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TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS MEETING MINUTES

DATE: January 8, 2015
TIME: 6:06 p.m. to 6:42 p.m.
LOCATION: Town Hall
2050-B Middle Street
Sullivan's Island, South Carolina

PALMETTO STATE COURT REPORTERS
1440 Ben Sawyer Boulevard, Suite 1101
Mt. Pleasant, SC 29464
843.670.1637 Fax: 843.216.9874
Palmettostatecr@yahoo.com

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6 A-P-P-E-A-R-A-N-C-E-S

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8 For the Board of Zoning Appeals:

9 Elizabeth Tezza
10 Delores Schweitzer
11 Summer Eudy
12 Jimmy Hiers
13 Sarah Church
14 Bachman Smith, IV

15
16 For the Town of Sullivan's Island:

17 Joe Henderson, Zoning Administrator
18 Ellen Miller, BZA Secretary
19 John Linton, Esquire, Town Attorney
20 Randy Robinson, Building Official

21
22 For the Applicant:

23 Paul Boehm
24 Alice Paylor, Esquire

25

1 MS. TEZZA: The meeting is called to
2 order and I'll ask Ellen if the Freedom of
3 Information Act has been met.

4 MS. MILLER: It's met.

5 MS. TEZZA: Thank you. We now -- do I
6 have a motion to approve the minutes from the
7 November meeting? I think you all received them.
8 There were some minor edits.

9 MS. EUDY: Motion to move the November
10 minutes.

11 MS. SCHWEITZER: Second.

12 MS. TEZZA: Okay. Any discussion, any
13 changes? All those in favor signify by saying Aye.

14 ALL BOARD MEMBERS: Aye.

15 MS. TEZZA: All those opposed, like sign
16 The minutes are approved. Now, anyone speaking
17 before the --

18 MS. MILLER: We have two more sets of
19 minutes.

20 MR. SMITH: October, November and
21 September.

22 MS. TEZZA: Okay. It just says November.
23 Okay. So we're going to -- September and October.
24 So let's do those separately. And thank you Summer
25 for your careful review of, I think it was the

1 October --

2 MS. EUDY: Oh, you're welcome. Not that
3 there wasn't already a great respect for Ellen, but
4 even more so after doing that. Motion to approve
5 the September 2014 minutes.

6 MR. HIERS: Second.

7 MS. TEZZA: All those in favor signify by
8 saying Aye.

9 ALL BOARD MEMBERS: Aye.

10 MS. TEZZA: Opposed, like sign. And
11 October?

12 MS. EUDY: A motion to approve the
13 October 2014 minutes.

14 MS. TEZZA: Thank you Summer.

15 MR. HIERS: Second.

16 MS. TEZZA: Second by Jimmy. All those
17 in favor signify by saying Aye.

18 ALL BOARD MEMBERS: Aye.

19 MS. SCHWEITZER: If I wasn't here, do I
20 still approve them?

21 MS. TEZZA: You can or you can't. You
22 didn't get to see them?

23 MS. SCHWEITZER: I did, yes.

24 MS. TEZZA: And you did comment on them
25 because you weren't here, so there -- you had to

1 make a change. Ellen has to keep track of a lot,
2 and our minutes have gotten very long. Now we'll
3 have an applicant and participant oath. Anybody
4 speaking before the BZA please stand.

5 MR. HENDERSON: That would just be me.

6 MS. TEZZA: That will just be Joe. Do
7 you swear to tell the truth, the whole truth and
8 nothing but the truth so help you, God?

9 MR. HENDERSON: I do.

10 MS. TEZZA: Thank you. What Joe has just
11 advised us of is we can go ahead and hear the
12 variance request for 2429 Atlantic Avenue for the
13 perennial wax myrtles. This is a normal variance
14 request that comes before us, either annually or
15 every other year, so I would like to know the
16 feeling of the board as to whether we should hear
17 that in absentia of the owner.

18 MR. SMITH: I'm fine with it. I remember
19 doing this last year.

20 MS. TEZZA: Right.

21 MR. HIERS: I think we had the applicant.

22 MS. TEZZA: We did have the applicant.

23 We usually have the applicant, and I don't know what
24 might have held her up or her -- I think actually
25 her --

1 MS. HENDERSON: I think she had a
2 representative tree contractor come, so he might not
3 have --

4 MS. TEZZA: So is it the feeling of the
5 board that we should go ahead and hear this variance
6 request?

7 MS. EUDY: Yes.

8 MS. TEZZA: Joe, will you present?

9 MR. HENDERSON: Okay. General Item D(1)
10 is a variance request. This is 2429 Atlantic
11 Avenue, Harriet P. McDougal. The applicant and
12 property owner is requesting a variance, Ordinance
13 Section 21-71(C)(3). This section permits or limits
14 the cutting of wax myrtles to five feet in length,
15 and the applicant's requesting to prune them to
16 three and a half feet. Since 2004 this property
17 owner has requested this dimensional variance for
18 the reason of having her house on a grade. It's not
19 elevated like the rest of the homes on the street.
20 And I would defer to you. Do y'all have any
21 questions?

