

In the Matter Of:

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

Meeting

September 08, 2016

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TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS

COPY

HEARING BEFORE: CHAIRMAN ELIZABETH TEZZA

DATE: September 8, 2016

TIME: 6:00 PM

LOCATION: Sullivan's Island Town Hall
2050-B Middle Street
Sullivan's Island, SC

REPORTED BY: Priscilla Nay,
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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APPEARANCES :

- ELIZABETH TEZZA, CHAIRMAN
- SALLIE PRITCHARD, BOARD MEMBER
- EMILY BRASHER, BOARD MEMBER
- JAMES ELLIOTT, BOARD MEMBER
- JOE HENDERSON, ZONING ADMINISTRATOR
- COURTNEY LILES, ADMINISTRATIVE SPECIALIST
- RANDY ROBINSON, BUILDING OFFICIAL
- BRUCE A. BERLINSKY, ESQUIRE
- P.GRAHAM MAIDEN, ESQUIRE
- WILLIAM J. CARROLL, MD
- JESSICA CARROLL
- ELIZABETH HURT

ALSO PRESENT:

MARK HOWARD

1 THE CHAIRMAN: It's six o'clock. I'd
2 like to call this meeting to order. Courtney,
3 have the Freedom of Information requirements
4 been met?

5 MS. LILES: They have.

6 THE CHAIRMAN: Thank you. I move to
7 approval of the minutes from the August 11th
8 meeting. Did all of you receive the minutes?
9 Okay. Are there any changes, additions,
10 corrections?

11 (No response.)

12 THE CHAIRMAN: Okay. Do I hear a
13 motion that the minutes be approved?

14 MS. BRASHER: I motion that the
15 minutes be approved.

16 THE CHAIRMAN: Is there a second?

17 MR. ELLIOTT: Second.

18 THE CHAIRMAN: All in favor signify
19 by saying by aye.

20 MS. BRASHER: Aye.

21 THE CHAIRMAN: All opposed?

22 MS. PRITCHARD: I abstain because I
23 wasn't here.

24 THE CHAIRMAN: Okay. Now we'll have
25 the applicant and participant oath. So anyone

1 who will be speaking before the Board of Zoning
2 Appeals, please stand.

3 (Oath administered to applicants and
4 participants.)

5 THE CHAIRMAN: Thank you. A few
6 announcements before we start. Anybody speaking
7 should have signed in on the clipboard. When
8 you do get up to speak, please state your name
9 and your address.

10 If you have a cell phone, please turn
11 it off or on vibrate. We will according to our
12 rules of procedure, Article 4, Hearing Procedure
13 Section 5, conduct of hearing -- we will be
14 abiding by the time limits. The Board will
15 extend the time limits, if necessary.

16 Presentation by official of the Town,
17 ten minutes; presentation by applicant, ten
18 minutes; presentation by any opponents, ten
19 minutes; rebuttal by the applicant, five
20 minutes. Then we there will be public comment.

21 The Board can ask any question that
22 they wish during that time. All comments are to
23 be addressed to the Board and not to anyone in
24 the audience. When we close public comment it
25 means that we do close public comment, but we

1 may ask a question. We ask that questions and
2 statements not be directed to the Board while we
3 are considering the matter, but you can raise
4 your hand.

5 414 PATRIOT STREET

6 CHAIRMAN TEZZA: The first item on
7 our agenda is a variance request for 414 Patriot
8 Street, William and Jessica Carroll, applicants,
9 approval of a variance for the required rear
10 setback in RS Zoning District. Joe, please
11 present for the Town.

12 MR. HENDERSON: Thank you, members of
13 the Board. Agenda Item D-1 is a variance
14 request to Section 21-22 E(1). This is a
15 provision that applies to rear setbacks for the
16 RS Zoning District.

17 The applicants, the Carrolls, are
18 requesting an 11-foot encroachment into this
19 25-foot rear setback or 40-foot -- I'm sorry --
20 44 percent variance. This essentially applies
21 to all principal buildings and any accessory
22 recreational structures or uses, i.e. pools.

23 On August 11th the applicants also
24 made a request to encroach into the 25-foot rear
25 setback 15 feet or a 60 percent variance. That

1 request was denied by the Board during that
2 meeting.

3 The Town staff maintains the same
4 staff recommendation as we did during the August
5 11th meeting; that is that this variance request
6 doesn't meet the standard for granting
7 variances, the four-part test for hardship.
8 That is specifically Standard Number 3 which is
9 the utilization standard.

10 In order to grant a dimensional
11 variance without the granting of that variance
12 it would prohibit or unreasonably restrict the
13 use of the property. So staff is of the opinion
14 that not having a swimming pool would restrict
15 the single family use of this property.

16 I will yield to the Board for any
17 questions. I'll turn it back over to you.

18 THE CHAIRMAN: Thank you, Joe. Do
19 y'all have any questions of Joe?

20 MR. ELLIOTT: None.

21 THE CHAIRMAN: We did hear this last
22 month. Sally, you weren't here. I will ask the
23 applicants to go ahead and present, please.

24 MRS. CARROLL: Hello again. My name
25 is Jessica Carroll. My husband, William Carroll

1 and I, are property owners over at 414 Patriot
2 Street. We were here about a month ago
3 requesting a 60 percent variance except for the
4 25-foot rear setback on our property and, you
5 know, we're now asking for a 44 percent
6 reduction.

7 We have pushed the proposed pool
8 closer to the home. It's within three feet of
9 the home now. So this would leave about 14 feet
10 from the edge of the pool to the rear property
11 line.

12 As far as meeting the criteria for
13 hardship, you know, as I stated in our
14 application in the previous meeting our property
15 at 414 Patriot is unique in that it's an
16 exceptionally small lot compared to other
17 properties or the majority of properties on the
18 island.

19 Specifically, in my application I
20 cited the Town zoning ordinances. If you read
21 in there the description of the RS Single Family
22 District specifically states that these
23 ordinances are intended to be applied to
24 properties being at least one half-acre in size.
25 So obviously with our property being only

1 one-sixth of an acre, you know, we feel that
2 we're being kind of unreasonably burdened and
3 subjected to the same 25-foot rear yard setback
4 that a half-acre property has.

5 You know, if anything, there should
6 be some sort of ratio to account for, you know,
7 substandard or exceptionally small lots within
8 that. You know, regarding utilization which
9 seems to be, you know, where the hang-up is, you
10 know, we are effectively prohibited or
11 unreasonably restricted by this 25-foot setback.

12 You know, that's kind of what we're
13 here arguing for, not necessarily being able to
14 put in a pool but anything. If we were to put
15 decking or anything down we'd have to get a
16 variance approved because our entire back yard
17 is a setback. We are 26 feet from the rear of
18 our home to our rear property line.

19 So with the 25-foot setback that's
20 currently in place -- I feel that it absolutely
21 unreasonably restricts us from us being able to
22 do, you know, anything that we wanted to with
23 even a portion of our yard without being granted
24 a variance to do so. You know, it's not like we
25 have a monstrous house.

1 We have a modest 2,500 square-
2 foot house and by far the smallest home on
3 Patriot Street. Yet, you know, with that
4 current setback, again, to put anything back
5 there, whether we want to add a deck or a pool
6 or whatever we would have to be granted a
7 variance to do so.

8 With regards to the detriment of the
9 adjacent properties we have all the support of
10 our neighboring properties close to ours. In
11 fact, they're all close friends with young kids
12 who would love for us to have a pool as well.

13 You know, we just obviously -- in
14 looking up the -- what the intended purpose of
15 residential setbacks are and doing tons of
16 research on that and even hearing from Joe in
17 the last meeting on this, you know, it's meant
18 to maintain space between structures.

19 What we're asking for in no way
20 violates or abuses, you know, the intent or
21 purpose of the Town for these residential
22 setbacks here.

23 You know, there are pools, side yard
24 pools, even one on our street at 420 Patriot
25 that is much closer to neighboring properties

1 than what we're asking for here. We're still
2 going to have a substantial buffer of, you know,
3 over 30 feet in any direction to any home.

4 So it just obviously doesn't make a
5 ton of sense to us why, you know, these side
6 yard pools are acceptable and don't require
7 variances but we have to come in our case here
8 for, you know, a variance to put a pool in.

9 That's really not going to be as
10 egregious of a violation of these purposes of
11 the setbacks as some of these other pools that
12 are already approved.

13 So we just appeal to the Board that
14 you guys can understand that this is a unique
15 property in its size and be willing to grant us,
16 you know, our request for an adjustment to this
17 in what we feel is an unreasonably large setback
18 for such a small property.

19 You know, we feel that 44 percent or
20 that 14-foot from the pool to the rear property
21 line is sufficient and hope that you guys will
22 grant our appeal.

23 THE CHAIRMAN: Okay. You do know
24 that side yard setbacks are less than rear
25 yards?

1 MRS. CARROLL: Sure.

2 THE CHAIRMAN: They're usually 15
3 feet; so it is incumbent upon this Board not to
4 make new code.

5 MRS. CARROLL: Right.

6 THE CHAIRMAN: We have to be very
7 careful about that. Where do you read in the
8 code that the 25-foot rear setback technically
9 only applies to lots that are larger than yours?

10 I mean, do you get that assumption
11 based on --

12 MRS. CARROLL: So -- no. I read --

13 THE CHAIRMAN: Can you point to
14 something?

15 MRS. CARROLL: Yeah. I actually
16 cited it in my application.

17 So it says: As stated in the zoning
18 ordinances for the Town of Sullivan's Island,
19 Section 21-19 A, the regulations that apply
20 within this District -- so these are in the
21 zoning ordinances -- are designed to encourage
22 the formation and continuance of a stable,
23 healthy environment for one single family
24 primarily owner-occupied dwelling per lot
25 with each lot having an area of and least

1 one half-acre.

2 THE CHAIRMAN: At least.

3 MRS. CARROLL: At least.

4 THE CHAIRMAN: One half-acre.

5 MRS. CARROLL: One half-acre.

6 THE CHAIRMAN: That doesn't mean it's
7 a -- that's not a normative statement.

8 MRS. CARROLL: At least one half-acre
9 means to me one half-acre or more, like at
10 minimum one half-acre and we're, you know, a
11 sixth of an acre.

12 THE CHAIRMAN: Well, the lots predate
13 the code.

14 MRS. CARROLL: Okay.

15 THE CHAIRMAN: That's one difficulty
16 with this. Okay. Do y'all have any other
17 questions for the applicant?

18 DR. CARROLL: I'm William Carroll and
19 thank you for having us today. I'm also here
20 just to talk about the setbacks.

21 It seems that if we look at the
22 code -- obviously we can't remake the code, but
23 if you're applying a 25-foot setback to a half
24 an acre lot and you have a fifth of an acre lot
25 or a sixth of an acre lot there should be some

1 kind of relief granted and there some should be
2 some kind of ratio. There should be something
3 that makes this fair because if you put a
4 25-foot setback on a fifth of an acre that's a
5 significant portion of your property. On a half
6 of an acre that's not.

7 So I think that should be a big
8 consideration. One of the other considerations
9 is it seems that the variances have been a
10 little bit granted capriciously.

11 For example, if you look at 410
12 there's a variance for a very large structure
13 without a 25-foot setback painted very bright
14 yellow and one would -- one would say, well, how
15 did that get through recently?

16 There's one at 424 where a pool has
17 been put there and I think it was commented by
18 the Board previously that that was before us.
19 But --

20 THE CHAIRMAN: It was 17 years ago.

21 DR. CARROLL: So 17 years ago, but --

22 THE CHAIRMAN: It was before this
23 code.

24 DR. CARROLL: I think one of the
25 arguments by the Board was that if we grant this

1 then we set a precedent that we have to grant
2 this moving forward. However, one might argue
3 that all properties are unique as you're saying
4 it is with this 424.

