



TOWN OF KIAWAH ISLAND

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FEB 27 2009

William G. Wert, Mayor

TOWN OF KIAWAH ADMINISTRATOR Attn: TUMIKO RUCKER
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Council Members

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Town Administrator

Tumiko Rucker

February 27, 2009

Refer to Board of Zoning Appeals **Case # BZAV-1-09-2526**

Recently you were notified of The Town of Kiawah Island Board of Zoning Appeals (BZA) public hearing held on **February 23, 2009** regarding a Variance request for the reduction of the required 30' side yard setback along the golf course for a proposed deck addition encroachment of 143 square feet for the property located at 139 Broomsedge Lane (TMS# 207-03-00-032). This Variance request was **approved with conditions**. Please find an enclosed copy of the Order on Variance Application # **BZAV-1-09-2526**.

Sincerely,

Daniel C. Pennick, AICP
BZA Secretary

DCP/rjh
Cc: File BZAV-1-09-2526
Enclosure

**Town of Kiawah Island
Board of Zoning Appeals Final Decision and Order on
Variance Application # BZAV-1-09-2526 for property
located at 139 Broomsedge Lane**



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 February 23, 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 Steve and Joyce Howe ("the Applicant's") filed an application on January 12, 2009, for a Zoning Variance for property identified as TMS # 207-03-00-032 and located at 139 Broomsedge Lane, Town of Kiawah Island, Charleston County, South Carolina. The Applicant requested a Zoning Variance for the reduction of the required 30' side yard setback along the golf course for a proposed deck addition encroachment of 143 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 parcel is bounded on the side and rear by the Cougar Point Golf Course. A 30' setback is required from the side and rear property lines adjacent to the Cougar Point Golf Course.

The BZA also finds that these setback conditions do not generally apply to other properties in the vicinity because other properties do not have double frontage on the Golf Course.

The BZA also finds that the application of this Ordinance to 139 Broomsedge Lane would prohibit the replacement and reconfiguration of the rear deck as shown on the proposed site plans. Additionally, the utilization of the existing rear deck may be restricted as explained in the applicants' letter of intent, "...our dream was to expand the deck just five feet. This is important because to sit on our deck at its current size requires that we climb over the deck chairs just to sit down next to each other."

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 Cougar Point Golf Course instead of encroaching toward adjacent residential properties. Additionally, the proposed reconfigured deck shall not extend beyond the furthestmost extension of the existing deck and the contextual rear setbacks of the adjacent properties. 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 existing rear deck is a legal non-conforming structure which currently encroaches into the 30' rear yard setback. 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, 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 October 8, 2008, stating, "The ARB has reconsidered the rear deck variance request and has concluded that due to the original location of the home to preserve the trees, the proposed deck expansion meets ARB variance criteria and therefore is approved." Additionally, the applicants' letter of intent explains, "...our golf course location allows the expansion without encroaching on any existing residence."

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 29.32%, which is under the maximum allowed lot coverage of 33% for this parcel. Additionally, the proposed deck should not further obstruct the view from adjacent parcels because the proposed deck will not extend beyond the furthestmost extension of the existing deck and substantial landscaping (a minimum height of five and half feet) shall be installed that will visually screen the outer foundation of the deck from the golf course.

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

1. **The encroachment is restricted to the location and dimensions as shown on the submitted site plan.**
2. **The applicant shall submit a landscape plan for Planning Staff review and approval that depicts the installation of substantial landscaping (a minimum height of five and half feet) that will visually screen the outer foundation of the deck from the golf course.**

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' side yard setback along the golf course for a proposed deck addition encroachment of 143 square feet at 139 Broomsedge Lane with the above referenced conditions.



Daniel C. Pennick, AICP
BZA Secretary

Date issued: February 23, 2009

Date mailed to parties in interest: February 27, 2009