

1 TOWN OF KIAWAH ISLAND  
2 BOARD OF ZONING APPEALS  
3 OCTOBER 21, 2024, MEETING

4

5 BEFORE: FRANK CASSIDY, Chairman

6 LIN O'LEARY

7 BEN FARABEE

8 J. JAY LEWIS (via videoconference)

9 J. PHILLIP ADAMS (via videoconference)

10 Kiawah Island Board of Zoning Appeals

11

12 ALSO PRESENT: JOHN TAYLOR, Planning Director

13 DANIEL VINCENT, Planner 1

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15 J. BOONE AIKEN, IV, ESQ., Counsel

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17 DATE: OCTOBER 21, 2024

18 TIME: 1:00 p.m.

19 LOCATION: KIAWAH ISLAND MUNICIPAL CENTER

20 KIAWAH ISLAND, SC

21 TRANSCRIBED BY: CAROL T. LUCIC, RPR, RMR

22

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1           CHAIRMAN CASSIDY: I will call to order  
2 this October 21, 2024, meeting of the Town of  
3 Kiawah Island Board of Zoning Appeals. I'm Frank  
4 Cassidy. I'm the chairman of the board. With me  
5 today hearing these cases are Ben Farabee, Lin  
6 O'Leary, and virtually up there you will see Phil  
7 Adams and J. Jay Lewis. Here from staff are John  
8 Taylor, our planning director, and Daniel Vincent  
9 from our planning staff and our legal counsel,  
10 Boone Aiken.

11           Our case rulings from this and any BZA  
12 meeting are available for public review and  
13 inspection during normal business hours at Town  
14 Hall. Since this meeting is being conducted  
15 virtually via Zoom, please be reminded in order to  
16 make sure that we have a clear record for anybody  
17 who is listening live or may be listening at a  
18 later date, I ask all participants not to speak  
19 over one another. If you would like to speak,  
20 raise your hand, I'll recognize you, go to the  
21 mike, and make your comments.

22           At this time I would like to explain to  
23 the public the workings of the BZA. The Board of  
24 Zoning Appeals is a quasi-judicial body established  
25 to interpret and grant relief from the zoning

1 ordinance. The Board of Zoning Appeals has  
2 jurisdiction over three types of cases, appeals,  
3 variances, and special exceptions. Appeals are  
4 heard regarding administrative actions or decisions  
5 by the zoning administrator or staff. Variances  
6 may be granted when strict application of the  
7 zoning ordinance would cause an unnecessary  
8 hardship.

9 This board's actions must be based on  
10 specific standards, which you will hear about  
11 today, as contained in the SC Local Government  
12 Planning Enabling Act of 1994 of the Town of Kiawah  
13 zoning ordinance. Special exceptions allow the  
14 board to permit uses if certain conditions as  
15 contained in the zoning ordinance are met.

16 A simple majority vote of the quorum  
17 present is required to grant a variance and  
18 overturn the decision of the zoning administrator  
19 in an appeal or to grant a special exception.  
20 Because today's hearing is a public fact-finding  
21 meeting, we are in compliance with the Freedom of  
22 Information Act and SC Code 6-29-70.

23 15 days prior to this meeting an  
24 announcement was printed in the Post & Courier, a  
25 sign was posted on or near the designated

1 properties, and notice was mailed to the applicant  
2 or representative -- to residents within 500 feet  
3 of the application, and to parties of interest.  
4 Persons, organizations, and the news media that  
5 requested declaration of our meeting have also been  
6 notified. The Freedom of Information Act does not  
7 require notification of anyone other than the  
8 applicant and the parties of interest.

9 Our purpose today is for interested  
10 parties to be heard in order to assist the board in  
11 gathering evidence pertinent to each case. If the  
12 members of the BZA feel the need for further  
13 information to clarify a case, the board has the  
14 authority to subpoena witnesses.

15 In addition to your testimony our board  
16 has been presented written information submitted to  
17 the staff by the applicant or their agent in each  
18 case. This information is now considered to be  
19 evidence and is entered into the permanent record  
20 of the body. It is assumed that it's complete,  
21 true, and accurate. Also we have been presented  
22 data assembled by the staff for the purpose of  
23 clarifying the location and the effect on  
24 surrounding property.

25 Our board is empowered to approve, approve

1 with conditions, or deny requests. In granting a  
2 variance the Board of Zoning Appeals may attach to  
3 it such conditions regarding the location,  
4 character, or other features of a proposed  
5 building, structure, or use as the board may  
6 consider advisable to protect established property  
7 values in the surrounding areas or promote the  
8 general health, safety, and welfare. We are also  
9 authorized to defer a case should there be a need  
10 to obtain additional information.

11 If an applicant's request is approved for  
12 a special exception, a variance, or an appeal of a  
13 decision by the zoning administrator, they must go  
14 to the Town of Kiawah Island to apply for permits.  
15 Variances and special exceptions granted by the BZA  
16 are valid for 12 months after this meeting. If an  
17 applicant's request is disapproved and they wish to  
18 appeal the decision of the board concerning this  
19 case, appeals must be directed to the Circuit  
20 Court. SC 6-29-870 states that the appeal must be  
21 filed by the applicant within 30 days after the  
22 decision of the board is mailed to them. Failure  
23 to file an appeal within the time limit deprives  
24 the Court of the jurisdiction to hear the matter.

25 For each case staff will present

1 information, the applicant will present their case,  
2 and we'll hear from others who wish to speak. Be  
3 reminded to direct comments to the board, not the  
4 applicant or other speakers. To expedite the  
5 meeting at this point I would ask all persons who  
6 intend to speak today to stand, and Boone will  
7 administer the oath.

8 (Oath administered to all speakers.)