5 That's one of the arguments that we
6 would make is that our property is unique and
7 that it's a very small lot. Therefore, if you
8 can grant the variance for 410 or 424 why would
9 you not be able to grant a variance for a very
10 small lot such as ours?

11 THE CHAIRMAN: It was a different
12 board. It was 17 years ago. The granting of
13 variances has a varied history in the history of
14 the Board of Zoning Appeals.

15 Our decisions are not precedent
16 setting in any way, shape, or form because of
17 the fact that you -- you are unique maybe in the
18 context of the entire island. You're not unique
19 to your block. All the lots, I believe, are the
20 same size on those two streets, Patriot and then
21 the street that backs up to --

22 MR. HENDERSON: That's right. It's a
23 very small lot. I would just like to reiterate
24 a point about 21-19. That's the introduction to
25 the section to the Single Family District and it

1 does give kind of your single lot size which is
2 a half-acre lot because on Sullivan's Island we
3 have lots of substandard lots much smaller.

4 We've created a code that's more of a
5 form-based code. It is not your standard zoning
6 ordinance.

7 What I mean by that is for
8 substandard lots smaller than half acres or a
9 half-acre in order to build a reasonable-sized
10 home for a reasonable use of that property we
11 have a mechanism after lots of these standards
12 like the side setbacks, heated square footage,
13 the building coverage that the DRB can grant
14 relief for.

15 So in order for you to build your
16 house on these small lots the mechanism is that
17 the DRB can lessen those standards. However,
18 for the rear setback there is no mechanism for
19 relief granted by the DRB. That's done in my
20 mind intentionally by Town Council when they
21 wrote this ordinance.

22 In addition to the 25-foot rear
23 setback there's also a 30-foot rear setback for
24 properties adjacent to the ocean, the critical
25 and also the marsh via the critical line.

1 So in the past, maybe in the recent
2 past, five to three years ago, we have not
3 allowed pools and other accessory or
4 recreational uses to encroach into these 30-foot
5 setbacks. That goes the same for these 25-foot
6 rear setbacks as well.

7 So that is true. I mean, you bring
8 up a very valid point. You know, there is a
9 mechanism for granting relief to small
10 properties.

11 MR. ELLIOTT: Historically, Joe, if
12 you know before the current code was adopted did
13 the Town allow lots to exist and be subdivided
14 such that I think they were less than a half-
15 acre lot? Do you know the answer to that?

16 MR. HENDERSON: There is a strict,
17 you know --

18 THE CHAIRMAN: Restriction.

19 MR. HENDERSON: There is a
20 restriction on subdividing lots. That was --

21 MR. ROBINSON: Before this code you
22 couldn't subdivide a lot that was less than an
23 acre because you had to have a half-acre.

24 MS. PRITCHARD: At least a half-acre.

25 MR. HENDERSON: So that was a 1977

1 ordinance that stopped the subdividing of lots.
2 So zoning regulations were implemented on
3 Sullivan's Island in 1977 where they halted the
4 subdividing of lots.

5 MR. ELLIOTT: I will say when I read
6 21-19 and the intent -- and you've got to read
7 the whole paragraph together and all the
8 sentences and clauses together and give meaning
9 to all clauses in it. My interpretation is that
10 the Town is saying that we want lots to be a
11 half-acre or bigger; that is the intent of what
12 we're doing here.

13 I understand that, you know,
14 there's -- you have a point that you have a
15 small lot and the ordinances impact you maybe
16 more severely than it does with a half-acre lot.
17 My concern as a member of this Board is that I
18 don't write these ordinances. They're adopted
19 by the Council.

20 So I have to -- my job is to follow
21 them. Our job is to follow them and apply your
22 facts to them and make our decision accordingly.
23 If there is some exception in here that the
24 county gives us that we can apply to your
25 situation then I personally am happy to do it.

1 But the way that it's written -- I don't see
2 that Town Council has allowed us to grant you
3 the exception the way that it's written and the
4 exceptions that are given to the ordinances.
5 That's my problem.

6 You make a good point that you looked
7 to a previous board and they've done certain
8 things. They've made certain decisions and you
9 look at us and say, well, why can't you guys do
10 the exact same thing?

11 I think you highlight the problem,
12 that perhaps previously -- and I don't know this
13 to be the case, but it's possible that a
14 previous board sitting here didn't follow the
15 regulations and the exceptions the way they
16 should have and they granted a variance or
17 whatever.

18 So I think we have problems if we
19 don't follow the rules that are given to us and
20 enforce them as they are written because if we
21 don't in the future people are going back and
22 saying, well, why did you give the variance
23 here?

24 I feel comfortable saying when I
25 grant this and I agree to a variance or deny a

1 variance I believe I've followed what's written,
2 but I don't know that the other folks before us
3 have done that. The point is we are sort of
4 like, you know, trial courts in that one court
5 makes a decision that's on the same level as
6 another court.

7 Well, we don't -- that one court
8 doesn't have to follow the other. If there's
9 like an appellate court then you have to follow
10 that ruling. I don't think we're bound by the
11 ruling of the Board of Zoning Appeals, you know,
12 10 or 15 years ago or something like that.

13 MRS. CARROLL: Sure.

14 DR. CARROLL: But you can understand
15 that would be incredibly frustrating to us when
16 we see two variances very similar to what we're
17 asking that have been approved and also another
18 pool that encroaches on another property within
19 10 feet and yet we're saying -- you know, we're
20 requesting a 16-foot setback.

21 MRS. CARROLL: We're seeing new
22 construction go up on the island at 918 Middle
23 Street where it's a pretty large house going up
24 in what looks like somebody's front yard and you
25 could reach out and touch the other house from

1 the new construction that's going up. We're
2 driving by this saying, this is okay but we
3 can't put a very small pool in our back yard
4 that's in no way going to bother our neighbors.

5 DR. CARROLL: It looks very much
6 if you sat in on the Town Council where one of
7 the builder variances are approved if you're a
8 builder or something like that you get approved,
9 but if you're regular people you don't.

10 THE CHAIRMAN: I want to point out
11 the houses you're seeing built -- those haven't
12 even come to us for variances. Those are
13 granted by the DRB, not by the BZA. I
14 understand your concern, but that's actually not
15 in our purview.

16 Those are designed -- as Joe said,
17 the DRB granted that relief and you didn't build
18 your house. That's one of the problems.

19 MRS. CARROLL: Right.

20 THE CHAIRMAN: You bought the house
21 and I believe the Realtor said, oh, yes, there's
22 enough room for a pool in your yard.

23 MRS. CARROLL: Right.

24 THE CHAIRMAN: He didn't know to come
25 and check with us or just didn't come and check

1 with the Town to see if a pool could actually be
2 put back there. The DRB in planning a design
3 and approving a design can work with the owners
4 and give relief to cite everything they want
5 within their plan.

6 You have a different problem. You
7 bought a house that's sitting right in the
8 middle of your lot that maybe could have been
9 moved forward so that you could put a pool. The
10 other two pools on your block are side yard
11 pools.

12 Side yard setbacks are less than rear
13 yard setbacks. So the variances that -- in
14 fact, one of them wasn't even granted a variance
15 from the side yard setback.

16 It was a lot coverage ratio that they
17 were having to meet which they did because they
18 took up some impervious material and put
19 pervious material in. The one at the end was
20 the one on the marsh side. That was the one
21 from 1999.

22 I'm not sure what the percentage was,
23 but those are side yard setbacks. Unfortunately
24 we are dealing with a rear yard setback.

25 Do y'all have any questions?

1 Does anybody else want to speak to
2 this issue in the audience?

3 Okay. Do y'all have any more
4 questions for the applicants? Okay. Thank you.
5 We might ask you some more questions.

6 MRS. CARROLL: Sure.

7 THE CHAIRMAN: Joe, do you have
8 anything further?

9 MR. HENDERSON: Nothing further.

10 THE CHAIRPERSON: If there is no
11 comment from the public, I'm going to close
12 public comment at this time and the Board will
13 begin deliberations. I do want to say that I
14 commend you for reducing the variance request.
15 So thank you for that.

16 MRS. CARROLL: Sure.

17 MS. PRITCHARD: I get it about
18 the ordinances. I get it, but they have a
19 smaller lot. They are less than the half-acre,
20 which it was painted with a broad brush for a
21 half-acre lot.

22 MR. ELLIOTT: Well, you know, they --
23 I completely get their problem and I feel for
24 them, but it seems to me that the appropriate
25 forum for getting relief for a small lot to

1 these setback issues is for the Town Council to
2 take a look at it --

3 MS. PRITCHARD: I agree.

4 MR. ELLIOTT: -- and Council to say
5 this really doesn't make sense for this tiny
6 little lot and make a change. Then if they do
7 that we can have --

8 MS. PRITCHARD: And how many lots
9 fall within that on the island?

10 MR. ELLIOTT: My problem --

11 THE CHAIRMAN: My lot is less than a
12 half an acre.

13 MS. PRITCHARD: And we'll see this
14 time and time again.

15 THE CHAIRMAN: I don't know because a
16 lot of the existing -- if this was granted the
17 people that are right behind them could ask for
18 relief and put a pool in their yard, too.

19 MS. PRITCHARD: That's what I'm
20 saying. I think the Council needs to look at it
21 and not punish people for having a smaller than
22 a half-acre lot and adjust the numbers for them.

23 MR. ELLIOTT: Yes.

24 THE CHAIRMAN: That's the problem I
25 have is -- the difficulty I have with this one

1 is it's a pool. It's an accessory structure for
2 which we have never granted variances in rear
3 setbacks. We just don't do it unless it's a
4 very small variance.

5 You know, sometimes it's because it's
6 an angular lot and then the corner of the pool
7 is -- you know, we had one of those on -- on the
8 beach. This still remains the largest pool
9 variance we've ever had and it is a rear
10 setback. I do -- I feel for them for the
11 placement of the house on this particular lot.

12 MR. ELLIOTT: How do we conclude --
13 if we were inclined to grant the variances how
14 do we conclude that the lots effectively
15 prohibited or unreasonable restricted?

16 MS. PRITCHARD: By its size.

17 THE CHAIRMAN: No, but you have to
18 prove hardship and it's not a hardship to not
19 have a pool.

20 MS. PRITCHARD: That's not a
21 hardship, but it's a hardship to them to not be
22 able to put it in because of the lot size.

23 THE CHAIRMAN: Correct, but it's not
24 a legal hardship as it's defined in our code.

25 MS. PRITCHARD: I agree.

1 THE CHAIRMAN: That's the difficulty
2 we've had. I think it's just been within the
3 last three years that we have been seeing pool
4 variances. We've been fairly strict with every
5 single one of them and a number of them have had
6 to come back.

7 MR. ELLIOTT: And then what if we
8 were to grant the variance here and then in the
9 next case the person behind the house says --

10 MS. PRITCHARD: I want --

11 MR. ELLIOTT: No. They say, I don't
12 want a pool. It's going to be a crowded mess.
13 Everybody is screaming and yelling and your
14 rules don't allow you to do it.

15 I mean, I just feel like I get into
16 trouble if I -- we get in trouble if we don't
17 follow what's written and carry out the task
18 that the Council has given us.

19 THE CHAIRMAN: I do like James'
20 suggestion and I agree with it that we should --
21 should we not approve this we need to couple
22 that with the suggestion that we send this
23 matter to Town Council and let them direct the
24 Planning Commission to create a text amendment
25 or, you know, further look at it.

