



**Board of Zoning Appeals  
Kiawah Island Municipal Center  
May 20, 2024; 1:00PM**

**AGENDA**

- I. **Call to Order**
- II. **Roll Call**
- III. **Briefing to the Public on Procedures of the BZA**
- IV. **Administer the Oath to Those Presenting Testimony**
- V. **New Business:**  
Review of the following applications:
  - 1) **Case #BZA24-000005**  
**187 Ballybunion Drive – Kiawah Island, SC | TMS# 265-13-00-032**  
Variance request for the reduction of the required 50’ rear setback for approximately 162 square feet encroachment for a proposed pool addition
- VI. **Additional Business**
  - 1) **Review and approval of Board of Zoning Appeals Rules of Procedures.**
- VII. **Adjournment**



**Case #BZA24-000005**  
**Kiawah Island BZA Meeting of May 20, 2024**

**Applicant/Property Owner:** Pennell Read Family Trust

**Representative:** Jeff Forte

**Property Location:** 187 Ballybunion Drive

**TMS#:** 265-13-00-032

**Zoning District:** R-1, Residential Zoning District

**Lot Size:** 40,540 sqft (.93 acres)

**Request:** Variance request for the reduction of the required 50' rear setback for approximately 162 square feet encroachment for a proposed pool addition.

**Requirement:**

Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 2. Zoning Map/Districts, Sec. 12-65. - R-1, Residential District.

Required setbacks: 70' (Front); 15' (lot 186), 25' (lot 188); 50' (Rear)  
Maximum 33% Lot Coverage

The Ordinance defines Setback as "a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected." The Ordinance defines Side Setback as "any setback other than a rear or front setback."

*Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 3. Use Regulations, Sec. 12-104. – Sec. 12-104. - Accessory uses, buildings/structures. The Ordinance outlines:*

*"(5) Standards for accessory structures in residential districts. Accessory structures may be allowed in residential districts under the following conditions:*

*a. Private swimming pools, along with incidental installations such as pumps and filters, may not be located in the front yard. A pool shall be set back a distance of not less than ten feet from all lot lines, except that a pool that is elevated more than four feet above the average natural ground level at the nearest property line shall comply with required building setbacks. All swimming pools shall be gated and fenced. The fence height shall be five feet."*

**Sec. 12-65. R-1, Residential District.**

- (a) *Purpose and intent.* The purpose of the R-1 zoning district is to promote stable residential neighborhoods consisting of low density, detached, single-family dwellings and surrounding parks, golf courses, and open spaces. Activities and endeavors which might serve to mitigate against this purpose shall be prohibited or strictly regulated.
- (b) *District regulations.* The following apply to all dwelling units in the R-1 zoning district:
  - (1) The maximum density for this district is three dwelling units per acre;
  - (2) All required parking shall be enclosed;
  - (3) Open storage is prohibited;
  - (4) Lot standards (setbacks, lot coverage, etc.) for single-family detached dwellings on existing platted lots that are included in article VII of this chapter, the Kiawah Island Property Setback Requirements Appendix, dated 7-10-2007, incorporated herein by reference and adopted hereto as said article VII shall apply in lieu of the setback requirements in table 2B following subsection (b)(6) of this section;
  - (5) Lot standards (setbacks, lot coverage, etc.) for single-family detached dwellings not covered by subsection (b)(4) of this section are listed in table 2B following subsection (b)(6) of this section and table 2C following section 12-66(b)(8);
  - (6) Authorized uses are listed in table 3A in section 12-102(c).

Table 2B. Lot Standards for R-1 Single-Family Detached Dwellings								
Lot Size (square feet)	Maximum Lot Coverage	Depth (feet)	Width (feet) <sup>(1)</sup>	Minimum Yard Setbacks (feet)			Maximum Height	
				Front <sup>(2)</sup>	Side <sup>(3)(5)</sup>	Rear <sup>(4)</sup>	(stories)	(feet)
8,000—11,999	40 percent	100	60	25	10	25	2.5	40
<b>12,000+</b>	<b>33 percent</b>	100	75	25	20	25	2.5	40
<sup>(1)</sup> For lots on cul-de-sacs or similar circumstances, the minimum width shall apply at the front yard setback line. Cul-de-sac lots shall have a minimum width of 25 feet at the street line. The minimum width of any flag lot may be reduced to 20 feet, provided that the minimum width specified in the table is provided at the front building setback line.								
<sup>(2)</sup> On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principal structure's front main entrance. The side yard setback shall apply to the remaining sides.								
<sup>(3)</sup> A minimum of 15 feet must be provided between structures.								
<sup>(4)</sup> The minimum yard requirements shall be increased to 30 feet from any lot or parcel boundary which abuts a golf course.								
<sup>(5)</sup> Minimum setbacks in side yard for lots currently in existence and reflected on the current zoning map and fronting on Eugenia Avenue the side yard setback shall be ten feet.								

(Code 1993, § 12A-205; Ord. No. 2005-08, § 12A-205, 10-12-2005; Ord. No. 2006-10, § 2, 2-6-2007; Ord. No. 2007-05, § 2(12A-205), 7-10-2007)

Sec. 12-64. - Setbacks.

*Setback* means a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected.

- (1) *Contextual setbacks.* Notwithstanding the front setback requirements of the underlying zoning district, the front building line of any structure or addition to a structure may be as close to the street as the front building line of a structure located on any lot that is immediately adjacent to the subject lot. If the subject lot is located between two developed lots, the front building line of the structure that is set back further from the street shall apply to the subject lot.
- (2) *Setbacks on corner and double frontage lots.* On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principle structure's front main entrance. The side yard setback shall apply to the remaining side(s).
- (3) *Exception to setbacks.* Every part of a required setback must be open and unobstructed from the ground to the sky except as set out in this subsection.

Driveways and walkways may be located within any required setback.

Uncovered stairs or stair landings to building entrances may extend up to five feet into any required setback.

Uncovered, at-grade patios may extend into a required setback; however, they shall maintain a minimum ten-foot distance from the property line.

Uncovered decks may extend up to five feet into any required rear yard setback.

Sills, belt courses, cornices, buttresses, eaves and other architectural features may extend up to two feet into any required setback.

Walls and retaining walls below three feet in height may be located within required setback.