9 MR. AIKEN: That you, everyone.

10 Mr. Chairman, I'll turn it back over to you.

11 CHAIRMAN CASSIDY: Thank you, Boone.

12 I'll now call Case BZA 24-000017 at 42  
13 Greensward Road. First we'll hear from staff, then  
14 the applicant, and then others. All speakers  
15 should come to the podium and state your name and  
16 current address for the record before presenting  
17 testimony. We will limit comments by the public to  
18 three minutes, and the applicant will have a chance  
19 for rebuttal if necessary.

20 Daniel, the floor is yours.

21 MR. VINCENT: Thank you, Mr. Chair,  
22 Members of the BZA. Our first case being presented  
23 today is Case No. BZA 24-000017. The applicant and  
24 property owners are Steven and Mary Lineberger  
25 being represented by Julie O'Connor of American

1 Vernacular. They are requesting a variance for a  
2 reduction of the required 30-foot rear setback for  
3 approximately 363 square feet for a proposed  
4 screened porch enclosure. The TMS number for the  
5 subject property is 207-07-00-026, and the property  
6 is located in the R-1 zoning district.

7           The required setbacks for the subject  
8 property are a 25-foot front setback from  
9 Greensward Road, a 15-foot side setback on either  
10 side, and a 30-foot rear setback from the golf  
11 course. The subject property is approximately  
12 13,090 square feet in size. The subject property  
13 is developed and sits adjacent to Cougar Point golf  
14 course to the east.

15           Based on Charleston County records the  
16 home was constructed in 1980, and per Charleston  
17 County records the property was acquired by Steven  
18 and Mary in September of 2017. The adjacent  
19 properties to the north, the south, and the west  
20 across Greensward Road are located in the R-1  
21 zoning district. Cougar Point golf course is  
22 located in the parks and recreational district with  
23 a resort overlay. The subject property is subject  
24 to review by the Kiawah Island Architectural Review  
25 Board.

1           Here is a GIS aerial of the subject  
2 property. Staff took a site visit on October 4,  
3 2024, and took a few pictures. Here is the front  
4 of the property, adjacent properties. Here is the  
5 subject property and the rear and the sides.

6           So the applicant's proposed plans include  
7 enclosing an existing open deck for a screened-in  
8 porch. The existing lot coverage is approximately  
9 34.7 percent, and the existing open deck is  
10 approximately 15 feet 4 inches from the rear  
11 30-foot setback. Pursuant to Section 12-64 in  
12 regards to setbacks, uncovered decks may extend up  
13 to 5 feet into any required rear yard setback. The  
14 proposed screened-in porch will be approximately 16  
15 feet 2 inches from the rear 30-foot setback, and  
16 currently the subject property is legally  
17 nonconforming in regards to lot coverage and  
18 setbacks.

19           The applicant's plans include 4,333 square  
20 feet of lot coverage, which is totaling 33.1  
21 percent. The current lot coverage is 4,537 square  
22 feet, which is 34.7 percent. The applicant's plans  
23 will remove 30 percent of the open deck and enclose  
24 the remaining areas. The result will be a decrease  
25 in lot coverage by approximately 204 square feet or

1 1.6 percent.

2 The applicant has submitted to the Kiawah  
3 Island Architectural Review Board. The proposed  
4 project received KIARB conditional approval on  
5 April 23, 2024, stating, quote, given the reduction  
6 in footprint and the simpler massing that would  
7 result from a smaller roofed area, the board has  
8 approved this variance. Here is a proposed  
9 landscape plan provided by the applicant.

10 I'll move on to the variance approval  
11 criteria.

12 Criteria A: There are extraordinary and  
13 exceptional conditions pertaining to the particular  
14 piece of property.

15 There may be extraordinary and exceptional  
16 conditions pertaining to this piece of property.  
17 The subject property is legally nonconforming in  
18 regards to setbacks and lot coverage. The home  
19 sits at a slight angle in reference to the building  
20 setbacks and lot lines, and per the applicant's  
21 letter of intent, quote, there are several  
22 extraordinary and exceptional conditions on this  
23 lot including, number one, the house was built in  
24 1980 and is over the rear setback due to large  
25 trees in the front yard; number two, the house is

1 set at an angle to the property lines; and, number  
2 three, the deck is over the rear setback.

3 Criteria B: These conditions do not  
4 generally apply to other properties in this  
5 setting.

6 These conditions may be unique to the  
7 subject property and may not generally apply to  
8 other properties in the vicinity. The property is  
9 located in the R-1 zoning district. Adjacent  
10 properties along Greensward Road are also located  
11 in the R-1 zoning district. The subject property  
12 sits adjacent to a golf course at the rear, which  
13 is located in the parks and recreational zoning  
14 district with a resort overlay. The existing  
15 structures in the vicinity may or may not have  
16 similar encroachments.

17 Per the applicant's letter of intent,  
18 quote, due to the shape of the lot and orientation  
19 of the golf course the house is angled and extends  
20 past the rear setback. The house was set far back  
21 from the property due to large trees in the front,  
22 end quote.

23 Criteria C: Because of these conditions  
24 the application of this ordinance to the property  
25 would effectively prohibit or unreasonably restrict

1 the utilization of the property.

2 The application of this ordinance to the  
3 property may not prohibit or unreasonably restrict  
4 the utilization of the property. Per the  
5 applicant's letter of intent, quote, the  
6 application of the ordinance would unreasonably  
7 restrict the ability to improve the property by  
8 providing a more usable outdoor area. The deck is  
9 very hard to maintain and needs to be replaced at  
10 this time.

11 Criteria D: The authorization of this  
12 variance will not be a substantial detriment to the  
13 adjacent property or the public good, and the  
14 character of the zoning district will not be harmed  
15 by the granting of this variance.

16 The authorization of this variance may not  
17 be a substantial detriment to the adjacent  
18 properties or the public good. The proposed  
19 additions decrease the lot coverage and decrease  
20 the existing encroachment of the current open deck.

21 Per the applicant's letter of intent,  
22 quote, the authorization of this variance would not  
23 be a detriment, but instead a benefit to the public  
24 good and character of the district. The deck needs  
25 to be replaced, and the reduction of the footprint

1 will reduce the lot coverage, which is a benefit to  
2 the neighbors and the neighborhood. Also the new  
3 porch is a substantial aesthetic improvement to the  
4 house, end quote.