1 MS. PRITCHARD: Right.

2 THE CHAIRPERSON: And maybe have a --
3 but we can not apply -- we cannot start applying
4 a ratio ourselves --

5 MS. PRITCHARD: No, we can't.

6 THE CHAIRMAN: -- because then we
7 are --

8 MS. PRITCHARD: Overstepping our
9 bounds and --

10 THE CHAIRMAN: Exactly.

11 MS. PRITCHARD: I've got that.

12 THE CHAIRMAN: So these --

13 MR. HENDERSON: I would add, if I
14 could interject something, the resident is
15 always welcome to approach Town Council and
16 recommend or suggest an amendment to the
17 ordinance that is perceived as unfair. That's
18 certainly an option for these folks.

19 As far as the DRB, you know, y'all
20 aren't here to create the policy.

21 THE CHAIRMAN: Right.

22 MR. HENDERSON: Just to interpret the
23 ordinance.

24 THE CHAIRPERSON: Right.

25 MS. PRITCHARD: So there's never been

1 a variance for a pool?

2 THE CHAIRMAN: Very small variances,
3 not -- well, certainly not 60 percent last time
4 and not even 44 percent and it's usually because
5 of lot configurations, citing lots with a
6 diagonal rear property line. Something like
7 that.

8 MS. PRITCHARD: I see.

9 THE CHAIRMAN: Something of that
10 nature. Very de minimis-type variances. We
11 have given variances --

12 MS. PRITCHARD: But never this scope?

13 THE CHAIRPERSON: -- but never this
14 scope. We have -- I think this -- I don't even
15 know what is the smallest lot size we gave the
16 variance for. The thing that concerns me is the
17 saying that it's because of the four findings of
18 fact for granting of variances.

19 They just absolutely do not meet
20 Number 3. They're not restricted -- they're not
21 restricted from utilizing their property as
22 residential. I do understand that it restricts
23 them from putting a pool in that they want.

24 MS. PRITCHARD: Right.

25 THE CHAIRMAN: I understand that,

1 but we have determined long ago -- and this
2 isn't precedent-setting. This is just something
3 that -- pools are not hardships. It is not a
4 hardship to not have a pool. It is a hardship
5 to not be able to build your house on the lot.

6 MS. PRITCHARD: Thank you.

7 MRS. CARROLL: May I ask a question?

8 THE CHAIRMAN: Yes.

9 MRS. CARROLL: Would it be the same
10 situation if we were asking to put a deck in our
11 back yard?

12 THE CHAIRMAN: Yes. It's an
13 accessory structure.

14 MR. HENDERSON: Yes.

15 THE CHAIRMAN: So you could put a
16 deck on the back of your house to the extent
17 that it did not encroach in the rear setback.

18 MRS. CARROLL: So we wouldn't be able
19 to? We'd have had to be granted a variance for
20 that as well?

21 THE CHAIRMAN: How far is their house
22 from the rear of the lot?

23 MRS. CARROLL: It's 26 feet.

24 MR. HENDERSON: It just meets the
25 rear setback of 25 feet. So typically any

1 accessory or recreational use cannot meet the
2 Standard Number 3 under utilization because
3 that's a question of use.

4 What is the reasonable use of your
5 property for single family residential living?
6 In order to live in that house you can live
7 there without a storage shed, without a tennis
8 court or a pool or replace pool with any other
9 accessory use.

10 MRS. CARROLL: I feel like that's
11 very --

12 MR. HENDERSON: Recreational use.

13 MRS. CARROLL: -- ambiguous, though.
14 I mean, we feel and I feel like others would
15 look at this from my perspective as well and
16 others from our perspective as well in saying we
17 do meet -- because at the current 25-foot
18 setback that exists -- we're absolutely
19 reasonably restricted because it's our entire
20 back yard.

21 If we wanted to put a deck -- forget
22 about a pool for a second. If we wanted to add
23 a swingset with an impervious structure
24 underneath it for our kids we'd have to have a
25 setback variance granted for that. So I feel

1 like, you know --

2 THE CHAIRMAN: No.

3 MRS. CARROLL: Does it effectively
4 prohibit? No. But does it unreasonably
5 restrict us? Absolutely.

6 THE CHAIRPERSON: I don't think you
7 need a variance to put a playset for your
8 children.

9 MR. HENDERSON: It is not a permanent
10 structure.

11 THE CHAIRMAN: It is not a permanent
12 structure; so you could put a playset for your
13 children.

14 DR. CARROLL: Go ahead.

15 THE CHAIRMAN: How far is the house
16 from the street? What is the --

17 MR. HENDERSON: About 26 feet.

18 THE CHAIRMAN: So the front yard
19 setback is only 15, right? What is it? 20?

20 MR. HENDERSON: 25.

21 MR. ROBINSON: 25.

22 THE CHAIRMAN: So whoever built this
23 house just built it to the max. So it fell
24 right inside the setbacks, right?

25 MR. HENDERSON: That's exactly right,

1 and then they received more than likely a
2 reduction for the side setbacks. For a standard
3 half-acre lot you're required to have side
4 setbacks that aggregate to 40 feet, both sides.
5 So 20 on either side.

6 Because the linear frontage is
7 70 feet they don't a get a reduction of those
8 setbacks. So that's that mechanism to allow
9 smaller lots to be able to build --

10 THE CHAIRMAN: A bigger house?

11 MR. HENDERSON: -- a reasonable-sized
12 house for the reasonable use of the property.

13 THE CHAIRMAN: And that mechanism is
14 used by the DRB?

15 MR. HENDERSON: Well, by the DRB, but
16 also as an outright code requirement. So Randy
17 and I -- the ordinance allows without DRB
18 approval for a substandard or a smaller -- a lot
19 with fewer or -- smaller than 105 linear feet to
20 have a reduction.

21 THE CHAIRMAN: Got it.

22 MR. HENDERSON: That doesn't require
23 DRB approval.

24 MR. ROBINSON: And there is a
25 reduction for a shallow lot, but that's a lot

1 that has less depth and width. I don't think
2 that's the case here.

3 THE CHAIRMAN: No.

4 MR. ROBINSON: You know, I went into
5 my office just to let you know. The 410
6 Patriot, I believe that was just a driveway
7 variance. They needed a variance for two
8 driveways. Isn't that Mr. Gregory's house?

9 DR. CARROLL: It is the big yellow
10 one.

11 MR. ROBINSON: The big yellow one?
12 They didn't get a variance. That's 25 feet from
13 the rear setback.

14 THE CHAIRMAN: 410 got a -- I went
15 and looked. It looks like they had to make some
16 adjustments for impervious and pervious.

17 MR. ROBINSON: Could be.

18 THE CHAIRMAN: So if it was a
19 driveway that's probably right. Okay.

20 DR. CARROLL: One question. This is
21 kind of a question and a comment, but what is
22 the issue with pools? When we looked at places
23 to live in Charleston, you know, Sullivan's has
24 a great school. There's good families here.
25 One of the things that kids like to do is swim

1 in a spool. Unlike I'on -- unlike Daniel
2 Island, we don't have a pool area. We don't
3 have a community pool for them to go to.

4 So, you know, it almost looks like
5 you have to move, to go somewhere else if you
6 want to have a good family environment.

7 So you're kind of pushing the
8 families off the island because, you know, if
9 they want to build something that seems
10 certainly very reasonable in their back yard
11 they can't because, as you said, we hardly ever
12 grant variances for pools.

13 Why the issue with pools?

14 THE CHAIRMAN: Well, you tell me
15 because about three years ago pools became a
16 really big anything on Sullivan's Island.

17 MRS. CARROLL: Because we don't have
18 a community pool.

19 DR. CARROLL: There are families here
20 and we don't have a community pool.

21 THE CHAIRPERSON: There is a
22 community pool at the Sand Dunes Club.

23 MRS. CARROLL: The hours aren't
24 conducive for parents.

25 THE CHAIRMAN: A little history. I

1 grew up on this island. There were no pools on
2 Sullivan's Island when I was growing up. Pools
3 have come with families to be honest with you.
4 I understand what you're saying.

5 I get your opinion and I feel for
6 you, but the situation that we have is this
7 Board -- and when I say we've given variances
8 for pools they've been very small variances.
9 They have not been 44 percent variances. They
10 have been very small. We cannot make new code.

11 We cannot -- if we actually used a
12 ratio to grant you a variance we would --
13 someone could file suit against us for it. We
14 are bound to follow the code and point out to
15 Council where we think adjustments need to be
16 made, but we can not make them.

17 MR. ELLIOTT: For me the pool is
18 irrelevant. It is whether or not what is being
19 requested to encroach into the setback is such
20 that without being able to do it you couldn't
21 use the property. You would be prohibited from
22 using the property or unreasonably restricted
23 from using the property.

24 To me I can't sit here and think of
25 anything right now that would prevent you from

1 using the property unless it's some sort of
2 living quarters or something. You know, it's
3 the ability to use the house to live in it.

4 If it is something that doesn't
5 negatively impact your ability to live in the
6 house, I couldn't find it prohibits your use of
7 the property or unreasonably restricts the use
8 of the property.

9 I mean, I hope you feel my empathy
10 with you and that if it were me I would go to
11 Town Council and I would -- they need to be made
12 aware of the problem. They may be, but you're
13 right.

14 I mean, it seems to me other families
15 moving in and other pools are being built. This
16 might be a problem going forward and they need
17 to consider it so they can free us up to help
18 people out.

19 MS. PRITCHARD: I agree.

20 THE CHAIRMAN: Is anyone ready to
21 make a motion?

22 MR. ELLIOTT: Yes. I would move to
23 deny the request of William and Jessica Carroll
24 for the approval of the dimensional variance for
25 the required rear setback of RS Zoning District

1 Section 21-22 E(1).

2 THE CHAIRMAN: Is there a second?

3 MS. BRASHER: I second.

4 THE CHAIRMAN: Any further
5 discussion? All in favor of denying the
6 variance, signify by saying aye.

7 MS. BRASHER: Aye.

8 MR. ELLIOTT: Aye.

9 MS. PRITCHARD: Aye.

10 THE CHAIRMAN: Like sign opposed?
11 Variance is denied. I do suggest you take this
12 to Town Council.

13 DR. CARROLL: We will because
14 otherwise I think you're going to have
15 difficulty retaining your families and that's
16 probably not healthy for the island.

17 MRS. CARROLL: Thank you.

18 DR. CARROLL: Thank you.

19 2014 GULL AVENUE

20 THE CHAIRMAN: On item D-2, 2014 Gull
21 Avenue the zoning administrator is requesting a
22 continuance because all the required documents
23 were not submitted for the application. So
24 without any protest I will grant the
25 continuance. Okay. Continuance is granted.

1 MR. HENDERSON: Thank you.

2 2624 I'ON AVENUE

3 THE CHAIRMAN: Okay. Administrative
4 appeal of 2624 I'on Avenue. Bruce Berlinsky
5 and the applicant request an appeal of an
6 administrative decision relating to use of
7 2624 I'on Avenue in accordance with section
8 21-20 B(4), lots containing two occupied
9 dwellings.

10 Joe, please present for the Town.

11 MR. HENDERSON: Thank you. Mr.
12 Berlinsky is here on behalf of Ms. Elizabeth
13 Hurt, the property owner at 2624 I'on. He is
14 appealing the staff decision related to 21-20 B
15 4 which is entitled: Lots containing two
16 occupied dwellings.

17 What this section of the ordinance
18 pertains to is a conditional use in the
19 Residential Zoning District.

20 What I would like to do is just hand
21 out a highlighted copy of that ordinance section
22 so we can read through that together.

23 THE CHAIRMAN: Thank you.

24 MR. HENDERSON: This section of the
25 ordinance essentially allows the Town staff to

1 authorize two dwelling units on a residential
2 property under certain conditions. The main
3 condition is that there has to be some type of
4 documentation on record that predates 1977.