22 MS. TEZZA: Is there any discussion?
23 This is an application that comes before us every
24 year. It's one of two that are granted on the front
25 beach. If anybody has any questions for Joe. This

1 is a standard application, just like the
2 applications in prior years.

3 MR. HENDERSON: It is.

4 MR. HIERS: Okay. I'll go ahead and make
5 a motion that we allow the pruning of wax myrtles at
6 2429 Atlantic Avenue to a height of three and a half
7 feet. In making this motion the board will base
8 part of its finding on the finding of previous
9 years, that this property has extraordinary and
10 exceptional conditions, that there are only two
11 houses that are essentially single story at ground
12 level, and since the ordinance was set up in 1995
13 the board has made on an annual basis an exception
14 for these two properties only. These conditions do
15 not generally apply to other properties in the
16 vicinity and cannot be taken as a precedent for any
17 other front beach property. Because of the unusual
18 conditions of these houses being at ground level the
19 application of the ordinance as it stands will
20 disproportionately impact the utilization of the
21 property.

22 The property owners with two stories are
23 allowed to cut wax myrtles previously seven feet,
24 but now to five feet, so the three and a half feet
25 for these two properties is proportional. The

1 authorization of a variance will not be of
2 substantial detriment to adjacent property or to the
3 public good. The character of the district will not
4 be harmed by the granting of the variance in these
5 two cases, as the board has determined since 1995.

6 And the following conditions will also
7 apply: That the house at 2429 Atlantic not be
8 altered by increasing the height or square footage
9 and provided that the zoning ordinance regulations
10 do not change with respect to tree pruning in the
11 RC-1 district and that the Town of Sullivan's Island
12 does not institute any other type of land management
13 or preservation plan for the RC-1 district
14 restriction of the cutting of the wax myrtles.

15 MS. TEZZA: Is there a second?

16 MR. HIERS: I'll second.

17 MS. TEZZA: Is there any further
18 discussion? All those in favor signify by saying
19 Aye.

20 ALL BOARD MEMBERS: Aye.

21 MS. TEZZA: Opposed, like sign. Thank
22 you. We now will take up -- there are two recusals,
23 one from Jim Hiers and one from Sarah Church on the
24 2720-B Goldbug Avenue, so I accept those recusals,
25 and the board, with the exception of Sarah and Jimmy

1 will now go into executive session with our attorney
2 to review a legal matter regarding the remand of a
3 filed order from the Circuit Court so that we can
4 have legal advice, so we will now go into executive
5 session in this room right over here.

6 (Board of Zoning Appeals breaks for Executive
7 Session from 6:13 to 6:37 p.m.)

8 BOARD OF ZONING APPEALS MEETING RESUMES:

9 MS. TEZZA: Okay. We are now back out
10 of executive session and addressing the
11 administrative appeal of 2720-B Goldbug Avenue. The
12 judge's order did not allow any new evidence and
13 directed the board to make a decision on the
14 findings of fact, so there will be no comments from
15 staff or from the public. This order remanded the
16 matter to this board for the limited purpose of
17 making findings of fact based on evidence in the
18 record to support the conclusion of the structured
19 issue is a non-conforming accessory structure, i.e.
20 a garage with a non-conforming apartment on the
21 second floor under the terms of the zoning
22 ordinance.

23 The court's order instructed the board to
24 adopt factual findings based upon the record on this
25 single issue and did not provide for the board to

1 take any additional evidence. Is there a motion?

2 MR. SMITH: Yes. I move that the board
3 adopt the following findings of fact in accordance
4 with Judge Dennis' order. Number one, the
5 certificate of occupancy for the upstairs living
6 quarters issued November 20th, 1989 classified the
7 apartment as an apartment above garage. This
8 certificate of occupancy refers to the structure as
9 a garage and the apartment as being above the
10 garage. This prior classification of the structure
11 as a garage with an apartment unit above it supports
12 the board's finding that the structure is a
13 non-conforming accessory structure. It shows that
14 the structure is an accessory structure with a
15 non-conforming but approved apartment use on the
16 second floor.