5           Criteria E: The Board of Zoning Appeals  
6 shall not grant a variance the effect of which  
7 would be to allow the establishment of a use not  
8 otherwise permitted in the zoning district, to  
9 extend physically a nonconforming use of land, or  
10 to change the zoning district boundaries shown on  
11 the official zoning map.

12           Granting of this variance would not allow  
13 the establishment of a use not otherwise permitted,  
14 extended physically a nonconforming use of land, or  
15 change the zoning district boundaries. Per the  
16 applicant's letter of intent, quote, the use of the  
17 space is not changing. It is outdoor living space.  
18 The space is a deck currently, and we are  
19 requesting a roof over part of the space and  
20 removing the rest. It will remain as an outdoor  
21 space and will not be heated and cooled, end quote.

22           Criteria F: The fact that the property  
23 may be utilized more profitably should a variance  
24 be granted may not be considered grounds for a  
25 variance.

1           BZA may not consider profitability when  
2     considering a variance request. Per the  
3     applicant's letter of intent profitability is not a  
4     factor in this request.

5           Criteria G: The need for this variance  
6     shall not be the result of the applicant's own  
7     actions.

8           The need for the variance may not be the  
9     result of the applicant's own actions. Per the  
10    applicant's letter of intent, quote, the house and  
11    deck were in place before the Linebergers purchased  
12    the property in 2017.

13          Criteria H: The granting of this variance  
14    will not be contrary to the public or neighborhood  
15    interest nor will not adversely affect other  
16    properties in the vicinity nor interfere with the  
17    harmony, spirit, intent, and purpose of these  
18    regulations.

19          Granting of this variance may not be  
20    contrary to the public or neighborhood interest,  
21    may not adversely affect other properties in the  
22    vicinity, nor interfere with the harmony, spirit,  
23    intent, and purposes of these regulations. Per the  
24    applicant's letter of intent, quote, the public and  
25    neighborhood's interests are not contrary to the

1 intents of this variance request. The cart path of  
2 the golf course is a significant distance, and the  
3 neighboring properties will also not be negatively  
4 affected, end quote.

5 Criteria I: Granting of this variance  
6 does not substantially conflict with the  
7 comprehensive plan or the purposes of this  
8 ordinance.

9 Granting of this variance may not  
10 substantially conflict with the comprehensive plan  
11 for the purposes of this ordinance. The proposed  
12 plans reduce the existing nonconforming elements.

13 This concludes the staff's presentation.

14 CHAIRMAN CASSIDY: Thank you, Daniel. Any  
15 questions from the board for Daniel? Public  
16 comments?

17 MR. VINCENT: We did receive one public  
18 comment. I will pull it up on the screen here.  
19 This was from a neighbor at 41 Greensward. They  
20 offered a letter in support.

21 CHAIRMAN CASSIDY: Any questions for  
22 Daniel?

23 MR. ADAMS: When the material you just  
24 read says the deck as built and as proposed is 15  
25 and change and 16 and change from the very rear

1 setback, as I look at the diagram, does that mean  
2 into the rear setback?

3 MR. VINCENT: That's correct.

4 MR. ADAMS: I thought the existing deck  
5 was already pretty much over the 30-foot setback as  
6 a nonconforming use.

7 CHAIRMAN CASSIDY: It looks to me like the  
8 setback is roughly at the edge of the house, and so  
9 the deck is all the way to the setback.

10 MR. ADAMS: I think it was clear. I was  
11 just looking at the written material that said the  
12 deck as built and then as proposed is respectively  
13 15 feet and 16 feet and change from the rear  
14 setback, and (inaudible) I just want to be sure  
15 (inaudible) will continue to be over the rear  
16 setback.

17 MR. VINCENT: So, Phil, the existing deck  
18 is 15 feet 4 inches from the property line, and  
19 that's to the north in this picture right here.

20 MR. ADAMS: From the property line.

21 MR. VINCENT: Correct.

22 CHAIRMAN CASSIDY: And therefore it would  
23 be into the setback.

24 MR. VINCENT: And then you mentioned the  
25 16 feet 2 inches.

1 MR. ADAMS: That was just the difference  
2 between as built and proposed.

3 MR. VINCENT: That's correct.

4 MR. ADAMS: (inaudible) the same question  
5 to make sure I was interpreting (inaudible).

6 MR. VINCENT: Yes.

7 CHAIRMAN CASSIDY: Any other questions?

8 Ms. O'Connor, are you speaking for the  
9 applicant?

10 MS. O'CONNOR: I would love to. Hi there.  
11 I'm Julie O'Connor. I'm the designer on this  
12 project. I think Daniel pretty much covered  
13 everything, so I don't want to belabor it, but I  
14 did want to point out this graphic is showing -- it  
15 just doesn't show the cart path on there, but that  
16 72 foot dimension line up there at the top is to  
17 the cart path of the golf course.

18 So understanding that -- there we go --  
19 understanding that the 30-foot setback is  
20 prescribed for the golf course setback, we are  
21 quite -- more than double that from the cart path  
22 itself, which would be the impact on the golf  
23 course. So I just wanted to point that out. That  
24 was in our materials as well that we're not sort of  
25 coming up on the golf course really close.

1           This is an existing condition. We feel  
2 like we're improving this existing condition by  
3 removing a good amount of lot coverage, and  
4 obviously from an aesthetic perspective we feel  
5 strongly that this is an improvement. The neighbor  
6 on sort of the north side I guess of our property  
7 is a vacant lot, and the only other adjacent  
8 neighbor is the one who has written a letter of  
9 support for us.

10           I will be very happy to answer questions.  
11 I just don't want to take up your time because  
12 Daniel did a great job of going through the salient  
13 points.