5 We just talked about that a little
6 bit a second ago. That's when the Town
7 implemented zoning regulations on Sullivan's
8 Island effectively saying that every residential
9 lot can only have one residential property. So
10 it basically renders any additional lots as
11 nonconforming.

12 So in 1977 if you had a second dwelling
13 unit on the property you were required to come
14 forth, come to Town Hall, and get a CO document
15 that said that you had a second dwelling unit.

16 So when we have a request of someone
17 to rent out a space or to continue operating a
18 long-term rental or a short-term rental we
19 simply go back to the CO documents and look and
20 see if it's authorized or not.

21 We did that in this case for 2624 I'on
22 Avenue and found a CO, but it says: Single
23 family residential use only. So in December of
24 1978 the CO was issued that only authorized a
25 single family use. It doesn't say anything

1 about a second dwelling use. So we delivered
2 that to the property owners and also the Realtor
3 before the property was sold to, I believe,
4 Ms. Hurt.

5 I think we exchanged some e-mails
6 with Mr. Graham Maiden here. So we maintain
7 that this has only been authorized as a single
8 family property. Any use from 1978 to today
9 that is other than single family has been
10 illegal in the staff's opinion.

11 MS. PRITCHARD: Have any of the
12 owners during that time applied for a business
13 license?

14 MR. HENDERSON: We have nothing on
15 record.

16 MS. PRITCHARD: Okay.

17 MR. ELLIOTT: I missed something.
18 You said -- was there a notification that went
19 out to the homeowners that says if you have two
20 dwelling units you need to come and get a CO
21 evidencing that? Is that what you said? I
22 missed that part.

23 MR. ROBINSON: Yes.

24 THE CHAIRMAN: That was back in 1977.

25 MR. HENDERSON: That's correct.

1 Well, that was a blanket notification community-
2 wide that if you had a nonconforming scenario,
3 if you had one, two, three or like the -- not
4 the Junior Officers' quarters but the -- the --

5 MS. PRITCHARD: Single Apartments.

6 MR. HENDERSON: -- the single
7 apartments that's got probably eight units on
8 that one property, those owners would have had
9 to come to Town Hall and get a CO that denoted
10 each one of those units and --

11 MR. ELLIOTT: So there was some valid
12 notification to the public by the Town?

13 MR. HENDERSON: Absolutely.

14 MR. ELLIOTT: But that was a valid
15 notification by the Town that that was a
16 requirement?

17 THE CHAIRMAN: The thing is that the
18 CO for this was '78. It's after that.

19 MR. HENDERSON: We have 10 binders
20 filled with COs that authorize multiple units or
21 one unit or a vacation rental for a property.
22 That's all documented and in Randy's office.

23 Again, we exchanged e-mails. We
24 also spoke to a contractor who worked on this
25 house in 1977 and '78 who is still working on

1 the island.

2 MS. PRITCHARD: Mr. Coish?

3 MR. HENDERSON: Mr. Coish. He is
4 actually pictured in a couple of those.

5 THE CHAIRMAN: His sign is on a house
6 on Middle Street right now.

7 MR. HENDERSON: So it is a fairly
8 cut-and-dry case. We just delivered this
9 information to the property owners before the
10 purchase and to the Realtor.

11 Sometimes we come across this in
12 a listing on a real estate company's website and
13 we have to quickly reach out to them and say
14 this doesn't have -- this property doesn't
15 authorize a second dwelling unit and we have
16 nothing to substantiate that at Town Hall
17 regardless of how long they've been paying taxes
18 on it as a two-dwelling unit.

19 What matters is what's stated in
20 those binders from 1978 to '77.

21 MS. PRITCHARD: Is there a survey
22 that shows two dwellings?

23 MR. HENDERSON: We do have a survey,
24 but it doesn't denote anything about a second
25 dwelling unit, but I'm not sure when this is --

1 MS. PRITCHARD: I probably have it in
2 here.

3 THE CHAIRMAN: We have it here. It
4 just says, two-story frame residence. Is it
5 even dated?

6 MR. HENDERSON: Again, we have
7 survey-dated testimony from someone who worked
8 the property in the late 1970s who said it was
9 just a single family home and I believe he was
10 working on an addition to the house.

11 So if they did a large addition to
12 an existing structure then that addition was
13 part and parcel of the single family home and
14 shouldn't have been subdivided and rented out
15 separately.

16 MS. BRASHER: When I read this I
17 thought that this certificate of occupancy was
18 also a building permit which they said they were
19 building garages underneath. So two garages
20 does not a second dwelling make and they did not
21 file to say that it was going to be rented or
22 anything.

23 They were -- and then the pictures
24 show the homeowner proudly showing garages. So
25 it sounded to me actually like it was a

1 subterfuge even. I don't know.

2 MR. HENDERSON: The CO just says:
3 New construction and alteration, hyphen, change
4 under house for two-car garage. In my mind that
5 could pertain to modifications to a single
6 family home.

7 THE CHAIRMAN: Thank you. It doesn't
8 just mean under the garage. So I think it
9 probably was an addition, putting a garage
10 underneath the addition, because that's where it
11 looks like the garage is.

12 MR. ELLIOTT: Mine's not legible.
13 Does it say type of building or single family
14 residence?

15 THE CHAIRMAN: Residence. Uh-huh.
16 Okay. Do y'all have any more questions before
17 you go to the applicant?

18 MR. ELLIOTT: Joe, the certificates
19 of occupancy indicate that a structure can be
20 habitable. You build it and a building official
21 comes out and issues an inspection and the
22 CO says basically to the world you can live in
23 it, right?

24 MR. HENDERSON: That's exactly right.
25 That is the purpose of the document.

1 MR. ELLIOTT: And this one indicates
2 this house is built for the single -- all right.
3 I got it.

4 THE CHAIRMAN: Are there any more
5 questions before we hear from the applicant?
6 Mr. Berlinsky.

7 MR. BERLINSKY: Madam Chairman,
8 Members of the Board, Bruce Berlinsky
9 representing the property owner and applicant.
10 I've got a package for everybody.

11 And with all due respect to
12 Mr. Henderson, I would disagree as to the entire
13 history as he's purported it. The history of
14 this house goes back I have been told by some
15 people to at least 1930. I have been told by
16 others it goes back to the 1800s.

17 There was a small cottage on this
18 property. That 1977 CO and building permit was
19 to enlarge that existing structure and elevate
20 it so that the garage was put underneath the
21 house and to meet flood regulations.

22 It wasn't until 1982 that the new
23 house was built adjoining to the existing small
24 cottage or apartment. I'm going to use the
25 words cottage and apartment interchangeably for

1 the unit that has been rented. You will see in
2 my package at the very back there are affidavits
3 from Archie Baker, a long-time owner of this
4 property who owned it from 1989 through 2006.

5 During that period he continuously
6 rented it to either Roger Gaither or Jim
7 Derrick. The Town of Sullivan's Island knew the
8 apartment was rented and that it was a separate
9 structure because every year the Town sent out a
10 summary sheet inquiring about who the tenant was
11 and how much they were collecting in rent.

12 There has always been two houses on
13 the property. Roger Parham or Dr. Parham was
14 the one who built the new part, the new house
15 adjacent to the old house. He lived in the old
16 house until the new house was built and then
17 started renting it immediately.

18 Then Roger Gaither, the tenant, has
19 lived in the apartment. It has it located at
20 2624 1/2 as its mailing address from July '85
21 through '93. Then he moved out of town for
22 work, came back and rented it from January of
23 '99 through 2006.

24 He moved in as soon as Dr. Parham
25 finished the construction of the new addition

1 and new house. During the entire time he had
2 separate electric meters. During the entire
3 time this property has been constructed, as long
4 as both houses have been, there have been two
5 electric meters, separate mailboxes, different
6 mailing addresses.

7 If any of y'all have built a house
8 you can't get a meter or an electric box without
9 something approval of a governmental entity
10 saying it's been inspected and install the
11 meter.

12 In fact, Mr. Gaither wanted to have
13 the apartment or cottage subdivided off from
14 the main house and was told by the Town of
15 Sullivan's Island or Mr. Baker was told that he
16 couldn't do that and he had to keep renting it
17 if he wants to keep his grandfathered rental in.
18 Again, this is a CO for the old structure.

19 It had nothing to do with the new
20 structure. The case of Baker versus Town of
21 Sullivan's Island and Penny Creek versus Fenwick
22 Tarragon Apartments says you don't need to get a
23 new CO. It's not necessary.

24 You will see in both of their
25 affidavits there's never been any connection

1 between the two units. They just happen to be
2 side by side. They have always been there.
3 It has been recognized by the Town.

4 You will also see in my packet where
5 Dr. Parham applied for and received a six
6 percent assessment on the cottage and a four
7 percent on the new structure that was built
8 there beginning in approximately -- he applied
9 in -- let me back look at this.

10 It was '82 because the construction
11 on the new house didn't even begin until 1982.
12 So the Town allows this to be done and then they
13 want to say, well, you can't rent it. Now,
14 there's precedence in the community for this
15 similar-type situation.

16 Both Mr. Bennett at 3124 Marshall and
17 Mr. Powers of 2630 I'on had a similar situation
18 and the Town just said to pay the back license
19 fee because your prior owner didn't pay it.

20 You're punishing my clients because
21 the prior owners didn't comply with getting the
22 license, but the fact still remains that this
23 house has been two houses since it's built.
24 You'll also see the tax bill from Charleston
25 County.

1 Charleston County has recognized this
2 as a duplex all along, taxes it as a duplex.
3 Charleston County is the agent of the Town in
4 collecting taxes.

5 The Town can't come in at this point
6 having let it been rented for 30 years, having
7 known about it being rented for 30 years, having
8 allowed two meters to be at this place, separate
9 mailing, separate phones, separate everything
10 with no interconnection between the two houses.

11 They can't come forward now and say,
12 well, we messed up in '82 and didn't file the
13 '77 ordinance. Well, too bad for you even
14 though we've established this.

15 Again, I would also argue the
16 doctrines of equitable estoppel and laches
17 prevents the Town from coming in after 30 years
18 and saying you can't rent something that's been
19 rented for 30 years and that the Town new about
20 because the prior tenant or the prior owner from
21 '89 through 2006 filled out a form for the Town
22 advising them who the tenant was and what the
23 rent was.

24 THE CHAIRPERSON: Do you have a copy
25 of that form?

1 MR. BERLINSKY: I don't know because
2 Mr. Baker rented the house and sold the house
3 over 10 years ago and he doesn't have anything.

4 MR. HENDERSON: We've never the seen
5 the form. We don't have anything on record. We
6 don't have any business license documentation on
7 this and --

8 THE CHAIRMAN: So if the Town had
9 recognized he was renting it they would have
10 required him to get a business license and --

11 MR. BERLINSKY: I understand that,
12 but the fact is for 30 years this thing has been
13 rented. All the neighbors know it's rented.
14 No neighbor objects. There's none of them here.

15 We feel that you're punishing the
16 current owner because prior owners didn't come
17 and get a business license.

18 THE CHAIRMAN: Okay. Do you -- I
19 assume, but I do not like to assume that you
20 have copies of the e-mails that were sent by
21 Joe to Everett Presson and Graham Maiden saying
22 this is a single family residence and according
23 to our records there's never been a business
24 license and you --

25 MR. BERLINSKY: I understand that and

1 that's why we're here because we think he was
2 wrong back then.

3 THE CHAIRMAN: Okay. Well, this was
4 a year ago. So why are you coming here now? I
5 mean, why are we just now hearing about this?

6 MR. BERLINSKY: Because he just --
7 because until I formally met with him the Town
8 never sent a formal denial of anything and it
9 has been rented. You know, after Archie Baker
10 sold it the current tenant -- the current owner
11 then rented it to his daughter.

