

Town of Sullivan's Island  
BOARD OF ZONING APPEALS  
Thursday, June 13, 2019

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

Present were: Elizabeth Tezza, Chairman  
Babak Bryan, Board Member  
Peter Koepke, Board Member  
Michael Koon, Board Member  
Joe Henderson, Director of Planning/Zoning Administrator  
Courtney Liles, Town Clerk

A. Freedom of Information Act Requirements

Elizabeth Tezza called the meeting to order at 6:00 p.m. and stated the press and public had been notified in accordance with State Law. There were four (4) members of the public present and no members of the media present.

B. Approval of Minutes from April 11, 2019

**Motion was made by Babak Bryan, seconded by Michael Koon, to approve the Board of Zoning Appeals Meeting minutes of April 11, 2019. This motion passed unanimously.**

C. Applicant and Participant Oath

Members of the audience who spoke during the meeting: Paul Boehm, Hal and Karen Coste and Alice Paylor, Esq.

D. Administrative Appeal

1. 322 Station 19 Street: Hal Coste, applicant, requests continuation of an administrative appeal related to Town staff's denial of a Building Permit application, and interpretation of Section 21-150, *Nonconforming Uses*; and 21-151, *Nonconforming Structures*. (TMS # 529-05-00-089, 529-05-00-057)

Director of Planning/Zoning Administrator Joe Henderson presented this application on behalf of the Town. Mr. Henderson gave a brief background of the property. On February 28, 2014, Town staff discovered the unpermitted construction of a "tree house" structure at the property, which has been under a mandatory "stop-work order" since its discovery. Because Mr. Coste's home is a second principal building on the lot, it is considered a



legal nonconforming use and structure. Staff's interpretation of Section 21-150, *Nonconforming Uses*, would prohibit any expansion of his home via a porch, deck or other recreational space. Mr. Coste received DRB approval (Certificate of Appropriateness) on April 17, 2014 to make changes to the designated historic property. On June 12, 2014, the BZA denied a request for an accessory structure height variance to the required 15' limitation. The structure is currently at 28' to 30' tall. On September 8, 2015, Mr. Coste submitted a building permit application requesting that the structure be considered an elevated deck instead of an accessory structure. Staff denied the building permit request based upon staff's interpretation of Section 21-150, *Nonconforming Uses*, that nonconforming uses shall not be expanded except to eliminate or reduce the nonconforming aspects. On November 12, 2015, Mr. Coste appealed Town staff's denial of a building permit to connect a free-standing structure to his home by way of stairs. Mr. Coste maintains that the structure should be considered an addition of a covered porch or deck and not an accessory structure.

Section 21-150, *Nonconforming Uses*, was changed in November 2018. The BZA must consider the applicant's request retroactively.

Deliberations took place between the Board, Mr. Henderson and the Applicant.

Mr. Coste provided the Board members with a photo of him with his grandchildren. (Exhibit 1)

Ms. Tezza asked what the DRB approved during the 2014 meeting and also what changed in the plans. This was first presented as an accessory structure and now is being presented as an addition of the deck. Mr. Henderson answered that the DRB essentially approved the structure as it is today, or it being lowered to meet the 15' height requirements for accessory structures, or being attached in some way to constitute a deck. They approved it as a structure but did not decide what it was.

Mr. Bryan asked if the question for the Board to decide whether this is a tree house/accessory structure or a nonconforming use addition/expansion of a deck. Mr. Henderson answered yes, that is exactly the question. Mr. Bryan added that if the applicant himself is calling the structure a tree house, he does not see why this is even a discussion for the Board.

Ms. Paylor presented on behalf of the applicant. She gave a brief background of the property. Ms. Paylor referenced BZA minutes from November 12, 2015. The outcome of that meeting was to postpone Mr. Coste's administrative appeal pending the outcome of



the Town's court case appeal regarding Mr. Boehm. Ms. Paylor stated that the consensus of this Board was that if Mr. Boehm won the court case then Mr. Coste also will win. Ms. Tezza disagreed with Ms. Paylor and stated that at that time, the Board was discussing an accessory structure and not an expansion. Mr. Coste had not come before the Board with an addition/expansion to a deck.

Mr. Koon stated whether it is a tree house or a second area deck it is not integral and is by definition an expansion of a nonconforming use.

Mr. Bryan stated that if we allow for people to daisy chain continuous additions to additions it will unleash a Pandora's box of different types of construction on the island which is detrimental to things such as: public safety, congestion, hurricane debris, etc.