14           CHAIRMAN CASSIDY: Questions for  
15 Ms. O'Connor?

16           MR. ADAMS: Just to be sure I understand,  
17 as an uncovered deck some intrusion beyond the  
18 setback was permitted, right, by the zoning laws.  
19 We're now covering it so that the intrusion  
20 otherwise would not be granted without a variance,  
21 and that's really the main difference. We're not  
22 dramatically changing the dimensions of the deck as  
23 I see it.

24           MS. O'CONNOR: That's right. As far as I  
25 understand 5 feet of an open deck can encroach over

1 a setback, so even the open deck as it stands goes  
2 beyond that, and even as you can see in this  
3 graphic the house itself is over the rear setback.  
4 So it was built I would have to believe before  
5 these setbacks were established, and so this house  
6 was nonconforming from the day the setbacks came  
7 into play.

8 CHAIRMAN CASSIDY: Other questions?

9 MR. LEWIS: This is Jay. Is it 15 or  
10 (inaudible)

11 MS. O'CONNOR: 15.

12 CHAIRMAN CASSIDY: I'm sorry. I didn't  
13 hear the question. What was the question?

14 MR. LEWIS: I'm trying to visualize the  
15 house (inaudible)

16 CHAIRMAN CASSIDY: Got you.

17 MR. LEWIS: I know where it is, and it is  
18 pretty far off the cart path.

19 CHAIRMAN CASSIDY: Any comments from  
20 members of the public? No. I would entertain any  
21 motions that anyone would care to make.

22 MR. FARABEE: I make a motion that we  
23 approve as proposed. I think there has been an  
24 effort I think to reduce the coverage of the lot as  
25 well as some of the materials, and so I support

1 their efforts, and I recommend we approve it.

2 CHAIRMAN CASSIDY: Thank you, Ben. Is  
3 there a second?

4 MS. O'LEARY: Second.

5 CHAIRMAN CASSIDY: I'll call the roll.  
6 All those in favor of approving this. Jay?

7 MR. LEWIS: I approve.

8 CHAIRMAN CASSIDY: Phil?

9 MR. ADAMS: Yes.

10 CHAIRMAN CASSIDY: Lin?

11 MS. O'LEARY: Yes.

12 MR. CASSIDY: Ben?

13 MR. FARABEE: Yes.

14 CHAIRMAN CASSIDY: And Frank yes. So it's  
15 unanimous. We are agreed that this variance is  
16 approved. There is a decrease in over 200 square  
17 feet of coverage. It also reduces the footprint,  
18 it improves the aesthetics, and it's a long way  
19 from the golf course. Thank you, folks.

20 I will now call Case BZA 24-000018, 301  
21 Surfson, and we'll go through the same procedure.  
22 Dan, you're up again.

23 MR. VINCENT: Yes, sir.

24 Our next case being presented today is  
25 Case No. BZA 24-000018. The applicant and property

1 owner, Ronald and Lorene Veith being represented by  
2 Tyler Smyth, are requesting a variance for the  
3 reduction of the required 30-foot rear setback for  
4 approximately 21 square feet for a proposed  
5 screened-in porch enclosure located at 301 Surfsong  
6 Road. The TMS number for the subject property is  
7 264-09-00-047, and the property is located in the  
8 R-1 residential zoning district. The lot size is  
9 approximately 15,738 square feet or .36 acres.

10 The required setbacks for the property are  
11 a 25-foot front setback from Surfsong Road, a  
12 15-foot side setback on each side, and a 30-foot  
13 rear setback from the golf course. The subject  
14 property is developed and sits adjacent to Turtle  
15 Point golf course to the north. Based on  
16 Charleston County records the home was constructed  
17 in 1987, and per Charleston County records the  
18 property was acquired by Ronald and Lorene Veith in  
19 August of 2020.

20 The adjacent properties to the east, the  
21 west, and to the south across Surfsong Road are  
22 located in the R-1 zoning district, and Turtle  
23 Point golf course is located to the north and is in  
24 the parks and recreation district with a resort  
25 overlay.

1           Here is a GIS aerial view of the subject  
2 property. Staff took a site visit on October 4,  
3 and here are a few pictures from the visit. The  
4 subject property should say 301 Surfsong. Here is  
5 the front of the property, adjacent properties  
6 across the street, and to the left. Here is the  
7 subject property. Here is the rear and each side.

8           The applicant's proposed plans include  
9 enclosing a portion of existing open deck for a  
10 screened-in porch. The proposed plans also include  
11 adding 84 square feet of building footprint to the  
12 west side of the property. The existing lot  
13 coverage is approximately 37.83 percent. The  
14 existing open deck is approximately 26 feet 8  
15 inches from the rear 30-foot setback.

16           Pursuant to Section 12-64 in regards to  
17 setbacks uncovered decks may extend up to 5 feet  
18 into any required rear yard setback. The proposed  
19 footprint of existing open deck being converted is  
20 being converted into a screened-in porch and is not  
21 changing.

22           MR. CASSIDY: Dan, before you leave that  
23 slide can I just ask you a question, and it relates  
24 to Phil's question earlier. I don't understand why  
25 this property is currently -- the current property

1 is legally nonconforming. That deck is only 3 feet  
2 into the setback, and as I understand it it's  
3 allowed to be 5 feet, and the square footage is  
4 below the maximum. So why is it legally  
5 nonconforming?

6 MR. VINCENT: So the current lot coverage  
7 is over 33 percent, which is the allowable  
8 percentage in an R-1 property. That is just one  
9 part of the legally nonconforming. I can blow up  
10 the full site plan and I can show you where the  
11 setback is encroaching.

12 CHAIRMAN CASSIDY: You said in your  
13 write-up here that you can go 20 percent over the  
14 33 for open deck.

15 MR. VINCENT: You're allowed to go over 20  
16 percent for certain items that include pervious  
17 materials. I can get to that so we can kind of  
18 talk about it now. Those allowed items that  
19 qualify for the allowable 20 percent increase, they  
20 include driveways not defined by this ordinance  
21 that utilize pervious materials, pervious walks and  
22 patios, and raised courtyards created by walls 3  
23 feet or less above the adjacent grade.