12 This thing has been rented for
13 30 years with the Town's blessing. They collect
14 taxes on it as a rental unit.

15 To come in after 30 years and say,
16 oh, well, we made a mistake in 1982 letting you
17 get two meters and letting you build a different
18 house with different entrances and -- and it's
19 never been connected except by the outdoor porch
20 that runs the property and the -- you know, they
21 had to have issued building permits for all of
22 this.

23 Whether they had records or not
24 nobody has been available to provide the records
25 for the '82 construction, but the Town certainly

1 acquiesced in allowing it to be built that way.

2 MS. PRITCHARD: Are there any copies
3 of lease agreements? Did anybody sign leases?

4 MR. BERLINSKY: Roger Gaither signed
5 a lease. To my knowledge nobody has a lease
6 because, again, 2006 is when that ended.

7 My understanding from the person that
8 owned it from Archie Baker to Ms. Hurt -- it was
9 the daughter so he didn't enter into a formal
10 lease and Ms. Hurt while she he's had the tenant
11 since the renovations have been completed to not
12 let the one year of an unoccupied rental go by
13 hadn't entered into a lease because of the
14 Town's position until we got here today and, you
15 know, moved forward.

16 There is a tenant who's going to sign
17 a lease in the event this is granted.

18 MS. PRITCHARD: Okay.

19 MR. ELLIOTT: When did your clients
20 buy the house?

21 MR. BERLINSKY: December of '15.

22 MR. ELLIOTT: Okay. I'm interested
23 in making sure I understand, Bruce, what the
24 notice to the Town was.

25 MR. BERLINSKY: I don't --

1 THE CHAIRMAN: Let me -- just tell me
2 what it was. What --

3 MR. BERLINSKY: The notice to the
4 Town is when they issued the building permit for
5 the second structure in '82.

6 MR. ELLIOTT: Do you have a copy of
7 that?

8 MR. BERLINSKY: No. The Town doesn't
9 even have that, but there had to have been once
10 one because it's over 2,000 square feet. They
11 didn't just build a structure without permits
12 and inspections.

13 MR. ELLIOTT: I don't know if that's
14 true or not. Is there --

15 MR. BERLINSKY: And that's when the
16 second meter was installed.

17 MR. ELLIOTT: That's another thing,
18 though. I'm following you. I just want to make
19 sure I understand. Is the fact that the
20 building permit is issued evidence of the Town's
21 knowledge that's going to be rented?

22 You follow me?

23 I can build a structure and perhaps I
24 can build another property, but that doesn't
25 mean it's going to be rented.

1 MR. BERLINSKY: The only evidence I
2 have is Archie telling me the entire time.

3 MR. ELLIOTT: I get it.

4 MR. BERLINSKY: There are no records.
5 The Town doesn't have records. The owners don't
6 have records or they didn't keep records when
7 they moved. You know, it's 10 years ago and
8 they don't have any records any longer.

9 MR. ELLIOTT: There's no CO for --

10 MR. BERLINSKY: There's no CO.

11 MR. ELLIOTT: You indicated that -- I
12 was trying to follow you and I not interrupt
13 you, but you were on a flow.

14 MR. BERLINSKY: Go ahead.

15 MR. ELLIOTT: You had mentioned there
16 was some other property and you were using that
17 as a reference to why -- you were trying to
18 compare it and the Town said to pay the business
19 license and --

20 MR. BERLINSKY: The back business
21 license fee.

22 MR. ELLIOTT: Go ahead.

23 MR. BERLINSKY: This was in the '80s
24 to my knowledge for two other pieces of
25 property, for 3124 Marshall and 3834 I'on.

1 MS. PRITCHARD: That's me. No. I'm
2 28.

3 MR. ELLIOTT: Your point is --

4 MR. BERLINSKY: The point is the Town
5 set precedent in letting new owners come in and
6 pay back business license fees when the prior
7 owners didn't comply but continually rented it
8 out for an extended period of time.

9 MR. ELLIOTT: Under the same
10 circumstances?

11 MR. BERLINSKY: Under the same
12 circumstances.

13 MR. ELLIOTT: When you say "the Town"
14 what do you mean? The BZA gave some variance or
15 the Town Council said, here you go.

16 MR. BERLINSKY: I don't know
17 which Board gave the Town variance. I just
18 spoke to the owners and that they told me that's
19 what happened.

20 MR. ELLIOTT: Or was it Town Council?

21 MR. BERLINSKY: I think it was
22 Council, but I can't be positive.

23 THE CHAIRMAN: Okay. And then you
24 said something else.

25 MR. BERLINSKY: I don't want to

1 misrepresent anything.

2 MR. ELLIOTT: That's all right.
3 You're good. You said case law doesn't allow
4 something. It sounded like you said there's
5 a case or two that sounded very much like
6 Mr. Baker sued somebody.

7 MS. PRITCHARD: It was Ben Baker
8 versus the Town.

9 MR. BERLINSKY: It was Ben Baker, not
10 Archie Baker.

11 THE CHAIRMAN: Oh, that's why. I
12 didn't think Mr. Baker ever sued the Town for --

13 MR. BERLINSKY: No, he did not.

14 MR. ELLIOTT: And the result was --

15 MR. BERLINSKY: And the other case is
16 Penny Creek versus Fenwick Tarragon Apartments
17 and the way I read those --

18 MR. ELLIOTT: I know that case.

19 MR. BERLINSKY: Okay. The way I read
20 those cases is you don't need to get a new CO if
21 you expand and if there's already a CO on the
22 property.

23 THE CHAIRMAN: Expand which means on
24 an existing structure, which means you're not
25 building a second unit.

1 MR. BERLINSKY: The house had been
2 occupied by '85. Somebody had to issue a CO.

3 THE CHAIRMAN: Here's what I'm
4 saying. That structure -- and I'm just going to
5 call it a structure no matter how many living
6 units or dwelling units are in there.

7 If that structure was expanded and
8 wasn't required to have a CO then what it means
9 is it was an expansion of the existing single
10 family residence that was already there. That's
11 the only way that you can have a construction
12 project expanding a single family residence
13 without a CO because the original CO applies.

14 If you were going to expand the
15 structure for a second dwelling unit it would
16 have required a separate CO. The thing is the
17 electric meters -- we've been down that road
18 before and I'm not going to get into -- an
19 electric meter does not tell me that's a second
20 dwelling unit.

21 It just says there's a second
22 electric meter. I have to go by what the Town
23 records say.

24 MR. BERLINSKY: Well, the Town
25 records are unclear.

1 THE CHAIRMAN: The Town records are
2 not unclear. The Town records say that it's a
3 single family residence.

4 MR. BERLINSKY: From 1977 prior to
5 the new house being built.

6 MR. ELLIOTT: Yeah, and I'm just
7 trying to understand all the evidence and notice
8 you think the Town has. I've heard everything
9 you said. One other thing, though. If in '82
10 they built a different house or cottage --

11 MR. BERLINSKY: That's connected now.

12 MR. ELLIOTT: Okay. But if it's
13 going to be lived in are you saying that Penny
14 Creek and this Baker case say you wouldn't need
15 a CO for that structure?

16 MR. BERLINSKY: I'm saying --

17 MR. ELLIOTT: Is that the way you
18 read that?

19 MR. BERLINSKY: I'm saying you may
20 not need a second CO for the new structure. I
21 don't know. You may need one. That's just, you
22 know, in those particular cases.

23 THE CHAIRMAN: But what does the Town
24 ordinance say? What does our ordinance say
25 about, well, we don't really allow that, to

1 build a second structure and rent it?

2 MR. BERLINSKY: Right, because
3 there's no definition in your code as to duplex.

4 THE CHAIRMAN: Exactly.

5 MR. HENDERSON: So if I could kind of
6 unpack some of these ideas that already were
7 thrown out. So just to address a couple of
8 these things, they have been paying taxes to
9 Charleston County for many, many years.

10 On an annual basis the county tax
11 assessor comes out to your house and they do an
12 evaluation of your structure and they tax you
13 accordingly and they send you a bill. That
14 doesn't mean that they necessarily communicate
15 with the Town. Okay.

16 So if they've been doing that for
17 many, many years the Town was likely unaware of
18 it. As far as two electric meters back in the
19 1970s and '80s, all you had to do was know
20 somebody at the electric company and they would
21 come in and put a second meter in. That's
22 pretty common knowledge that that's how a lot of
23 them are.

24 A lot of properties had multiple
25 electric meters. It's the same thing with a

1 mailbox and an address. That doesn't give an
2 indication that you're legally allowed to have
3 two dwelling units by zoning.

4 Finally, when we're talking about the
5 issuance of a certificate of occupancy in the
6 mid 1970s when the Town implemented zoning
7 regulations on this island it was an extremely
8 contentious issue. Very contentious. You know,
9 it was a property rights issue.

10 We were coming in and telling you
11 what islanders can do with your property and we
12 had lots of lawsuits as a result of it. So in
13 my mind when the Town issues a CO for this
14 property saying that you have one single family
15 residence on it that means that there aren't two
16 dwellings legally authorized.

17 In 1983 whenever the work took place
18 the Town staff would not have violated this CO
19 by allowing a second construction to be built, a
20 separate dwelling unit to be built on that lot.

21 If you have looked at several of
22 these CO documents if there were two legally
23 authorized dwelling units it would say in the
24 conditions a space here, that there are two
25 different dwelling units.

1 So in my mind our interpretation of
2 21-20 B(4) is reasonable and unsubstantiated by
3 the only document we have available to us.

4 MR. ELLIOTT: Joe, are your e-mails
5 with Graham and Everett Presson before or after
6 these folks bought?

7 THE CHAIRMAN: Before.

8 MR. HENDERSON: It was before. It
9 was November 13th.

10 MR. HENDERSON: And were one of these
11 folks the agent for -- Graham or Presson the
12 agent for the applicants?

13 MR. HENDERSON: I initially spoke
14 with Everett Presson of Carolina One Real Estate
15 on November 10th and then I think I exchanged
16 some e-mails with you.

17 MR. MAIDEN: I was a co-agent on the
18 purchase.

19 MR. BERLINSKY: Everett represented
20 the sellers.

21 MR. MAIDEN: Right. I just referred
22 it.

23 MR. HENDERSON: This is fairly
24 typical of a request for zoning compliance when
25 there's a pending sale of a property instead

1 of -- you know, they can request a letter from
2 the Town staff.

3 In this case they didn't request
4 a letter of zoning compliance. I issued an
5 e-mail. I issue e-mails all the time saying
6 yes or no.

7 MR. ELLIOTT: This is my point, I
8 think, though, that before the applicant bought
9 the property you had advised Everett Presson and
10 Mr. Maiden that the --

11 THE CHAIRMAN: That's you.

12 MR. ELLIOTT: The Town took the
13 position you could not continue to rent --

14 MR. HENDERSON: That's correct.

15 MR. ELLIOTT: -- and that they
16 purchased anyway?

17 MR. HENDERSON: That's correct.

18 MR. ELLIOTT: Bruce, the property if
19 you're accurate -- well, it has been rented
20 forever and you point out and you note that the
21 Town may be estopped from now, you know, not
22 allowing the rental to continue.

23 Do you agree that it matters for your
24 estoppel argument that your client purchased
25 with the knowledge of the problem, that the Town

1 said you can't live in it anymore?

2 MR. BERLINSKY: I do acknowledge that
3 they were aware of Joe's position.

4 MR. ELLIOTT: Yeah.

5 MR. BERLINSKY: Again, we feel
6 that Joe's position was wrong and until -- you
7 know, until it became the Town's official
8 position, you know, that's why we applied at the
9 time we did for the variance.

