



**Town of Sullivan's Island, South Carolina
Board of Zoning Appeals
Meeting Minutes
Thursday, February 9, 2023**

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, Chair
Sydney Cook, Board Member
James Elliott, Board Member
Jackie Edgerton, Board Member
Jeremy Graves, Board Member
Jody Latham, Board Member
Michael Scruggs, Board Member
Andy Benke, Town Administrator
Charles Drayton, Director of Planning and Zoning
Larry Dodds, Town Lawyer
Joe Henderson, Deputy Administrator
Bridget Welch, Administration

I. Freedom of Information Act Requirements

Chair 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 over twenty-five (25) members of the public present, no members of the media present, and one (1) court reporter present.

II. Approval of Minutes-December 8, 2022

Motion was made by Jody Latham, seconded by Michael Scruggs, to approve the Board of Zoning Appeals Meeting Minutes of December 8, 2022, passed unanimously.

III. Appeal Requests

1. 3115 I'On Avenue (Application): Pacaso, Inc., application, is appealing the determination of the zoning administrator related to the use of the property at 3115 I'On Avenue by 2 SC Lighthouse, LLC, the ownership group, as violating Article III, the RS, Single-Family Residential Zoning District, and Article XIII, Vacation Rentals. (PIN# 529-12-00-095)

Mr. Drayton presented on behalf of the Town, giving a description of the request as well as presenting maps and some photos. He also provided background on why the company has submitted the appeal. He stated in 2001 the rules regarding vacation rentals were codified, with the goal of eliminating all vacation rentals on the Island. He stated Pacaso was sent a letter in October 2022 stating they were in operating violation of the Sullivan's Island Code of Ordinances. This meeting is a result of Pacaso requesting an appeal.

Mr. Drayton reviewed the Zoning Ordinances that Pacaso is in violation of, including §21-19 A. Intent, §21-203 Definitions, and §21-20 D. Prohibited uses in the RS District. Mr. Drayton stated the Pacaso program at 3115 I'On Avenue violates the intent as stated in the law by promoting a commercial use and one that adversely affects the residential character of the district. It violates §21-19 by bringing a vacation rental as defined in the zoning ordinance §21-203 into the RS zoning district. Vacation rentals are prohibited uses in the RS zoning district and specifically called as item 6 under §21-20 D, prohibited uses in the RS zoning district.

He then went over the definition of a vacation rental: "the commercial use of a Principal Building (s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for use, occupancy, possession, sleeping accommodations, or lodging for one or more persons in return for valuable consideration for any period of less than twenty-eight (28) continuous days duration. He then pointed out and provided the FAQ page on the Pacaso website, which has multiple items dedicated to scheduling. Mr. Drayton stated the various topics presented on the page, including how to schedule, short-notice vs general stays, cancellations, and check-in and check-out protocol. Mr. Drayton also pointed out in addition to assigning tenancy, Pacaso also regulates the length of a stay for a shareholder from 2-7 days, with some exceptions. Pacaso also has a monthly program management fee, indicating Pacaso has an on-going fee structure that requires shareholders to provide valuable consideration for use of the property. This is in addition to the cost the member must pay for the share in the membership LLC and to the monthly operating costs. Mr. Drayton also pointed out the structure of the program agreement indicates the LLC is the owner of the property and no members are deeded any portion of ownership of the property.

In conclusion, the staff recommendation is to affirm the Zoning Administrator's decision because the program at issue falls under the definition in the Zoning Ordinance §21-203, *Vacation rental*, and use of the property as violates RS, Single-Family Residential District, §21-19 A. *Intent*. And §21-20 D. *Prohibited uses in the RS District*., by creating a commercial use that caters to multiple families on one lot, disrupts neighborhood compatibility, and is not permitted in accordance with ARTICLE XIII.

Board member Jackie Edgerton asked Mr. Drayton if he believes Pacaso is also in violation of the permitted use of the property, which the ordinance states should be a single-family dwelling unit. Mr. Drayton agreed they are also in violation of this. Board member Sydney Cook then asked how this situation is different than any group of family and/or friends that own a piece of property under an LLC. Mr. Drayton stated because this has a clear assignment of tenancy it is different than her examples. The Board continued to ask questions that clarify

the differences between Pacaso's use of this property versus other properties on the Island that are owned by an LLC. Mr. Drayton stated if there were any other LLCs on the Island that had a similar booking and fee structure and it were brought to the Town's attention, they would also be cited for violation of the Town ordinance. He confirmed he is not currently aware of any other properties that operate in this manner. He also stated the Town has requested a copy of the operating agreement in full from Pacaso but it has not been provided.