24 CHAIRMAN CASSIDY: But not decks.

25 MR. VINCENT: Not decks, correct.

1           CHAIRMAN CASSIDY: Okay. I understand.  
2 Thank you. Sorry to interrupt.

3           MR. VINCENT: So I explained the reason  
4 why it is nonconforming in regards to lot coverage,  
5 but if you look at your screen here, you can see  
6 that that raised HVAC platform extends into that  
7 side setback as well as that staircase and that  
8 platform. So those are the reasons why it is  
9 nonconforming in regards to setbacks as well.

10          MS. O'LEARY: So when they did the raised  
11 HVAC, they didn't need a variance for that  
12 (inaudible)?

13          MR. VINCENT: I do not -- I don't have the  
14 knowledge of when that was constructed, but from  
15 the as-built survey that was existing, which makes  
16 it legally nonconforming. The home was built in  
17 1987, and we do not have a record from the HVAC  
18 installation.

19          Continuing, the existing lot coverage is  
20 5,955 square feet, which is about 37.83 percent.  
21 The existing lot coverage for 301 Surfsong is  
22 considered legally nonconforming, and according to  
23 Section 12-192, nonconforming structures, no person  
24 may engage in any activity that causes an increase  
25 in the extent of an existing nonconformity.

1           The applicant's proposed plan is to remove  
2 approximately 103 square feet of maximum lot  
3 coverage and add approximately 84 square feet to  
4 the maximum lot coverage. They are also adding an  
5 additional 103 square feet of pervious material.

6           The applicant has submitted to the Kiawah  
7 Island Architectural Review Board, and they were  
8 granted conditional approval stating, quote, board  
9 members determined that this request would have  
10 been approved at the time of the original design  
11 approval, end quote.

12           We'll go to the variance approval  
13 criteria.

14           Criteria A: There are extraordinary and  
15 exceptional conditions pertaining to this  
16 particular piece of property.

17           There may be extraordinary and exceptional  
18 conditions on this property. The subject property  
19 is uniquely shaped. The subject property is  
20 legally nonconforming in regards to setbacks and  
21 lot coverage. Per the applicant's letter of  
22 intent, quote, the concave nature of the rear  
23 property line creates a choke point within the  
24 buildable area in the center of the property as  
25 defined by the setback. The original siting of the

1 house extended an open deck over the rear setback  
2 line. With little coverage/screened porch area it  
3 is difficult for the homeowners to enjoy their  
4 home's outdoor areas, end quote.

5 Criteria B: These conditions do not  
6 generally apply to other properties in the  
7 vicinity.

8 These conditions may be unique to the  
9 subject property and may not apply to other  
10 properties in the vicinity. The property is  
11 located in the R-1 zoning district. Adjacent  
12 properties along Surfsong Road are also located in  
13 the R-1 zoning district, and existing structures  
14 may or may not have similar encroachments.

15 Per the applicant's letter of intent,  
16 quote, all of the adjacent properties in the  
17 vicinity have more conventional rear property lines  
18 without concave intrusions from the golf course.

19 Criteria C: Because of these conditions  
20 the application of this ordinance to the property  
21 would effectively prohibit or unreasonably restrict  
22 the utilization of the property.

23 The application of this ordinance to the  
24 property may not prohibit or unreasonably restrict  
25 the utilization of the property. Per the

1 applicant's letter of intent, quote, because of the  
2 rear property line and its resulting setback, the  
3 ability to have a reasonably laid out porch across  
4 the back of the living room is unreasonably  
5 restricted, end quote.

6           Criteria D: The authorization of the  
7 variance will not be a substantial detriment to the  
8 adjacent property or the public good, and the  
9 character of the zoning district will not be harmed  
10 by the granting of this variance.

11           The authorization of this variance may not  
12 be a substantial detriment to the adjacent  
13 properties or the public good. The proposed  
14 additions do not increase the building footprint  
15 beyond the rear setback line.

16           Per the applicant's letter of intent,  
17 quote, the authorization of this variance will not  
18 impact either adjacent property as it would allow a  
19 porch in the center of the residence farthest from  
20 either neighbor. The existing deck that occupies  
21 the area to be converted to a covered porch space  
22 has been present since construction around 1988,  
23 end quote.

24           Criteria E: The Board of Zoning Appeals  
25 shall not grant a variance the effect of which

1 would be to allow the establishment of a use not  
2 otherwise permitted, to extend physically a  
3 nonconforming use of land, or to change the zoning  
4 district boundaries shown on the official zoning  
5 map.

6 Granting of this variance would not allow  
7 the establishment of a use not otherwise permitted  
8 in the zoning district, extend a physically  
9 nonconforming using of land, or change the zoning  
10 district boundaries.

11 Per the applicant's letter of intent,  
12 quote, the requested setback variance would not  
13 allow the establishment of a use not otherwise  
14 permitted in a zoning district, to extend  
15 physically a nonconforming use of land, or to  
16 change the zoning district boundaries shown on the  
17 official zoning map. The property is a personal  
18 residence and will remain a personal residence.

19 Criteria F: The fact that the property  
20 may be used more profitably should a variance be  
21 granted may not be considered grounds for a  
22 variance.

23 The BZA may not consider profitability  
24 when considering this variance request. Per the  
25 applicant's letter of intent, quote, profitability

1 is not the reason for this variance request as this  
2 request is for personal residential use.

3           Criteria G: The need for this variance  
4 shall not be the result of the applicant's own  
5 actions.

6           The need for the variance may not be the  
7 result of the applicant's own actions. Per the  
8 applicant's letter of intent, quote, the applicant  
9 or homeowner has not acted in any way to cause the  
10 need for this variance request. They have made no  
11 changes to the residence since acquiring it four  
12 years ago.

