



TOWN OF KIAWAH ISLAND

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JUN 29 2009

TOWN OF KIAWAH ADMINISTRATOR Attn: TUMIKO RUCKER
21 BEACHWALKER DR
KIAWAH ISLAND, SC 29455

June 26, 2009

Refer to Board of Zoning Appeals **Case # BZAV-4-09-3698**

Recently you were notified of The Town of Kiawah Island Board of Zoning Appeals (BZA) public hearing held on **June 15, 2009** regarding a Variance request for the reduction of the required 30' rear yard setback along the golf course for a proposed swimming pool and deck addition encroachment of 96.5 square feet for the property located at 331 Catbrier Ct (TMS# 209-01-00-048) was **approved with conditions**. Please find an enclosed copy of the Order on Variance Application # **BZAV-4-09-3698**.

Sincerely,

Daniel C. Pennick, AICP
BZA Secretary

DCP/rh
Cc: File BZAV-4-09-3698
Enclosure



**Town of Kiawah Island
Board of Zoning Appeals Final Decision and Order on
Variance Application # BZAV-4-09-3698 for property
located at 331 Catbrier Ct**



Findings of Fact

The Town of Kiawah Island Board of Zoning Appeals ("BZA") makes the following findings of fact pursuant to S.C. Code Ann. §6-29-800 and Article 12 of the *Town of Kiawah Island Code of Ordinances*, Article 12A *Land Use Planning/Zoning Ordinance* §12A-509. Based on the evidence presented at the hearings held on May 18, 2009 and June 15, 2009, to include the Planning Department's staff review and pursuant to §12A-509.4 of the Town's Code of Ordinances, the Town of Kiawah Island BZA finds that John B. Pohle with Compass Rose Design Builders ("the Applicant") filed an application on April 16, 2009, for a Zoning Variance for property identified as TMS # 209-01-00-048 and located at 331 Catbrier Ct, Town of Kiawah Island, Charleston County, South Carolina. The Applicant requested a Zoning Variance request for the reduction of the required 30' rear yard setback along the golf course for a proposed swimming pool and deck addition encroachment of 96.5 square feet.

The BZA also finds that there are extraordinary and exceptional conditions pertaining to the property because the existing rear deck is a legal non-conforming structure which currently encroaches into the rear yard setback. Additionally, the original placement of the house was dictated by several large live oak trees located on the subject property as explained in the applicant's letter of intent and the submitted KIARB approval letter.

The BZA also finds that these setback conditions do not generally apply to other properties in the vicinity due to the narrow shape of the subject property and the location of the several large live oak trees within the subject property.

The BZA also finds that the application of this Ordinance to 331 Catbrier Ct would prohibit the replacement and reconfiguration of the rear deck as shown on the proposed site plans.

The BZA also finds that the authorization of this variance will not be of substantial detriment to the adjacent properties or to the public good and the character of the Residential (R-1) Zoning District will not be harmed by the granting of this variance because the proposed deck will extend into the rear yard setback adjacent to the golf course instead of encroaching toward adjacent residential properties. Additionally, the distance the rear porch encroaches into the setback has been reduced and the adjacent property owner to the west (332 Catbrier Court) has submitted a letter in support of this variance.

The BZA also finds that granting of this variance would not allow the establishment of a use not otherwise permitted in this zoning district, extend physically a nonconforming use of land, or change the zoning district boundaries.

The BZA also finds that the fact that property may be utilized more profitably, by granting the variance, was not considered grounds for this variance approval.

The BZA also finds the need for the variance is not the result of the applicant's own actions because the existing rear deck is a legal non-conforming structure which currently encroaches into the 30' rear yard setback. Any reconfiguration of the deck along the rear of the residence beyond its current location would require an approved variance.

The BZA also finds that granting of this variance will not be contrary to the public or neighborhood interest, nor will not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent, and purpose of these regulations because a letter was submitted from the KIARB dated April 16, 2009, stating, "The requested rear yard variance is approved due to the large live oak that affects the original placement of the home and the reduction of existing rear yard encroachments." Additionally, the orientation of the rear of the home in relation to the golf course inhibits the renovation from encroaching toward any existing residences, and the reconfiguration of the rear deck reduces the encroachment within the setback toward the golf course.

The BZA also finds that granting of this variance does not substantially conflict with the *Comprehensive Plan* or the purposes of this *Ordinance* because the total proposed lot coverage is 29%, which is under the maximum allowed lot coverage of 33% for this parcel. Additionally, the proposed renovation should not further obstruct the view from adjacent parcels because the distance which the proposed deck and pool is to extend into the rear setback will be reduced from the existing deck encroachment.

The BZA also finds that the applicant shall meet the following conditions:

1. The applicant should work in good faith with their architect and the Kiawah Island ARB to further reduce the encroachment in the rear yard setback along the golf course to the minimum amount necessary for safety purposes; provided however, if further reduction is not achieved, the variance shall nevertheless be granted.
2. The applicant shall implement the Kiawah Island ARB's recommendations for the landscape buffer.

Conclusions of Law

The BZA is authorized pursuant to S.C. Code Ann. §6-29-800 and Article 12 of the *Town of Kiawah Island Code of Ordinances*, Article 12A *Land Use Planning/Zoning Ordinance* §12A-509 to hear and approve, approve with conditions, or deny zoning variances. Based upon the findings of fact, the Board of Zoning Appeals concludes as a matter of law that the applicant's request for the zoning variance satisfies the Approval Criteria in the *Land Use Planning/Zoning Ordinance* §12A-509.4. A party in interest may appeal this decision to the Circuit Court of Charleston County within 30 calendar days after the decision of the Board of Zoning Appeals is mailed.

THEREFORE, the Town of Kiawah Island Board of Zoning Appeals approves this zoning variance request for the reduction of the required 30' rear yard setback along the golf course for a proposed swimming pool and deck addition encroachment of 96.5 square feet at 331 Catbrier Ct with the above referenced conditions.



Daniel C. Pennick, AICP
BZA Secretary

Date issued: June 15, 2009

Date mailed to parties in interest: June 26, 2009