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TOWN OF SULLIVAN'S ISLAND  
BOARD OF ZONING APPEALS

MEETING BEFORE: ELIZABETH TEZZA, CHAIR

DATE: May 10, 2018

TIME: 6:00 PM

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

REPORTED BY: Priscilla Nay  
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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APPEARANCES :

ELIZABETH TEZZA, CHAIR  
EMILY BRASHER, BOARD MEMBER  
PETER KOEPKE, BOARD MEMBER  
SALLIE PRITCHARD, BOARD MEMBER  
JODY M. LATHAM, BOARD MEMBER  
RANDY ROBINSON, BUILDING OFFICIAL  
(FOR ZONING ADMINISTRATOR)  
COURTNEY LILES, TOWN CLERK

ALSO PRESENT :

ALICE F. PAYLOR, ESQUIRE  
BRIAN A. HELLMAN, ESQUIRE  
JULIE HELLMAN  
PAIGE TOLMACH

(INDEX AT REAR OF TRANSCRIPT)

1 THE CHAIRMAN: I'd like to call this  
2 meeting to order. Courtney, have the Freedom of  
3 Information Act requirements been met?

4 MS. LILES: They have.

5 THE CHAIRMAN: Thank you. A few  
6 announcements. If you have a cell phone it needs  
7 to be on vibrate or off, please.

8 We are going to enforce the time limits  
9 for this meeting: Presentation by the Town, ten  
10 minutes; presentation by applicant, ten minutes;  
11 presentation by the participant, ten minutes;  
12 rebuttal by applicant, five minutes. Then we'll  
13 probably close.

14 We always reserve the right to ask any  
15 questions while we are deliberating. I'm going to  
16 remind the BZA members that you need to make sure  
17 the green light is on your microphone when you're  
18 going to talk. You need to have your -- you need  
19 to not sit back, please. Sit forward when you're  
20 speaking.

21 Okay. Joe Henderson is on vacation; so  
22 Randy Robinson will be representing the Town. I  
23 will first do the applicant-participant oath. So  
24 anyone speaking before the BZA this evening, if you  
25 will please rise. Make sure you have signed in as

1 well so we'll have your names.

2 (Oath administered to applicants and  
3 participants.)

4 THE CHAIRMAN: Thank you. You may be  
5 seated. Randy, would you please present -- we have  
6 a special exception that was withdrawn.

7 2668 I'ON AVENUE

8 THE CHAIRMAN: So we have one item  
9 before us, an administrative appeal, 2668 I'On  
10 Avenue. Brian Hellman, applicant, is appealing the  
11 decision of the Zoning Administrator related to the  
12 residential use of 2668 I'On Avenue.

13 MR. ROBINSON: Okay. Brian and Julie  
14 Hellman came to us and asked if they can rent a  
15 portion of the house at 2668 I'On. In 1977 the  
16 Town of Sullivan's Island sent out letters to  
17 everybody in the town that said if you have a  
18 duplex, or a triplex, or anything like that then  
19 you apply for a certificate of occupancy for that.

20 The Town issued many of them back in  
21 1977. In this case this structure did not get a  
22 certificate of occupancy. So when we were  
23 approached to issue a business license to rent this  
24 property we looked for the certificate of occupancy  
25 and couldn't find it.



1                   Based on that we denied that issuance  
2 of the business license. Since then Joe Henderson  
3 and I have both been out to the house. We have  
4 looked it over.

5                   It is clearly -- was built as a duplex.  
6 I think the applicants will bring you documentation  
7 that it was a duplex. But based on the ordinance,  
8 Section 21-20 B, we can't as a staff issue a  
9 business license for this property.

10                   I'm sure the applicants will give you  
11 plenty of documentation why this has been a duplex  
12 and how it has had dual ownership over the years.  
13 But as a staff we cannot do it. So that's why they  
14 are here before you tonight and I'll be here to  
15 answer any questions, but other than this it's --

16                   THE CHAIRMAN: And as Randy said,  
17 Section 21-20 B, there are three documents that can  
18 allow them to give business license: A certificate  
19 of occupancy, a business license -- which they've  
20 never had because it's never been rented -- and  
21 prior BZA hearing. None of those three have  
22 occurred.

23                   The staff had to deny and allow them to  
24 appeal the Zoning Administrator's decision. So who  
25 is presenting for the applicant? Alice, are you?

