

**Town of Kiawah Island  
Board of Zoning Appeals**

**Rules of Procedure**

The Board of Zoning Appeals (BZA) of the Town of Kiawah Island is a quasi-judicial body established to interpret and grant relief from the Town of Kiawah Island Land Use Planning/Zoning Ordinance. The administrative office of the BZA shall be located in the Town Hall office. The actions of the BZA are governed by the Town of Kiawah Island Land Use Planning/Zoning Ordinance contained in Article 12 of the Town of Kiawah Island Municipal Code and the South Carolina Code of Laws, Chapter 29, Article 5, Sections 6-29-780 through 6-29-860 et seq. All actions of the BZA and its members shall be taken in compliance with Robert's Rules of Order unless such rules are in conflict with the adopted BZA Rules of Procedure. The BZA Rules of Procedure shall always be available to the public upon request.

The BZA has decision making authority over three (3) types of applications:

1. Appeal of an Administrative Decision may be filed when there is an alleged error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Land Use Planning/Zoning Ordinance.
2. Variations may be filed when strict application of the zoning ordinance would cause an unnecessary hardship. The BZA's actions on such variance requests must be based on the specific standards contained in the Land Use Planning/Zoning Ordinance.
3. Special Exceptions allow the BZA to permit uses if certain terms and conditions in the Land Use Planning/Zoning Ordinance are satisfied.

In each case, the BZA is authorized to approve, to approve with conditions or to deny a request. The BZA is authorized to refer the application to staff or to defer action if additional information is deemed necessary.

**MEMBERSHIP**

1. The BZA shall consist of seven (7) members, a majority of which constitutes a quorum, to be appointed by the Mayor with the consent of the Town Council. At least (5) of the members shall be residents of the Town of Kiawah Island. A resident member shall mean a person who resides permanently in the Town of Kiawah Island for not less than eight (8) months of each calendar year and is registered to vote on Kiawah Island. Of the seven (7) members, the BZA may consist of as many as two (2) members who own property in the Town of Kiawah Island but are not "residents." The term of office shall be for three years. Any vacancy shall be filled for the unexpired term by an individual appointed by the Mayor with the consent of the Council. All members shall serve without compensation, but may be reimbursed for actual expenses incurred in connection with their official duties, provided Council has approved such expenditures.

2. The Mayor and Town Council of Kiawah Island determines members of the BZA and their tenure for their specific expertise, community knowledge, and concern for the future welfare of the total community and its citizens. They shall represent a broad cross section of community interest, concerns and professions.
3. Should a vacancy occur in the membership of the BZA, the Chairperson of the BZA, for the purpose of appointing a replacement member, will give immediate notice to the Clerk of Town Council. In November of each year the Town Clerk shall provide the BZA a written document setting forth the terms of the existing members.
4. No member shall hold an elected public office in the Town of Kiawah Island or Charleston County.
5. Members who resign by absenteeism or due to holding dual offices must vacate their seat immediately upon resignation. Members who resign for other reasons, members who are no longer qualified to serve and members who are not reappointed shall serve until their successors are appointed and qualified.

#### **OFFICERS**

1. **CHAIRPERSON** - At the first scheduled meeting of the BZA in any calendar year, the BZA shall elect one (1) of its members to serve as Chairperson. The duration of the term shall be one (1) year. The Chairperson may be reelected. The Chairperson shall be a voting member of the BZA.
2. **VICE-CHAIRPERSON** - At the first scheduled meeting of the BZA in any calendar year, the BZA shall elect one (1) of its members to serve as vice-chairperson. The duration of this term shall be one (1) year. The Vice-Chairperson may be re-elected.
3. In the event that both the Chair and the Vice-Chair are absent from a meeting, the legal staff shall conduct an election from among those members present to determine who shall conduct that meeting.
4. **SECRETARY**- The Planning Director shall serve as Secretary to the Board.

Should a vacancy occur among the officers of the BZA, an election shall be held at the next regularly scheduled meeting to fill the unexpired term of that officer.

#### **BOARD MEMBER ATTENDANCE**

1. All members are expected to attend at least eighty (80%) percent of the scheduled and held meetings each calendar year
2. It is most important that members of the Board be present at meetings. When a member is to be tardy or not able to attend a meeting of the Board, said member should so notify the Town Clerk in advance. Staff will inform the Chair of the anticipated tardiness or absence.

3. If votes are to be taken on an application, Board members must be physically present in order to participate. A board member who is unable to be physically present may attend virtually via video conference and where exceptional circumstance exist.

