

TOWN OF SULLIVANS ISLAND
BOARD OF ZONING APPEALS
MARCH 13, 2014

DATE: March 13, 2014
TIME: 6 P.M.
LOCATION: TOWN OF SULLIVANS ISLAND
SULLIVANS ISLAND, SOUTH CAROLINA
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APPEARANCES
BOARD MEMBERS PRESENT:
Carlin Timmons
Delores Schweitzer
Bachman Smith, IV
Elizabeth Tezza
Jimmy Hiers
STAFF MEMBERS PRESENT:
Randy Robinson
Joe Henderson
Ellen Miller
ON BEHALF OF THE LANDOWNER:
ROSEN HAGOOD, LLC
BY: ALICE F. PAYLOR, ESQ.
151 Meeting Street, Suite 400
Charleston, SC 29401

PROCEEDINGS
MS. TEZZA: Would anyone who was going to speak before the Board please stand and raise your right hand, if you're going to speak.
(Witnesses are sworn.)
MS. TEZZA: Thank you. Okay. We -- the variance request for 3001 Marshall Boulevard has been deferred to the next meeting.
MR. HENDERSON: That's correct.
MS. TEZZA: So we will work on Item E. Joe Henderson to present.
MR. HENDERSON: Okay. Very good. Thank you members of the Board. Our one and only agenda item is the administrative appeal.
This is regarding an appeal of several staff decisions as they relate to 2720-B Goldbug Avenue. The property owner, Paul Boehm, is the applicant.
What I would like to do is go through some of the site conditions, the existing site conditions, and then move on to staff position. Currently you have two structures on the property. You have 2720 and then 2720-B.
If you look at this photograph, you have a single-family detached home on the

1 right-hand side; and then on the left-hand side
2 you have a detached garage, what staff perceives
3 to be a detached garage. Here's a closer
4 photograph of that. (Indicating.)

5 Within this detached garage, we have a
6 legal but nonconforming apartment unit; and we
7 have made this determination because we have two
8 documents that were drafted, one in 1989, and
9 then another one in 1991 that established that
10 this is a garage with an apartment on top, which
11 is what it states.

12 Apartment above garage, and then an
13 inspection ticket from 1991 that states
14 "apartment over garage." So these are signed by
15 David Cauty and Frank Tymco.

16 So because we made this determination
17 that this structure, the garage, was an accessory
18 structure, we made several determinations about
19 Mr. Boehm's permit request. His first request
20 when I first met him -- and that was October of
21 2013, Mr. Boehm requested to raise the roof of
22 this garage structure by 2 feet.

23 And so because this is in conflict of
24 our zoning ordinance, Section 21-150 and 21-151,
25 which addresses nonconforming structures and

1 that the folks living in the nonconforming
2 apartment needed some cover when they go up the
3 steps carrying groceries, and it's raining. It's
4 a reasonable sort of permit to issue.

5 When we went out on site to do an
6 inspection, we realized that he put the posts
7 outside of that building footprint so we issued a
8 stop work order. In addition to that we noticed
9 that there was several alterations made to the
10 back deck. This alteration was the removal of
11 handrails and actually structures, benches and
12 planters; and you can see here's a grill was
13 placed on top of what we permitted to be an arbor
14 or a slat house.

15 And so none of these things had permits
16 issued for it, and I can pass these around.
17 (Indicating.)

18 MS. TEZZA: 'Cause I saw the copy.

19 MR. HENDERSON: So, again, recap, the
20 staff position is very simple here. What
21 Mr. Boehm has asked to do is to modify a
22 nonconforming use by raising the roof, expanding
23 the usable square footage of this legal and
24 nonconforming use which is prohibited by our
25 Zoning Ordinance; and he's also expanded the roof

1 nonconforming uses -- and I have a copy of this.
2 That permit request was denied.

3 MS. PAYLOR: What was the section? I'm
4 sorry.

5 MR. HENDERSON: 21-150 and 21-151. So
6 that's 21-150 is actually nonconforming uses, and
7 21-151 is nonconforming structures. So by
8 raising the roof, he would be expanding the
9 nonconforming use and also expanding the
10 nonconforming structure. Again, this is an
11 accessory structure garage.

12 Mr. Boehm also requested to expand his
13 building footprint. In February of 2013 our
14 staff issued a permit to establish a roof
15 overhang to come over the steps that come up the
16 side and then around the back of this structure.

17 What Mr. Boehm did when he constructed
18 this is he actually placed the posts outside of
19 the area that he showed on his plans. The only
20 reason that we issued these permits to Mr. Boehm
21 was so that -- was in, I guess, with the
22 condition that he not expand beyond the existing
23 building footprint.

24 So this is something that Randy wanted
25 to offer a little flexibility for. He understood

1 overhang, and he's gone beyond the scope of those
2 plans. He's also expanded the original footprint
3 for the deck onto this slat house.

4 Now, we also required him to put up
5 those handrails and keep them there because we
6 don't think that the slat house has been
7 engineered to withstand the weight of folks
8 walking around on it; and there's some big open
9 gaps underneath the -- the benches that were
10 constructed, and we think that that's a safety
11 hazard as well.

12 So in a nutshell, that's why we denied
13 permits; and I'll defer to you, Madam Chair.

14 MS. TEZZA: Before we go further, I
15 have a recusal statement from Jim Hiers because
16 he lives contiguous to the property that we're
17 discussing so he says he's -- he lives directly
18 next door so I will accept this recusal, and
19 Jimmy will step to the audience.

20 MR. HIERS: I -- I -- in researching
21 this recusal, I asked the Town if -- if I could
22 recuse myself and if I could also speak as a
23 citizen. They got a ruling from the South
24 Carolina Ethics Board that, in fact, I could
25 recuse myself and speak as a citizen. So I'm

1 going to reserve the right to -- to speak as a --
2 as a citizen.

3 MS. TEZZA: And I will note that even
4 with that recusal, we do still have a quorum
5 present.

6 MR. SMITH: I'd like -- before we
7 continue just so it's all on the table, I had no
8 intention of recusing myself; but I do live
9 immediately across the street from this property.
10 I don't think it's going to affect my decision
11 one way or the other but -- and would let us know
12 where I stand and where we live.

13 MS. TEZZA: Thanks, Bachman. We will
14 now hear from the applicant.

15 MS. PAYLOR: Thank you. I'm Alice
16 Paylor. I'm here representing the owner of
17 2720-B, which is the dwelling that is above a
18 storage area; and this is an appeal. It's not a
19 variance request. So we are here appealing the
20 three rulings made by the Zoning Administrator
21 because they are not in accordance with the
22 Zoning Ordinance itself.

23 And it's our position that the Zoning
24 Ordinance controls, and that's what we're going
25 to do. And I do have a court reporter here

1 A. The main house, the next door structure,
2 which is a dwelling, and a car port.

3 Q. Okay. And -- and I believe that this is
4 a picture that the Town put in. On the right, is
5 that the main house? (Indicating.)

6 A. That's -- that's the main house on the
7 right.

8 Q. And on the second, is that another
9 dwelling? (Indicating.)

10 A. Another dwelling, yes.

11 Q. Okay. And main house, dwelling right
12 there. (Indicating.) Or secondary dwelling.

13 Did you talk to the Town of Sullivans
14 Island regarding the impact of its Zoning
15 Ordinance on your ability to use this property
16 prior to your actually purchasing it?

17 A. Yes. I came to see Kent Prause, who at
18 the time was the Zoning Administrator; and I
19 asked Kent what it meant to have these two
20 separate dwellings on the property, and he
21 explained to me that the larger of the two
22 dwellings would be the conforming dwelling, and
23 the smaller of the two dwellings, which is the
24 called the garage apartment on the CO or
25 apartment above garage, would be the

1 'cause we're going to make a record; and if
2 there's an appeal, then we'll have a transcript
3 of exactly what was presented.

4 I'm going to call my first witness,
5 Mr. Paul Boehm, and he's already sworn in.

6 PAUL BOEHM,
7 having been first duly sworn, was examined and
8 testified as follows:
9

10 EXAMINATION

11 BY MS. PAYLOR:

12 Q. Paul, will you tell the Board who you
13 are. You can sit down.

14 A. I'm Paul Boehm. I live at 3209 Middle
15 Street; and I own 2720-B Goldbug next door to my
16 son, Ashley Haynes.

17 Q. Okay. And is that property part of a
18 condominium regime?

19 A. It is.

20 Q. And when did you condo it?

21 A. 2003.

22 Q. Okay. When did you buy the property?

23 A. In 2001.

24 Q. And what was on the lot that -- at the
25 time that you were considering purchasing it?

1 nonconforming dwelling.

2 Q. And would you have bought this if this
3 was an accessory structure, the second building?

4 A. I wouldn't.

5 Q. Would not.

6 A. I would not.

7 Q. Did you rely on what Mr. Prause told you
8 when you made your purchase?

9 A. Yes.

10 Q. And I'm going to hand you a notebook
11 that's got our exhibits in it, and these are the
12 originals which we'll provide. And in front of
13 y'all are two notebooks that I hope I can share
14 because that's all I have, but I'm going to refer
15 to the exhibits in there.

16 Look at Exhibit 1 in the notebook.

17 A. (Complies with request.)

18 Q. Can you tell -- did you get that out of
19 the files of the Town of Sullivans Island?

20 A. Yes. Kent gave me this document when I
21 came to see him about the two structures.

22 Q. And one of them is a Certificate of
23 Occupancy; is that correct?

24 A. Correct.

25 Q. And it says, "apartment above garage";

1 correct?

2 A. Correct.

3 Q. Prior to Mr. Henderson's recently taking
4 the position that the second building was an
5 accessory structure, a garage, had anyone with
6 the Town ever told you that it was not a
7 principal building?

8 A. Never.

9 Q. Had you applied for a variance -- did you
10 apply for a variance in 2009?

11 A. Yes.

12 Q. And what -- and I've got that Exhibit 2
13 in there is the order that was in the file here,
14 and did Mr. Robinson make the presentation to the
15 Board at that hearing?

16 A. Yes.

17 Q. And did he rely on Section 21-151 when he
18 asked the Board to turn down your variance
19 request?

20 A. Yes.

21 Q. Did he rely on Section 21-150(f) when he
22 asked the Board to deny your variance request?

23 A. Yes.

24 Q. Okay. And I'm going to go to that
25 section of the Zoning Ordinance, and what is the

1 Q. Do you have a rental license to rent this
2 structure as a dwelling?

3 A. I do.

4 Q. Have you had one every year that you've
5 owned it?

6 A. I have.

7 MS. PAYLOR: Okay. And he brought them
8 with you if you have any questions about that.

9 A. 14 years.

10 Q. Does that structure have a separate
11 electric meter on it?

12 A. It does.

13 Q. Does this structure have a separate sewer
14 system? Tied into the sewer?

15 A. Tied into the city sewer.

16 Q. Is it used only for the storage of motor
17 vehicles and that type of thing?

18 A. It is not. It actually is used for
19 storage of my junk, furniture, et cetera.

20 Q. Okay. And has it ever -- to your
21 knowledge, has it ever been used as a garage for
22 the principal building, the other principal
23 building on the lot?

24 A. It has not.

25 Q. Have you made improvements to Building B,

1 title -- I'm going to hand it to you -- what is
2 the title of Section 21-150(f)?

3 A. Two or more principal buildings on one
4 lot.

5 Q. Okay. Does that discuss having a
6 principal building and an accessory structure on
7 a lot?

8 A. It does not.

9 Q. And was your variance request denied?

10 A. It was.

11 Q. And that's Exhibit 2. I'm going to move
12 all these into evidence.

13 Look at Exhibit 3.

14 A. (Complies with request.)

15 Q. Is that a picture of the structure?

16 A. Yes.

17 Q. Have you ever considered this to be a
18 garage?

19 A. Not just a garage. Obviously, a dwelling
20 over a garage.

21 Q. Okay. And do you -- what do you do with
22 the dwelling?

23 A. I rent it out. It's been rented by -- by
24 my sons initially for about five years and by
25 regular tenants for the last nine years.