Ross Appel, of the law firm McCullough Khan Appel in Mt. Pleasant presented on behalf of Pacaso, Inc and the owners of 3115 P'On Avenue, 2 SC Lighthouse, LLC. He also stated the Vice President of Legal and Public Affairs with Pacaso Kevin Hennigan was at the presentation. He stated his clients are aware of the opposition to their presence on the Island, but asks that politics be put aside and for the Board to focus on determining if the October 21 letter from the Zoning Administrator is correct.

Mr. Appel stated they feel that what Pacaso is doing at this property does not fall in line with the definition of vacation rentals, specifically "commercial use" and "in return for valuable consideration." They feel neither of those conditions are present, thus not making it a vacation rental. He stated the first reason that supports this is that the property is not marketed to the general public and is only available for use by the property's owners and their guests. The owners of the property are members of an LLC that do act and function as tenants in common. Additionally, there is an agreement between owners to equitably manage and apportion the use of the property. He stated Pacaso administers the relationship agreed upon by the owners as a third party and this relationship is no different than current co-ownership scenarios on the Island. The members are not allowed to rent the property out on any public sites such as VRBO or Airbnb as per the operating agreement. They also do not pay a nightly or weekly rate when they use the property, there is no valuable consideration exchanged each time there is a use of the property.

Mr. Appel further stated the property owners are the ones that have agreed upon the stay limitation framework, it is not Pacaso that enforces these. Rather, they manage and facilitate the arrangements via its proprietary software. He also stated the use of the property and/or a stay limitation does not qualify as a vacation rental since the stay does not involve a rental transaction. He also stated that in South Carolina case law zoning ordinances must be strictly construed in favor of the free exercise of property and against the government. He also stated zoning ordinances cannot regulate how property is owned, only how the property is used. Mr. Appel stated the use manifestation of property does not trigger the definition of a vacation rental because it is not of commercial use and there are no rental transactions in return of valuable consideration. He also asserted that the affirmation of zoning ordinances does not establish principal lines that would prevent such enforcement action being taken against other similar properties owned by multiple people and/or LLCs. He concluded by saying while he understands this is a difficult and unpopular opinion, the BZA's role in this decision is to decide if the property is clearly and unequivocally being used as a vacation rental. He requests that the board reverse the zoning administrator's decision.

During questions from the Board, it was stated there is no penalty to the homeowners should they decide to terminate their relationship with Pacaso. Mr. Appel also stated the owners are able to make their own decisions about the use rights of the property. Mr. Appel stated Pacaso makes money by upselling the property to the LLC members as well as charging \$99 a month for its property management services. He went on further to say the \$99 fee is for the scheduling app in addition to fees for management services. These fees are required to be paid by any member of the LLC that owns the property. It was asked if the app is required for a member to book their stay, which it is. Board member Jeremy Graves asserted having to pay for this app is consideration for assignment of tenancies since you must have the app. Mr. Appel countered it is not consideration in connection with a vacation rental and it is for the means of facilitating the ownerships agreement of how to share the property. He stated there is a difference between paying for the use of the app versus paying in connection for a stay. He reiterated the owners have agreed to pay Pacaso to manage the property as well as facilitate the use of their app to schedule their visits. He also stated the operating agreement establishes the contractual relationship between the ownership and the usage is what is happening at the property. He stated Pacaso and their lawyers have not given the operating agreement or the management agreement to the Town and they do not have to do so because there is no legal basis for it. There was some discussion about whether this agreement qualifies as a tenancy in common.

Mr. Appel stated Pacaso does not own a share of the home once all eight shares are purchased and could feasibly sell the property without Pacaso's input. It was reiterated only the owners and their registered guests are able to use the property, regardless of how many shares have been sold. Stays are not available to the general public and the owners cannot exchange stays with guests for any kind of remunerations. In order to be a member of good standing all fees must be paid, including the \$99 monthly app fee, otherwise the member forfeits their use rights. There was further discussion about who is allowed to use the property and the agreement between the LLC (owners) and Pacaso.

Mr. Appel stated the current operating agreement states no member can stay on the property for longer than fourteen (14) days. Chair Tezza pointed out this is inconsistent with answers provided to the Town's lawyers in earlier communication. She also stated that what is on Pacaso's website does not match the answers previously given to the Town's lawyer. Mr. Appel stated there are two different agreements, the operating agreement and the management agreement, and these limitations in stays are not in both. Chair Tezza read part of the ordinance and asserted that in her opinion, Pacaso is most likely charging a fee for their property management. She feels there have been inconsistencies between what Pacaso's website says and the answers that Pacaso has given directly to the Town. Mr. Appel feels there are no inconsistencies and that the fourteen (14) day cap on stays is part of the operating agreement between the owners of the property and not part of the management agreement the owners have with Pacaso.