In all zoning districts heating, ventilation and air conditioning (HVAC) equipment and associated HVAC stands may extend up to five feet into required side or rear setbacks only when all of the following conditions are met:

- (1) The HVAC equipment is replacing existing HVAC equipment which was originally placed below an existing structure and/or which HVAC equipment being replaced is now required to be elevated to meet the requirements of the Federal Emergency Management Agency (FEMA) and the Town of Kiawah Island Building Code;
- (2) Such HVAC equipment cannot reasonably be accommodated within the setback required by otherwise applicable zoning requirements;
- (3) The property owner has, through regular mail postmarked no later than five days in advance of applying for a Zoning Permit, notified the affected adjacent property owner(s) that are adjacent to the property line where the proposed HVAC equipment will be located, and has submitted to the Planning Director a signed affidavit stating that such property owner has notified the affected adjacent property owner(s) and proving each name and address to which notice was sent; and
- (4) A Zoning Permit is approved by the Planning Director.

(Code 1993, § 12A-204; Ord. No. 2005-08, § 12A-204, 10-12-2005; Ord. No. 2012-03, § 2, 4-3-2012; Ord. No. [2015-04](#), § 2, 4-14-2015)

**Sec. 12-104. - Accessory uses, buildings/structures.**

The purpose and intent of this section is to describe the standards for accessory uses as follows:

- (1) *Definition and applicability.*
  - a. The terms "permitted uses" and "approved special exception uses" include accessory uses and structures that are necessarily associated with, and appropriate, incidental and subordinate to, the allowed principal use. Accessory uses and structures shall be subject to the same regulations that apply to principal uses and structures in each zoning district, unless otherwise expressly stated.
  - b. Permits for accessory uses and structures shall be issued by the Town of Kiawah Island Planning Director.
  - c. In a residential zoning district, an accessory building or structure is a subordinate or incidental structure, attached to or detached from the principal building, which is not used for commercial purposes and which is not rented.
  - d. In nonresidential zoning districts, an accessory building or structure is a subordinate building or structure, the use of which is secondary to and supportive of the principal building.
  - e. Accessory buildings or structures shall not be permitted without a principal building or primary use being in existence.
  - f. Accessory uses include any use that is authorized in the district which is secondary or subordinate to the primary use.
- (2) *Standards for detached accessory dwelling units in residential districts.* An accessory dwelling unit to be occupied by family members or caretakers may be allowed as an accessory use to the principal dwelling unit under the following conditions:
  - a. No detached accessory dwelling unit may be constructed on a lot less than 15,000 square feet;
  - b. The detached accessory dwelling unit may not be sold separately from the sale of the entire property, including the principal dwelling unit, and shall not be leased or sublet;
  - c. The detached accessory dwelling unit shall comply with all required building setbacks for the principal residential use and shall be located in the buildable area of the lot;
  - d. The overall height of a detached accessory dwelling shall be limited to one story, provided that an accessory dwelling may be located over a garage;
  - e. When the accessory dwelling is directly attached to the principal dwelling with a roof connection of a minimum of four feet in width, or a wall connection of a minimum of four feet in height, it shall be considered an integral part of the main building; and
  - f. Detached accessory dwellings shall not exceed 1,500 square feet of heated area.
- (3) *Standards for accessory dwelling units in existing structures and nonresidential districts.*
  - a. Accessory dwellings for nonresidential structures shall be solely for use by fulltime caretakers of the structure. Such dwellings shall have at least one access through the business that employs the caretaker.
  - b. The overall height of an accessory dwelling shall be limited to one story, provided that a garage apartment or nonresidential caretaker's quarters may be located over a garage.
- (4) *Standards for accessory buildings in residential districts.* Accessory buildings may be allowed in residential zoning districts pursuant to the following conditions:
  - a. No accessory building may be constructed on a lot less than 15,000 square feet;

- b. Detached accessory buildings shall be prohibited from being placed in front of the principal building and shall be placed in the rear yard. Except that a detached accessory use may be constructed in front of the principal residence where the residence backs up to a beach, golf course, lagoon or marsh and is only permitted after approval as a special exception. Accessory buildings will be located within the buildable area of the lot as delineated by the setback requirements;
  - c. Subleasing or renting an accessory building separately from the primary use shall constitute a violation of this article.
- (5) *Standards for accessory structures in residential districts.* Accessory structures may be allowed in residential districts under the following conditions:
- a. Private swimming pools, along with incidental installations such as pumps and filters, may not be located in the front yard. A pool shall be set back a distance of not less than ten feet from all lot lines, except that a pool that is elevated more than four feet above the average natural ground level at the nearest property line shall comply with required building setbacks. All swimming pools shall be gated and fenced. The fence height shall be five feet.
  - b. Private tennis courts shall not be constructed within 20 feet of any adjoining property under other ownership. Tennis court fences or walls shall not exceed 12 feet in height, and no lights for the tennis court shall be permitted.
  - c. Fences shall be limited to landscaped hedgerows of dense plant material and/or wooden, masonry or wrought-iron material, all of which are required to be architecturally integrated with development of the lot or parcel. Fences shall not exceed five feet in height from grade for residential development; provided, however, that this five-foot height restriction shall not apply to the hedgerow portion of any fence or to a fence consisting completely of a hedgerow. This five-foot height restriction shall apply to any gate or gates in any fence of any kind. Solid wood fences shall not be permitted in front yards. Fences (excluding the use of plant material) shall not be permitted within five feet of a side or rear property line. Fences taller than three feet from pavement shall not be located within a sight triangle. Fence heights and setback restrictions shall not apply to the patio wall of patio homes. In measuring the height of a fence to determine whether it complies with the height restrictions, the measurement shall be made to the uppermost portion of the fence, and, if there is anything affixed to or regularly placed or resting thereon, including, without limitation, decorative or ornamental elements or features, all of which shall be considered a part of the fence for the purposes of this section, then the height measurement shall be to the top of any such thing, element or feature.