1 this building, over the years of your ownership?

2 A. Yes, numerous improvements.

3 Q. Okay. And Exhibit 4 has got a stop work
4 order there which we'll talk about, but are these
5 some of the permits that you've had to do work on
6 2720-B?

7 A. Yes.

8 Q. How many construction permits have you
9 received for improvements to this nonconforming
10 principal building?

11 A. I've gotten seven. The next door
12 dwelling where Ashley lives now and owns has
13 gotten four or five; and then there's a couple of
14 permits that were issued for the overall
15 property, the dock, and the fence.

16 Q. If this were an accessory structure,
17 would you have received those permits?

18 A. I don't think so.

19 Q. If this were a garage, would you have
20 been entitled to a rental permit?

21 A. I would not.

22 Q. As the owner of the larger -- pardon me.

23 Did the Town ever issue a Certificate of
24 Occupancy providing that Building B was the
25 nonconforming principal building when the permits

1 were requested as the Zoning Ordinance requires
2 in Section 20-150?

3 A. They were not.

4 Q. Did you have -- was that because of
5 anything that you did?

6 A. Absolutely not.

7 Q. Did you ever prevent them from performing
8 their job under the Zoning Ordinance?

9 A. No.

10 Q. And I'll ask y'all to look at the Zoning
11 Ordinance, 20-150(f), says, "In the event that
12 two or more principal buildings occupy a single
13 lot, said occupancy shall constitute a
14 nonconforming use. One structure shall be
15 designated conforming and the other shall be
16 nonconforming under the following procedure: If
17 a request to improve the property is received,
18 the Zoning Administrator shall," it's mandatory,
19 "designate the principal building, the greatest
20 liveable square footage, including porches as a
21 conforming use and the other principal building
22 as nonconforming."

23 So which building had the most liveable
24 square footage?

25 A. Where Ashley lives now.

1 And he said it was not, but he said I
2 have a suggestion for something that you can do.
3 And that is you could construct a slat house
4 adjacent to the existing deck, and that would
5 serve the same purpose.

6 Q. Did you know what a slat house was?

7 A. Had no idea what a slat house was.

8 Q. Did you ask Mr. Prause what a slat house
9 was?

10 A. I did. And he told me it was a garden
11 structure that if I built it the same height as
12 the existing walkway/deck, that it would serve
13 the purpose of a deck.

14 Q. Okay. And so did you do that?

15 A. I did.

16 Q. Did you get a building permit for that?

17 A. I did.

18 Q. And did they inspect it and do all the
19 stuff that they had to do?

20 A. Yes. Randy inspected it.

21 Q. Okay. And that was an accessory
22 structure to what building?

23 A. To the Building B.

24 Q. Okay. And it's not used at all by the
25 primary building; correct?

1 Q. All right. Which is the building on the
2 right in that picture? (Indicating.)

3 A. Correct.

4 Q. Have you ever gotten another Certificate
5 of Occupancy other than the one saying it's an
6 apartment over garage?

7 A. I have not.

8 Q. Has -- when -- when the owner of 2720,
9 the main building, has applied, has there ever
10 been a -- have they ever been given a Certificate
11 of Occupancy?

12 A. Not to my knowledge.

13 Q. In 2001 did you build an accessory
14 structure adjacent to the rear deck on
15 Building B?

16 A. I did.

17 Q. Tell the Board how that occurred.

18 A. Well, Ashley had moved into the
19 apartment; and we spent some time there and
20 pretty well determined that that -- the back
21 walkway -- there was a walkway that came up
22 alongside the house and turned around to the back
23 and went down some back steps. Really wasn't
24 adequate to sit outside so I came to Kent to ask
25 him if it was possible to add onto the deck.

1 A. It is not.

2 Q. So let's look at Exhibit 5.

3 A. (Complies with request.)

4 Q. There's a plat, the first document, and
5 does it show the slat house back there?

6 A. It does.

7 Q. Okay. And it's -- it's adjacent to that
8 building, and it abuts to your walkway; is that
9 correct?

10 A. Correct, correct.

11 Q. And what was your purpose in building
12 that slat house?

13 A. For someone to use it as a deck.

14 Q. Okay. And how did the occupants get
15 access to it?

16 A. They actually climbed over the rail.

17 Q. Have you had discussions with Randy
18 Robinson about the slat house over the years?

19 A. Yes.

20 Q. Did he give you permission to screen in
21 the slat house?

22 A. He did. In 2010.

23 Q. Now, have you installed furniture on the
24 slat house roof?

25 A. Yes. It's treated, for lack of a better

1 word, garden furniture, something you could leave
2 outside.

3 Q. And why did you do that?

4 A. For people to be able to sit outside for
5 one; but also it occurred to me that we needed
6 some kind of protection around the perimeter of
7 the slat house deck, slat house roof to keep
8 someone from getting too close to the edge.

9 Q. So it was basically a safety rail?

10 A. It was.

11 Q. And have they told you you could not put
12 a railing around that slat house roof?

13 A. They have, yes.

14 Q. And what was the basis for that? Did
15 they ever tell you what that was?

16 A. No.

17 Q. So they told you you could put up a slat
18 house, and they could use it as a deck; but you
19 couldn't have a safety railing around it. Is
20 that correct?

21 A. Correct, that's correct.

22 Q. Has the Town ever provided any basis in
23 the Zoning Ordinance for your not being allowed
24 to have furniture on the slat house roof?

25 A. No.

1 A. He did. He said it was a garage, and I
2 couldn't elevate it any further.

3 Q. Okay. Did you contact Sullivans Island's
4 former building official, Frank Tymco, who issued
5 the Certificate of Occupancy in 1989?

6 A. I did.

7 Q. And did he send the letter to
8 Mr. Henderson?

9 A. He did.

10 Q. And is that Exhibit 7?

11 A. Yes.

12 Q. Okay. And in this letter, did he -- did
13 he say that there were two principal buildings
14 on -- at 2720 Goldbug?

15 A. He did. He said that.

16 Q. Okay. Did the Town -- did Mr. Henderson
17 change his mind about whether or not this was an
18 accessory structure or a principal building?

19 A. He did not.

20 Q. Now, has Mr. Henderson told you that if
21 Building B is a principal building, you would be
22 allowed to raise the roof under the Zoning
23 Ordinance?

24 A. He did tell me that.

25 Q. And did he do that in an e-mail?

1 Q. In early 2013 did you meet with
2 Mr. Robinson about elevating the roof of
3 Building B?

4 A. I did.

5 Q. And was he the Zoning Administrator at
6 the time?

7 A. He was.

8 Q. Okay. And what did he tell you?

9 A. He told me that I could elevate the
10 ceiling/roof by 2 feet. He suggested that I
11 contact Rusty Shumpert at Carolina House Movers
12 to get a quote to do it. He told me that he had
13 considered doing exactly the same thing at his
14 house in Mount Pleasant and had decided not to do
15 it, but I did contact Rusty. He came over,
16 looked at the dwelling, gave me an estimate; and,
17 unfortunately, I had not gotten the plans drawn
18 up in time before Joe became the new Zoning
19 Administrator.

20 Q. And then did you apply -- did you make
21 application with him?

22 A. I did make the application with Joe with
23 a set of plans, and he refused me.

24 Q. And was that because he said this was a
25 garage?

1 A. He did.

2 Q. And is that found in Exhibit 8?

3 A. Yes.

4 Q. Have you reviewed the Zoning Ordinance,
5 Mr. Boehm?

6 A. Yes.

7 Q. Is there a definition of "garage" in
8 there?

9 A. There is.

10 Q. Okay. And I think it's -- it's at the
11 very back, although exactly under several places;
12 but I'm going to show you it's page 98 and
13 Section 21-203.

14 But I want to read the preamble of 21.
15 This says, "Except as specifically defined
16 herein, all words used in the Zoning Ordinance
17 have their customary definitions. For the
18 purpose of this Zoning Ordinance, certain words
19 or terms herein are defined as follows:" And one
20 of them is "garage private." Can you read the
21 definition of "garage private" there?

22 A. "Accessory building or portion of a
23 principal building used only for the private
24 storage of motor vehicles, campers, boats, boat
25 trailers, and lawn mowers as an accessory use."

1 Q. Okay. Is Building B only used for the
 2 private storage of motor vehicles, campers,
 3 boats, boat trailers, and lawn mowers?
 4 A. No.
 5 Q. To your knowledge, has Building B ever
 6 been used as an accessory building for the
 7 conforming principal building on 2027 Goldbug?
 8 A. No.
 9 Q. Have you reviewed the prior versions of
 10 the Zoning Ordinance?
 11 A. Yes.
 12 Q. Do they all define "garage" in the same
 13 way?
 14 A. They do.
 15 Q. Do you rent out Building B?
 16 A. Yes.
 17 Q. And you have a building -- you have a
 18 business license; correct?
 19 A. Correct.
 20 Q. Would you be allowed to rent a garage to
 21 tenants to use as a dwelling?
 22 A. I would not.
 23 Q. Look at Section 21-138 of the code.
 24 A. (Complies with request.)
 25 MR. HENDERSON: I'm sorry. Could you

1 Q. So is that the nonconforming use?
 2 A. It is.
 3 Q. Have you ever proposed to expand the
 4 nonconforming use?
 5 A. No.
 6 Q. Have you ever requested that you be
 7 allowed to add another dwelling in this building?
 8 A. No.
 9 Q. Are there other properties on Sullivans
 10 Island that have more than one dwelling located
 11 on a single lot?
 12 A. Yes. Quite a few.
 13 Q. Has the Town allowed some of those
 14 property owners to increase the size of their
 15 nonconforming uses without obtaining a variance?
 16 A. They have.
 17 Q. Has the Town allowed some of those
 18 property owners to add onto the existing
 19 footprint?
 20 A. Yes.
 21 Q. All right. I'm going to ask you to look
 22 at Exhibit 9.
 23 A. (Complies with request.)
 24 Q. Did you -- this has to do with 2805
 25 Atlantic Avenue. Did you get a copy of the

1 repeat that?
 2 MS. PAYLOR: 21-138.
 3 Q. Okay. And this is in Article 15 entitled
 4 "Accessory Uses and Structures." Okay. That's
 5 21-138. And does this section that I just gave
 6 you, does that discuss accessory structures?
 7 A. It does.
 8 Q. Are accessory structures allowed to have
 9 a separate electric meter?
 10 A. They are not.
 11 Q. Does Building B have a separate electric
 12 meter?
 13 A. It does.
 14 Q. Are accessory structures allowed to be
 15 connected to the sanitary sewer system?
 16 A. They are not.
 17 Q. Is Building B connected to the sanitary
 18 sewer system?
 19 A. It is.
 20 Q. What is the nonconforming use with regard
 21 to Building B? What is its use?
 22 A. It's a dwelling.
 23 Q. Okay. And you're not supposed to have
 24 more than one dwelling on a lot; correct?
 25 A. Correct, correct.

1 Town's file regarding this property?
 2 A. I did.
 3 Q. Go through what we've got. Were there
 4 two dwellings on this single-family lot?
 5 A. There were two dwellings on the property,
 6 one the conforming dwelling, the other the
 7 nonconforming dwelling.
 8 Q. Okay. And at some point, I believe it
 9 was 1998, was a variance request presented to the
 10 Board of Zoning Appeals?
 11 A. It was.
 12 Q. And did the Board of Zoning Appeals
 13 determine that they didn't need a variance in
 14 order to elevate, add on, and improve this
 15 nonconforming use?
 16 A. That's correct.
 17 Q. Now, in here there's some pictures. I'd
 18 like you to kind of go through those. There's --
 19 there's a drawing that shows the house before.
 20 A. There's a drawing of the original
 21 structure, a before drawing. That was obtained
 22 from the Town.
 23 MS. PAYLOR: Go right to the next page.
 24 Go right to the next page, and you'll be -- no.
 25 I'll show you. I'm sorry. It's right after the

1 minutes. Okay. Certificate of Occupancy.