There was further discussion between Mr. Appel and the Board about what does and does not constitute a commercial property, as well as the details of the operating agreement. Mr. Appel maintained that what Pacaso is doing does not constitute a “vacation rental” under the Town’s definition in the ordinance. Mr. Drayton referred to the ordinance and stated it does exactly define vacation rental and what Pacaso is doing falls under this category, focusing on the “or” in the verbiage. Mr. Appel disagreed, maintaining the rental is not commercial.

There was then discussion about how Pacaso comports with the permitted use of the home as the owners are not a single-family dwelling or renting the home. Mr. Appel spoke about the definitions and other various aspects of what is considered a “one-family,” home and how it relates to what is going on at the property. There was also discussion about the corporations involved in this property and the profit it generates for Pacaso. Chair Tezza then requested the Board stop asking questions to allow Mr. Drayton to respond.

Mr. Drayton reiterated that the property fits both definitions of a vacation rental in the ordinance. He also asked questions about the cancellation fees that incur if a stay is cancelled within a certain time period and the rules about the length of time between stays. Mr. Appel then reiterated there is no money that changes hands in connection with each stay.

Board member Michael Scruggs and Mr. Appel had an exchange regarding the activities of other LLCs on the Island, and it was confirmed there are no other LLCs with a limit on time stayed or fees associated with cancelling stays, to the best of everyone’s knowledge. Mr. Appel stated there is no knowledge of others because LLCs are not required to disclose that kind of information to the Town. He also stated the reason for the Town’s strict enforcement on Pacaso and not others is politically motivated and again requested the BZA come to a unbiased conclusion.

In Response, Chair Tezza stated the Board is not political and opened public comments.

The following residents commented with their opposition to Pacaso:

- Mark George, 3109 I’On Avenue
- Dan Legare, 3104 Marshall Boulevard
- Deborah Sharp, 2901 Jasper Boulevard
- Eddie Fava, 2424 Myrtle Avenue
- Tim Emrich, 3118 Marshall I’On
- Ralph Byers, 3025 Middle Street

Chair Tezza closed public comments and asked if anyone wanted to speak in favor of the appeal. She then opened discussion from the Board. There were questions about whether or not property owners are able to exchange their interest in other properties and about the 5% interest owners have. Chair Tezza stated the answers are likely in the operating and management agreements that has not been provided to the Town. She also stated Pacaso does not allow stays over twenty-eight (28) days and limits owners to stays of either 2-7 or 2-14 days only.

The Board further discussed the usage of the property and how it relates to the ordinance language, as well as the ownership. Chair Tezza and Board members Scruggs, Cook, Graves, Elliott, and Latham stated they agree the property is being used as a commercial rental.

The Board decided to ask Mr. Appel to clarify some of the topics that were brought up during their discussion. He stated it is not possible for owners to exchange or swap their interests for interests in other locations and only the LLC's owners and their guests can stay at the home. He also stated owners are not allowed to subdivide their membership interest to have short-term rentals, or market it to the public. It was also noted that an LLC of an unknown number of partners can purchase a share of the property. Board member Scruggs asked for further information about the "Pacaso Home Transfer Benefit Trademark." Mr. Appel clarified the benefit and stated again what Pacaso is doing does not constitute a vacation rental. There was also more discussion about the fees Pacaso charges.

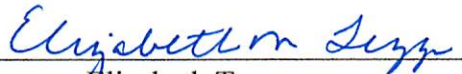
Motion was made by Elizabeth Tezza to close discussion, passed unanimously.

Motion was made by James Elliott, seconded by Jody Latham, to deny the appeal and affirm the Zoning Administrator's decision in as much as the program and usage of this house falls under the definition of vacation rental per zoning ordinance Section 21-203, as it is used for commercial purposes in that there are assigned tenancies and it's made available for use in exchange for valuable consideration for a period of less than 28 days and the use violates RS, single-family residential district Section 21-19, Section A, Intent, and Section 21-20 D, Prohibited Uses in the RS District, by creating a commercial use of this home that caters to multi-families on one lot, disrupts neighborhood compatibility, and is not permitted in accordance with Article XIII, passed unanimously.

IV. Adjourn

Motion was made by Jody Latham, seconded by Michael Scruggs, to adjourn the meeting at 8:05 p.m., passed unanimously.

Respectfully submitted,
Bridget Welch
Board of Zoning Appeals Staff


Elizabeth Tezza