(Code 1993, § 12A-303; Ord. No. 94-12, § 2(12A-302), 9-26-1994; Ord. No. 2005-08, § 12A-303, 10-12-2005; Ord. No. 2008-04, § 2, 6-3-2008; Ord. No. 2010-02, § 2.2, 3-2-2010)

**BALLY BUNION (DEVELOPED LANDS)**

<u>Lot</u>	<u>Front</u>	<u>Side</u>	<u>Rear</u>
181 (*)	50	25 (lot 198) 15 (lot 196)	120
182	70	25 (lot 181) 15 (lot 183)	50
183	70	15 (lot 182) 25 (lot 184)	50
184	50	32 (lot 183) 15 (lot 185)	120
185	50	15 (lot 184) 32 (lot 186)	120
186 *	70	25 (lot 185) 15 (lot 187)	50
<b>187</b>	<b>70</b>	<b>15 (lot 186)</b> <b>25 (lot 188)</b>	<b>50</b>
188	50	32 (lot 187) 15 (lot 189)	120
189 (UNDEVELOPED)	50	15 (lot 188) 32 (lot 190)	120
190	50	30 (lot 189) 10 (lot 191)	50
191	50	20 (lot 190) 20	50
192	50	20 (lagoon) 15 (lot 193)	30 (lot 193)
193	30 (lot 192)	20 (lot 194) 30 (Flyway)	50 (Gov. Dr)
194	See Plat	15 (lot 193) 15 (lot 195)	50
195	50	15	50
196 (*)	50	15 (lot 181) 25 (lot 182)	120
198 (*)	50	15 (Lot 180) 25 (Lot 181)	50

(\*) = Setbacks not graphically depicted.

**BALDPATE COURT (NIGHT HERON COTTAGES) (DEVELOPED LANDS)**

<u>Lot</u>	<u>Front</u>	<u>Side</u>	<u>Rear</u>
80-82	25	15	20
83	20	7	15
84	25	15	20
85	20	7	15
86	15	*	10
87	25	15	20

\*Zero lot line homes may be built with no setback on one side of the property, but must have at least a 14 foot separation between buildings.

**BANK SWALLOW (NIGHT HERON COTTAGES)**

<u>Lot</u>	<u>Front</u>	<u>Side</u>	<u>Rear</u>
49	25	15	20
50-51	20	7	15
52-53	25	15	20
54-58	20	7	10
59			
77-78	15	*	10
79	20	7	15
88	20	7	15
89	25	15	20

\*Zero lot line homes may be built with no setback on one side of the property, but must have at least a 14 foot separation between buildings.

**BASS CREEK LANE (SEE GRAPHICS ALSO) (UNDEVELOPED LANDS)**

<u>Lot</u>	<u>Front</u>	<u>Side</u>	<u>Rear</u>
91	N/A (See Graphic)	30 (marsh) 30 (marsh) 20 (lot 92)	30 (marsh)
92	25	20 (lot's 91 & 93)	20 (marsh)
93	25	20	20 (See Graphic)
94	See Graphic	20	See Graphic
95	50 (See Graphic)	20	30 (marsh)
96	50	20	30 (marsh) (not defined)

# Town of Kiawah Island Board of Zoning Appeals

May 20, 2024



*Town of Kiawah Island Municipal Center | 4475 Betsy Kerrison Parkway | Kiawah Island, SC 29455*

1

## **CASE# BZA24-000005**

<b>Applicant/Property Owner:</b>	<b>Pennell-Read Family Trust</b>
<b>Representative:</b>	<b>Jeff Forte</b>
<b>Property Location:</b>	<b>187 Ballybunion Drive</b>
<b>TMS#:</b>	<b>265-13-00-032</b>
<b>Zoning District:</b>	<b>R-1, Residential Zoning District</b>
<b>Lot Size:</b>	<b>40,540 sq. ft. (0.95 acres)</b>
<b>Request:</b>	<b>Variance request for the reduction of the required 50' rear setback for approximately 162 square feet encroachment for a proposed pool addition.</b>

