



TOWN OF KIAWAH ISLAND

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William G. Wert, Mayor

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February 6, 2009

Refer to Board of Zoning Appeals **Case # BZAV-12-08-2296**

Recently you were notified of The Town of Kiawah Island Board of Zoning Appeals (BZA) public hearing held on **January 26, 2009** regarding a Variance request for the reduction of the required 40' side yard setback adjacent to the Property Owner's Pool by 20' to 20' for the encroachment of a proposed swimming pool and deck at or near ground level for the property located at 1A Eugenia Ave (TMS# 207-08-00-098). This Variance request was **approved with conditions**. Please find an enclosed copy of the Order on Variance Application # **BZAV-12-08-2296**.

Sincerely,

Daniel C. Pennick, AICP
BZA Secretary

DCP/rjh
Cc: File BZAV-12-08-2296
Enclosure



**Town of Kiawah Island
Board of Zoning Appeals Final Decision and Order on
Variance Application # BZAV-12-08-2191 for property
located at 1039 Warbler Court**

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 January 26, 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 Malcolm Brennan (“the Applicant”) filed an application on December 11, 2008, for a Zoning Variance for property identified as TMS # 207-06-00-024 and located at 1039 Warbler Court, Town of Kiawah Island, Charleston County, South Carolina. The Applicant requested the following Zoning Variances:

1. Variance request for the reduction of the required 20’ front yard setback along Duneside Road for a proposed single family structure encroachment of 264 square feet;
2. Variance request from the required 15’ building separation to allow approximately 39 square feet of heated space to be within 10’-3” of the adjacent building; and
3. Variance request for the reduction of the required 7’ side yard setback along the southern property line for a proposed deck encroachment of approximately 73 square feet.

The BZA also finds that there are extraordinary and exceptional conditions pertaining to the property because the lot has double-frontage along Warbler Court and Duneside Road. Section 12A-204 B. of the *Ordinance* requires that front yard setback standards apply to each lot line that borders a street right-of-way. This requirement creates unique site constraints because a 20’ front yard setback applies to the Duneside Road lot line to the north versus a 7’ side yard setback.

The BZA also finds that these setback conditions only apply to other properties in the vicinity that have double-frontage or are corner lots. Furthermore, the existing residence at 1040 Anhinga Court, which is the adjacent lot directly behind the subject property, is approximately five feet from the edge of pavement on Duneside Road as stated in the applicant’s letter of intent and as shown on the submitted site plan.

The BZA also finds that the application of this Ordinance to 1039 Warbler Court would prohibit the construction of the additions to the single family residence as shown on the proposed site plans. The applicant testified that the Kiawah Island Cottage Owners Association (KICOA) and the Kiawah Island Architectural Review Board (KIARB) would not support the addition within the required setbacks because it would locate the addition closer to the adjacent residences creating privacy issues.

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 because KICOA does not consider the addition detrimental to the character of the neighborhood (see KICOA letter). Therefore, the character of the zoning district will not be harmed by granting 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 applicant testified the project was designed based on the recommendations of the KICOA, regime and KIARB. Additionally, the existing residence is 30 years old and there are no alternatives for additions to the existing residence.

The BZA also finds that granting of this variance will not be contrary to the public or neighborhood interest, will not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent, and purpose of these regulations because the addition fits in well with the existing community. Additionally, a letter was submitted from the KIARB that states, "The KIARB does not further burden corner lots abutting Duneside Road in the Sparrow Pond Cottage development with increased frontage setbacks. This is evident in the placement of existing structures in this community and is due to the original development strategy of the neighborhood. Please favorably consider this clarification of the setback intent."

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 39.3%, which is well under the maximum allowed lot coverage of 50% for this parcel. Additionally, the applicant's letter of intent from the owner states, "To further enhance the safety between the cottages, we are prepared to exceed code by providing one-hour fire rated construction along the entire south wall of the cottage."

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

- 1. The encroachment is restricted to the location and dimensions as shown on the submitted site plan.**

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 application for following Zoning Variances:

1. Variance request for the reduction of the required 20' front yard setback along Duneside Road for a proposed single family structure encroachment of 264 square feet;
2. Variance request from the required 15' building separation to allow approximately 39 square feet of heated space to be within 10'-3" of the adjacent building; and
3. Variance request for the reduction of the required 7' side yard setback along the southern property line for a proposed deck encroachment of approximately 73 square feet at 1039 Warbler Court with the above referenced condition.



Daniel C. Pennick, AICP
BZA Secretary

Date issued: January 26, 2009

Date mailed to parties in interest: February 6, 2009