2 Q. Okay. This is a plat showing -- or
3 drawing showing the house before; right?

4 A. Before, correct.

5 Q. And there are some pictures also that
6 are -- that are in here.

7 A. There's some elevations that were done by
8 the architect, although they don't show the house
9 elevated as high as it is today; and there's a
10 new layout plan approved by Kent, and then there
11 are photographs of the structure being elevated
12 and added onto. And then there's some
13 photographs of the finished structure as well.

14 Q. Do you know what the square -- the heated
15 square footage of the original house was?

16 A. It was, according to the County, 198
17 square feet. Basically 10 by 20 so 200 square
18 feet.

19 Q. And do you know how many heated square
20 feet there are in the house now?

21 A. According to the County it is 485 square
22 feet.

23 Q. Okay. And was that house elevated?

24 A. It was elevated above the required flood
25 elevation in order to provide for parking and

1 A. No.

2 Q. You're actually not asking for what they
3 got.

4 A. They actually got more heated square
5 footage, and I'm not asking for that.

6 Q. Okay. Let's look at 1851 Flag Street,
7 which is Exhibit 10.

8 A. (Complies with request.)

9 Q. Did you get copies of the County's and
10 the Town's files on this property?

11 A. I did.

12 Q. And is the first sheet there kind of your
13 summary of what you found?

14 A. Yes.

15 Q. Okay. Tell the -- tell the Board about
16 this -- is this another property that had two
17 dwellings on it?

18 A. It is. And this is the nonconforming
19 structure. The -- the property was condoed in
20 1987; and as a result of that, there was a file
21 with the County for what the structure looked
22 exactly like, the size of it, the elevation of
23 it, in 1987 before Hurricane Hugo, the property
24 was damaged in Hugo and was subsequently
25 demolished and a new house was built.

1 storage underneath.

2 Q. And if you look at the minutes of the
3 Board of Zoning Appeals, they determined that
4 because the footprint was not going to change,
5 the number of bedrooms was not going to change,
6 the size and quote enclosed space was not going
7 to change, there was no variance needed.

8 A. That's correct.

9 Q. Do you -- with regard to your request, is
10 your footprint as defined in the Zoning Ordinance
11 rather than as defined by Mr. Henderson, is that
12 going to change?

13 A. It is not.

14 Q. Is the number of bedrooms going to
15 change?

16 A. They are not.

17 Q. Is the size and enclosed space going to
18 change?

19 A. Only the interior volume.

20 Q. And what do you mean by "volume"?

21 A. Going up 2 more feet would increase the
22 cubic feet inside the dwelling.

23 Q. Is your request any different than what
24 the owners of 2805 Atlantic Avenue were allowed
25 to do?

1 Q. And how -- and so -- I believe in all of
2 this, Building A is the smaller of the two; is
3 that correct? They call it Building A?

4 A. Building A is the smaller of the two,
5 correct.

6 Q. How many stories was Building A in 1985?

7 A. It was a single story.

8 Q. Was it elevated off the ground?

9 A. It was elevated a few feet.

10 Q. In your review of the Town files, did you
11 find any variance allowing the owners to increase
12 the footprint of that nonconforming use?

13 A. I did not.

14 Q. Was there a variance allowing the house
15 to be moved away from the property line?

16 A. There was.

17 Q. Did it address anything about any other
18 changes?

19 A. It did not.

20 Q. And is that included in what was provided
21 here, Exhibit 10?

22 A. Yes.

23 Q. How many square feet was Building A in
24 1985?

25 A. 804 square feet.

1 Q. And in 1990 a Certificate of Occupancy
2 was issued, which is in there. Did it provide
3 that the living area could not be expanded beyond
4 1,080 square feet?

5 A. It did.

6 Q. Was there any variance with regard to
7 allowing that expansion?

8 A. No.

9 Q. Did that Certificate of Occupancy allow
10 for a two-story frame house?

11 A. There is a two-story frame house there.
12 The Certificate of Occupancy doesn't address
13 whether it's two stories or not.

14 Q. Okay. Did you locate a variance allowing
15 the house to be elevated so that it would have
16 two stories?

17 A. No.

18 Q. Did you see any variance allowing the
19 square footage to be increased?

20 A. No.

21 Q. Have you found a plat from 2004, or did
22 you find an additional plat recently that showed
23 the much greater square footage than the 1,080?

24 A. Well, according to the County records --
25 I thought there was a plat here somewhere, isn't

1 property was condoed in 1987. So there's a set
2 of documents that exists that show the square
3 footage as it was in 1987. It was a single-story
4 dwelling, had 1139 square feet of heated
5 footprint, which is the total square footage.

6 Had a 213 square foot porch and a 160 square foot
7 deck.

8 Q. Was there a variance allowing these
9 increases?

10 A. Well, it's increased from that; but there
11 is no variance allowing it to be increased.

12 Q. Okay. So what -- so what has it been
13 increased to?

14 A. The current square footage is about 2200
15 square feet. It has a roof deck of 800 square
16 feet, covered porch of 192 square feet, and
17 additional deck of 133 square feet.

18 Q. Okay. And does -- and there's a picture
19 in here. Does that --

20 A. No, that's not it.

21 Q. Okay. And you could find no variance for
22 that; is that correct?

23 A. There's no variance for it.

24 Q. Okay. Let's go to Exhibit 12 which is
25 1121 Middle Street, Unit 5.

1 there? Yes, I'm sorry. Here it is.

2 The 2004 plat calls for Building A to
3 have 1456 square feet heated.

4 Q. Did you ever find a variance allowing the
5 increase from the 1,080 square feet from 1990?

6 A. No. And by the way, on this plat it does
7 call it existing two-story frame house.

8 Q. Okay. Have the decks and porches
9 changed?

10 A. They have increased.

11 Q. Any variances allowing those?

12 A. No.

13 Q. Do you know when those changes were made?

14 A. The roof deck was put on the property
15 with a new construction. The screened porch was
16 expanded with the new construction, and the last
17 deck that was added was done in 2006.

18 Q. Is this structure subject to the same
19 provisions of the Zoning Ordinance as is 2720-B?

20 A. It is.

21 Q. Let's go to Exhibit 11.

22 A. (Complies with request.)

23 Q. This is 956 Middle Street. Can you go
24 through that for us.

25 A. (Complies with request.) Again, the

1 A. (Complies with request.) Yes.

2 Q. Okay. What did you discover about this
3 dwelling? Is this also -- are there two
4 principal buildings on that one?

5 A. There are two buildings on the lot. This
6 is the nonconforming dwelling constructed pre
7 1977, pre Town Zoning Ordinances being passed.
8 It was damaged in Hugo but not destroyed. It was
9 condoed in 1987. So, again, there are drawings
10 that exist of the -- of the structure before it
11 was elevated above parking and expanded.

12 Q. And were -- was a second floor added?

13 A. There was already a second floor, but the
14 useable square footage was significantly
15 diminished because of the design of the house;
16 and I actually have some drawings here I could
17 show.

18 Q. Well, just tell them what happened.

19 They -- they added on --

20 A. They were allowed to increase the side
21 walls from about 2-and-a-half feet of height up
22 to 8 feet 9 inches. As a result of that, the
23 useable square footage approximately doubled.
24 The volume of the second floor completely
25 doubled.

1 Q. Was there a variance given for that?
 2 A. There was not.
 3 Q. And did the Town attorney work out a --
 4 basically a deal which is set forth in the letter
 5 in here that allowed this owner to do that?
 6 A. That's correct.
 7 Q. Has the owner also put a roof deck up?
 8 A. Yes. As part of the new construction
 9 when it was elevated, there was a roof deck added
 10 above the porch that's accessed from the second
 11 floor; and then there's an additional roof deck
 12 on top of the house that was also added.
 13 Q. Okay. And there's a brochure in here,
 14 apparently was on the market; and it shows the
 15 back with these decks and the spiral up to the
 16 other roof deck. Correct?
 17 A. Correct. It also shows the elevation of
 18 the second floor roof or ceiling so you can see
 19 what happened.
 20 Q. Was there a variance ever given for any
 21 of these changes to this nonconforming structure?
 22 A. There was not.
 23 Q. Let's go to Exhibit 13.
 24 A. (Complies with request.)
 25 Q. This is 2102 I'On Street. Can you tell

1 511 square feet of heated footprint and that
 2 after hurricane -- it was, again, damaged in
 3 Hugo. Demolished. After Hurricane Hugo, it was
 4 allowed to be increased to 620 square feet.
 5 Q. Okay. Was -- are you aware of any
 6 variance that was given?
 7 A. There was not one.
 8 Q. And let's look at the picture which is
 9 the second page of that. Does that look somewhat
 10 like your --
 11 A. Looks a lot like it to me.
 12 Q. Like an apartment over a garage?
 13 A. It sure does.
 14 Q. And that's a nonconforming dwelling;
 15 correct?
 16 A. It is, yes.
 17 Q. Okay. Let's look at Exhibit 15.
 18 A. (Complies with request.)
 19 Q. Which is 2523 --
 20 A. Myrtle.
 21 Q. -- Myrtle. Okay. Can you tell the Board
 22 about this property that has two dwellings
 23 located on it?
 24 A. Yes. This is the nonconforming secondary
 25 dwelling; and the only thing that they did

1 the Board what you found about this property that
 2 had two dwellings located on it?
 3 A. It started out in 1979 according to the
 4 County records as 254 square feet with a screened
 5 porch of 124 square feet and a sun deck of 41
 6 square feet. It was renovated in 1986 before
 7 Hurricane Hugo. It was also low to the ground,
 8 by the way.
 9 Renovated in '86 and expanded to a heated
 10 footprint of 510 square feet and had a sun deck
 11 of 59 square feet added to the property. Then
 12 after Hurricane Hugo, it was elevated well above
 13 the required flood elevation to allow for storage
 14 underneath; and the deck was expanded to 214
 15 square feet.
 16 Q. Was there a variance allowing any of this
 17 work?
 18 A. No.
 19 Q. All right. Let's go to Exhibit 14.
 20 A. (Complies with request.)
 21 Q. This is 2263 I'On. Tell the Board what
 22 you found about this property that had two
 23 dwellings located on it.
 24 A. The only records I found were from the
 25 County that showed that the original dwelling was

1 according to the County was add two small decks,
 2 front and rear, in 1990-'91, a four by eight size
 3 for an increase of the deck of 64 square feet.
 4 Q. Okay. And are you aware of any variance
 5 that they got to do that?
 6 A. They did not.
 7 Q. In your review of the Zoning Ordinance,
 8 have you found anything that would prohibit an
 9 owner from putting a deck onto an -- a
 10 nonconforming structure?
 11 A. I have not.
 12 Q. Let's look at Exhibit 17.
 13 A. (Complies with request.)
 14 Q. There's no Exhibit 16, by the way. This
 15 is 1820 Central Avenue. Tell the Board about
 16 this property that has two dwellings located on
 17 it.
 18 A. The original structure that became the
 19 secondary dwelling, nonconforming dwelling, was
 20 originally a commercial building that sat up on
 21 the front of the property. In 1983 the owner
 22 asked for permission to move it to the back of
 23 the lot and elevate it and make it a dwelling.
 24 So there was a variance request for the
 25 ability to move it to the back of the lot and

1 elevate it and make it into a dwelling. But it
2 started life as 800 square feet, was not to be
3 expanded, and since then the -- the property --
4 the heated footprint has expanded to 1176 square
5 feet, and a very large porch was added to the
6 front of the house of 520 square feet; and an
7 additional 100 square feet of deck was added to
8 the side of the house so it significantly
9 increased in size.

10 Q. So are there pictures in here? Is this
11 the way it looks now? (Indicating.)

12 A. That's the way it looks now, yes.

13 Q. And before it had no porches or decks on
14 it?

15 A. Had no porch or decks at all.

16 Q. Okay. Did you see any variance that was
17 granted to allow that?

18 A. No.

19 Q. Let's go to Exhibit 18, which is 1857
20 Flag Street.

21 A. (Complies with request.)

22 Q. Explain to the Board about this property
23 that has two dwellings located on it.

24 A. Well, this property is -- was a
25 nonconforming dwelling on the lot. It was

1 concrete blocks for storage.