2

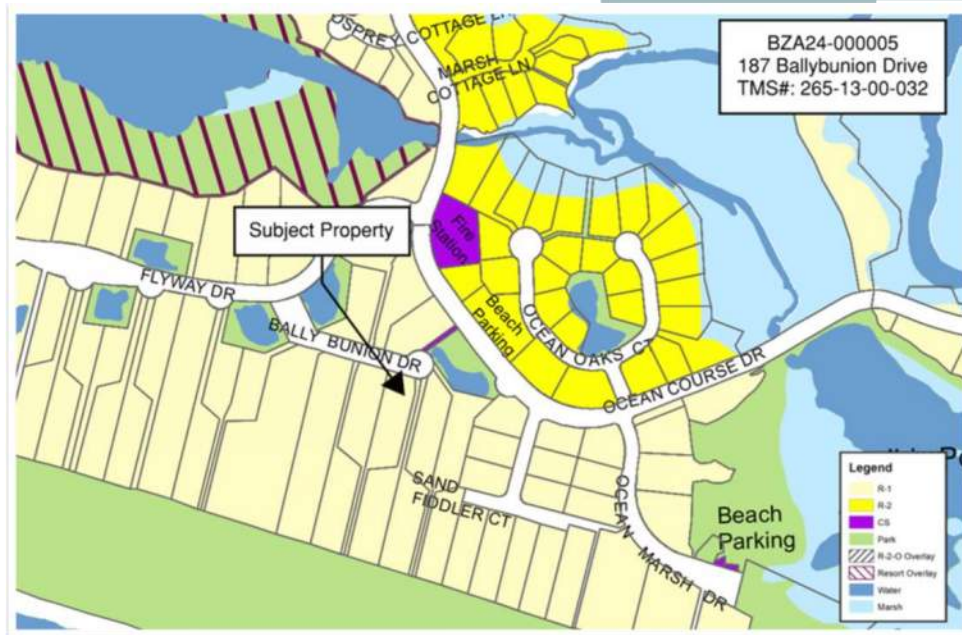
### CASE# BZA24-000005

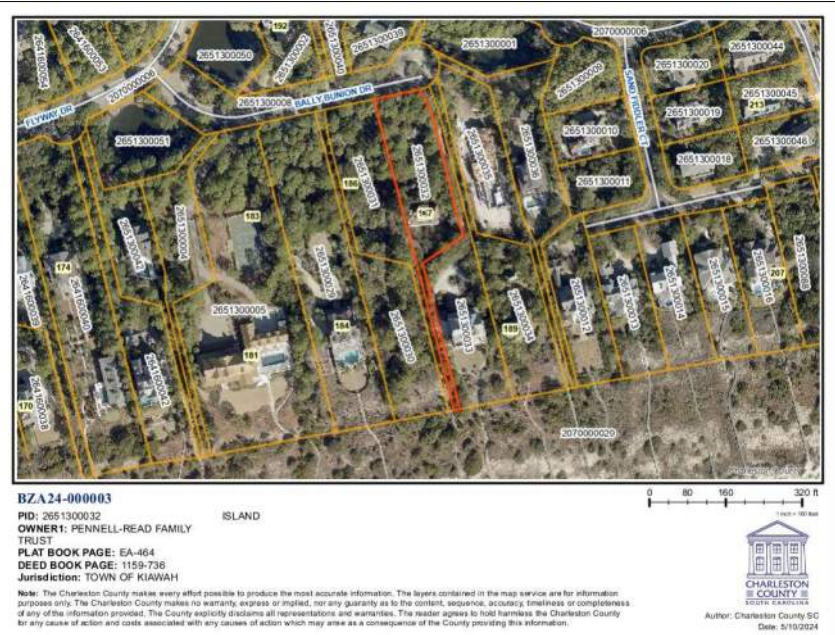
Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 2. Zoning Map/Districts, Sec. 12-65. - R-1, Residential District.

Required setbacks: 70' (Front); 15' (lot 186); 25' (lot 188); 50' (Rear)

Maximum 33% Lot Coverage

The Ordinance defines Setback as “a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected.” The Ordinance defines Rear Setback as “the setback measured from the rear lot line.”





5

**Case # BZA24-000005**  
**BZA Meeting of May 20, 2024**  
**Subject Property: 187 Ballybunion Drive- Kiawah Island**

Variance request for the reduction of the required 50' rear setback for approximately 162 square feet encroachment for a proposed pool addition.



6

### Subject Property



### Adjacent Properties



### Property Side



### Property Rear

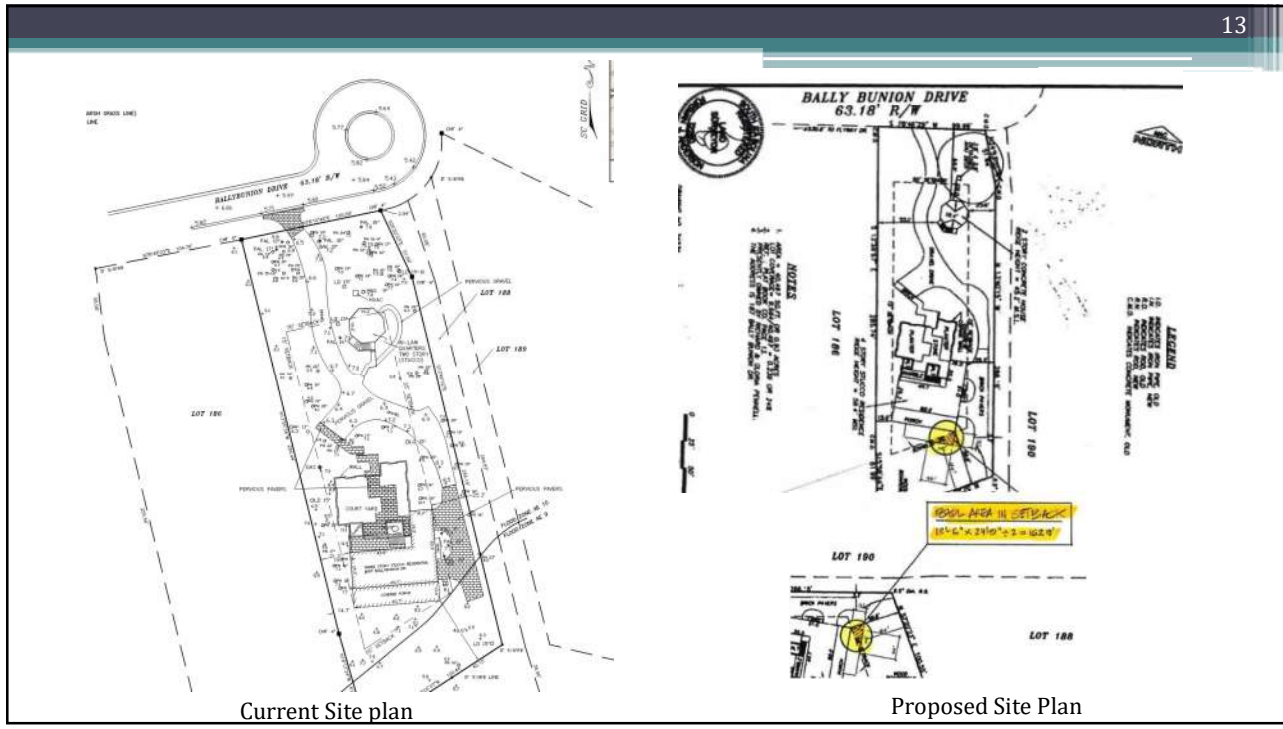


### Subject Property



### Subject Property





Current Site plan

Proposed Site Plan

13



187 BALLY BUNION DR., KIAWAH ISLAND PROPOSED ADDITIONS

14

## Variance Approval Criteria

According to Chapter 12 of the Land Use Planning and Zoning Ordinance of the Town of Kiawah Island Code of Ordinances, Section 12-163. Variances (4) Approval Criteria, the Board of Zoning Appeals may grant a variance only if exceptional circumstances exist, and where practical difficulty or unnecessary hardship is so substantial, serious, and compelling that relaxation of the general restrictions ought to be granted. No variance shall be granted unless the applicant shall show and the BZA shall find that:

- a) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b) These conditions do not generally apply to other property in the vicinity;
- c) Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
- d) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;

15

## Variance Approval Criteria

- e) The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map;
- f) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;
- g) The need for the variance shall not be the result of the applicant's own actions;
- h) Granting the 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;
- i) Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.

16

## **Board of Zoning Appeals Action**

The Board of Zoning Appeals may approve, approve with conditions or deny Case #BZA24-000005 (Variance request for the reduction of the required 50' rear setback for approximately 162 square feet encroachment for a proposed pool addition) based on the BZA's "Findings of Fact", unless additional information is deemed necessary to make an informed decision.