Mr. Koon stated that he has only been on this Board for seven months and one thing he has learned that is consistent is that everything the Board does is just the jumping off point for the next application. He added that the Board has to be stricter than they would like to be.

Mr. Coste stated that the accessory structure Ordinance is vague and read the recreational uses definition.

Ms. Tezza stated that there is not a current tree house Ordinance and all legal existing tree houses on the island were permitted as accessory structures. She stated that the Board needs to be convinced that this is an addition/expansion on a property that is nonconforming.

Mr. Henderson stated that what is being appealed is the denial of the building permit application calling this an expansion of a deck. Mr. Henderson suggested identifying some of the parallels between Mr. Boehm's case as to what he requested and what he received approval of to what is currently being presented. Mr. Boehm requested two things: to make changes to the heated and cooled square footage within the existing footprint of the building and to make changes to other portions of the structure that was not heated and cooled such as expanding deck space and covered porch space. Mr. Henderson stated if there were some structural alterations or architectural change that could constitute a structural expansion of the existing deck then it would be parallel to what Mr. Boehm received approval of. He asked if there was a way the current ladder could be considered a connection to the house or could some modification be made to connect the existing deck to the structure at issue.



Mr. Bryan asked how tall the current structure is. Mr. Coste answered that the deck is 16' from the ground and the top of the structure with no roof is 24' from the ground. He also mentioned adding the roof back on to the structure. Mr. Bryan stated that the intentions seem like Mr. Coste wants to skirt around the system.

Ms. Paylor provided the Board with a photo of 1312 Cove Avenue. (Exhibit 2)

Ms. Tezza asked if the Board approved this as an expansion of the deck, what would it be if Mr. Coste adds the roof on the structure. Mr. Henderson stated that he sees it as no different as long as he is not heating or cooling it.

Mr. Henderson stated if the Board approves this tree house/deck addition it becomes a legal nonconforming use and the Town's new regulations would prohibit any future expansion of that nonconforming use.

Mr. Koon stated he is having a hard time seeing how this is simply the expansion of the use that was there before. Mr. Boehm's case was much more straightforward and was within the contours of the structure that he was building. Mr. Koon sees this as another structure connected the original structure. He added that he feels badly this has been such a long process which has been difficult to the homeowners but it has also been an embarrassment to the Town.

Mr. Koepke stated that if this gets approved as is it will always be a tree house connected to a deck. He added it will be difficult to tell somebody else they could not build the same thing.

Mr. Koon suggested since the applicant is now requesting that the structure be treated as a deck, perhaps Board approval should be with the understanding that when it is finished it looks like a deck with the perimeter being no higher than 42".

The following Exhibits were made part of the record:

- I. Photo of Mr. Coste and his grandchildren on his property at 322 Station 19 Street, Sullivan's Island, SC 29482 (Exhibit 1)
- II. Photo of 1312 Cove Avenue, Sullivan's Island, SC 29482 (Exhibit 2)

**A motion was made by Michael Koon, seconded by Peter Koepke, that the Board of Zoning Appeals overturn the administrative appeal related to Town staff's denial of a Building Permit application and interpretation of Zoning Ordinance Section §21-150, *Nonconforming Uses*; and §21-151, *Nonconforming Structures*. The Board**



indicates that the applicant shall be permitted to proceed with the understanding that the connection between the existing deck and the expanded deck be improved, including handrails and that the improvements will need to be to the satisfaction of the Building Official and the Zoning Administrator and that the perimeter of the expanded deck be of a consistent height between 42” to 45” and no higher.

Babak Bryan amends the motion with the following provisions: the elevated deck is allowed provided the walls, windows, and door is removed. Handrails may remain 42” to 45” high around the perimeter of the deck; the Building Permit should demonstrate compliance with all provisions of the Sullivan’s Island Zoning Ordinance, namely setbacks and impervious surface limitations for the entire parcel; a code compliant staircase is required with solid handrails to serve as the permanent attachment from the existing deck to the elevated deck. This structure must be engineered and permitted through the Town meeting all ICC International Building Codes. Michael Koon accepts the amendment. Peter Koepke seconded the motion.

This motion passed by a vote of 3-1, with Babak Bryan opposed.

E. Adjourn

Motion was made by Michael Koon, seconded by Elizabeth Tezza, to adjourn at 7:27 p.m. This motion passed unanimously.

Respectfully submitted,

  
Courtney Liles