1 MS. PAYLOR: I am. Thank you.

2 THE CHAIRMAN: Okay. You have the  
3 floor.

4 MS. PAYLOR: I'm Alice Paylor. I'm a  
5 lawyer. I used to be on the Board. I used to live  
6 on Sullivan's Island.

7 I'm here representing Julie Hellman  
8 who is here with me, her husband Brian, and her  
9 sister, Paige Tolmach. Julie and Paige actually  
10 own the property at 2668 I'On. Do they have the  
11 affidavit that she submitted?

12 THE CHAIRMAN: Yes, they do.

13 MR. ROBINSON: We do.

14 THE CHAIRMAN: Yes. We have all the  
15 documents.

16 MS. PAYLOR: Okay. So that's that.  
17 I'm just going to give you a little bit of the  
18 history and we will not be long, I promise you.  
19 Julie and Peggy's grandmother was Lilly Bebergal.

20 Back in 1945 she and a friend of hers,  
21 Dotty Warsaw bought this property and it was a  
22 duplex. Ms. Warsaw lived in Unit B and Mrs.  
23 Bebergal lived in Unit A. Julie was telling me  
24 yesterday that they even had a partition on the  
25 front porch to divide it because they didn't know

1 them. I mean, I think the two women knew each  
2 other. The rest of the family, you know, did their  
3 own thing. They were two separate households,  
4 units.

5 In 1973 Julie and Paige's mother,  
6 Sheran Goldberg Rittenberg, bought Ms. Warshaw's  
7 interest and their family began occupying Unit B  
8 while the Bebergals and Barry Baker and his wife  
9 occupied Unit A.

10 Over the years the interests have been  
11 transferred. As of today the property is owned by  
12 Julie Hellman and Paige Tolmach. Paige has a trust  
13 that she is holding --

14 THE CHAIRMAN: Okay.

15 MS. PAYLOR: -- but those are the  
16 owners. Unit A is Paige's unit and Unit B is the  
17 Hellmans' unit. They actually lived there up until  
18 about six months ago when they -- their new house  
19 was finished that they have moved into.

20 So they spent some time renovating it  
21 and fixing it up and furnishing it. I even was one  
22 of the people that asked if I could rent it because  
23 we needed a place until our new place gets built.  
24 So they -- and so -- Brian said, well, I'm, going  
25 to apply for a business license.



1                   So he did and that's when Joe Henderson  
2 told him that it was a single-family house. He  
3 said, no, it's never, ever been a single family  
4 house.

5                   This is, I think, one of the most  
6 interesting characteristics of it is on the bottom  
7 or below the house -- it's raised up a little  
8 bit -- there was actually like a housekeeper's  
9 quarters under there that had a bedroom and a bath  
10 on each side.

11                   So, I mean, this tells you it goes back  
12 a pretty good ways. It wasn't -- it wasn't built  
13 any time soon. He said that in his letter -- and  
14 this is kind of what I was going on. Mr. Henderson  
15 said there was no certificate of occupancy as  
16 pertaining to dwellings.

17                   There's a case right on point. I'm a  
18 lawyer and I know James would know what I was  
19 talking about. I know Sallie probably knows. But  
20 the South Carolina Court of Appeals in 1983 ruled  
21 in a case, Baker versus the Town of Sullivan's  
22 Island.

23                   It was about those condos that are  
24 right across the street because at that point they  
25 told them that that was a single family house.



1 It's the same thing. So they appealed it because  
2 they didn't have a certificate of occupancy. The  
3 Court held that it doesn't matter if you have a  
4 certificate of occupancy.

5 If it's a multifamily dwelling it's a  
6 multifamily dwelling. So you've got to go on the  
7 facts as they exist and not on whether or not  
8 something has got -- a piece of property has gotten  
9 a certificate of occupancy. I don't know about the  
10 1977 thing and what that involved.

11 I do know that there were some records  
12 that got messed up during Hurricane Hugo. So I  
13 don't know if there was the certificate of  
14 occupancy because they couldn't get to those. You  
15 said you couldn't get them.

16 MR. ROBINSON: No. We saved all the  
17 certificates of occupancy.

18 MS. PAYLOR: I still don't --

19 MR. ROBINSON: Those we can find.  
20 Irregardless (sic) --

21 MS. PAYLOR: It doesn't matter.

22 THE CHAIRMAN: It doesn't matter. It's  
23 not in the Town's records.

24 MS. PAYLOR: It doesn't matter. He's  
25 got two electric meters up there, which you can't

1 have a single family. There's two HVAC units, one  
2 for each. The stairs -- there used to be two sets  
3 of stairs until after Hurricane Hugo when they went  
4 the cheaper route and just put one set of stairs.