In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

**Staff Review:**

The applicant and property owner Read Pennell Family Trust being represented by Jeff Forte is requesting a variance for the reduction of the required 50' rear setback for approximately 162 square feet encroachment for a proposed pool addition located at 187 Ballybunion Drive (TMS# 265-13-00-032). The subject property is located within the R-1, Residential District.

The lot is approximately 40,540 square feet (.93 acres) in size. Per Charleston County records, the single-family residence was constructed in 1999. The adjacent properties to the north, south, east, and west are also located in the R-1, Residential Zoning District. There is a 15' pedestrian access easement located northeast of the property across Ballybunion Drive. St Johns fire station #6 is located roughly 500 feet north of the subject property. The subject property is subject to review by the Kiawah Island Architectural Review Board.

The *Town of Kiawah Island Land Use Planning and Zoning Ordinance* requires a seventy (70) foot front setback off Ballybunion Drive, fifteen (15) foot side setback off lot 186, twenty-five (25) feet off lot 188, and a fifty (50) foot rear setback. The subject property has a maximum lot coverage 33%.

The Ordinance defines Setback as “a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected.” The Ordinance defines Rear Setback as “the setback measured from the rear lot line.”

The applicant's plans include a pool and deck extending south from the existing rear deck. Approximately 162 square feet of the proposed pool encroaches into the required rear setback. The proposed deck does not encroach into the rear setback. The proposed pool extends approximately 14 feet into the required rear setback. The existing lot coverage is approximately 29.2%. The proposed lot coverage is 29.22%.

The applicant submitted to the Kiawah Island Architectural Review Board (KIARB) for review. The KIARB on April 3, 2024 granted preliminary approval for permit submittal with the following conditions:

*“The view corridor for this property angles south on the SSE facing lot and the existing house was designed in response to this condition. The variance for a pool or deck at the level of the elevated first floor to go over the rear setback as shown on the attached site plan is next to two driveway corridors, is well screened and would have no material impact on neighboring properties. The variance is approved.”*

Please see the attachments for further information regarding this request. A site visit was conducted on May 3, 2024, at which time the following determinations were made regarding the Approval Criteria for Variances, as stated in Chapter 12 of the Town of Kiawah Island *Land Use Planning and Zoning Ordinance*, Article II, Division 5, Section 12-163.(4):

**Staff Findings:**

The BZA may grant a variance only if exceptional circumstances exist, and where practical difficulty or unnecessary hardship is so substantial, serious, and compelling that relaxation of the general restrictions ought to be granted. No variance shall be granted unless the applicant shall show and the BZA shall find that:

§ 12-163.(4)a.: *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

**Staff Response:** **There may be extraordinary and exceptional conditions pertaining to the property due to the home being constructed out of line with the setbacks. Per the applicant's letter of intent, "The current home was originally sited at a slight angle from the side property and side setback lines. This original angular siting is the driving factor for our request for this slight variance in the rear setback of the home."**

§ 12-163.(4)b.: *These conditions do not generally apply to other property in the vicinity;*

**Staff Response:** **Existing structures in the vicinity may or may not have similar circumstances based on current setback standards. These conditions may be unique to the subject property and may not generally apply to other properties in the vicinity. The subject property is unique in that the home was constructed with ARB review to integrate the built environment into the natural surroundings.**

§ 12-163.(4)c.: *Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;*

**Staff Response:** **The application of this Ordinance to 187 Ballybunion Drive would restrict the construction of the proposed pool as the structure encroaches into the required 50-foot rear yard setback. However, it does not unreasonably restrict the utilization of the property. Per the applicant's letter of intent, "It is our intent to update the home and add a very straightforward, simple narrow swimming pool to the rear."**

§ 12-163.(4)d.: *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;*

**Staff Response:** **The proposed pool encroaches into the setback by approximately 14 feet with a total additional encroachment of 162 square feet for the proposed pool; However, due to the positioning of the house, the proposed pool and deck will remain screened from neighbors and may not be of substantial detriment to the adjacent properties, public good, and the character of the zoning district. Per the applicant's letter of intent, "This site is currently buffered by very dense and natural**

***trees and plants material. There are no existing trees that will be impacted by adding this proposed swimming pool. No neighbors, current or future will be impacted in any way by granting this variance.”***

§ 12-163.(4)e.: *The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map;*

**Staff Response:** **Granting of this variance would not allow the establishment of a use not otherwise permitted in this zoning district, extend physically a non-conforming use of land, or change the zoning district boundaries.**

§ 12-163.(4)f: *The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;*

**Staff Response:** **Profitability may not be considered grounds for this variance request.**

§ 12-163.(4)g.: *The need for the variance shall not be the result of the applicant’s own actions;*

**Staff Response:** **Per Charleston County records, the property was acquired by Gloria Pennell in 2003. The need for the variance may not be the result of the applicant’s own actions.**

§ 12-163.(4)h.: *Granting the 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;*

**Staff Response:** **Staff believes this variance request fulfills criteria (h). Per the applicant’s letter of intent, “*The requested variance will in no way negatively impact the community or neighborhood.*”**

§ 12-163.(4)i.: *Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.*

**Staff Response:** **Granting of the variance may not substantially conflict with the *Comprehensive Plan* or the purposes of the *Ordinance*. The applicant’s proposed plans do not exceed the maximum lot coverage.**

**Board of Zoning Appeals’ Action:**

The Board of Zoning Appeals may approve, approve with conditions, or deny Case #BZA24-000005 (variance request for the reduction of the required 50’ rear setback for approximately 162 square feet encroachment for a proposed pool addition) based on the BZA’s “Findings of Fact”, unless additional information is deemed necessary to make an informed decision.

April 9<sup>th</sup>, 2024

Town of Kiawah Island - Board of Zoning Appeals

4475 Betsy Kerrison Parkway

Kiawah Island, SC 29455

**Re: Letter of Intent in Support of Variance Request at 187 Ballybunion Drive (TMS# 265-13-00-032)**

Dear Board Members,

We are requesting a slight triangular variance of a total of 162 sq ft from the rear setback of an existing home located at 187 Ballybunion on Kiawah Island (please see attached proposed revised site plan).

The existing home was constructed in 1997, and is constructed with precast concrete panels, which cannot be modified through typical construction methods. The current home was originally sited at a slight angle from the side property and side setback lines. This original angular siting is the driving factor for our request for this slight variance in the rear setback of the home.