13           Criteria H: Granting this variance will  
14 not be contrary to the public or neighborhood  
15 interest nor will not adversely affect other  
16 properties in the vicinity nor interfere with the  
17 harmony, spirit, intent, and purpose of these  
18 regulations.

19           Granting of this variance may not be  
20 contrary to the public or neighborhood interest,  
21 may not adversely affect other properties nor  
22 interfere with the harmony, spirit, intent, or  
23 purposes of these regulations.

24           Per the applicant's letter of intent,  
25 quote, the granting of the variance would not be

1 contrary to the public or neighborhood interest.  
2 It is just simply to allow a larger, logically  
3 designed extension of an existing deck to make a  
4 porch adjacent to the living room.

5 Criteria I: Granting of this variance  
6 does not substantially conflict with the  
7 comprehensive plan or the purposes of this  
8 ordinance.

9 Granting of this variance may not  
10 substantially conflict with the comprehensive plan  
11 or the purposes of this ordinance. Per the  
12 applicant's letter of intent, quote, the granting  
13 of this variance does not conflict with the  
14 comprehensive plan or the purposes of this  
15 ordinance.

16 CHAIRMAN CASSIDY: Thank you, Dan.

17 MR. VINCENT: Should the Board of Zoning  
18 Appeals consider approval of this variance request,  
19 planning staff had asked for the following  
20 condition, which is to provide an as-built survey  
21 post construction to verify all encroachments match  
22 the existing plans.

23 This concludes staff's review.

24 CHAIRMAN CASSIDY: You had someone file a  
25 comment on this one also; right?

1 MR. VINCENT: That's correct. We received  
2 one public comment. I'll pull it up on the screen  
3 here. Gerald Hogan from 303 Surfsong is in support  
4 of the variance.

5 CHAIRMAN CASSIDY: Okay. Questions for  
6 Daniel? Daniel, the current lot coverage is 37.83.  
7 Does that include this 103 square feet of  
8 nonpervious -- I don't know what you call them --  
9 pathways or whatever?

10 MR. VINCENT: The 103 square feet of  
11 pervious is not that, correct.

12 CHAIRMAN CASSIDY: Is not included.

13 MR. VINCENT: Is not included.

14 CHAIRMAN CASSIDY: What is there now is  
15 not pervious.

16 MR. VINCENT: Correct.

17 CHAIRMAN CASSIDY: What I'm asking is is  
18 that in the 37.83?

19 MR. VINCENT: It is included in the 37.83.

20 CHAIRMAN CASSIDY: So the fact that  
21 they're substituting pervious material lowers the  
22 lot coverage.

23 MR. VINCENT: Correct.

24 CHAIRMAN CASSIDY: But they are adding 84  
25 square feet to the footprint of the house.

1 MR. VINCENT: Correct.

2 CHAIRMAN CASSIDY: Okay. I've got it.

3 Any other questions for Daniel? Mr. Smyth?

4 MR. SMYTH: My name is Tyler Smyth, 386  
5 Ashley Avenue. I don't have much to add here to  
6 Daniel's presentation. We are removing four areas  
7 of impervious lot coverage in order to gain a  
8 little bit of additional space to add onto the  
9 porch. In the drawing you see here the  
10 crosshatched area in the lower corner of the  
11 drawing, that's the new screened porch where there  
12 is no porch now -- porch or deck now. The area  
13 that we are asking for the variance is just the  
14 grayed hatched area.

15 It is an unusually shaped lot in that it  
16 has that sort of bite into the back of it due to  
17 just the shape of the lot. I just want to be clear  
18 about what we're doing. If we can maybe zoom in on  
19 this, Daniel, just to make sure that you're clear  
20 on what we're doing, in order to lower the overall  
21 lot coverage there are four sections of lot  
22 coverage that we are going to be turning from  
23 impervious lot coverage to a pervious material at  
24 the ground level. That's this little bit in the  
25 interior courtyard. There are two stair landings.

1 Really it's just those three, I guess. It's the  
2 pathway inside the courtyard (inaudible) pervious  
3 land.

4           They have a very small screened porch now.  
5 It's about 12'3" X 14 feet. It's a five bedroom  
6 house, which they enjoy with their grandkids and  
7 kids, and they just really need some more room on  
8 their screened porch. You guys may not know this,  
9 but the living room is the wing that comes out.  
10 Can you see this? This is the living room here,  
11 and so the new screened porch would simply wrap  
12 around the living room and give them some more  
13 space to be able to open up that living room when  
14 the weather is nice.

15           I don't have anything else to add at this  
16 point.

17           MS. O'LEARY: Is there anywhere where you  
18 can make it (inaudible) driveway and maybe put some  
19 shells in it just to reduce that nonpervious  
20 (inaudible) because it's sort of bumping out all  
21 over the place on the sides.

22           CHAIRMAN CASSIDY: I'm not sure --

23           MS. O'LEARY: So where they're taking from  
24 (inaudible) and then putting in pavers, is there  
25 anywhere else that you can possibly (inaudible) lot

1 coverage because you're over on that far side  
2 (inaudible) Does make that sense?

3 CHAIRMAN CASSIDY: I'm not sure.

4 MS. O'LEARY: So where they're taking some  
5 of the bricks out and are putting in pavers, is  
6 there anywhere else that you can possibly consider  
7 doing that to help with your lot coverage? Because  
8 you're over on that far side that you can't see on  
9 the very top now with the stairs going up there.  
10 I'm just trying to see if there is somewhere where  
11 you can help a little bit more.

12 MR. SMYTH: Well, certainly we could if we  
13 needed to convert some of the driveway to a  
14 pervious driveway if you wanted us to reduce the  
15 lot coverage further than we're already reducing  
16 it.

17 MR. LEWIS: As proposed your lot coverage  
18 was down from what it is now. It was 33 percent  
19 (inaudible) correct?