5 There are still two entrances. Show  
6 them that picture, that plumbing picture. That's  
7 actually under the house. That's what I was  
8 talking about as being under the house, one of  
9 the -- one of the rooms. But there's one under  
10 each side.

11 These are mirror images. There's a  
12 kitchen on each side. There's two bathrooms and  
13 three bedrooms on each side. As Mr. Robinson said,  
14 there's no prior business license because they've  
15 never tried to rent the house before.

16 They've never asked the BZA for  
17 anything, like a variance or anything else. So  
18 it's never come here. So the conclusion that I  
19 reached is that 2668 I'On contains a legal  
20 nonconforming use because it existed as a duplex  
21 prior to the adoption of the zoning ordinance.

22 It has never been abandoned. It has  
23 been continuously used the entire time. So what  
24 we're asking you to do today is to overrule the  
25 decision of the Zoning Administrator, that the

1 building is a single family residence and find that  
2 it is a legal nonconforming structure that contains  
3 two dwellings in it. And I got -- I know. I used  
4 to be on there. I know y'all ask for proposed  
5 findings. I even -- I even did some.

6 THE CHAIRMAN: Sure.

7 MS. PAYLOR: You don't have to use  
8 them, but I just figured it is kind of a roadmap to  
9 get --

10 THE CHAIRMAN: I --

11 MS. PAYLOR: -- to where I am.

12 THE CHAIRMAN: I've done my research.

13 MS. PAYLOR: Okay. Well, you've  
14 already --

15 THE CHAIRMAN: Well --

16 MS. PAYLOR: You --

17 THE CHAIRMAN: Back in the old days  
18 when I was coming onto the BZA you were Chairman,  
19 Alice. Remember that? That's how long I have been  
20 here.

21 MS. PAYLOR: And Julie is here if you  
22 have any questions.

23 THE CHAIRMAN: And we'll put this in  
24 the record.

25 MS. PAYLOR: Okay. I just -- we



1 thought it would be easy if you want to be quick  
2 and get it over with. If you have any questions,  
3 there's Julie right here and Brian. Thank you.

4 MR. HELLMAN: Who also served on the  
5 Board for Sullivan's Island.

6 THE CHAIRMAN: Okay. Is there any  
7 member of the public that might like to make a  
8 comment?

9 (No response.)

10 THE CHAIRMAN: Okay. We will close  
11 public comment. We will move to consider this  
12 request to overturn the decision of the Zoning  
13 Administrator. I have some thoughts. Do y'all  
14 want to hear them?

15 MS. LATHAM: Sure.

16 THE CHAIRMAN: Yes. I researched this  
17 case on my own. I believe this was actually built  
18 as a duplex during the war. It was built in --  
19 they bought it in '45, but obviously I think it was  
20 used for excess housing for the fort.

21 I also know that there's a firewall  
22 between the two. It's obviously been a duplex  
23 and in my opinion we need to overturn the Zoning  
24 Administrator. We don't normally look at  
25 doing that quickly or without a whole lot of

1     aforethought, but there are definite reasons why he  
2     had to deny the business license.

3             They've been very thorough in all the  
4     supplemental information. I even got all of the  
5     exhibits for the transfers of the property and it  
6     has stayed in each family. They're related but two  
7     very different branches. So I'd like to hear from  
8     anybody else.

9             The three things that I picked up on,  
10    first of all, is the affidavit of Julie Hellman  
11    which is very thorough affirming that there have  
12    always been two dwelling units specifically since  
13    1945 when Ms. Bebergal and Ms. Warsaw bought the  
14    property. They're separately metered, which is  
15    another test.

16            The 1945 deed actually split the  
17    property and finally the historic records identify  
18    it as a duplex, not going on county records but  
19    going on historic records of when it was purchased.  
20    So those are my findings. Anybody else? Yes,  
21    Peter.

22            MR. RICHARDSON: Does each property pay  
23    taxes?

24            MS. PAYLOR: Well, the taxes are paid  
25    as one. They split them.

1 THE CHAIRMAN: It's --

2 MS. PAYLOR: It's not a condominium.  
3 It's a duplex.

4 THE CHAIRMAN: It is one TMS number.  
5 So they pay the -- the expenses in common are  
6 shared as far as I understand.