It is our intent to update the home and add a very straightforward, simple narrow swimming pool to the rear.

The site is currently buffered by very dense and natural trees and plants material.


There are no existing trees that will be impacted by adding this proposed swimming pool.

No neighbors, current or future will be impacted in any way by granting this small variance area.

We will work in close harmony with the Kiawah Island ARB, in addressing any requested additional planted buffer if requested.

Thank you in advance for your consideration of this variance from the rear setback, therefore allowing for the proposed swimming pool addition.

Sincerely,

DocuSigned by:  
  
ECDB6D5157D4473...

Darryl Dewberry

462 Fenton Place

Charlotte, NC 28207

704-299-6663

dewbyd18@gmail.com



April 3, 2024

Richard Pennell  
187 Ballybunion Drive  
Kiawah Island, SC 29455

PHYSICAL ADDRESS  
253 Gardeners Circle, Suite 200  
Johns Island, SC 29455

MAILING ADDRESS  
130 Gardeners Circle, Suite 123  
Johns Island, SC 29455

Re: **Variance Request**  
Construction Address: 187 Ballybunion Drive  
ARB Action: Approved

Dear Mr. Pennell,

Thank you for your submittal to the Kiawah Island Architectural Review Board (KIARB) regarding the variance request at 187 Ballybunion Drive. This was an Item of Discussion at the April 3<sup>rd</sup> meeting. The view corridor for this property angles south on the SSE facing lot and the existing house was designed in response to this condition. The variance for a pool or deck at the level of the elevated first floor to go over the rear setback as shown on the attached site plan is next to two driveway corridors, is well screened and would have no material impact on neighboring properties. The variance is approved. This proposed improvement may also require approval from the Town of Kiawah Board of Zoning Appeals.

The ARB will require a full Improvement Review and approval prior to the issuance of the ARB permit. We look forward to the complete design submittal for your future improvement.

Once again, thank you for your submittal to the ARB. Please let us know how we can assist you moving forward.

Sincerely,

Jane Maybank, *Director*  
On Behalf of the Kiawah Island Architectural Review Board

cc: Property file

Mr. and Mrs. Darryl Dewberry  
462 Fenton Place  
Charlotte, NC 28207

March 26<sup>th</sup>, 2024

Dear Darryl and Connie,

I was excited to learn of your interest in 187 Ballybunion Drive and even more so that you have placed it under contract. We will certainly love having you as neighbors.

I understand that you are exploring the process of having a pool put in and that it will require a small setback variance from the ARB and the Town of Kiawah. You communicated the setback is approximately 162 SF as shown on the attached plat.

I want you to know that we are in complete support of your addition and have no issue whatsoever with your encroachment over the buildable setback towards the edge of our property line.

If there is anything I could help you with during the process, please do not hesitate to reach out to me.

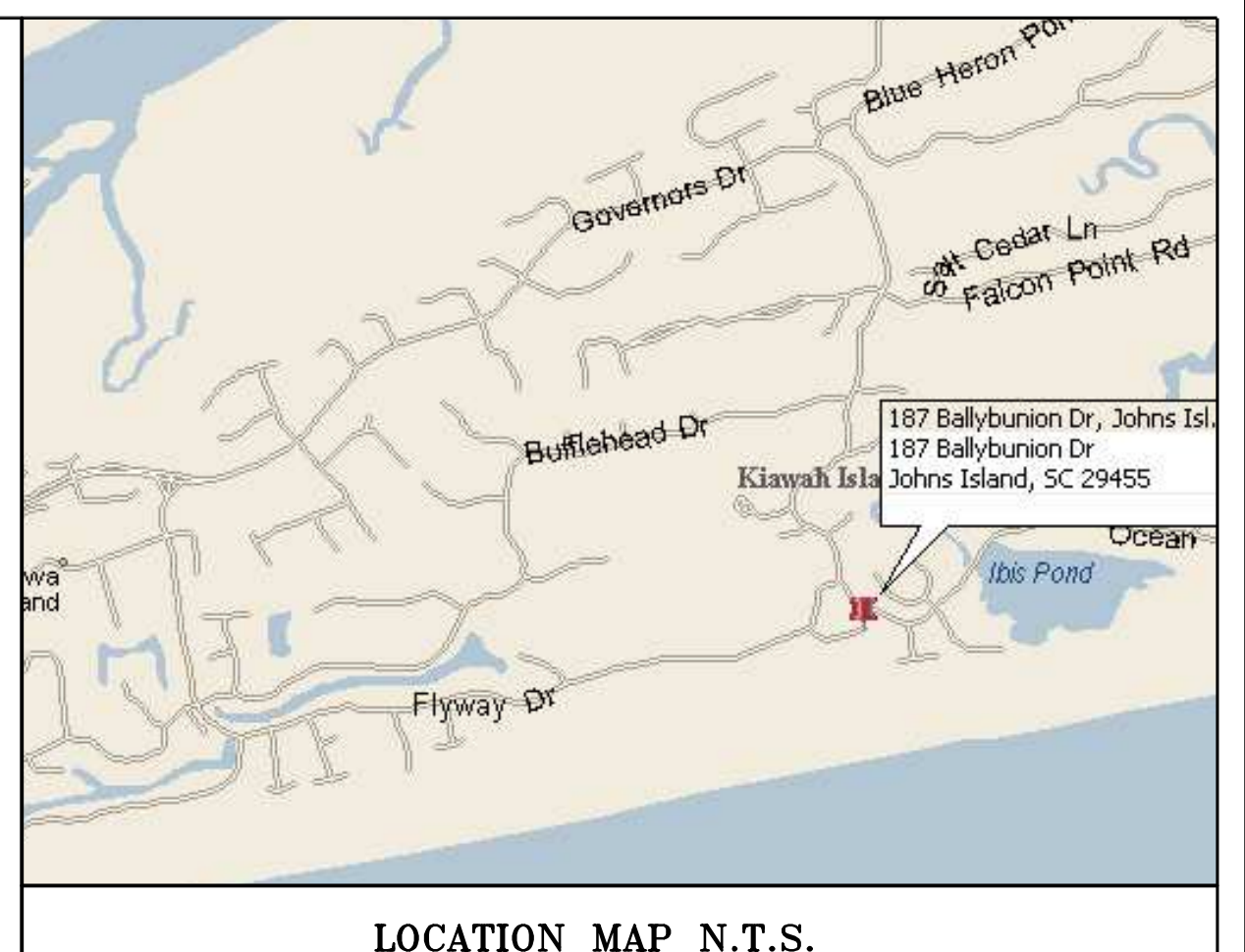
Sincerely yours,

*Curtis Arledge*

Curtis Arledge  
(203) 505-7682  
188 Ballybunion Drive  
Kiawah Island, SC 29455