2 In 1973 there was a Certificate of
3 Occupancy issued by the Town that referenced the
4 fact that it was a rental cottage behind the main
5 house. By March of 1979, according to Charleston
6 County, the ground floor had become living area.
7 The structure had become a duplex so basically it
8 doubled in size, and somewhere over the years a
9 second electric meter has been added to it. In
10 addition to that, a deck has expanded and a
11 screened porch was added underneath.

12 Q. And what is the total square footage of
13 the two-story dwelling now?

14 A. According to the County, it's 1860 square
15 feet; and the deck was enlarged by 138 square
16 feet.

17 Q. Okay. Did you see any evidence of a
18 variance allowing that?

19 A. There was not one.

20 Q. Did you get permission from the Town to
21 extend the existing roof on your Building B over
22 the existing stairs and walkways?

23 A. Yes.

24 Q. And is that Exhibit 20? Well, this is
25 the permit.

1 damaged in Hurricane Hugo so it was replaced. It
2 was a few feet off the ground initially and had
3 about 850 square feet of heated space.

4 The new dwelling was elevated above
5 parking. Approximately the same size; however,
6 the roof was allowed to be elevated so that you
7 could -- you could have a loft inside the
8 structure. So it increased in size. Overall
9 square footage increased by 410 square feet.

10 Q. And it's also got a loft in it; correct?

11 A. Has a loft.

12 Q. And did you see any evidence of a
13 variance with regard to this?

14 A. There was not one.

15 Q. Okay. And the last one we're going to
16 look at is Exhibit 19. 1856 I'On. Is this
17 another property on which two dwellings are
18 located?

19 A. It is.

20 Q. Tell the Board about this one.

21 A. Well, this structure in 1976, according
22 to Charleston County, was a -- a single-story
23 elevated structure, had a heated footprint
24 according to Charleston County of 940 square
25 feet. The ground floor was enclosed with

1 A. That's the permit, yes.

2 Q. So what has happened with regard to that?
3 Did you start building it?

4 A. We started building it. The footers were
5 put in last summer. They were inspected by Randy
6 and approved. I should say the side 6 footers
7 were put in, inspected by Randy, and approved.
8 Then in January the posts were installed for the
9 side 6 footers, and the 4 footers in the back
10 were dug. And Randy came and inspected the
11 existing six posts and their connection to the
12 footer and inspected the footers, the 4 footers
13 in the back.

14 Q. And did he approve those?

15 A. He did.

16 Q. What has happened since then?

17 A. Well, he approved them on Thursday, that
18 Thursday in January. We poured the footers the
19 next day. We installed the posts, the four
20 posts, in the back on Saturday; and then by
21 Monday, Randy posted a stop work order.

22 Q. Okay. And is that Exhibit 6? Did you
23 get a letter also from Mr. Henderson?

24 A. Yes.

25 Q. And there are -- and at this point he

1 also pointed out that the connection has been
2 made to the slat house, which was originally
3 denied by the Board of Zoning Appeals. A portion
4 of the handrail was removed from the second story
5 rear walkway. Wooden benches were constructed
6 and anchored. Wooden planters were installed.
7 Additional wood plank slats were installed onto
8 the roof of the slat house, which is now
9 illegally being used as a deck surface.

10 Does he cite any code section for that
11 being a violation of the Zoning Ordinance?

12 A. He does not.

13 Q. Did you subsequently obtain a letter from
14 architect Ron Denton to address the placement of
15 the roof posts?

16 A. Yes.

17 Q. And is that -- that's in Exhibit 20? The
18 last two pages of that?

19 A. Yes.

20 Q. And did he say in here that it was needed
21 for the structural integrity of the existing deck
22 walkway?

23 A. He did.

24 Q. And have you -- and that was submitted to
25 Mr. Robinson; correct?

1 the -- in the definitions it says "building
2 footprint," and it refers you to "building
3 coverage area principal."

4 Can you read that? It's the very first
5 one at the top of the page.

6 A. The lot area covered by the principal
7 building measured vertically downward from the
8 principal building's exterior walls to the ground
9 but excludes, one, accessory structures not
10 readily useable as living space; two, exterior
11 portions and decks; and, three, exterior stairs.

12 Q. So the footprint is from the walls of the
13 house, not from the -- the stairs and the
14 walkway; correct?

15 A. Correct, correct.

16 Q. Are you aware of any other definition of
17 "footprint" in there?

18 A. No.

19 Q. And I understand that you're appealing
20 basically three rulings. First of all, that
21 Building B, which is an apartment, which has a
22 storage area underneath, is a garage. That's not
23 true, is it?

24 A. That is not correct.

25 Q. You're also appealing and because it's a

1 A. Correct.

2 Q. And has anyone said that you can go
3 forward with your --

4 A. No, as a matter of fact.

5 Q. -- extension, roof extension?

6 A. As a matter of fact, I requested a review
7 of the new drawing that was provided by
8 Mr. Denton and was, again, turned down.

9 Q. Okay. And is that Exhibit 21, which is a
10 loose exhibit in there.

11 A. Yes.

12 Q. Is that the letter you got?

13 A. Yes.

14 Q. From Mr. Henderson?

15 A. Yes.

16 Q. And he says in here that "expanding the
17 footprint of this nonconforming structure is in
18 direct conflict with Zoning Ordinance Section
19 21-151."

20 Is that the basis for his denial?

21 A. It is.

22 Q. Okay. Is "footprint" defined in the
23 zoning code?

24 A. It is.

25 Q. All right. Let's go to it. Okay. In

1 garage, you can't raise your roof; correct?

2 A. Correct.

3 Q. If it's a principal building, you can
4 raise your roof; correct?

5 A. Correct.

6 Q. You're also appealing the furniture --
7 the order to remove the furniture; is that
8 correct?

9 A. Correct, yes.

10 Q. Are you aware of any portion of the
11 Zoning Ordinance which would not allow you to
12 have a railing or furniture on the roof of a slat
13 house?

14 A. I'm not.

15 Q. And has anyone ever pointed out one to
16 you?

17 A. No.

18 Q. And, lastly, are you appealing the
19 decision not to allow you to -- to use these roof
20 posts that are outside of the stairway and the
21 existing walkway?

22 A. Correct, yes.

23 Q. And is the basis for that because they
24 are not the existing walkway, and the stairway is
25 not part of the footprint?

1 A. Correct.
 2 MS. PAYLOR: Okay. I don't have any
 3 further questions. Do you have any questions for
 4 Mr. Boehm?
 5 MR. HENDERSON: Sure, if I could.
 6 MS. PAYLOR: You got it.
 7

8 EXAMINATION

9 BY MR. HENDERSON:
 10 Q. Paul, did -- you mentioned you talked to
 11 Kent Prause, the previous Zoning Administrator.
 12 A. For years, yes.
 13 Q. Did he ever issue you a permit to expand
 14 any portion of this structure?
 15 A. No.
 16 Q. He didn't. Did he ever issue you a
 17 Statement of Zoning Compliance or any other
 18 zoning statement that -- that called this a
 19 principal -- a second principal building?
 20 A. No.
 21 Q. Okay. Did Randy ever issue you a permit
 22 to expand any portion of this structure?
 23 A. The roof but I'm not sure what you call
 24 that.
 25 Q. Why did he allow you to ex- -- to extend

1 Q. And the Zoning Administrator said that
 2 was a good plan. Is that what you're saying?
 3 A. He suggested it.
 4 Q. Okay. When did you -- when did you
 5 construct the bench and the planter, and when did
 6 you cut out the rail so that you could access the
 7 roof of the slat house?
 8 A. Those were added about 1910 when we
 9 did -- I mean, 2010, sorry. When we did the
 10 improvements to the downstairs area as well as
 11 the framing for the screen porch.
 12 Q. Was that permitted, the framing for the
 13 screen porch and the enclosure?
 14 A. Yes.
 15 Q. Why didn't you get permits for the
 16 benches and the --
 17 A. I didn't think I needed a permit for
 18 those. Why would I need a permit to put
 19 furniture up on a slat house?
 20 Q. Why would you need permits to enclose the
 21 bottom?
 22 A. Because --
 23 Q. Why would you do one and not the other?
 24 Did you get permits to connect the slat house to
 25 the deck?

1 this roof?
 2 A. I requested it.
 3 Q. Was it because he considered the -- the
 4 steps part of the building footprint and,
 5 therefore, he was applying what he thought was a
 6 little flexibility in allowing you --
 7 A. I couldn't tell you that.
 8 Q. -- to go to the edge?
 9 A. I couldn't tell you what Randy's intent
 10 was. He just told me I could do a roof over the
 11 walkway on the side and the rear of the building.
 12 Q. Okay. When -- when we were talking about
 13 the slat house, when permits were issued for the
 14 slat house, were the rails part of that permit?
 15 A. I didn't request rails.
 16 Q. Okay. You just built the slat house;
 17 right?
 18 A. Uh-huh, yes.
 19 Q. And then at what point did you remove the
 20 handrails? You said that you and Kent talked
 21 about building the slat house so that people
 22 could jump over the rails and use it as a deck;
 23 right?
 24 A. I said that's how they accessed the slat
 25 house. They went over the rail.

1 A. No.
 2 Q. The request that was denied by the BZA?
 3 A. No, no.
 4 Q. You didn't get permits to connect that?
 5 A. No.
 6 Q. What did you request from the BZA in
 7 2009?
 8 A. I requested a roof over the slat house
 9 and a rail around the slat house. I could --
 10 actually requested that the entire slat house
 11 roof be able to be screened in.
 12 Q. I believe as part of that request in
 13 2009, it was to connect the slat house to the
 14 deck, if I'm not mistaken.
 15 MR. ROBINSON: Probably to make it a
 16 deck.
 17 MS. PAYLOR: Okay. He can be a witness
 18 in a minute.
 19 MR. HENDERSON: Okay. So, I have two
 20 more things. I just want to kind of go through
 21 very carefully here with y'all. Under
 22 nonconforming structures, there's been a lot of
 23 discussion about --
 24 MS. PAYLOR: I'm presenting my case
 25 now. You can do your closing at the end. I know

1 you're not a lawyer. I'm just telling you
2 because I got a couple more witnesses.

3 MR. SMITH: With all due respect, it's
4 not a court of law either. You've elicited a not
5 of hearsay. Right now we're going down a path of
6 everyone else got to do it. So I want to do it.
7 Let's stick to what we've got here.

8 MR. HENDERSON: And I know that's just
9 a voluntary -- there's no cross-examination
10 allowed. It can be voluntary from what I
11 understand from the Rules of Procedure.

12 MS. TEZZA: Yes.

13 MR. HENDERSON: Okay. Just to recap,
14 in our Ordinance under nonconforming structures,
15 it states verbatim, "Structural alterations
16 including enlargements are permitted if the
17 structural alteration does not increase the
18 extent of the nonconformity."

19 Mr. Boehm's request is to take his
20 structure with a roof and raise that roof up 2
21 feet. So you said it yourself. You're
22 increasing the volume of that; correct?

23 MS. TEZZA: Yes.

24 MR. HENDERSON: So what's keeping him
25 from going up 10 feet? If you do go up 10 feet,

1 on the island and then build your big house
2 somewhere else on the lot.

3 And to, also, allow -- I have some
4 photographs here. And allow historic properties
5 that have multiple dwellings on them. I'm
6 thinking specifically of Steve Herlong's property
7 at 22 -- I'm sorry. 226 Station 19, I believe.

8 There are three structures on that. Historically
9 there have always been three dwellings on there.

10 MS. TEZZA: Since 1902.

11 MR. HENDERSON: I don't think that it's
12 the intent of the ordinance to allow new
13 constructions to be considered to be allowed to
14 have multiple principal buildings on them, and I
15 would -- I would just leave you with one more --
16 one more item here, and if I could ask one more
17 question to Paul Boehm.