10 MR. ELLIOTT: Yeah, but didn't your
11 client purchase --

12 MR. BERLINSKY: Well, he purchased
13 with them saying no but with all the previous
14 owners having 30 years of rental history on the
15 property.

16 THE CHAIRMAN: The documentation --

17 MR. ELLIOTT: But what I'm concerned
18 with is, did she change her position because of
19 something the Town had done?

20 MR. BERLINSKY: I'm not --

21 MR. ELLIOTT: You're saying that,
22 yes, that she bought --

23 MR. MAIDEN: Can I --

24 MR. BERLINSKY: I'm not arguing
25 detrimental reliance, but I'm arguing estoppel

1 because the Town can't come in after at that
2 point of 29 years and say --

3 MR. ELLIOTT: Well, maybe for a prior
4 owner, but not a new owner. I mean --

5 MR. BERLINSKY: That still comes on.

6 MR. ELLIOTT: But you've got your --

7 MR. BERLINSKY: You've got 29 years
8 of established use at the time Mr. Henderson
9 says no.

10 MR. ELLIOTT: I understand that.
11 However, don't you have to -- to establish
12 estoppel you've got to prove prejudice in some
13 fashion and a change of position as a result of
14 what you're relying on?

15 It seems to me her argument is not as
16 strong when she comes in and bought with the
17 knowledge that a representative of the Town is
18 saying you can't keep doing that.

19 MR. BERLINSKY: Well --

20 MR. ELLIOTT: I'm just trying to
21 think it through.

22 MR. BERLINSKY: Again, I think the
23 Town's position was wrong to begin with and I
24 don't think -- I disagree with you on what has
25 to be proved for estoppel. I just think the

1 continued use and the acquiescence and the
2 nonobjection to it for a 29-year period
3 certainly --

4 MR. ELLIOTT: Yeah, and you've told
5 us all the notice that the Town has with regard
6 to how it was used.

7 MR. BERLINSKY: Correct.

8 MR. ELLIOTT: We've got that in the
9 record.

10 MR. BERLINSKY: Yeah.

11 MR. ELLIOTT: You were going to say
12 something? I'm sorry.

13 MR. MAIDEN: I was going to say we
14 have the e-mails to show that she didn't rely on
15 it. We could get you those, too.

16 MR. ELLIOTT: What do you mean?

17 MR. MAIDEN: To rely on the Town's
18 position. We took our position that he was
19 wrong and we would appeal.

20 MR. ELLIOTT: I know.

21 MR. MAIDEN: So it was -- there was
22 no change in her when she purchased.

23 MR. ELLIOTT: Okay.

24 MR. MAIDEN: I just had a question as
25 a nonparty. What is the Town's definition of a

1 duplex? Is it a single family residence or is
2 it a dual family?

3 I looked all through the ordinance
4 and I could not find a definition of what a
5 duplex was within Sullivan's Island.

6 MR. ELLIOTT: I don't know.

7 THE CHAIRMAN: Well, technically
8 they're not allowed.

9 MR. MAIDEN: Okay.

10 MR. ELLIOTT: But I do know that the
11 rule says in order to do what is being done with
12 the house you've got to have documentation since
13 August of 1977 that it has been used since then.

14 MR. MAIDEN: But if the house was
15 built after and taxed as a duplex --

16 MR. ELLIOTT: I understand. Taxed by
17 the county.

18 THE CHAIRMAN: Taxed by the county.

19 MR. MAIDEN: Then it's a single
20 family residence but it's a duplex under the
21 umbrella of a single family residence. Is that
22 the Town's position?

23 MR. ELLIOTT: Well, we don't take
24 that position. No. It is not --

25 THE CHAIRPERSON: No. A duplex is

1 not -- a single family residence is just exactly
2 what it says, a single family residence.

3 MR. MAIDEN: So it is impossible to
4 have a duplex as a single family residence? Is
5 that the Town of Sullivan's Island position?

6 THE CHAIRMAN: Are you arguing about
7 where the wall is?

8 MR. MAIDEN: No. I want to know what
9 y'all's position is. Is a duplex a single
10 family residence?

11 MR. ELLIOTT: I don't think this
12 Board is --

13 MS. PRITCHARD: It's not appropriate
14 to --

15 MR. ELLIOTT: I don't think that's
16 our charge to make that -- provide that
17 definition.

18 MR. MAIDEN: Okay. So if something
19 was a duplex two families could live under one
20 single family residence?

21 MR. HENDERSON: To answer his
22 question -- I mean, it's a valid question.
23 These CO documents were intended to describe the
24 type of building.

25 MR. ELLIOTT: Exactly.

1 MR. HENDERSON: The entire building.
2 Beside that it says, single family residence.
3 If it were a duplex or a three-dwelling unit or
4 housed three-dwelling units the CO would have
5 said that.

6 MR. MAIDEN: That's a '78 CO.

7 MR. HENDERSON: Yes.

8 MR. MAIDEN: The house was built in
9 '83.

10 THE CHAIRMAN: But we're operating
11 under the CO from 1978 because --

12 MR. MAIDEN: Correct, but that CO --
13 can you have one CO for a duplex?

14 MR. HENDERSON: If you had a single
15 family home in 1978 the Town would not have
16 authorized you to build two dwelling units in
17 1983.

18 MR. MAIDEN: Right, but is a duplex
19 one dwelling unit or two dwelling units?

20 MR. HENDERSON: It is two dwelling
21 units.

22 MR. MAIDEN: And that's the Town's
23 position?

24 MR. HENDERSON: We don't have it
25 defined in the ordinance.

1 MR. MAIDEN: Correct. I'm just
2 wanting to know what the Town's position of a
3 duplex is. Is a duplex a single family
4 dwelling?

5 MR. HENDERSON: It would be two
6 separate dwellings on one property.

7 MR. MAIDEN: That's all I needed to
8 know.

9 MR. ELLIOTT: I'm not sure that it
10 matters.

11 THE CHAIRMAN: I understand exactly
12 where you're going.

13 MR. MAIDEN: No. It's --

14 THE CHAIRMAN: Just because it
15 exists -- just because it currently exists as
16 two dwelling units doesn't mean to the Town that
17 it is a duplex. It is a single family
18 residence.

19 MR. MAIDEN: And two people -- two
20 families could live in a single family residence
21 as a duplex if it was a duplex?

22 MR. ELLIOTT: They could do it if it
23 was a single family house.

24 THE CHAIRPERSON: In a house. It
25 doesn't matter.

1 MR. ELLIOTT: One family could live
2 in a triplex.

3 MR. MAIDEN: Correct. No. Three
4 families could live in a triplex.

5 MR. ELLIOTT: Or one or none. They
6 did it for 30 years. I'm not following you.

7 THE CHAIRPERSON: But according to
8 the records we have available they did it
9 illegally without a business license and a CO
10 for a second dwelling unit attached to that
11 original dwelling unit would not have been
12 allowed by the Town in 1983. That's exactly
13 what Joe just said.

14 So if that's what happened in 1983 it
15 was done without the permission of the Town.
16 The Town didn't know about it. The Town may
17 have issued a building permit to expand the
18 house not knowing that it was going to be turned
19 into an apartment.

20 Is there anybody else that would like
21 to speak to this matter? Do y'all have any more
22 questions for the applicant or for Joe?

23 MR. ELLIOTT: I don't think so.

24 I'm going to officially close public
25 comment, but we always have time to reopen it so

1 that we can deliberate.

2 MR. ELLIOTT: What do y'all think
3 about the notice to the Town?

4 THE CHAIRMAN: When you say "notice
5 to the Town" tell me exactly what you mean.

6 MR. ELLIOTT: Bruce laid out a lot of
7 circumstantial evidence that he points to that
8 the Town knew exactly what was going on.
9 However, there's nothing -- I mean, you know,
10 there's county tax records. That's not notice
11 to the Town.

12 THE CHAIRMAN: No.

13 MR. ELLIOTT: There are two meters on
14 the property. That is not notice to the Town.

15 THE CHAIRMAN: Exactly.

16 MR. ELLIOTT: What else?

17 THE CHAIRMAN: If there was --
18 obviously there was construction in 1982 and
19 '83 --

20 MR. ELLIOTT: Construction. Yeah.

21 THE CHAIRMAN: -- but that
22 construction if it were according to code would
23 not have been for a second dwelling unit because
24 they didn't get another CO. This is the CO on
25 record for that.

1 So when you expand a dwelling unit
2 you don't have to get a CO. If you build a
3 second unit you do have to get a CO or if you --

4 MR. ELLIOTT: And we don't have a
5 permit for the '82?

6 THE CHAIRMAN: No. Do we have a
7 building permit for '82?

8 MR. ROBINSON: We don't actually have
9 a permit. We have a book. That's why I went in
10 my office and looked. It states, okay, they've
11 got a permit there. They got a permit there.
12 They got a permit there.

13 MR. ELLIOTT: Does it say the owner
14 of this property got a permit in 1982 for some
15 construction?

16 THE CHAIRMAN: Or '82 or '83?

17 MR. ROBINSON: Yes.

18 THE CHAIRMAN: And it was for what?

19 MR. ROBINSON: New construction.
20 That's what it says. New construction. Let me
21 just say -- I mean, we're under oath and in 1988
22 I worked on this house. I was working for a
23 builder who lived next store.

24 I didn't know of any apartment on
25 this thing and I worked on that house in '88. I

1 know it was right before Hugo. We did some
2 remodel work on a bathroom on the top floor. I
3 didn't know it had an apartment on it. It could
4 have.

5 MR. MAIDEN: Well, they're connected.

6 MR. ROBINSON: I didn't work for the
7 Town.

8 THE CHAIRMAN: Well, they share a
9 wall I'm sure.

10 MR. ROBINSON: Actually, I did work
11 the Town. I was working as a fireman and I
12 worked construction on the side. You know,
13 that's how I got into this thing. Anyway...

14 THE CHAIRMAN: All right.

15 MR. ELLIOTT: So all the Town would
16 have done in connection with that '82/'83
17 construction would have been to issue a permit?

18 MR. ROBINSON: Yes.

19 MR. ELLIOTT: County did the
20 inspection back then?

21 MR. ROBINSON: No. We did the
22 inspections. We had a police officer doing
23 inspections for a time back then. There was a
24 lot of documentation that, you know, just didn't
25 happen.

1 THE CHAIRPERSON: But they did get
2 permits for it?

3 MR. ROBINSON: They did get permits,
4 yes.

5 THE CHAIRMAN: So whatever they did
6 was legal according to the code.

7 MR. BERLINSKY: But the permit was
8 for new construction, not expansion or an
9 addition.

10 THE CHAIRMAN: But another CO was not
11 issued.

12 MR. BERLINSKY: Yes, but you heard --

13 THE CHAIRMAN: Another --

14 MR. BERLINSKY: You heard Randy just
15 now describe how the Town was operating back
16 then.

17 THE CHAIRMAN: But he also said there
18 wasn't an apartment in the building.

19 MR. BERLINSKY: The guy who rented it
20 says he was in there.

21 MR. ROBINSON: It was widely anymore
22 known at that time --

23 MR. BERLINSKY: Mr. Gaither --

24 MR. ROBINSON: It was known -- at
25 that time it was a single family residential

1 island at that time, no matter who it was.

2 MR. ELLIOTT: Do we have any
3 indication the names are running together?

4 THE CHAIRMAN: Mr. Baker.

5 MR. ELLIOTT: Mr. Baker -- I know
6 there's not -- is it evidence that he came to
7 the Town having constructive knowledge of these
8 ordinances and say, hey, I'm renting this thing
9 and you guys need to be aware of it?

10 MR. BERLINSKY: The only thing is he
11 filled out the sheet and said I'm renting it
12 because the Town wanted to know who was on the
13 island in the -- because if you recall Mr. Baker
14 didn't buy until right around Hugo that year in
15 '89.