20 MR. SMYTH: Correct. That is true.

21 CHAIRMAN CASSIDY: By 21 square feet.

22 MR. SMYTH: That sounds right to me, yes,  
23 sir.

24 MS. O'LEARY: Right. It was 103 and  
25 they're taking it to 84.

1           CHAIRMAN CASSIDY: Any other questions for  
2 Mr. Smyth?

3           MR. LEWIS: As I understand it the main  
4 change here in addition to adding that little  
5 corner onto the porch is turning an uncovered porch  
6 into an enclosed porch.

7           MR. SMYTH: Correct, yes. Most of it is  
8 an uncovered deck, an existing uncovered deck that  
9 we would like to put a porch roof over to make it a  
10 screened porch.

11          CHAIRMAN CASSIDY: Anything else, anyone?  
12 I would entertain any motions anyone would care to  
13 make.

14          MR. ADAMS: I move to approve.

15          CHAIRMAN CASSIDY: Is there a second?

16          MR. FARABEE: I'll second.

17          CHAIRMAN CASSIDY: Okay. Let me call the  
18 roll. Jay?

19          MR. LEWIS: Yes.

20          CHAIRMAN CASSIDY: Phil?

21          MR. ADAMS: Yes.

22          CHAIRMAN CASSIDY: Lin?

23          MS. O'LEARY: Yes.

24          CHAIRMAN CASSIDY: Ben?

25          MR. FARABEE: Yes.

1           CHAIRMAN CASSIDY: And Frank yes, so it's  
2 unanimously approved, this one.

3           MR. SMYTH: Thanks very much.

4           CHAIRMAN CASSIDY: Thank you, Mr. Smith.  
5 John, any further business?

6           MR. TAYLOR: No further business.

7           MR. VINCENT: We will have a case next  
8 month, just one case, and that date will be  
9 November 16. I'll double check on the date.

10          CHAIRMAN CASSIDY: November 18.

11          MR. VINCENT: The 18th. My apologies.  
12 That's at 1:00 p.m. No further updates.

13          CHAIRMAN CASSIDY: Okay. Anything else,  
14 anyone? Okay. We stand adjourned. Thank you.

15          (Meeting concluded.)

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CERTIFICATE

I, Carol T. Lucic, Notary Public in and for the State of South Carolina at Large, do hereby certify that the audio recording in the foregoing transcript was recorded stenographically by me and thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete, and true record of the audio recording. Due to the quality of the recorded media, the transcript may include misinterpreted and/or inaudible parentheticals for words unable to be discerned. The court reporter was not present at the time of the recording; therefore, this transcript should not be considered verbatim.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal at Charleston, Charleston County, on \_\_\_\_\_.

\_\_\_\_\_

Carol T. Lucic

My Commission Expires November 27, 2027.

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name (2)  
 nature (1)  
 near (1)  
 necessary (1)  
 need (9)  
 needed (1)  
 needs (2)  
 negatively (1)  
 neighbor (4)  
 neighborhood (6)  
 neighborhood's (1)  
 neighboring (1)  
 neighbors (1)  
 neither (1)  
 new (3)  
 news (1)  
 nice (1)  
 nonconforming (19)  
 nonconformity (1)  
 nonpervious (2)  
 normal (1)

**north** (5)  
**Notary** (1)  
**notice** (1)  
**notification** (1)  
**notified** (1)  
**November** (3)  
**number** (5)  
  
**< O >**  
**oath** (2)  
**obtain** (1)  
**obviously** (1)  
**occupies** (1)  
**O'Connor** (7)  
**OCTOBER** (5)  
**offered** (1)  
**official** (4)  
**Okay** (6)  
**O'LEARY** (10)  
**open** (12)  
**order** (5)  
**ordinance** (15)  
**organizations** (1)  
**orientation** (1)  
**original** (2)  
**outdoor** (4)  
**overall** (1)  
**overlay** (3)  
**overturn** (1)  
**owner** (1)  
**owners** (1)  
  
**< P >**  
**p.m** (2)  
**parentheticals** (1)  
**parks** (3)  
**part** (2)  
**participants** (1)  
**particular** (2)  
**parties** (3)  
**party** (1)  
**path** (5)  
**pathway** (1)  
**pathways** (1)  
**patios** (1)  
**pavers** (2)  
**pending** (1)  
**percent** (12)  
**percentage** (1)

**permanent** (1)  
**permit** (1)  
**permits** (1)  
**permitted** (6)  
**person** (1)  
**personal** (3)  
**Persons** (2)  
**perspective** (1)  
**pertaining** (3)  
**pertinent** (1)  
**pervious** (10)  
**Phil** (4)  
**PHILLIP** (1)  
**Phil's** (1)  
**physically** (5)  
**picture** (1)  
**pictures** (2)  
**piece** (3)  
**place** (2)  
**plan** (8)  
**Planner** (1)  
**Planning** (5)  
**plans** (7)  
**platform** (2)  
**play** (1)  
**please** (1)  
**podium** (1)  
**point** (9)  
**points** (1)  
**porch** (24)  
**portion** (1)  
**possibly** (2)  
**Post** (2)  
**posted** (1)  
**prescribed** (1)  
**PRESENT** (6)  
**presentation** (2)  
**presented** (4)  
**presenting** (1)  
**pretty** (3)  
**printed** (1)  
**prior** (1)  
**procedure** (1)  
**profitability** (4)  
**profitably** (2)  
**prohibit** (4)  
**project** (2)  
**promote** (1)  
**properties** (19)

**property** (65)  
**proposed** (19)  
**protect** (1)  
**provide** (1)  
**provided** (1)  
**providing** (1)  
**public** (20)  
**pull** (2)  
**purchased** (1)  
**purpose** (4)  
**purposes** (7)  
**Pursuant** (2)  
**put** (2)  
**putting** (2)  
  
**< Q >**  
**qualify** (1)  
**quality** (1)  
**quasi-judicial** (1)  
**question** (5)  
**questions** (9)  
**quite** (1)  
**quorum** (1)  
**quote** (26)