18 BY MR. HENDERSON:

19 Q. Mr. Boehm, you have a -- a business;
20 correct?

21 A. Yes.

22 Q. You have a business. Is that on Isle of
23 Palms? What's the name of that business?

24 A. It's East Island Real Estate, and it's
25 licensed on both Isle of Palms and Sullivans

1 then what are you doing to the inside space of
2 that structure? Can you then put in a loft?
3 Could you then put additional shelves, or could
4 you put additional bunk beds? I don't know.

5 This I would think would be an increase
6 to the extent of the nonconformity, and I think
7 the key point that you're making is that
8 increasing the height is not an increase in the
9 extent of the nonconformity. I would disagree.
10 I think height is very relevant here.

11 And so I -- without having the
12 documentation that calls this a second principal
13 building, having the documentation that calls
14 this a garage from Town staff, Mr. Tymco that
15 contradicts himself later in the letter that he
16 sent to me and then calls it a principal
17 building.

18 I'm going with the official document.
19 In fact, I think that's hearsay. Is that the
20 term? Regarding the historic -- the intent of
21 allowing second principal buildings on one
22 parcel, I think the spirit of the Ordinance --
23 and correct me if I am wrong, Randy, is to allow
24 two situations. A special exception to help
25 preserve existing cottages and smaller structures

1 Island.

2 Q. You mentioned that you bought it in 2001,
3 this structure in 2001?

4 A. Correct.

5 Q. And you bought it because you thought it
6 was a second house basically; right?

7 A. Correct.

8 Q. Second principal building.

9 A. Correct.

10 Q. Have you ever thought otherwise?

11 A. No.

12 Q. Have you ever thought about this
13 structure in another way?

14 A. No.

15 Q. You haven't. Have you ever seen this MLS
16 listing? (Indicating.)

17 MR. HENDERSON: What I've just pointed
18 out is an MLS listing that states -- and it's
19 referring to this structure, the garage, and it's
20 listed by Paul Boehm of East Island Real Estate
21 under PaulBoehm0@Yahoo.com. Has his contact
22 information.

23 States, when giving remarks about this
24 structure, he states, verbatim, "Because it is
25 the second structure of the lot, it cannot be

1 enlarged but otherwise you can doll it up inside
2 and out. The lower level contains a garage for
3 two cars, a storage workshop area for your
4 favorite hobbies." And this was -- there are
5 some dates on the back of this MLS listing, and
6 it begins at 2008 and goes to 2012.

7 So this is a fairly recent note that
8 was made here. And from what I understand of
9 MLS, it's a very exclusive ability to tap into
10 this. You have to be a real estate agent, and so
11 I would ask if you've ever seen this.

12 A. Oh, sure, I've seen it.

13 Q. Did you type this?

14 A. No. Probably Bradley did, my son
15 Bradley.

16 Q. So somebody in your office believed that
17 this was a garage secondary structure that can't
18 be enlarged?

19 MS. PAYLOR: Object to the form.
20 That's not what it says anyway.

21 A. That's not what it is. It's a
22 dwelling -- two-bedroom dwelling at the top of a
23 listing with 1,076 square feet. It's not saying
24 it's a garage. It's saying it has a garage
25 underneath the dwelling.

1 things. And until a permit is applied for,
2 reviewed, and approved, you don't have approval.
3 You can come talk to me about something, and I
4 will tell you what I think; but then until it's
5 applied for and approved, we don't know if we're
6 on the same page, you know. So I think that's
7 really about all I have to say.

8 MS. TEZZA: I'm going to ask one
9 question before we'll let you finish. Most of
10 the -- the properties in the exhibits seem to be
11 pre Hugo historic properties, historically had
12 dependencies. The history of this garage, I
13 believe, is such that we do not believe it
14 predates Hurricane Hugo, but is there an aerial
15 photo?

16 MR. HENDERSON: That's correct, we do
17 have some aerials.

18 MS. TEZZA: Because this garage -- I
19 just want to point out the fact that this was not
20 a structure that existed before Hurricane Hugo.

21 MR. HENDERSON: We don't have any
22 evidence that shows we -- we asked several of the
23 long-time residents of the neighborhood if they
24 remember a structure being there. Nobody could
25 tell us there was one.

1 Q. Would you think "enlarge," what does that
2 mean? Does that mean expanding?

3 A. "Enlarge" to me means expanding the
4 footprint.

5 Q. The footprint being --

6 A. You couldn't add on sideways and increase
7 the heated footprint. That's what it meant to
8 me.

9 MR. HENDERSON: Okay. Randy do, you
10 have any issues?

11 MR. ROBINSON: You know, the only --
12 the only thing I'd like to say here is, you know,
13 Paul made some statements about what I said and
14 also about some other structures. You know, that
15 was -- and I don't know exactly how to say it
16 except that that was history according to Paul.

17 You know, if you -- if we dissect every
18 different property and every different situation,
19 they're all different. You know, he stated that
20 I was going to raise my roof at my house and
21 have, you know, company do it. I never intended
22 to raise the roof to the house. I intended to
23 raise the ceiling in my house.

24 You know, the way Paul interprets and
25 the way I interpret it could be two different

1 MS. TEZZA: We know that one was built
2 post Hugo. We know that, but we don't know that
3 there was a structure before Hugo.

4 MR. HENDERSON: That's correct. So
5 what I've done is I've pulled a photograph from
6 just before. This is from February of 1989. Of
7 course, Hugo was September of 1989. And we can't
8 identify -- if you notice there's a house there.
9 There's no garage. This is Goldbug so that's
10 kind of the house that I identified.
11 (Indicating.)

12 MS. TEZZA: Thank you. Okay. Before
13 we ask any questions, I'll ask Alice to go ahead
14 and do a summation or a final statement; and then
15 we I'll ask the -- I'll ask the Board if they
16 have any questions. And/or should we take
17 statements from the -- does anybody else in the
18 audience want to make a statement or -- about
19 this property?

20 Both of you do. Okay. Alice, why
21 don't you go ahead. Then we'll take those
22 statements. Then the Board will ask any
23 questions.

24 MS. PAYLOR: Okay. I would actually
25 would like to call Mr. Henderson as a witness, if

1 that's okay.

2 MS. TEZZA: You may ask him any
3 question you want.

4 MS. PAYLOR: Thank you very much.

6 EXAMINATION

7 BY MS. PAYLOR:

8 Q. How long have you been with the Town of
9 Sullivans Island?

10 A. About nine months.

11 Q. And you weren't here in the 1990s, 1980s
12 when 2027 Goldbug was constructed; correct?

13 A. No.

14 Q. And what is your understanding of what
15 was there?

16 A. When?

17 Q. When it was first built. What was it?
18 Was it ever something different from what it is
19 today?

20 A. Well, this -- when it was built, the
21 document says that it was a garage.

22 Q. Well, it says "apartment above a garage."
23 Does it not?

24 A. Uh-huh.

25 Q. So it doesn't say it's a garage. Says

1 Ordinance where it says that a garage can be part
2 of a principal dwelling, of a principal building?

3 A. I don't know specifically whether it says
4 that.

5 Q. Well, it does. I just have to find it.
6 Here it is. Section 21-203.

7 A. Is that definitions?

8 Q. Yeah. Right back there. (Indicating.)

9 A. I'm sorry. What are we defining?

10 Q. Garage.

11 A. Garage?

12 Q. Uh-huh.

13 MR. SMITH: Or rather whether it can be
14 part of a principal building is the question.

15 Q. Well, let's look at the definition now.
16 Are you to interpret the Zoning Ordinance, is
17 that your --

18 A. Yes, ma'am, uh-huh.

19 Q. Okay. So when you look at the
20 definition, it says, "an accessory building or
21 portion of a principal building." Isn't that
22 right? A garage?

23 A. Uh-huh.

24 Q. You deny that's what that says?

25 A. No. I -- I agree that it says an

1 "apartment above garage"; correct?

2 A. That's right, which infers that it's a
3 garage and not a house; right?

4 Q. Any way you want. I mean, I understand
5 where you -- I understand what you're saying. I
6 don't believe it's in accordance with the Zoning
7 Ordinance.

8 A. Wouldn't there be a CO for a house if it
9 were not a garage?

10 Q. Well, it's a CO for an apartment, isn't
11 it?

12 A. Okay.

13 Q. And isn't an apartment a dwelling?

14 A. An apartment is a dwelling but this -- if
15 it were as you said a principal building,
16 wouldn't this be a CO for a house? I mean, it
17 would be a new construction; right?

18 Q. I'm asking you questions. Is that what
19 your opinion is? It would have to be a house on
20 there? Is that what you're saying?

21 A. To be a principal building? To be
22 considered a principal building and not a garage?
23 It would not -- it would have to not say
24 "garage."

25 Q. Okay. Are you aware in the Zoning

1 accessory building or a portion of a principal
2 building.

3 Q. Okay. So it can only be two things;
4 right? Either an accessory building or a portion
5 of a principal building; correct?

6 A. I suppose, yeah.

7 Q. Okay. Thank you.

8 And if you look at the definition of
9 "accessory structures," they cannot have an
10 electric meter, can they? You want to go look
11 under the accessory structure?

12 A. I think if they're newly constructed, no,
13 they can't have an electrical meter.

14 Q. Well, this is -- this is what was in
15 effect when this was constructed in 1989-'90;
16 correct? An accessory structure could not have a
17 separate electrical meter?

18 MR. ROBINSON: Just for history
19 purposes, we -- we have not allowed a second
20 meter on a lot since 1975-'77 when our original
21 Zoning Ordinance was put into place.

22 MS. PAYLOR: So for an accessory
23 structure, it specifically says in the Zoning
24 Ordinance that an accessory structure shall not
25 have an electric meter; correct?

1 MR. ROBINSON: A separate meter, and it
2 has said that since 1975-'77.

3 Q. Okay. And you agree with me that this
4 apartment has a separate electric meter; correct?

5 A. That's what you said. I think you
6 confirmed that it does have one, yes. I haven't
7 confirmed that.

8 Q. You don't -- but he's -- he's testified
9 to that. You don't have any reason to not
10 believe that.

11 A. I don't have any reason to doubt him, no.

12 Q. And an accessory structure cannot have --
13 be -- be connected to the sewer system, can it,
14 under the Ordinance?

15 A. Not legal, but, yeah, it's a
16 nonconforming structure, right.

17 Q. No. It's not a nonconforming structure.

18 It's a nonconforming use. Well, maybe it's a
19 nonconforming structure.

20 A. It's definitely a nonconforming
21 structure.

22 MS. TEZZA: It's a nonconforming use of
23 a nonconforming structure is actually what it is.

24 A. It's both. It can actually be both.
25 They're not mutually exclusive.

1 principal use of 2720 Goldbug is residential?

2 A. Yes.

3 Q. Okay. And would you agree with me that
4 the use of that apartment is residential?

5 A. Yes.

6 Q. So that is a principal building under
7 this Ordinance; correct?

8 A. No, not necessarily. No, it -- it could
9 be -- we have lots of structures on the island
10 that have illegal uses. They could be an illegal
11 use. It could be a nonconforming use.

12 Q. It's a residential use, isn't it?

13 A. So there's nothing --

14 MR. ROBINSON: Anything -- anything --

15 MS. PAYLOR: Randy, I'll get to you in
16 a minute.

17 MR. ROBINSON: Thank you.

18 A. He can't help me out? I mean, this isn't
19 a court of law. We're staff.

20 Q. Y'all go for it.

21 MS. TEZZA: Excuse me. This isn't a
22 court; and so if Randy has something germane to
23 the discussion, I'm going to let him answer.

24 MS. PAYLOR: I apologize. I'm used to
25 being in court. If I say stuff like that, it's

1 MS. TEZZA: That's my read.

2 Q. Okay. Have you looked at the definition
3 for "principal building"? How about looking at
4 Section 21-25.

5 A. (Complies with request.)

6 Q. Do you see that? 21-25?

7 A. Building principal, yeah.

8 Q. Okay. Let's look. There's definitions
9 under Subsection A. Do you see that?

10 A. You're looking at "building principal."

11 Q. I'm looking at "principal building
12 coverage area," Section 21-25.

13 A. Oh, you're looking in the body of the
14 Ordinance now.

15 Q. I am.

16 A. I'm sorry. I'm trying to keep up with
17 you.

18 Q. I'm sorry. Actually it says it in both
19 places. That's on page 16.

20 A. (Complies with request.) Okay.

21 Q. Have you got that? And it's got
22 definitions, and it's got a definition of the
23 principal building. "A building or buildings in
24 which the principal use of the lot is conducted."