16 So the Town wanted to know on a --
17 some sort of sheet who was legally or who
18 would -- not legally but who was allowed to be
19 on the island. So that --

20 MR. ELLIOTT: Yeah.

21 MR. BERLINSKY: -- if people tried to
22 get on the island after another Hugo-type
23 hurricane there would be some record as to
24 whether these people were allowed on the island
25 or not.

1 MR. ELLIOTT: We have documentation
2 as to that?

3 MR. BERLINSKY: Nobody has any
4 documentation. Again --

5 THE CHAIRPERSON: Was that he was
6 living in the house or the legal tenant paying
7 rent.

8 MR. BERLINSKY: That he was the legal
9 tenant paying rent. The affidavit said they
10 wanted to know who the tenant was, identify who
11 the tenant was, and how much rent was being
12 paid.

13 The Town knew what was being said and
14 never sent him a business license to collect on
15 that amount, but he certainly filled out a form
16 when -- I find it hard to believe, too, but
17 that's what he tells me and I believe Mr. Baker.

18 I mean, he has no dog in this fight
19 and has no reason to make something up. That's
20 what he told me. I didn't make it up. I've
21 reflected his verbatim description to me.

22 MR. ELLIOTT: All right. So this guy
23 Baker --

24 MS. PRITCHARD: I talked to her
25 yesterday.

1 MR. ELLIOTT: So Baker owns the
2 properties from '89 to '06 and he's saying: The
3 Town knew the apartment was rented because each
4 year they sent me a summary sheet about who
5 was renting the apartment and how much rent
6 was collected.

7 MR. BERLINSKY: That's correct.

8 THE CHAIRMAN: That would not have
9 been our practice in 2006, I believe.

10 MR. BERLINSKY: I don't know who
11 either, but that's what he told me.

12 THE CHAIRMAN: I know, but we can
13 also misremember events. I grew up with his
14 daughter. So I -- the Bakers are very well
15 known to me and he's a wonderful gentleman.

16 MR. ELLIOTT: Joe, is there a history
17 if you know of the Town where the Town would
18 send a summary sheet to residents inquiring
19 about the subject that Mr. Baker outlined?

20 MR. HENDERSON: Not that I know of.
21 No, sir.

22 MR. ELLIOTT: And you've been with
23 the Town for how long?

24 MR. HENDERSON: Three years.

25 MR. ELLIOTT: But you have access?

1 MR. HENDERSON: I have access to all
2 the files and I've never seen any kind of
3 correspondence like that other than the business
4 license process. We don't have anything in our
5 records that ever indicated that this was
6 illegally licensed as a rental or indicating
7 revenue being generated from the property.

8 THE CHAIRMAN: I do remember the
9 forms that were sent to residents after Hugo
10 because they had to verify everybody that was
11 allowed to come back on the island. That's --

12 MR. ELLIOTT: That not what he's
13 saying.

14 THE CHAIRMAN: That's what Mr.
15 Berlinsky just raised, that it was after Hugo
16 and they wanted to know who was on the island.
17 So I don't know what they would have to do
18 with -- you know what I'm saying?

19 MR. ELLIOTT: I understand.

20 THE CHAIRMAN: Yeah. It's a
21 different matter. It's who's allowed to be
22 there, but that doesn't necessarily -- that
23 summary statement might not have said that it
24 was a tenant paying rent. It would just say
25 this person was allowed to be on the island

1 because they live in this house.

2 MS. PRITCHARD: My recollection of
3 that house is there is a doorway from main house
4 into that apartment, isn't there? I know
5 there's a porch access.

6 MR. MAIDEN: It is not connected by
7 anything. You have to go outside when you enter
8 and --

9 MS. HURT: The porch I think you're
10 referring to is the only access.

11 MS. PRITCHARD: Okay.

12 MR. ELLIOTT: That is Ms. Brooker?

13 MS. HURT: Yes.

14 MR. ELLIOTT: And you're the sole
15 owner?

16 MS. HURT: I am.

17 MS. PRITCHARD: Have you filed a
18 current rental agreement with the Town?

19 MS. HURT: I haven't. I was just
20 waiting.

21 MS. PRITCHARD: Waiting on this?

22 MS. HURT: Correct.

23 MS. PRITCHARD: Okay.

24 THE CHAIRMAN: You know, this might
25 be the paperwork that Mr. Baker thought he was

1 filling out with the Town because when the
2 assessor does look at the property when you're
3 doing your -- if he was -- if it's registered
4 with the county as a duplex and he's trying to
5 prove, you know, what percentage of the property
6 is four percent and what is six percent --

7 MR. BERLINSKY: That form was
8 actually filled out by Dr. Parham --

9 MS. PRITCHARD: Yes.

10 MR. BERLINSKY: -- when he built the
11 house. It wasn't filled out by Mr. Baker.

12 THE CHAIRMAN: But in an ownership
13 change he would have had to do it as well.

14 MR. MAIDEN: There's no record of it.

15 MR. BERLINSKY: There's no record of
16 it. We got those documents from the Town of
17 Sullivan's Island. I didn't get those from the
18 county. They came from here.

19 THE CHAIRPERSON: This says it's the
20 Charleston County assessor's office.

21 MR. MAIDEN: Joe sent those to us; so
22 they were on notice at some point.

23 MR. ELLIOTT: County?

24 MR. MAIDEN: No. The Town. We got
25 the record from the Town in 1982 to that show it

1 as four and six percent. We didn't reach out to
2 the county.

3 THE CHAIRMAN: He just got these.

4 MR. MAIDEN: No. In November we got
5 those.

6 MR. ELLIOTT: Joe --

7 MR. HENDERSON: Were these in the
8 archive documents that I sent you to --

9 MR. MAIDEN: You sent them to us
10 during contract before we closed --

11 MR. HENDERSON: Via e-mail.

12 MR. MAIDEN: -- and a decision was
13 made.

14 THE CHAIRMAN: I understand that, but
15 still --

16 MR. MAIDEN: He asked when the Town
17 was on notice and there's documents back in
18 nineteen-whatever that show they had notice.

19 MR. ELLIOTT: Joe, I want to make
20 sure I'm looking at --

21 MR. HENDERSON: So this county
22 document --

23 MR. MAIDEN: There's multiple of
24 them. If you flip through there's multiple.

25 MR. HENDERSON: This was in the

1 archive file that I sent to you via e-mail.

2 MR. MAIDEN: I have no idea. You
3 presented it as the Town representative to us.
4 I have no idea if --

5 MR. HENDERSON: And I'm not prepared
6 to answer that if it's in the Town documents.
7 It's possible. But my question is, why was
8 there never a business license issued to the
9 property owners?

10 MR. MAIDEN: Why does it say a
11 single family residence can be a duplex and it
12 can be -- under one roof it can be four percent
13 and six percent in that document.

14 THE CHAIRMAN: But that's the county.

15 MR. BERLINSKY: But the Town is on
16 notice but because the Town --

17 MR. MAIDEN: The Town --

18 MR. BERLINSKY: The Town sent us that
19 document. We didn't get it. The Town sent us
20 those files.

21 MS. PRITCHARD: I think the missing
22 link is when the Town had it in their possession
23 the Town didn't go to the homeowner and say --

24 MR. ELLIOTT: What's up.

25 MS. PRITCHARD: -- what's up. You

1 need to the go to the homeowner and straighten
2 this out now.

3 MR. HENDERSON: This could have been
4 a part of a building permit submittal to
5 identify the home or the existing Town staff
6 could have misplaced it and not identified --

7 MR. MAIDEN: There's one --

8 MR. HENDERSON: Failed to ask the
9 question. So if Town staff was just focused on
10 issuing a building permission -- again, I have
11 no idea why this is in our possession. You
12 know, was it to -- did the Town have knowledge
13 of this rental going on or this second dwelling
14 unit in conflict with the original 1978 CO?

15 I don't know. I think the Zoning
16 Administrator or staff would have certainly
17 reached out as I did. I certainly know that
18 Blaine Miller would have identified it on this
19 CO.

20 In 1978 he had three or four lawsuits
21 ongoing for people that had illegal second
22 dwellings. So when this gentleman put single
23 family home he only had one dwelling unit on
24 this property.

25 MR. MAIDEN: Because in '78 it was a

1 single family dwelling.

2 MR. HENDERSON: One single family
3 dwelling and you would not have been allowed to
4 build a second dwelling on the property.

5 MR. BERLINSKY: But --

6 MR. HENDERSON: If you were issued a
7 building permit and you put an addition on it
8 was an addition to that single family home.

9 MR. MAIDEN: But you granted new
10 construction.

11 MR. HENDERSON: New construction --

12 MR. BERLINSKY: The point is --

13 MR. HENDERSON: New construction
14 could be an addition.

15 MR. BERLINSKY: The point is when
16 Mr. Elliott asked if the Town had knowledge the
17 county produced the county records because the
18 Town had knowledge it was a duplex because it
19 clearly says duplex --

20 MS. PRITCHARD: In 1985.

21 MR. BERLINSKY: In 1985.

22 MR. HENDERSON: That doesn't mean the
23 zone issued zoning compliance for the --

24 MR. BERLINSKY: The Town had
25 knowledge. You allowed it to be a duplex and

1 allowed it to be rented it for 30 years.

2 MR. ELLIOTT: You guys are going back
3 and forth and you don't know really know if that
4 makes a hill of beans to anybody at this table

5 MR. BERLINSKY: Right.

6 MR. ELLIOTT: The question I have
7 that makes a difference to me is this may be
8 some evidence of notice. Does it carry the day?
9 I don't know.

10 So the question I have is, what file
11 did it come from and who had these files?

12 MR. HENDERSON: I'm not positive. We
13 have probably -- I don't know how many pages
14 were in that archive file that I sent, but --

15 MR. ELLIOTT: What does that mean
16 when --

17 MR. HENDERSON: For every property on
18 Sullivan's Island we keep an archive file, a
19 scanned document, of all of the building permits
20 that were issued on the property. So it's
21 possible. I don't know. I can't verify that
22 right now without looking through the 80 to 100
23 pages of archived files whether this actually
24 came from our files.

25 THE CHAIRMAN: Okay.

1 MR. ELLIOTT: Their point is that we
2 got it from the Town.

3 MR. HENDERSON: I don't know if they
4 did or not. I can't say if they --

5 MR. BERLINSKY: I'm not -- I'm under
6 oath. I'm an officer of the court. I'm not
7 going to sit here and lie under oath.

8 MR. HENDERSON: And I can't say
9 yes or no.

10 MR. MAIDEN: I can go on my phone and
11 see when you sent it and where you sent it.

12 MR. HENDERSON: There's a lot of
13 these. Again, I'm looking at this. I mean, I
14 don't even know where it says how we would know
15 of this second dwelling unit.

16 MS. PRITCHARD: I think this piece of
17 paper tells you.

18 MR. MAIDEN: There's multiple years
19 of it, where it goes through four and six
20 percent.

21 THE CHAIRMAN: It says it's a
22 townhouse. It doesn't say it's a --

23 MR. BERLINSKY: Duplex residential
24 apartment.

25 MR. ELLIOTT: And where are you

1 reading that?

