



TOWN OF KIAWAH ISLAND

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FEB 08 2010

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

February 5, 2010

Refer to Board of Zoning Appeals **Case # BZAV-12-09-6543**

Recently you were notified of The Town of Kiawah Island Board of Zoning Appeals (BZA) public hearing held on **January 25, 2010** regarding a Variance request for the reduction of the required 30' rear yard setback along the lagoon by 21 ft. to 9 ft. for a proposed screened/sun porch addition encroachment of approximately 34.5 sq. ft for the property located at 519 Ruddy Turnstone (TMS# 207-04-00-069). This Variance request was **approved with a condition**. Please find an enclosed copy of the Order on Variance Application # **BZAV-12-09-6543**.

Sincerely,

Daniel C. Pennick, AICP
BZA Secretary

DCP/rjh
Cc: File BZAV-12-09-6543
Enclosure

**Town of Kiawah Island
Board of Zoning Appeals Final Decision and Order on
Variance Application # BZAV-12-09-6543 for property
located at 519 Ruddy Turnstone**



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 25, 2010, 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 Kevin Whalley with Dolphin Architects and Builders, Inc. ("the Applicant") filed an application on December 17, 2009, for a Zoning Variance for property identified as TMS # 207-04-00-069 and located at 519 Ruddy Turnstone, Town of Kiawah Island, Charleston County, South Carolina. The Applicant requested a Zoning Variance for the reduction of the required 30 ft. rear yard setback along the lagoon by 21 ft. to 9 ft. for a proposed screened/sun porch addition encroachment of approximately 34.5 sq. ft

The BZA also finds that there are extraordinary and exceptional conditions pertaining to the property because the residence is a legal non-conforming structure. Nearly the entire existing rear deck and a significant portion of the existing enclosed structure encroach into the side and rear yard setbacks. Additionally, the subject parcel has frontage on the lagoon along both the side and rear yard setbacks which requires 30' setbacks instead of 15' on the side.

The BZA also finds that these setback conditions do not generally apply to other properties in the vicinity. Rear yard setbacks for lots on Ruddy Turnstone vary from 20' to 30'. However, the general side yard setback requirements for the lots on Ruddy Turnstone are 15', with the exception of five lots. Four of these five lots are adjacent to the marsh or lagoon and require a 30' side yard setback.

The BZA also finds that the application of this *Ordinance* to 519 Ruddy Turnstone would prohibit the construction of the proposed screened sun porch addition, 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 because the proposed addition will not further obstruct the view from adjacent parcels and the character of the zoning district will not be harmed by granting this variance because the existing structure encroaches up to 17.8' into the setback.

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 a result of the proposed screened porch addition of 34.5 square feet beyond the current encroachment of the existing wood deck into the rear yard setback in order to align with the existing staircase and the edge of the existing building. This improvement will allow the roof line to continue across the rear elevation. The existing rear deck is a legal non-conforming structure which currently encroaches into the 30'

rear yard setback and 30' side yard setback by 17.8'. Any expansion 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, 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 December 3, 2009, which states, "The increase of the first floor mass at the existing open deck is approved due to the likelihood of a similar mass being allowed during the original review of the home and its unique site considerations." Additionally, "The increase of existing encroachment is approved to accommodate aesthetic considerations as result of the sun porch addition."

The BZA also finds that the proposed addition would increase the encroachment into the rear yard setback by approximately 34.5 square feet and slightly increase the total lot coverage. Staff suggests that a rain garden be installed between the proposed screened sun porch and the lagoon to mitigate any negative effects to stormwater runoff potentially caused by the increased encroachment. Therefore, granting of this variance will not substantially conflict with the *Comprehensive Plan* or the purposes of this *Ordinance* when plans are approved and implemented to mitigate stormwater runoff.

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

- 1. Prior to zoning permit approval, the applicant shall submit plans for a rain garden to the KIARB and the Town of Kiawah Island Planning Staff for review and approval. Once the addition is completed, the rain garden shall be installed between the proposed screened sun porch and the lagoon in order to minimize any stormwater runoff into the lagoon.**
- 2. The BZA has concerns about the effect of additional roofing area and related collection of water during periods of rain, and the board directs that the Planning Staff review the impact of drainage on the variance and recommend a solution that is mutually agreeable to the architect, the property owner and the Town of Kiawah Island.**

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 ft. rear yard setback along the lagoon by 21 ft. to 9 ft. for a proposed screened/sun porch addition encroachment of approximately 34.5 sq. ft at 519 Ruddy Turnstone with the above referenced conditions.



Date issued: January 25, 2010
Date mailed to parties in interest: February 5, 2010

Daniel C. Pennick, AICP
BZA Secretary