25 Would you agree with me that the

1 just my habit. I apologize.

2 MR. HENDERSON: I think it's a
3 voluntary cross-examination from your rules of
4 procedure so I, you know.

5 MS. TEZZA: So Randy predates Joe, and
6 that is why it's important for him to be here
7 because many statements have been made about what
8 Randy said; and so that's why they're working
9 together on this. It's the staff supporting the
10 Board of Zoning Appeals.

11 MR. HENDERSON: But to answer your
12 question, we have on this island, I recently did
13 some GIS work, Geographic Information System
14 dropping dots on every illegal and nonconforming
15 extra dwelling on a lot. We got lots of them.
16 We have lots of people using structures on this
17 island as dwelling units that are illegal, that
18 they have knowledge about; and that's why it's so
19 critical that we get this right. Alice, that we
20 don't allow the increase of these uses and the
21 expansion of these uses. If we overturn this
22 decision, then that sets the standard for doing
23 it across the board for all of these structures.

24 If you have a garage on your property
25 and 20 years down the road, five Zoning

1 Administrators later, probably ten, you know,
2 it -- it's just we need to hold the line with --
3 with not allowing this use to expand, not
4 allowing this footprint to expand. And that's --
5 that's why this is critical for us.

6 Q. And what's the use? Residential?

7 A. It's a legal nonconforming residential
8 use.

9 Q. Okay.

10 A. Yeah.

11 Q. It's residential.

12 A. Uh-huh.

13 Q. And it's legal; right? This isn't
14 illegal as you were just saying; correct?

15 A. Well, yeah. It's -- it has a Certificate
16 of Occupancy issued in 1989, which is strange
17 because all of them were issued in 1977.

18 Q. These are the Town's records. Mr. Boehm
19 did not have anything to do with this property in
20 1989.

21 A. Okay. Well, we have a CO. That's right.

22 Q. So you have a Certificate of Occupancy
23 showing apartment above the garage. So you're
24 not telling the Board that this is an illegal
25 use, are you?

1 Q. And is there anything in the Zoning
2 Ordinance which leads you to that conclusion? Is
3 there anything talking about expanding by going
4 up? Aren't there lots of cases in here?

5 A. There's lots of case law out there. I'm
6 not an attorney, but there's lots of case law out
7 there that would describe that the increase in
8 height is an intensification of a use and that's
9 a -- that's very common in zoning regulation.
10 After all, that's why we have maximum heights for
11 structures.

12 Q. Okay. And that's why I'm asking you
13 what's in your Zoning Ordinance, not --

14 A. We have maximum heights in our Zoning
15 Ordinance.

16 Q. -- and not what is in anybody else's
17 Zoning Ordinance because this is what you're
18 supposed to interpret; right?

19 A. We only have maximum heights in the
20 Zoning Ordinance. Why do we have a limitation on
21 height?

22 Q. And a nonconforming -- a legal
23 nonconforming structure like this dwelling with
24 the garage underneath it can have a deck on it,
25 can't it? Is there any prohibition in the Zoning

1 A. No. He can continue this legal but
2 nonconforming use.

3 Q. Okay.

4 A. It's nonconforming.

5 Q. And the use is residential; correct?

6 A. That's right, uh-huh.

7 Q. Okay. Tell the Board how he's expanding
8 the residential use by raising the roof 2 feet.

9 Is he adding any bedrooms on?

10 A. He's -- he's increasing the volume and
11 the square footage, the useable square footage in
12 that dwelling.

13 Q. What useable square footage? The 2 feet
14 that goes up?

15 A. Well, when you say "square footage,"
16 you're taking a measurement length by width;
17 right?

18 Q. Correct.

19 A. So you don't --

20 Q. Where do you increase?

21 A. When you walk around in a space, you're
22 not sliding around on the floor. You're up top;
23 right? So you're using what's above the floor.
24 So if you raise the roof, you're increasing the
25 area that you can use within that dwelling unit.

1 Ordinance from having a deck on it?

2 A. On a legal nonconforming use?

3 Q. Legal nonconforming dwelling structure.

4 A. There would be a prohibition on expanding
5 the structure or anything attached to that
6 structure.

7 Q. Have you --

8 A. That's why --

9 Q. Have you looked in the Zoning Ordinance
10 for that? Is there any prohibition in the Zoning
11 Ordinance from having an accessory use, an
12 accessory structure on an accessory use to a
13 legal nonconforming dwelling?

14 A. It doesn't specifically call that out,
15 but we just went through the section that
16 describes legal -- or nonconforming structures
17 which you guys admit it's a nonconforming
18 structure; right?

19 Q. It's a legal --

20 A. You can't expand a nonconforming
21 structure, period.

22 Q. It's a legal nonconforming structure --
23 well, where does it say you can't expand the
24 structure? Where does it say you can't expand
25 the use? And I'll -- I'll call you to 21-150.

1 A. I'm looking at 151.
 2 Q. 151. Whatever it is.
 3 MR. SMITH: 151 is nonconforming
 4 structures. 150 is nonconforming uses.
 5 A. That's right. Structural alterations
 6 including enlargements are permitted if the
 7 structural alteration does not increase the
 8 extent of nonconformity.
 9 I would say that when you build a wall
 10 out to expand that square footage or if you
 11 expand the roof, you increase the height of the
 12 roof, then you increase the volume or the useable
 13 area within that dwelling; and that's an
 14 increase, in my interpretation.
 15 Q. Well, let's go back to -- okay. Are you
 16 in 150 or 151?
 17 A. 151.
 18 Q. Let's go back to 150 because these are
 19 nonconforming uses; correct?
 20 A. They're both nonconforming use and --
 21 Q. And in 150 it talks about two or more
 22 principal buildings on one lot; correct? (F).
 23 Do you see that?
 24 A. That's right.
 25 Q. And it says -- in (f) talks about having

1 purely legal interpretation of what your Zoning
 2 Ordinance says, and -- all right. Let me go to
 3 your letter that you sent. That's Exhibit 21.
 4 Okay. Is that a letter that you sent to
 5 Mr. Boehm on March 10?
 6 A. Yes, it is.
 7 Q. And in here you say, "Expanding the
 8 footprint of this nonconforming structure is in
 9 direct conflict with Zoning Ordinance Section
 10 21-151."
 11 A. Uh-huh.
 12 Q. Now, "footprint" is defined in Section
 13 21-25 as well as in the definitions section;
 14 correct?
 15 A. Yes.
 16 Q. And the footprint does not extend to the
 17 decks, walkways, or stairs, does it?
 18 A. It doesn't, and, therefore, we probably
 19 shouldn't have issued the permits for the roof
 20 extension to go over your stairs either. So I
 21 think that may have been an error on our -- my
 22 part, our part.
 23 Q. So you're in error in this because the
 24 footprint does not include that; correct?
 25 A. Again, I think that we were just trying

1 two or more, and it says a building permit for
 2 improvements to the designated conforming
 3 principal building may be considered favorably so
 4 that would be --
 5 A. The house.
 6 Q. -- the regular house; correct? Provided
 7 all other requirements of the Town Ordinances are
 8 met, the nonconforming structures shall be
 9 regulated in accordance with Subsections A
 10 through E of Section 150; correct?
 11 A. (Nods head.)
 12 Q. So if you look, the only one that talks
 13 about it is B; correct? Expansion.
 14 A. Uh-huh. But, again --
 15 Q. A nonconforming use shall not be expanded
 16 except to eliminate or reduce the nonconforming
 17 aspects.
 18 A. But you've never been issued a
 19 Certificate of Zoning Compliance for this to be a
 20 principal building.
 21 Q. And whose responsibility was that?
 22 A. The Town's. If it really was a principal
 23 building, but it's a garage. That's why it
 24 wasn't issued.
 25 Q. Okay. All right. I'm -- this is a

1 to work with Mr. Boehm and -- we were -- because
 2 the decks in our Ordinance are considered
 3 impervious surfaces; right? We were considering
 4 that area, the steps and the rear deck, as an
 5 impervious surface for the footprint. Isn't that
 6 why we were trying to work with him to give him
 7 the expansion over the stairs?
 8 MR. ROBINSON: Oh, yeah.
 9 A. But, you know, I -- I think that you
 10 could -- you could say, you know, by using our
 11 definitions, taking the more -- more strict
 12 interpretation of the Ordinance, someone would
 13 have probably denied your request to extend that
 14 roof over your stairs.
 15 Q. Under what provision of the Zoning
 16 Ordinance would that be prohibited?
 17 A. Under the nonconforming structure
 18 section.
 19 Q. What does it say?
 20 A. Structural alterations, including
 21 enlargements, are permitted if the structural
 22 alteration does not increase the extent of the
 23 nonconformity. I guess the extent of the
 24 nonconformity would be, you know.
 25 Q. It's the dwelling.

1 A. Right. The usability of that structure
2 so you could probably deny the permit based upon
3 that. But, again, I think that we are trying to
4 make an effort to -- to work with Paul on that --

5 Q. And --

6 A. -- when we issued the permit.

7 Q. -- how was putting a roof over the
8 walkway and the stairways an extension of the
9 nonconformity? How could that possibly be an
10 extension of the nonconformity?

11 A. Well, it's a nonconforming structure,
12 nonconforming use. I think the stairs going up
13 the side to the -- to the entrance, that's a
14 characteristic of the use because you have folks
15 that are using that structure. Accessing the
16 structure there, and you're -- and you're
17 building on. You're intensifying that staircase.
18 Right? You're making it stronger. You're making
19 it last longer. You actually replaced all the
20 stairs; right? In that permit. Didn't you
21 replace the staircase?

22 MR. BOEHM: Yes.

23 MR. HENDERSON: Okay. So
24 intensification of the use, rebuilding it, you're
25 basically allowing that nonconforming structure,

1 a neighbor, even though I'm in the neighborhood.
2 I'm speaking -- I am a very strong proponent of
3 the Ordinance for the Town. I am no longer on
4 the Planning Commission, but I was for seven
5 years so I don't necessarily understand all the
6 legal, but I -- I really feel very strongly about
7 the Ordinance.

8 And the thing that -- that concerned
9 me, which is something that you will have to
10 determine and not me -- if, indeed, this is
11 enlarging the usability by using -- expanding the
12 deck over the slat house, what precedent it would
13 set as far as interpretation of Ordinance.

14 We have restaurants that are
15 nonconforming structures, nonconforming uses; but
16 they then say, hey, have more decks. We have
17 garages or apartments over garages. We have
18 houses that are nonconforming structures.

19 And I guess my concern is if, once you
20 start reinterpreting without rewriting, which can
21 be done by Council and can be done through
22 Planning; but if you start edging away at the
23 Ordinance, then you just open a very large can of
24 worms possibly.

25 MS. TEZZA: Thank you for your

1 the stairs are part of the structure, to live
2 longer so I think that would be an
3 intensification. I don't even know if the stairs
4 should have been rebuilt either if it's a
5 nonconforming use.

6 Q. So you're going to take a position that
7 you cannot maintain a legal nonconforming use?

8 A. You can maintain it; but reconstruct it,
9 I think, is something different.

10 Q. Replacing the stairs.

11 A. Why don't you tear the whole house down
12 and build it back.

13 Q. You're saying that cannot happen? I just
14 want to be clear on, you know, how you're
15 interpreting the Zoning Ordinances.

16 MS. PAYLOR: I have no further
17 questions.

18 MS. TEZZA: Okay. Is there any public
19 comment?

20 MR. HENDERSON: Oh, here are your
21 exhibits back. I'm sorry.

22 MS. TEZZA: If you will state your name
23 and address for the record, please.

24 MS. GEAR: My name is Aussie Gear. I
25 live at 2702 Goldbug. I'm not really speaking as

1 comments.

