28:10,11 30:4 32:24 39:2,7 45:3 75:3,16 76:9,19 81:12 87:23 91:14, 23 93:7 105:17,19 106:1,4 113:5 120:15</p> <p>tip 50:11</p> <p>today 74:20 100:2 103:5 119:24</p> <p>toes 83:13</p> <p>told 28:25 29:13 30:2 37:4 73:16 76:4 77:25 96:11,16,22 115:14 117:24</p> <p>tomorrow 92:20</p> <p>tonight 32:25 44:14 47:12 92:20 105:7 106:16, 20,25 114:13,23</p> <p>top 27:24,25 42:14 56:11 81:13</p> <p>tore 27:22</p> <p>total 16:11 56:9</p> <p>totally 74:8</p> <p>touchy 83:21</p> <p>tough 101:15</p> <p>Town 30:16 35:13 48:14 59:3,5 70:1,10,13, 20,22 73:11 76:12 77:3,5,8 78:6,14,17 81:25 85:2,3,15 86:10 90:13 91:20 92:18 97:4,6,20,24</p>
--	---	---	---	--

98:4,9 99:1,5 100:21 101:21,25 102:1 103:2 105:7 107:24 109:8 112:12,16 114:6,24 115:11,20 116:6,12 117:6,8,9 119:25 120:1,9	typically 8:8 20:12	unusual 26:16	45:11 46:21 74:21 76:19 90:6 92:22	23 63:7 64:11 66:18
Town's 11:13 77:20 81:17 84:24 91:5 92:20 99:7 100:4,16 101:5,13,14 106:5 113:6 119:22	<hr/> U <hr/>	urgent 53:8	viewed 121:23	wife 25:24
trailers 115:20	Ufkes 40:18,19	usable 53:25 54:1	views 36:8 37:8,25 38:2	window 17:15 91:12
transferred 95:6	Uh-huh 59:11	utilities 58:25 59:6,10	violate 104:22	winds 23:16
transpired 109:20	ultimately 111:1	utilization 22:6 60:11 61:14	violation 72:17 75:12 83:2 97:10	wired 9:11
trash 75:12	unaddressed 95:24	<hr/> V <hr/>	violations 72:16 109:4	wishes 26:10
treatment 17:21	unbelievable 82:11	vacation 70:9,18,21,25 71:6, 16,19 73:13,20 74:23 77:14,23,24 78:3,7 79:1,3,19 82:8 83:3,4 84:1 87:1,2,11,13 90:19 94:21 95:15 96:12 98:13 99:10,11,23 108:1,24 109:8,25 116:15 119:1	violence 106:4	withdraw 68:21,25 69:9,15
tree 36:1,3	unbuildable 7:5 27:14 42:23 46:10 48:24 57:15 58:9	values 48:10	<hr/> W <hr/>	withdrawal 69:17
trees 23:25	understand 24:17 27:15 29:21 30:4 36:22 39:18,24 51:19 74:18 93:13 111:6 119:10 120:6	variance 5:8,11 6:23,24 7:2,4 9:16,18 12:25 18:21,24 22:4 24:19 25:9,15 26:15,21 27:8,12,13 28:16 32:18 33:16 34:2,5 35:5 36:25 38:2,4 40:17 42:3,18 44:16,23 45:12,14 46:2,5,12,24 47:2, 24 48:21,23 49:2,7, 9,19 50:4,7,9 52:14, 17 54:9 55:11 56:10 57:15,17,20 58:4,6, 10 59:14 61:2,8,15, 19 62:2,7,16,22 63:2 65:23 66:9,10 67:8,10 69:1,15 108:17,20	walk 9:24 14:3 44:19	withdrawn 5:4 69:4
trial 39:13,14	understanding 9:17 48:6 75:14 95:13 114:21	versus 119:18	wall 21:15 64:6	word 77:16 78:8,9 82:22 90:4 104:24
triangle 12:17 46:13,16	understood 20:9 41:2,3	vicinity 14:23 61:12	walls 15:20 56:19	words 89:19
triangular 52:22	unfortunate 74:14 77:10	view 15:12 17:3 41:24	wanted 33:7 41:1,10 57:11 87:16 103:1 114:20 115:10	work 29:19 30:15 43:9 74:17 101:8 109:13
trucking 15:8	uninterrupted 77:25		watched 43:6	worked 41:9
true 108:6,8	unique 35:24 84:15 90:22		water 17:22 30:18 31:4 34:22 36:7 56:24	working 13:7 115:22
trumps 90:19	United 91:24 100:6 120:2		waters 18:18	works 90:10 114:21
turn 7:8 72:23 78:15 109:18	unlivable 27:22		weeds 82:5 89:18	world 107:11
turning 79:5	unnecessary 61:6		weeks 32:24	worth 117:19
Turnkey 95:4	unquote 53:14 77:22		welfare 81:18	written 69:4,14 75:11 83:24 120:8
two-story 56:7	unreasonable 22:17,21 60:18 61:9 62:19		west 32:21 38:23	wrong 89:5
type 75:11 116:12 117:25	unreasonably 12:13 13:22,23 22:12 60:9,11 61:14 62:15,18 67:5,12		whatsoever 45:15	wrongful 81:2
typical 11:19			wherewithal 31:15	Wurthmann 42:4,9,10 44:20
			wide 53:20,24 63:21 66:12	Wurthmanns 40:20 48:9 54:25
			widens 47:9	<hr/> Y <hr/>
			width 15:10 16:22 53:15,	y'all 57:19 75:4 82:8 83:21 84:16 106:15 107:8,16 112:22

y'all's

54:3 58:2 106:24

year

39:7 70:13 71:14,20
75:18 82:18,21
83:5,7 85:7,10,11
86:3 87:3 88:4 90:7,
8,18 100:9 113:22
116:9 118:18

yearly

75:23 103:11

years

8:15,21,22 26:9,13
29:6 30:6 31:24
36:18 52:15 70:19
76:1 84:5 96:9 97:3
107:24 109:9,11
112:14 116:16
117:21

yield

72:22

Z

zone

5:20 16:15 17:19,23

zoning

5:3,15 6:2 7:23
12:9,19,20 15:5,16,
23 20:8,10 56:11
69:5,11,14 70:7
71:2,4,12,23 72:6,8,
18 73:11 74:7 77:20
80:10,23,25 81:10,
12 82:15,17,20
83:17 84:4 85:14,
22,24 86:3,4,6 87:6,
14 89:23 90:20
94:20 95:8,13,25
101:19 102:6,7,17
106:17,19,23
107:20 109:4,23
110:5 112:24
116:10 118:25
119:25 121:5,10,17