



TOWN OF KIAWAH ISLAND

21 BEACHWALKER DRIVE • KIAWAH ISLAND, SC 29455 • (843) 768-9100 • FAX (843) 768-4764

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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-4-09-3507**

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 a 7'-1 ½" fence for the property located at 176 Flyway Drive (TMS# 264-16-00-042) was **approved**. Please find an enclosed copy of the Order on Variance Application # **BZAV-4-09-3507**.

Sincerely,

Daniel C. Pennick, AICP
BZA Secretary

DCP/rjh
Cc: File BZAV-4-09-3507
Enclosure

**Town of Kiawah Island
Board of Zoning Appeals Final Decision and Order on
Variance Application # BZAV-4-09-3507 for property
located at 176 Flyway Drive**



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 hearing held 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 Daniel J. Sullivan ("the Applicant") filed an application on April 3, 2009, for a Zoning Variance for property identified as TMS # 264-16-00-042 and located at 176 Flyway Dr, Town of Kiawah Island, Charleston County, South Carolina. The Applicant requested a Zoning Variance for a 7'-1 ½" fence. The *Town of Kiawah Island Land Use Planning/Zoning Ordinance*, Section 12A-303 5.C. requires fences shall not exceed five (5) feet in height from grade for residential development.

The BZA also finds that there are extraordinary and exceptional conditions pertaining to the particular piece of property because they are supporting columns for the gate and the limestone carved column design is integral to the overall architecture, and the supporting columns are not readily visible from Flyway Drive.

The BZA also finds that these conditions do not generally apply to other properties in the vicinity because of the reasons set forth in the proceeding paragraph.

The BZA also finds that the application of this Ordinance to 176 Flyway Dr would require the replacement of or modification to the existing support columns to meet the fence height requirement and in so doing would prohibit the continued use of the support columns.

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 existing fence/gate is approximately 195' midway down the driveway and is not readily visible from the roadway as well as from adjacent residences. Additionally, the fence/gate has been designed to be consistent with architecture of the existing residence.

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 applicant's letter of intent explains, "The ARB approved the drawings, but added a handwritten note on the specific gate detail that indicated the columns still needed further height reduction. Since the permit was granted without any comments, my builder archived the permit set for safe keeping and was unaware of the handwritten note from the ARB."

The BZA also finds that granting of this variance will not be contrary to the public or neighborhood interest, nor will it adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent, and purpose of these regulations because the construction materials and design of the fence/gate have been architecturally integrated into the development of the parcel.

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 existing fence/gate does not obstruct the view to and from adjacent parcels and the roadway. Additionally, the applicant's letter of intent explains, "The gate provides some level of security and discourages trespassing from autos driving and bikes riding down the driveway."

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 a 7'-1 ½" fence at 176 Flyway Dr.



Daniel C. Pennick, AICP
BZA Secretary

Date issued: June 15, 2009
Date mailed to parties in interest: June 26, 2009