2 MS. GEAR: Thank you.

3 MS. TEZZA: Jimmy.

4 MR. HIERS: Yes. I'm James Hiers. I
5 live next door at 2714 Goldbug, and I'm going to
6 violate the first rule of a good public speaker.
7 I'm going to read part of a letter because I
8 think it's important, and we live at 2714 Goldbug
9 directly next door to 2720 Goldbug. We'd like to
10 make the following comments regarding the
11 application to overrule it.

12 We would ask the Board not to grant the
13 request to overrule the Zoning Official who
14 denied the application regarding 2720-B, and I
15 guess I'd like to state I'm really going to make
16 it clear to the Board; and for the record, I'm
17 speaking as a next-door neighbor as a citizen,
18 not as anyone that's ever been on the Board for
19 the Town.

20 We've lived in our house since 1992,
21 and we've always had the clear understanding that
22 the garage and garage apartment next door were
23 nonconforming and could not be expanded or
24 increased. I'm asking to keep in mind the four
25 following points regarding the property at 2720

1 Goldbug.

2 The property at 2720 Goldbug consists
3 of one lot which contains one house and one
4 garage with a living space above. We believe
5 that the garage was built in 1989 without the
6 proper building permits. The garage called
7 2720-B has clearly always been treated as a
8 nonconforming property by all parties in the
9 past.

10 No. 2, there are no restrictions on
11 increasing the size of the -- of the main house
12 at 2720 Goldbug. It can certainly be expanded.
13 The roof can be raised. It could be doubled in
14 size and could have several additional porches
15 and decks. Under past and current Town
16 Ordinances, the nonconforming garage on the
17 property could not be expanded or increased.

18 Despite these facts, the applicant,
19 Mr. Boehm, has made -- has made several attempts
20 to expand the garage; and written records will
21 show that he has been turned down by Town
22 officials as well as by the BZA. And at this
23 point I'd like to note that in Mr. Boehm's 2009
24 application to overrule the Zoning Administrator,
25 the BZA voted unanimously not to overturn the

1 2720-B has been described in real
2 estate advertising as a secondary structure on
3 the lot. It has also been described in real
4 estate advertising as the garage with living
5 space above it, and it also has been described by
6 stating it cannot be enlarged.

7 No. 4, we believe that -- and when I
8 say "we," I'm speaking for my wife and myself.
9 We believe that the reason the slat house was
10 installed by the current property owners was
11 because under Town Zoning Ordinances, they were
12 not allowed to install a deck or a porch and that
13 the slat house is an attempt to circumvent these
14 Ordinances.

15 Under the rules in place, it seems
16 clear that a slat house nor any other structure
17 at the rear of the garage should be allowed to be
18 attached, railed, screened, redecked, raised, or
19 connected in any way. And the roof piers at the
20 rear of the property for the new -- the new roof
21 that was going in, the roof piers were put
22 through the slat house thereby attaching the slat
23 house to the structure which was what Mr. Boehm
24 was denied in his request to do in 2009.

25 I would just like to finish to say we

1 Zoning Administrator.

2 And at that time Mr. Boehm --
3 Mr. Boehm's present counselor was -- was the
4 chair of the Sullivans Island BZA in its own
5 record of voting against overruling the Town
6 Administrator.

7 MS. PAYLOR: I can speak up and say it
8 was not an overruling of the Town Administrator.

9 MR. HIERS: Let me finish, please.

10 MS. PAYLOR: It was an --

11 MR. HIERS: Would you let me finish,
12 please.

13 MS. PAYLOR: It was a variance request.
14 Go ahead.

15 MR. HIERS: Anything else?

16 MS. PAYLOR: I just wanted to make it
17 clear it was a variance request.

18 MR. HIERS: We believe that this
19 application is the latest attempt to test both
20 the new BZA and the new Zoning Administrator. So
21 for the past several -- No. 3, for the past
22 several years, the garage called 2720-B has been
23 offered for sale as a condominium, which we
24 believe goes against both the spirit and intent
25 of the Town zoning laws.

1 agree with the staff decision; and we also
2 believe that since our house and 2720-B are very
3 closely located to one another, any expansion of
4 2720-B would be of substantial detriment to our
5 adjacent property.

6 I'd like to ask the Town a question. I
7 think I know the answer to it. But does 2720-B
8 have a separate water meter?

9 MR. ROBINSON: Do not know.

10 MR. HENDERSON: I'm not sure.

11 MR. HIERS: Well, I'd like to know that
12 it does. We've heard it has a separate electric
13 meter but how about the water meter? I would
14 like to see if we can determine that. Mr. Boehm,
15 would you -- would you tell me if you have a
16 separate water meter?

17 MS. PAYLOR: There's no -- I don't know
18 if he does or he doesn't.

19 MR. BOEHRM: Am I allowed to answer this
20 question?

21 MS. PAYLOR: If you want to. You don't
22 have to.

23 MR. BOEHRM: As -- as all condominiums
24 on the island, there is one water meter. We
25 actually separate the bill for the garage

1 internally.

2 MS. TEZZA: You have a sub meter?

3 MR. BOEHM: We have our own meter for
4 the garage, and it's calculated -- it's used
5 separately.

6 MS. TEZZA: So it's like a sub meter.

7 MR. BOEHM: Sub meter, yes.

8 MR. HIERS: In any event, I'd just like
9 to say that Sullivans Island is a -- most of us
10 in this room live on Sullivans Island. It's a
11 special place, and I think it's a very special
12 place because the Town has had strict Zoning
13 Ordinances trying to preserve lot size and lot
14 coverages. A lot of the barrier islands don't
15 have these rules in place.

16 And I think there's -- there's a
17 reason -- there's a reason that these rules are
18 in place, and that's -- that's to maintain the
19 quality of life that's existed here, and I
20 believe that this -- this application is a --
21 is -- is really just to try to make the
22 property -- the garage more salable as a -- as a
23 condominium. Of course, even on Sullivans
24 Island, it's hard to sell a garage.

25 We all like to make money. If we

1 MR. SMITH: I have a couple of
2 questions. Is the slat house currently attached
3 to the garage apartment?

4 MR. BOEHM: No.

5 MR. SMITH: It's just freestanding?

6 MR. BOEHM: Yes.

7 MS. PAYLOR: But it abuts to the wall.

8 MR. SMITH: Is there --

9 MR. HENDERSON: I have a picture here
10 that shows it is attached. I believe.

11 MR. BOEHM: I don't think you do.

12 MS. PAYLOR: It abuts.

13 MR. HENDERSON: It actually looks like
14 a two by four or some structure that is nailed
15 up, and the slat house is leaning against it.

16 MR. BOEHM: Well, it's currently
17 supported by two by fours until the -- until the
18 balance of the roof is built, until this issue of
19 where the posts go is resolved; but it's not
20 permanently attached. Those are -- that's like a
21 batter board, I think they call them. What do
22 you call those things, Randy, when you're
23 supporting a temporary post?

24 MR. ROBINSON: What I saw has been
25 there a long time.

1 didn't, we'd live in Venezuela or in Cuba; but I
2 think it's -- I think you -- for me I draw the
3 line making money and being a decent neighbor.
4 So it's a very -- it's a very difficult thing to
5 have to speak before this Board as -- as someone
6 objecting to something going on next door.
7 It's -- it's clear that it's a -- it's clear to
8 me that -- that it -- that this -- this structure
9 was built without a permit in 1989 and that it
10 was -- it was built illegally.

11 Now, the CO, don't know how that was
12 gotten; but how do you get -- how does Mr. Tymco,
13 who's written this letter, how does he defend
14 being his own administrator when you have
15 something built, a structure like this built,
16 with no building permit?

17 So in any event, y'all have got a
18 difficult task and just look at the facts and do
19 the best you can.

20 MS. TEZZA: Thank you, Mr. Hiers.

21 I'm going to -- does anybody on the --
22 before we close comments, does anybody on the
23 Board have a question of the applicant? We
24 can't -- we can ask staff questions about any
25 details we've --

1 MS. TEZZA: Well, what I see is that
2 the bench that's supposedly furniture but looks
3 to me like it was put there also as a railing, is
4 attached to the slat house; and it is also
5 attached to the garage wall. Right here.
6 (Indicating.)

7 MR. SMITH: Okay.

8 MS. TEZZA: I mean, it is attached.

9 MR. SMITH: Looks like we have
10 conflicting opinions of whether it's attached or
11 not.

12 MS. TEZZA: Yeah.

13 MS. TIMMONS: You would fall -- excuse
14 me. There's enough space to slip through between
15 the walkway and the deck.

16 MS. PAYLOR: No, no.

17 MS. TEZZA: It's -- it's touching.

18 MS. TIMMONS: Yes, yes.

19 MS. PAYLOR: Right.

20 MR. SMITH: I noticed RJ Denton's
21 letter, he asserted that the reason the posts --
22 the six by's had to be put where they were was so
23 that it wouldn't disturb the structural integrity
24 of the slat house. Did I read that correct?

25 MR. BOEHM: I think he said the

1 walkway. The walkway, yeah. I didn't have a
2 permit to replace the walkway. The permit I had
3 was for the roof structure; and the roof
4 structure, by the way, includes everything to do
5 with how you build it, the footer, all the way up
6 to the roof rafters and the eave. All of those
7 things extend well beyond the posts.

8 MR. SMITH: And then would the --
9 the -- the roof if it were built and extended out
10 like that, would -- would those posts that are
11 now attached to the slat house, would that, then,
12 connect the slat house --

13 MR. BOEHM: No.

14 MR. SMITH: -- to --

15 MR. BOEHM: No. The posts are
16 freestanding, come up between the existing deck
17 and the slat house. The slat house and the
18 framing of the slat house and the deck are two
19 separate things.

20 MR. SMITH: Right.

21 MR. BOEHM: The only things that come
22 close together, they are separated by air, are
23 the deck surfaces.

24 MR. SMITH: Right.

25 MR. BOEHM: So those things come close

1 sixes --

2 MS. TEZZA: Going right through the
3 slat house roof.

4 MR. BOEHM: They do. Sure, they do.

5 MS. TEZZA: So they're connected.

6 MR. BOEHM: No, they don't. They're
7 not connected at all. They just go through the
8 roof. How are they connected? We cut -- we cut
9 the roof of the slat house away and a portion of
10 the deck away to slide those six by six posts
11 down through the hole. They're not connected at
12 all.

13 MS. TEZZA: What did that do to the
14 structural integrity to the slat house?

15 MR. BOEHM: Nothing. Slat house was a
16 freestanding structure. It was built to have
17 people walk on it, built to have furniture
18 sitting on top of it. You could put 20 people
19 out there. The posts are six by six posts. The
20 frame is two by eight. If you needed some kind
21 of a statement from an engineer or an architect,
22 I could get that for you. Randy inspected it.

23 MR. SMITH: Yeah. Those are my
24 questions. Thanks.

25 MS. TEZZA: Okay. Do either you -- do

1 together. Otherwise, the posts simply come up
2 between the framing.

3 MR. SMITH: But if this project were to
4 continue, what you're seeking to do is extend --
5 raise the roof and extend out. You've got these
6 six by's. Clearly they're going to be tied into
7 something.

8 MR. BOEHM: They're tied into the
9 house.

10 MR. SMITH: Tied into the house but
11 then they go around to the --

12 MR. BOEHM: And the deck, yeah.

13 MR. SMITH: So then the deck -- is the
14 slat house and the deck two different things?

15 MR. BOEHM: Two different things
16 completely.

17 MR. SMITH: So this slat house in no,
18 way, shape, or form will be -- taking your
19 contention that it's not attached right now,
20 after all this is done, you're telling me that
21 the slat house will not be connected to the
22 building.

23 MR. BOEHM: That's correct.

24 MR. SMITH: And we're looking at
25 photographs that appear to show the six by

1 you have any questions of applicants?