17 Number two, the inspection ticket issued
18 November 20th, 1991 approved the use of apartment
19 over garage. This document shows a request and
20 approval of the use of the apartment over the
21 garage. This prior classification of the structure
22 as a garage and the approval of the use of the
23 second floor as an apartment unit support the
24 board's finding that the structure is a
25 non-conforming accessory structure. It shows that

1 the structure is an accessory structure with a
2 non-conforming but approved apartment use on the
3 second floor.

4 Number three, the May 15th, 2001 survey of
5 2720 Goldbug Avenue issued by John E. Wade, Jr.,
6 RLS, identifies the structure as garage with
7 apartment. The survey identifies the owner of the
8 property at the time of the survey as Paul Boehm,
9 the applicant. The board finds that the
10 identification of the building on this survey as a
11 garage with an apartment is further support for the
12 board's finding that the structure is a
13 non-conforming accessory structure. The survey does
14 not identify the structure as a residence, dwelling,
15 house, principal building or apartment. The survey
16 identifies the structure as a garage, noting the
17 garage structure includes an apartment. The survey
18 shows that the building is an accessory structure
19 with a non-conforming but approved apartment use.

20 Number four, the design of the structure,
21 which can be readily observed by reference to the
22 photographs, drawings, documents and testimony in
23 the record, is that of a garage that has an
24 apartment on top. There are two garage doors on the
25 front of the structure, which open to the bays. The

1 only entrance to the apartment above the garage is
2 the staircase on the exterior right side of the
3 structure. The structure is designed for the
4 private storage of cars, boats, trailers, lawn
5 equipment or other recreational items. While there
6 is an apartment on the second story of the
7 structure, the board finds that these design
8 characteristics of the structure are further support
9 for the board's finding that the structure is a
10 non-conforming accessory structure. It shows that
11 the structure is an accessory structure with a
12 non-conforming but approved apartment use on the
13 second floor.

14 Number five, the applicant agreed in his
15 testimony before the board that the structure is
16 comprised of a garage on the first floor and an
17 apartment on the second floor. The applicant
18 characterized the structure as a dwelling with a
19 garage below it, but did not dispute that the first
20 floor was indeed a garage. In fact, a real estate
21 listing from the applicant's real estate company
22 described the first floor of the secondary structure
23 as follows: a garage for two cars, a
24 storage/workshop area for your favorite hobbies.
25 Instead of cars put a pool table and ping pong table

1 in garage. When asked about this listing the
2 applicant continued to characterize the structure as
3 a dwelling with a garage below it. However, the
4 board finds that this testimony provides additional
5 support for the board's finding that the structure
6 is a non-conforming accessory structure and rejects
7 the applicant's subjective classification of the
8 structure is rejected.

9 Six, and this is final, the board finds
10 that the structure at issue and use of the structure
11 as a garage with a non-conforming apartment on the
12 second story is customarily incidental to the
13 principal use in building located on the lot, a
14 principal building used as a residence. The board
15 recognizes the structures on the lot are now part of
16 a condo regime, but finds that the establishment of
17 the condo regime does not convert an accessory
18 structure into a second principal building.

19 MS. TEZZA: Is there a second?

20 MS. SCHWEITZER: Second.

21 MS. TEZZA: All those in favor signify by
22 saying Aye.

23 ALL BOARD MEMBERS: Aye.

24 MS. TEZZA: All opposed, like sign. The
25 board therefore makes these findings of fact based

1 upon the record of the March 13th, 2014 minutes of
2 this board. And we'll now move and see if there's
3 any public input. There being none --

4 MR. SMITH: May I make a move to adjourn?

5 MS. TEZZA: You may. All those in favor
6 say Aye.

7 ALL BOARD MEMBERS: Aye.

8 MS. TEZZA: Opposed, like sign. This
9 meeting is adjourned.

10 (The meeting adjourns at 6:42 p.m.)

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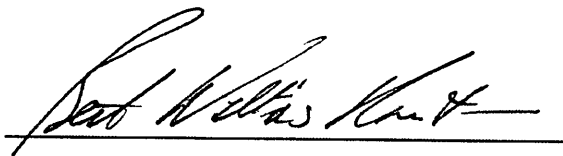
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I, Beth Walters Kornuta, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the aforementioned Sullivan's Island Board of Zoning Appeals Meeting was recorded by me and transcribed through computer-aided transcription to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said board members at the time and place specified.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this meeting is taken, neither am I financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 27th day of January, 2015.



Beth Walters Kornuta, CR
Notary Public for South Carolina
Commission Expires: 6/18/2023