**< R >**  
**R-1** (9)  
**raise** (1)  
**raised** (3)  
**read** (1)  
**really** (4)  
**rear** (25)  
**reason** (2)  
**reasonably** (1)  
**reasons** (1)  
**rebuttal** (1)  
**receive** (1)  
**received** (2)  
**recognize** (1)  
**recommend** (1)  
**record** (5)  
**recorded** (2)  
**recording** (3)  
**records** (4)  
**recreation** (1)  
**recreational** (2)  
**reduce** (5)  
**reduces** (1)  
**reducing** (1)  
  
**< S >**  
**safety** (1)

**reduction** (4)  
**reference** (1)  
**regarding** (2)  
**regards** (7)  
**regulations** (4)  
**related** (1)  
**relates** (1)  
**relief** (1)  
**remain** (2)  
**remaining** (1)  
**reminded** (2)  
**remove** (2)  
**removing** (3)  
**replaced** (2)  
**reporter** (1)  
**REPORTING** (1)  
**representative** (1)  
**represented** (2)  
**request** (11)  
**requested** (2)  
**requesting** (3)  
**requests** (1)  
**require** (1)  
**required** (7)  
**residence** (4)  
**residential** (2)  
**residents** (1)  
**resort** (3)  
**respectively** (1)  
**rest** (1)  
**restrict** (5)  
**restricted** (1)  
**result** (6)  
**resulting** (1)  
**review** (6)  
**right** (6)  
**RMR** (1)  
**Road** (8)  
**roll** (2)  
**Ronald** (2)  
**roof** (2)  
**roofed** (1)  
**room** (7)  
**roughly** (1)  
**RPR** (1)  
**rulings** (1)

**salient** (1)  
**says** (1)  
**SC** (5)  
**screen** (3)  
**screened** (6)  
**screened-in** (5)  
**seal** (1)  
**second** (4)  
**Section** (3)  
**sections** (1)  
**see** (8)  
**sense** (1)  
**September** (1)  
**set** (2)  
**setback** (37)  
**setbacks** (11)  
**setting** (1)  
**shape** (2)  
**shaped** (2)  
**shells** (1)  
**show** (2)  
**showing** (1)  
**shown** (3)  
**side** (10)  
**sides** (2)  
**sign** (1)  
**significant** (1)  
**similar** (2)  
**simple** (1)  
**simpler** (1)  
**simply** (2)  
**sir** (2)  
**site** (3)  
**siting** (1)  
**sits** (4)  
**size** (2)  
**slide** (1)  
**slight** (1)  
**small** (1)  
**smaller** (1)  
**Smith** (1)  
**Smyth** (10)  
**sorry** (2)  
**sort** (4)  
**sounds** (1)  
**south** (3)  
**space** (8)  
**speak** (4)  
**speakers** (3)

**speaking** (1)  
**special** (5)  
**specific** (1)  
**spirit** (4)  
**square** (18)  
**staff** (10)  
**staff's** (2)  
**stair** (1)  
**staircase** (1)  
**stairs** (1)  
**stand** (2)  
**standards** (1)  
**stands** (1)  
**state** (2)  
**states** (1)  
**stating** (2)  
**stenographically** (1)  
**Steven** (2)  
**street** (1)  
**strict** (1)  
**strongly** (1)  
**structure** (1)  
**structures** (3)  
**subject** (20)  
**submitted** (3)  
**subpoena** (1)  
**substantial** (5)  
**substantially** (4)  
**substituting** (1)  
**support** (4)  
**sure** (7)  
**Surfsong** (8)  
**surrounding** (2)  
**survey** (2)

## &lt; T &gt;

**take** (1)  
**talk** (1)  
**TAYLOR** (3)  
**testimony** (2)  
**Thank** (9)  
**Thanks** (1)  
**thereof** (1)  
**think** (4)  
**thought** (1)  
**three** (4)  
**TIME** (7)  
**TMS** (2)  
**today** (6)

**today's** (1)  
**top** (2)  
**totaling** (1)  
**TOWN** (5)  
**TRANSCRIBED** (2)  
**transcript** (3)  
**transcription** (1)  
**trees** (2)  
**true** (3)  
**trying** (2)  
**turn** (1)  
**turning** (2)  
**Turtle** (2)  
**two** (2)  
**Tyler** (2)  
**types** (1)

## &lt; U &gt;

**unable** (1)  
**unanimous** (1)  
**unanimously** (1)  
**uncovered** (6)  
**understand** (6)  
**understanding** (2)  
**unique** (2)  
**uniquely** (1)  
**unnecessary** (1)  
**unreasonably** (6)  
**unusually** (1)  
**updates** (1)  
**usable** (1)  
**use** (13)  
**uses** (1)  
**utilization** (4)  
**utilize** (1)  
**utilized** (1)

## &lt; V &gt;

**vacant** (1)  
**valid** (1)  
**values** (1)  
**variance** (50)  
**variances** (3)  
**Veith** (2)  
**verbatim** (1)  
**verify** (1)  
**Vernacular** (1)  
**vicinity** (8)  
**videoconference** (2)

**VIDEOCONFEREN**  
**CING** (1)  
**view** (1)  
**VINCENT** (26)  
**virtually** (2)  
**visit** (3)  
**visualize** (1)  
**vote** (1)

## &lt; W &gt;

**walks** (1)  
**walls** (1)  
**want** (5)  
**wanted** (2)  
**way** (3)  
**weather** (1)  
**welfare** (1)  
**well** (5)  
**we're** (7)  
**west** (3)  
**wing** (1)  
**wish** (2)  
**Witness** (1)  
**witnesses** (1)  
**words** (1)  
**workings** (1)  
**wrap** (1)  
**write-up** (1)  
**written** (3)  
**WWW.CLARKBOL**  
**EN.COM** (1)

## &lt; Y &gt;

**yard** (3)  
**years** (1)

## &lt; Z &gt;

**ZONING** (39)  
**Zoom** (2)