**LEGEND:**

- SEWER CLEAN-OUT/SERVICE
- WATER VALVE
- IS 5/8" RBS (REBAR SET)
- IF (IRON FOUND) SIZE/TYPE NOTED
- PK NAIL SET
- PK NAIL FOUND
- WATER METER
- ELECTRICAL TRANSFORMER
- ELECTRICAL BOX
- TELEPHONE BOX
- SPOT ELEVATION
- POWER POLE
- WATER SERVICE
- LOT LINE
- DHEC-OCRM (MARSH GRASS LINE)
- ADJACENT LOT LINE
- FENCE
- CED CEDAR
- PAL PALMETTO
- WN WALL NUT
- BLACK GUM
- OAK
- LO LIVE OAK
- GUM
- PEC PECAN TREE
- CH CHERRY
- HAK HACKBERRY
- PN PINE
- POP POPLAR TREE



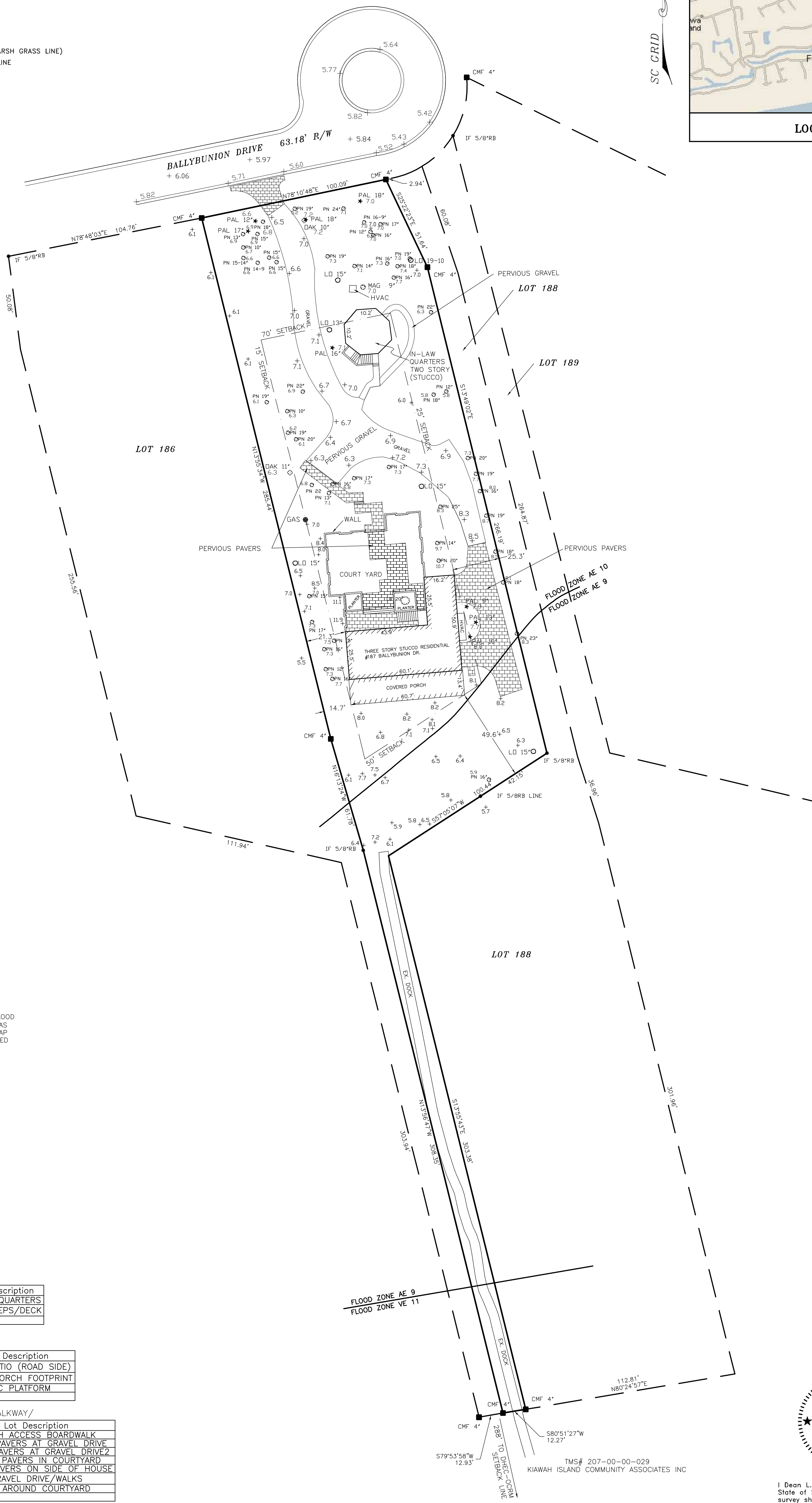
LOCATION MAP N.T.S.

**DATUM:**

SOUTH CAROLINA GRID SYSTEM  
NAD 1983 (2011 MODEL).  
VERTICAL DATUM IS BASED ON  
NVAD 1988 / CURRENT FEMA  
FLOOD MAPS.

**NOTES:**

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS; OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND-USE REGULATIONS, AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.  
THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SURVEYOR.  
THE SURVEY SHOWN HEREON REFLECTS THE ABOVE RECORDED REFERENCES.  
THE BEARINGS SHOWN HEREON ARE SOUTH CAROLINA GRID NAD 1983 (2011) MODEL.  
BUILDING SETBACKS SHOULD BE VERIFIED BY THE GOVERNING BODY PRIOR TO ANY DESIGN OR CONSTRUCTION.



**REFERENCE:**

- 1) PLAT BOOK CO AT PAGE 13.
- 2) PLAT BOOK EA AT PAGE 464.
- 3) KIAWAH ISLAND BEACH FRONT BASELINES SURVEY PACKAGE.
- 4) DEED BOOK
- 5) Book Page 1159-736.