7 MR. KOEPKE: Well, they have two  
8 meters, right?

9 THE CHAIRMAN: Yes.

10 MR. KOEPKE: But one tax bill?

11 THE CHAIRMAN: Correct.

12 MR. HELLMAN: The county tax bill  
13 actually identifies it as a duplex.

14 THE CHAIRMAN: Right, but we go by --  
15 we have to go by what the Sullivan's Island  
16 records say. So when we make our finding of fact  
17 that is based on the historic record and what is  
18 actually -- I'm basing my findings on the deed  
19 actually and the fact that it was a duplex when it  
20 was purchased in 1945.

21 I mean, it is a legal nonconforming use  
22 that it's a duplex because it preexists all codes.  
23 Many of our properties preexist the codes and are  
24 illegal nonconforming. So...

25 MS. PRITCHARD: I'm in agreement with



1 you. It was always a duplex. There is no question  
2 about it. I'm in total agreement with you.

3 THE CHAIRMAN: Does anybody else have  
4 anything to add?

5 THE CHAIRMAN: All right. I'm prepared  
6 to make a motion. So I'm handing the gavel to Jody  
7 who will take over as Chairman because as Chairman  
8 I cannot make a motion. So...

9 MS. LATHAM: All right. Would  
10 anyone -- does anyone have a motion on the  
11 administrative appeal before the Board?

12 THE CHAIRMAN: Yes, I do. I would like  
13 to make a motion that we overturn the decision of  
14 the Zoning Administrator related to the residential  
15 use of 2668 I'On Avenue in accordance with Zoning  
16 Ordinance Section 2120 B (4), lots containing two  
17 occupied dwellings, TMS Number 5291100004.

18 This is a legal conforming use as a  
19 duplex in a single family residential zoning.

20 The Zoning Administrator did follow the  
21 procedure outlined in Section 21-20 B (4) and was  
22 not able to approve the applicant's request because  
23 there was no CO on record with the Town. There was  
24 no previously issued business license and there was  
25 no previous BZA or BOA hearing. However, due to

1 the supplemental information provided by the  
2 applicant including specifically the affidavit of  
3 Julie Hellman affirming the fact that prior to 1977  
4 there have been two dwelling units known as Unit A  
5 and Unit B.

6 That was A and B. The units are  
7 separately metered for electric service. In  
8 Item C, the 1945 deed to Warshaw and Bebergal  
9 split the ownership of the building into Units A  
10 and B. Finally, it's a fact that historic records  
11 identify the building as a duplex.

12 MS. LATHAM: I second the motion. All  
13 those in favor?

14 (Board members stated aye.)

15 MS. LATHAM: Any opposed?

16 (No response.)

17 THE CHAIRMAN: It passes. Thank you.  
18 That proves that the BZA can be quick in its  
19 deliberations. So thank you very much, Alice.

20 MR. RICHARDSON: Randy, should they get  
21 a CO?

22 MR. ROBINSON: Do what?

23 MR. RICHARDSON: Should they at this  
24 point go ahead and get a CO?

25 MR. ROBINSON: I think they should

1 apply to Joe, but I think they will do that. We  
2 have to do in order to get a business license.

3 THE CHAIRMAN: Once they've done this  
4 you'll get the business license.

5 MR. HELLMAN: Can be out of the -- is  
6 it too late? We'll get it.

7 MR. ROBINSON: It is a certificate of  
8 zoning compliance.

9 THE CHAIRMAN: Compliance. Yes. I  
10 can't order the Zoning Administrator to do that.

11 MR. HELLMAN: Aren't you the CO?

12 MR. ROBINSON: It is really confusing  
13 right now with CO.

14 THE CHAIRMAN: I need to go over the  
15 approval of the October minutes. We didn't. I  
16 skipped right over it.

17 MS. LATHAM: I move we approve the  
18 minutes from the meeting of October 12th, 2017.

19 THE CHAIRMAN: Is there a second?

20 MS. LATHAM: I'll second.

21 THE CHAIRMAN: It's approved with one  
22 abstention, the approval of the minutes of the  
23 October hearing. Do I hear a motion to adjourn?

24 (Ms. Pritchard abstained from voting  
25 on the approval of the October Hearing minutes.)  
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MS. LATHAM: Motion to adjourn.

MS. PRITCHARD: Second.

THE CHAIRMAN: All in favor,  
aye.

(Board members stated aye.)

THE CHAIRMAN: We're adjourned.

(The meeting was adjourned at 6:20 PM.)

(EXH. 1, "Proposed Findings of Fact",  
was marked for identification.)

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CERTIFICATE OF REPORTER

I, Priscilla Nay, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 24th day of May, 2018 at Charleston, Charleston County, South Carolina.



*Priscilla Nay*

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

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