2 MS. TIMMONS: No, I don't.

3 MS. TEZZA: Okay. If y'all have no
4 more questions, I don't have any more questions
5 so I'm going to close the public comment.

6 And we shall -- who wants to open the
7 discussion?

8 MS. PAYLOR: Could I make a closing
9 statement just to tie together the Zoning
10 Ordinance, or you don't care. I mean, it's
11 legally just --

12 MS. TEZZA: A short one.

13 MS. PAYLOR: Very short.

14 MS. TEZZA: You may make a short
15 statement, Miss Paylor.

16 MS. PAYLOR: Thank you. I apologize.
17 I remember being on this, and I did not like long
18 meetings so I understand that.

19 MS. TEZZA: On the record books.

20 MS. PAYLOR: There have been some
21 statements that Mr. Truesdale didn't have a
22 building permit. That's not in the record.
23 There's no record of it. I mean, I asked the
24 Town for the full file; and they said they've
25 lost all kinds of stuff.

1 Mr. Boehm bought it well after the fact
2 of its being built so he didn't have anything to
3 do with constructing an illegal structure as
4 Mr. Hiers would like you to believe.

5 The building in question contains a
6 dwelling. Because it contains a dwelling, it is
7 a principal building under your Zoning Ordinance.
8 As a principal building, you can have an
9 accessory use. You can also -- the only thing
10 that you can't expand the use, and that was what
11 was so important about the first house that we
12 went through -- that I went through with
13 Mr. Boehm.

14 The Board of Zoning Appeals said they
15 didn't need a variance because they were not
16 expanding the use. You look at it as Exhibit 9.
17 Said footprint was not going to change; and the
18 footprint, remember, is the exterior wall right
19 here. (Indicating.)

20 Doesn't have anything to do with the
21 stairways or the walkways. The footprint was not
22 going to change. They're not adding any
23 bedrooms. The same number of bedrooms are going
24 to be there. The enclosed space is not going to
25 change. There was no variance needed.

1 itself. And when you look at the -- putting a
2 roof over, there's nothing in the Zoning
3 Ordinance that prohibits him from putting a roof
4 over an existing stairway and the walkway.

5 I don't think there's anything in the
6 Zoning Ordinance that prohibits him from putting
7 a deck on it. Now, if you go back, it was a
8 variance request; and as we all know when you ask
9 for a variance, you have to show hardship and
10 that type of thing.

11 Well, I don't -- I don't know he could
12 show hardship because he didn't have a deck back
13 there. So I guess what I'm saying is: We did
14 not and I was on that, and I think that was the
15 right decision because I don't think he needed a
16 variance.

17 I think he could have put a deck out
18 there under the Zoning Ordinance the way it's
19 drafted. And that -- that's where we are. And I
20 know that, you know, Mr. Boehm, you know, this is
21 an appeal. It is not a variance request. He
22 doesn't have to show a hardship.

23 So we're asking that Mr. Boehm be
24 allowed to raise his roof by 2 feet so he can
25 increase the ceiling height in his apartment.

1 And I'm -- that's the way I read the
2 Zoning Ordinance. It says that if you don't --
3 that you cannot expand the use. It doesn't talk
4 about the structure; and I don't believe raising
5 the roof which happened in basically every one of
6 these that we had where the Town allowed it
7 without a variance, I don't think a variance was
8 needed under the Zoning Ordinance.

9 They were allowed to -- because there's
10 a height restriction of 38 feet. This is a
11 principal building. It's well within the 38
12 feet. I think if you look at the Zoning
13 Ordinance, it clearly says that he can raise,
14 elevate his roof, on a principal building. Even
15 Mr. Henderson said that in the e-mail that he
16 sent to him.

17 Every -- there's no question about it
18 except now there's -- he's trying to come up with
19 a reason why, you know, he can't have, you know,
20 what he's entitled to.

21 This is a principal building. It can
22 be elevated. He's not asking for anything other
23 than raising the roof 2 feet so he can raise the
24 ceiling in the apartment by 2 feet. There's no
25 other expansion. There's no expansion of the use

1 Asking that you find that this is a principal
2 building; and really it's up to the Zoning
3 Administrator to give a Certificate of Occupancy
4 that says this is the nonconforming use on the
5 lot, nonconforming secondary building.

6 We don't believe that there's anything
7 in the Zoning Ordinance that prohibits the
8 placement of furniture on a slat house roof or
9 the placement of a safety rail around the slat
10 house roof because it's still within the height
11 restriction, even with the rail, of accessory
12 because that's 15 feet; and it's nowhere close to
13 15 feet now high.

14 And the roof piers, they don't have to
15 be within the existing footprint. If they did,
16 they would have to be -- you'd have to take part
17 of the building out to put them in. So we're
18 asking that you reverse the decision of the
19 Zoning Administrator. I believe that none of
20 this is a precedent for anything. I think it's
21 been done. I think that's why it was done in all
22 these other cases, because the Zoning Ordinance
23 allowed it. I don't -- I don't think they had
24 any reason to get a variance because the Zoning
25 Ordinance allowed what they did.

1 Thank you.

2 MS. TEZZA: Thank you. I'm going to
3 allow Jimmy to speak since I allowed you to
4 speak.

5 MR. HIERS: I would like to ask the
6 chair if she would open the conversation back up
7 for a brief statement.

8 MS. TEZZA: I will.

9 MR. HIERS: Thank you. I'd just like
10 to state for the record that I never said
11 Mr. Boehm nor did I apply that Mr. Boehm had
12 anything to do with this structure being built
13 illegally. This -- that occurred before
14 Mr. Boehm bought the property.

15 However, I would like to add this: I
16 spoke with Kent Prause today by phone and read
17 him this sentence from page 2 of Mr. Boehm's
18 application. Mr. Boehm would not have purchased
19 the property without the assurance of Mr. Prause
20 that the two structures were principal buildings
21 under the then Zoning Ordinance. Mr. Prause
22 said --

23 MS. PAYLOR: I object because this is
24 hearsay. Just putting it on the record. Now you
25 can read it.

1 two principal buildings on this lot?

2 MS. TIMMONS: Uh-huh, yes.

3 MS. TEZZA: And I think that's the
4 first question that we have to ask. Are you in
5 agreement, Bachman?

6 MR. SMITH: I'm in agreement.

7 Unfortunately, I think the waters are
8 sufficiently muddied that a decision at this --
9 this evening is probably not in the best
10 interests of the Board; however, that said, I
11 mean, I'm okay with making a decision, leaving it
12 up -- open to come back and revisit it later or
13 however we want to do it.

14 There's unanswered questions here; but
15 as it stands, I'm going to have the -- I'm going
16 to, you know. I'm okay with going forward, but
17 we just spent a lot of time talking about a lot
18 of things that -- that might not have a lot to do
19 with what we're here to decide.

20 MS. TIMMONS: Right.

21 MS. TEZZA: Right.

22 MR. SMITH: That's a little bit
23 unfortunate, but that is where we are now. So
24 with that said, I would agree with you that the
25 first question is to decide if there are two

1 MS. TEZZA: This is not a court of law.

2 MR. HIERS: Ms. Paylor, would you let
3 me finish before you -- this is the second time
4 you interrupted me. This is not court.

5 MS. PAYLOR: I'm making my objection
6 before you say it. It's for the record.

7 MS. TEZZA: And for the record, this is
8 not a court of law.

9 MS. PAYLOR: I know, but this appeal is
10 going up.

11 MS. TEZZA: That's fine. You don't
12 know what we're going to do yet.

13 MR. HIERS: May I proceed?

14 MS. TEZZA: You may proceed.

15 MR. HIERS: Mr. Prause stated that he
16 is sure that he never said nor assured Mr. Boehm
17 that the two structures were both principal
18 buildings. He said, in fact, that he did not see
19 how they could both be principal buildings.

20 MS. TEZZA: Thank you. The public
21 comment is now closed.

22 Carlin, do you have any --

23 MS. TIMMONS: Well --

24 MS. TEZZA: I think the issue is, is
25 this a principal building? Is there are -- there

1 principal structures up there.

2 And I even submit that in the
3 applicant's own facts, one of those structures
4 was the principal dwelling; and the other was the
5 garage apartment. They state it right there that
6 one's a principal and one's not, and I don't see
7 a way to get around that one.

8 MS. TIMMONS: Right.

9 MS. TEZZA: And -- and all of these
10 exhibits are -- those are dependency. They're
11 not garages, I don't think. I think most of them
12 are dependencies. I know the one that -- this
13 nine, I know -- I know that little house, and
14 that was a cottage. So we're talking about a
15 cottage versus a post storm garage that was
16 probably built. So in the -- the spirit and the
17 intent of the ordinance to allow variance --
18 variance requests for nonconforming structures
19 was to preserve cottages.

20 MS. TIMMONS: Right.

21 MS. TEZZA: In my view.

22 MS. TIMMONS: Yeah, I think and -- to
23 me, I have trouble when it's like your aunt, when
24 you can look and what you see, you know, is one
25 thing, you know. What your brain recognizes is a

1 two-car garage with an apartment up top and
2 whoever's renting it now wasn't told to keep that
3 door down 'cause when I rode my bike by, it --
4 the one on the right was up. And there was
5 nothing in there but some bikes at the back and a
6 golf cart right in front ready to drive in, you
7 know. So that's what I saw, Paul.

8 You know, and one's obviously a little
9 house; and the other's a nice apartment. I mean,
10 if it was just a couple of folks, it would be
11 great, you know. I mean, but -- I mean, I --
12 obviously, y'all are building a case; and that's
13 fine. But I know what my eyes see and I know
14 where it says a nonconforming use shall not be
15 expanded except to eliminate or reduce the
16 nonconforming aspects to, you know, the decks,
17 the walkways around the back, you know, to get
18 the view, you know. Where are you going?
19 Where's your door? You know, it's kind of put
20 two and two together, you know. So I --

21 MS. TEZZA: Is this still on the
22 market? Is this on the market right now?

23 MR. BOEHM: No.

24 MS. TIMMONS: Anyway, yeah.

25 MS. SCHWEITZER: I'm in agreement with

1 MS. TEZZA: All in favor, signify by
2 saying aye.

3 (All Member respond aye.)

4 MS. TEZZA: Opposed. Like sign.
5 (No response.)

6 MS. TEZZA: The motion to overturn the
7 Zoning Administrator is denied.

8 MS. PAYLOR: And is that as to all
9 three of the issues?

10 MS. TEZZA: Yes.

11 MS. PAYLOR: Okay. Thank you.
12 (Proceedings concluded at 8 p.m.)
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1 you that this is the key issue that needs to be
2 decided. I -- I saw what Carlin saw when I drove
3 by as well.

4 MS. TEZZA: And I went by as well. I
5 knew the house. I just drove by it get to make
6 sure.

7 MS. TIMMONS: Yeah.

8 MS. TEZZA: But it -- it looks like a
9 garage. It is referred to as a garage. It is
10 called a secondary structure in the applicant's
11 own documents. So I think that's fairly clear.
12 And it's not our job to suppose what might happen
13 based on our decision. It's our job to make the
14 best decision that we can make according to what
15 we see and how -- how we interpret the Zoning
16 Ordinance as written.

17 MS. TIMMONS: Right.

18 MS. TEZZA: So -- would anyone like to
19 make a motion?

20 MR. SMITH: I'll make a motion to deny
21 the appeal.

22 MS. TEZZA: Is there a second?

23 MS. TIMMONS: I'll second it.

24 MS. TEZZA: Any further discussion?
25 (No response.)

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

3 I, Ronda K. Blanton, a Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing proceedings were taken
7 at the time and location therein stated; that all
8 statements made at the time of the proceedings
9 were recorded stenographically by me and were
10 thereafter transcribed by computer-aided
11 transcription; that the foregoing is a full,
12 complete, and true record of the proceedings.

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

16 Witness my hand, I have hereunto affixed my
17 official seal on March 31, 2014, at Charleston,
18 Charleston County, South Carolina.
19
20
21
22
23
24
25

Ronda K. Blanton, RPR
Notary Public, South Carolina
My Commission expires:
May 14, 2018.