2 MR. BERLINSKY: Allocations of --

3 MS. PRITCHARD: Number 3.

4 MR. BERLINSKY: Residential and other
5 use.

6 THE CHAIRMAN: No. I'm looking at
7 this form right here.

8 MR. ELLIOTT: You've got something
9 different, sir? What --

10 MR. BERLINSKY: Oh. I'm looking at
11 the county's form. It says: Duplex,
12 residential apartment.

13 MR. ELLIOTT: See, I can barely read
14 some of this stuff. Duplex.

15 MS. PRITCHARD: Says: Small
16 two-bedroom apartment attached to the house is
17 rented.

18 MR. ELLIOTT: It says: Qualified
19 residential four percent and then it's got the
20 portion of six percent.

21 THE CHAIRMAN: Right. I agree with
22 Joe, but I want to -- I mean --

23 MR. HENDERSON: This could have come
24 from the Town's records, but receiving this and
25 having it as part of some other type of

1 documentation that was submitted I don't know
2 when isn't authorization. It isn't a statement
3 of zoning compliance which is what a business
4 license is or which is what an official letter
5 from the Zoning Administrator is.

6 I don't know how we received this or
7 whether it was caught. I certainly in talking
8 or discussing this with you folks back in
9 November of 2015 didn't identify it and I do
10 this for a living, you know, in those 80 pages
11 or 100 pages. So, I mean --

12 MR. ELLIOTT: Yeah. And why didn't
13 Mr. Parham come to them? I mean, to me he never
14 took a step to come to the Town and say, hey,
15 listen, I'm renting this deal and I need a
16 license.

17 MR. HENDERSON: That's right.

18 MR. ROBINSON: It's not in our file.
19 I don't know where that document came from, but
20 it's not in the archive files.

21 MR. HENDERSON: In the archive files.

22 MR. MAIDEN: I can find the e-mail.

23 MR. ROBINSON: It didn't come out of
24 our archive files.

25 MR. BERLINSKY: It was sent to us by

1 an e-mail from Joe. Whether it's in your files
2 or not, that's the only place we got it from.

3 MR. HENDERSON: It could it have been
4 sent from Everett Presson --

5 MR. ROBINSON: Correct.

6 MR. HENDERSON: -- to substantiate
7 the rental.

8 MR. BERLINSKY: No.

9 MR. MAIDEN: No. He just gave an
10 affidavit from the previous owner. He did a
11 one-word document before we closed that said,
12 you know, that it's easier to --

13 THE CHAIRMAN: It's not in our
14 archived file.

15 MR. HENDERSON: I would not ignore
16 this document right here.

17 THE CHAIRMAN: Okay. Let's cut to
18 the chase here. The document -- Randy, the
19 document that Mr. Berlinsky just gave us with
20 the -- is that the one he gave us?

21 Yes. With the seal on the top and
22 then there's a blank page and then the
23 allocation page -- the assessor's office form --
24 and I'm assuming the floor plan goes along with
25 that because none of those have -- they all seem

1 to be dated the same.

2 MS. PRITCHARD: The floor plan is
3 dated in '97.

4 MR. BERLINSKY: That was all part of
5 the --

6 THE CHAIRMAN: Can you -- I'm -- hold
7 on just a minute.

8 MS. PRITCHARD: I'm sorry.

9 THE CHAIRMAN: Randy just went and
10 pulled up the archive which is the scanned
11 document that was sent. These pages are not in
12 there.

13 MS. PRITCHARD: Okay.

14 THE CHAIRMAN: So I'm not doubting
15 that they exist. I just don't know if -- we see
16 them now, but I don't know if that proves that
17 we had them in our files because they're not in
18 the archive. What were you going to say?

19 MR. BERLINSKY: I was going to say
20 the only place I got this one from was from this
21 office.

22 THE CHAIRMAN: They're not in our
23 scanned documents.

24 MR. ELLIOTT: I don't think we need
25 to go --

1 MR. ELLIOTT: So that's just not
2 going to be an issue, I don't think.

3 MR. ELLIOTT: Yeah. In the
4 conclusion the applicants testified that they
5 got the documents from the Town.

6 THE CHAIRMAN: They got --

7 MR. ELLIOTT: The Town is saying that
8 may be the case, but they did. They come from
9 out of our files and we're not certain where
10 they got them from.

11 THE CHAIRMAN: Right. I think the
12 major struggle in having this is the only
13 documentation I see is the CO and the knowledge
14 is that after '78 we're not allowed to construct
15 an addition to your house and rent it according
16 to the zoning ordinance.

17 MR. ELLIOTT: Right.

18 THE CHAIRMAN: I understand that
19 evidently it has been rented, but we have no
20 business license on record. We would -- we
21 would have had a business license on record. If
22 we had asked -- if the Town had asked how much
23 rent you were bringing in they would have sent
24 you a bill and asked you to fill out a business
25 license application.

1 So my problem is there's no
2 documentation. I'm not doubting the affidavits,
3 but there's no documentation.

4 MR. ELLIOTT: I'm concerned about
5 whether or not the Town was aware of what was
6 going on and did nothing about it for all this
7 time. The evidence that the Town knew about it
8 was the meters.

9 They built the property and we have
10 this county documentation that we don't --
11 there's evidence that it came from the Town.
12 But there's also evidence that it didn't come
13 from the Town's files itself but that it came
14 from some other outside source.

15 THE CHAIRMAN: It might have been
16 another outside source.

17 MR. ELLIOTT: Yeah. I mean, other
18 than the zoning ordinance there absolutely is no
19 evidence it was rented going back to '77. It
20 was only rented once.

21 They built the building and the
22 Town's point is, well, there's no proof that we
23 allowed it to be used for that purpose and we,
24 in fact, would not have allowed it to be used
25 for a second dwelling --

1 MR. HENDERSON: That's correct.

2 MR. ELLIOTT: -- if we had known
3 about the purpose.

4 THE CHAIRMAN: And the owner was
5 notified of the position prior to purchase
6 notwithstanding the fact that you can appeal
7 that decision. I understand that.

8 In cases -- I don't think y'all have
9 been here since we've heard the administrative
10 appeal. In the case of administrative appeals
11 our motion is to either uphold the decision of
12 the Zoning Administrator or to uphold it.
13 That's the motion.

14 MS. PRITCHARD: And do we have to
15 give the grounds for which you uphold it or
16 overturn?

17 MR. HENDERSON: It helps.

18 MS. PRITCHARD: Okay. Just asking.

19 MR. ELLIOTT: What do you think?

20 MS. PRITCHARD: It is tough. It is
21 tough. I think that it has been renting
22 forever. There are two meters. As you say, we
23 don't have the certificate of occupancy or lease
24 agreement we have no business license. I think
25 it is a tough call.

1 THE CHAIRMAN: And the documentation
2 that we do have --

3 MS. PRITCHARD: We don't have the
4 Town's documentation. We have county
5 documentation.

6 THE CHAIRMAN: Right. I know, but
7 the documentation we have the Town shows a
8 single family residence.

9 They were notified prior to purchase
10 and according to our zoning ordinances in the
11 code it would not have been allowed because we
12 have the -- our documentation is we have a CO
13 and we have a survey and we have photographs and
14 the two e-mails, which is on the second page of
15 the staff report.

16 MS. PRITCHARD: I read that.

17 MR. ELLIOTT: And the cost to the
18 owner as far as the Town itself would that have
19 been a yearly business license fee?

20 MR. HENDERSON: That's correct. I
21 mean, if it were a legally authorized dwelling,
22 yes.

23 MR. ELLIOTT: Sure.

24 MS. BRASHER: But if the owner had
25 come forth and asked for that they would have

1 cited him as it beings an illegal situation?

2 THE CHAIRMAN: That's correct.

3 MR. HENDERSON: Correct.

4 MR. ELLIOTT: Which is what the Town
5 did when they came forward to Joe and said,
6 can't do what you're doing.

7 MR. HENDERSON: Correct. So any time
8 for the issuance of that CO to when I was
9 approached the Town staff should have identified
10 it as an illegal use and stopped it if they had
11 come forth and requested a business license to
12 operate.

13 THE CHAIRMAN: They would have gotten
14 a cease and desist order.

15 MR. ELLIOTT: Right.

16 MR. HENDERSON: We did not have an
17 opportunity to identify it until we were
18 approached by the Realtor, I believe, who was
19 dealing with the sale of the property.

20 MS. BRASHER: And ignorance of the
21 law is no excuse for not knowing it, right?

22 MR. ELLIOTT: That's what they say.
23 Yeah. I mean, a little more to the point, I
24 think the public's on constructive notice of
25 laws and regulations and ordinances which is

1 what we're looking at here with this -- whatever
2 our section is -- 21-20 B.

3 So Mr. Parham, I think, is on
4 constructive notice of the requirements for him
5 to be able to continue renting. He had an
6 obligation to come to the Town, I think, and ask
7 for a business license and approval to do what
8 he's doing.

9 But from -- but to the extent there
10 is evidence that the Town knew what was going on
11 and didn't do anything that's -- I mean, that's
12 on the Town and it can weigh in favor of
13 allowing the action to continue, I think.

14 I'm not convinced that the Town was
15 on notice of what was the use of the property.
16 I think there's evidence of it, but I'm not
17 certain it carries the day. There's evidence of
18 notice, but I'm not certain it establishes
19 notice on the part of the Town.

20 THE CHAIRPERSON: I tend to agree
21 with you.

22 THE CHAIRMAN: We don't know the date
23 of the survey, Joe?

24 MR. HENDERSON: No. That's a direct
25 printing from the scanned document. So --

1 THE CHAIRMAN: Okay.

2 MR. HENDERSON: -- I'm guessing it
3 was cut off.

4 THE CHAIRMAN: Okay.

5 MR. ELLIOTT: Are you going to make a
6 motion?

7 THE CHAIRMAN: I can't. I'm the
8 Chair.

9 MR. ELLIOTT: Sally, do you want to
10 make a motion?

11 MS. PRITCHARD: No, thank you.

12 MS. BRASHER: In agreement?

13 THE CHAIRMAN: No.

14 MR. ELLIOTT: You make a motion and
15 then we second it and vote on it or --

16 THE CHAIRPERSON: So here is the
17 way you motion make a motion for -- on an
18 administrative appeal: You either make a
19 motion -- say, I move to uphold the decision of
20 the Zoning Administrator in the matter of and
21 you read the whole thing and you can give a
22 reason and we can do a joint reason if we want.

23 If you want to approve the appeal of
24 the Zoning Administrator you would say -- do
25 the reverse. You'd say -- you'd say, I make

1 a motion to grant an appeal of the Zoning
2 Administrator's decision and overturn it.

3 MS. BRASHER: Okay. I will make a
4 motion to uphold the decision of the zoning --
5 of the Town Administrator in the matter of the
6 applicant, Bruce Berlinsky, who appeals -- who
7 requests an appeal of an administrative decision
8 relating to the use of 2624 Iron Avenue in
9 accordance with Zoning Ordinance 21-20 B, lots
10 containing two occupied dwellings, on the
11 grounds that there was -- there is a certificate
12 of occupancy for a single family residence and
13 on the grounds that there have been no business
14 licenses requested or issued for this property
15 ever since the renovations or the construction
16 permit in 1983.

17 THE CHAIRMAN: That's sufficient. Is
18 there a second?

19 MR. ELLIOTT: I'll second.

20 THE CHAIRPERSON: Any further
21 discussion? All in favor signify by saying aye.

22 MR. ELLIOTT: Aye.

23 THE CHAIRMAN: Aye.

24 MS. BRASHER: Aye.

25 THE CHAIRMAN: Like sign opposed?

1 MS. PRITCHARD: Aye.

2 THE CHAIRMAN: Okay. Three eyes and
3 one against the motion. Okay. That's it for
4 us. If there's nothing further, is there a
5 motion to adjourn?

6 MS. PRITCHARD: I move we adjourn.

7 THE CHAIRMAN: Second?

8 MS. PRITCHARD: Second.

9 THE CHAIRMAN: All in favor?

10 MR. ELLIOTT: Aye.

11 MR. HENDERSON: Thank you.

12 (The hearing was concluded at 7:49
13 PM.)

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