### MEETINGS

1. Each December, the BZA shall establish its schedule of meetings for the next calendar year. The time and place of the meetings shall be specified in the schedule.
2. A quorum is necessary in order for the BZA to conduct business. A quorum shall consist of a simple majority of the total membership of the BZA.
3. Should an emergency situation arise that cannot be addressed by Planning Staff, Staff may ask the Chairperson to call a special meeting to address that specific situation when waiting until the next regularly scheduled meeting of the BZA will dangerously and seriously affect an applicant or the general welfare of the community. A special meeting may be called at the discretion of the Chairperson. Alternatively, such a special meeting may be called upon the request of two (2) members of the BZA to the Chairperson. Three (3) working days notice shall be given to the BZA and the public.
4. When a regularly scheduled meeting is canceled as a result of a hurricane or other emergency situation, a substitute meeting may be held after three (3) working days notice to the BZA and the public.
5. Members of the BZA shall not discuss any pending application outside of the public hearing. If a proponent or opponent approaches a member regarding an application, he/she shall disclose that information to the BZA meeting when the matter is called.
6. A member may disqualify her/himself from discussion and voting when any proponent or opponent of an application has sought to influence the vote in any forum outside of the application process.
7. A member of the BZA shall recuse her/himself from participating in any matter in which she/he has a financial or personal interest in the property or action concerned or will be directly affected by the decision.
8. Swearing of witnesses by the Secretary of the Board, or their designee, may be done individually or as a group. All persons addressing the BZA to give testimony or evidence must be sworn. All persons addressing the BZA to give testimony or evidence shall state their full name and current address.
9. Public hearings of the BZA shall be conducted in accordance with these Rules of Procedure and all applicable laws. Applications for consideration shall be presented to the BZA in the following manner:
  - a. Presentation of Application by Staff;
  - b. Questions to Staff by BZA;
  - c. Presentation of Application by Applicant;

- d. Questions to the Applicant by BZA;
  - e. Presentation of information either in support of or in opposition to the Application;
  - f. Applicant's Reply to Opposition;
  - g. BZA Motions Concerning Application, stating specific findings of fact and conclusions of law; and
  - h. BZA action concerning the Application.
10. Time limits on presentations may be proposed by the Chairperson and approved by the BZA.
  11. All applications for Appeals, Variances and Special Exceptions that are to be considered by the BZA must be completed and filed at the administrative office no less than thirty (30) days prior to the meeting at which they will be considered.
  12. All written material submitted either in support of or in opposition to an application that is not supported by witness testimony must be received by the administrative office of the Planning Department at least five (5) working days prior to the public hearing during which the application is to be considered and shall be delivered to the BZA at least two (2) working days before the meeting.
  13. ~~Upon motion, the~~The BZA may accept and consider written material submitted either in support of or in opposition to an application less than five (5) working days prior to the public hearing.
  14. All information on file for cases on the agenda must be in the possession of the members of the BZA at least five (5) working days prior to the meeting at which the cases are to be heard, unless otherwise provided herein.
  15. At the public hearing, the case file prepared by the staff shall be entered into the official records of the BZA. In accordance with items 11 and 12, the BZA may accept affidavits, testimony or other evidence that may be presented by the proponents or opponents. All new evidence may be entered into the records by the BZA.
  16. The BZA, by its own motion, may certify contempt to the Circuit Court if false, misleading, or incomplete statements are made by any person presenting information to the BZA.
  17. The BZA, by its own motion, may call additional witnesses. The BZA has authority to subpoena witnesses.
  18. After each case has been voted on, the Chairperson shall announce into the record how each member voted.
  19. Cases to be heard by the BZA may be deferred for a period of time not to exceed ninety (90) days. For the record, the reason given for postponement must be clearly stated in the motion for deferral.

20. Upon vote of the BZA, any member from the prevailing side or in the event of a tie vote, any member, may make a motion to reconsider a case at the same or next BZA meeting. Any member may second the motion. In granting the motion for reconsideration, the BZA must find that it misapprehended or misconceived the question or questions involved, or that it erred in its finding or disposition of the appeal, application or matter. If the motion to reconsider the case is granted, then the case will be scheduled and heard by the BZA at same or the next available BZA public hearing provided all required notifications have been met. A case may be reconsidered only once.

21. A case may also be reconsidered upon the receipt of new evidence that has not been entered into the record of the decided case, as determined by the BZA Secretary and or legal staff only within 10 calendar days from the date of the decided vote. The BZA Secretary and or legal staff shall make a determination of the new evidence submitted within 15 calendar days. If it is determined that new evidence has been found, then the case may be scheduled and heard by the BZA at the next available BZA public hearing provided all required notifications have been met. A case may still be reconsidered only once.

20-22. The Chairperson or her/his designee shall sign all orders.

23. Board members may participate by telephone in meetings where no applications are to be considered.

24. Executive Sessions – It is a violation of the Town’s Code of Ordinances for a member of the Board of Zoning Appeals or person in attendance to disclose to another person or make public any matter discussed in executive session. If the Board enters executive session during a meeting, a member attending virtually shall adhere to executive session privileges, ensure that no other person can hear the executive session, and shall acknowledge upon request that there are no other persons present or able to hear the executive session. Failure to protect the privileged discussions of an executive session can result in the member’s removal from the Board.

### **ADDITIONS, DELETIONS OR MODIFICATIONS**

Additions, deletions or modifications to these procedures may be adopted by the BZA at a regular meeting when such changes have been previously presented and discussed at a prior BZA meeting.

### **SEVERABILITY**

If a court of competent jurisdiction determines that any provision of these Rules of Procedure is invalid, that ruling shall apply only to the provision in question and will not invalidate any other provision of these Rules of Procedure. If any court of competent jurisdiction rules invalid a specific application of any provision of these Rules of Procedure, that ruling will not affect the application of these Rules of Procedure in other instances.

**Date adopted:** \_\_\_\_\_

\_\_\_\_\_  
**Signature of BZA Chairperson**

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**Signature of the Secretary of the BZA**

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**Signature of the Attorney for the BZA**

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