**FLOOD NOTE:**

THIS PROPERTY IS LOCATED IN A FLOOD ZONE(S) AE 9, AE 10, AND VE 11 AS PER SCALING FROM FEMA F.I.R.M. MAP NUMBER 45019C0810K DATED REVISED JANUARY 29, 2021.

**IN-LAW QUARTERS**

Area	Sq. Feet	Acres	Lot Description
A1	484	0.01	IN-LAW QUARTERS
A2	112	0.00	WALL/STEPS/DECK
Total	596	0.01	

**MAIN HOUSE**

Area	Sq. Feet	Acres	Lot Description
A5	314	0.01	BACK PATIO (ROAD SIDE)
A3	2759	0.06	HOUSE/PORCH FOOTPRINT
A4	52	0.00	HVAC PLATFORM
Total	3125	0.07	

**DRIVEWAY/WALKWAY/**

Area	Sq. Feet	Acres	Lot Description
A12	1525	0.04	BEACH ACCESS BOARDWALK
A10	152	0.00	BRICK PAVERS AT GRAVEL DRIVE
A11	191	0.00	BRICK PAVERS AT GRAVEL DRIVE 2
A9	654	0.02	BRICK PAVERS IN COURTYARD
A8	1411	0.03	BRICK PAVERS ON SIDE OF HOUSE
A13	3966	0.09	GRAVEL DRIVE/WALKS
A7	116	0.00	WALL AROUND COURTYARD
Total	8015	0.18	

TOTAL 11,736

**LOT 187 OSPREY BEACH**

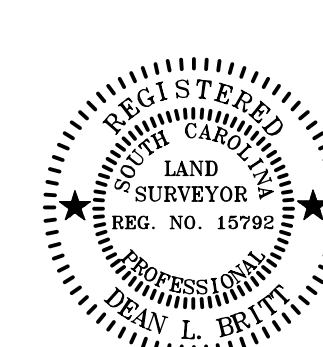
Area	Sq. Feet	Acres	Lot Description
A6	40453	0.93	LOT 187 OSPREY BEACH

29% LOT COVERAGE

LOCATION:	1897 BALLYBUNION DR. - 29455
TAX MAP NO.:	265-13-00-032
DATE:	MARCH 12, 2024
JOB NO.:	243942
COUNTY/STATE:	CHARLESTON, S.C.
FIELD BY:	DLB / S. HUFFMAN
DRAWN BY:	DLB

PLAT OF:  
AS-BUILT/TREE/TOPOGRAPHIC SURVEY SHOWING  
LOT 187 OSPREY BEACH - SUBDIVISION 429  
TRACT 52 PHASE III  
PREPARED FOR:  
Darryl Dewberry  
LOCATED IN THE TOWN OF KIAWAH ISLAND  
CHARLESTON COUNTY - SOUTH CAROLINA

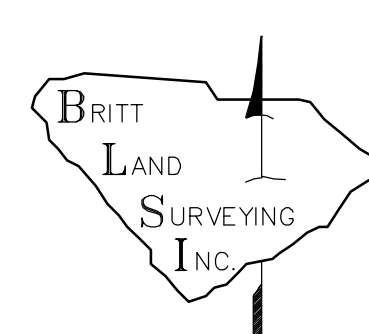
THIS SURVEY IS THE PROPERTY OF BRITT LAND SURVEYING, INC., AND IS PROVIDED AS A SERVICE TO Darryl Dewberry. THIS SURVEY IS NOT FOR THE USE OF MARKETING, NOR IS IT TRANSFERABLE / SELLABLE, AND IS ONLY INTENDED FOR THE NAME SHOWN HEREON.



I, Dean L. Britt, a Registered Professional Land Surveyor in the State of South Carolina, certify to owner(s) shown hereon that this survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a class \_\_\_\_ survey as specified therein.

Date: / /  
DEAN L. BRITT PLS S.C. REG. NO. 15792

BRITT LAND SURVEYING, INC.  
P.O. BOX 80333  
CHARLESTON, SC 29416  
843-766-2707  
brittsurveying@gmail.com



SCALE: 1" = 30'  
-30' -15' 0 30' 60' 90'



187 BALLY BUNION DR., KIAWAH ISLAND

PROPOSED ADDITIONS



# **Kiawah Island BZA Meeting of April 15, 2024**

## **Board of Zoning Appeals Rules of Procedure Review**

**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 5 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 6 (six) months ~~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. No member shall serve more than three consecutive terms of office; provided, however, that such member shall be eligible to hold such office after a break in service of twenty-four months. 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 ~~a-are~~are no longer qualified to serve per the Town's volunteer policy, state law requirements, and members who are not reappointed shall serve until their successors are appointed and qualified. ~~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 where exceptional circumstances exist. The Chairperson may use discretion to not allow virtual participation of a member based on the attendance quorum of members physically present.~~

### 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 members and the public.
4. When a regularly scheduled meeting is canceled as a result of an ~~hurricane or~~ 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 members of the BZA at least two (2) working days before the meeting. -The BZA may at their discretion 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.
13. 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~~ shall be entered into the records by the BZA.
14. 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.
15. The BZA, by its own motion, may call additional witnesses. The BZA has authority to subpoena witnesses.
16. After each case has been voted on, the Chairperson shall announce into the record how each member voted.

17. 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.

18. The BZA may reconsider a case under the following circumstances:

~~a. — Any member of the BZA may petition to the Planning Director that they would like a decided case to be reconsidered by the BZA. This petition to staff must come within seventy-two (72) hours of the BZA's decision on a decided case. Staff will present this petition to the BZA at the next scheduled meeting, granted a quorum is available. Prior to the BZA reconsidering the petitioned case, the BZA must find that it has misapprehended or misconceived the question or questions involved, or that it erred in its finding or disposition of the appeal, application or matter. Any member may motion to reconsider the case. If the motion to reconsider the case is granted, then the case will be heard by the BZA at the same meeting, provided all required notifications have been met. Following the approved motion, staff will present the subject case for reconsideration. A case may be reconsidered only once.~~

~~e. — Any applicant of a decided case may petition to the BZA that they would like a decided case to be reconsidered by the BZA. This petition to the BZA must be presented to staff within seventy-two hours (72) of the BZA's decision on a decided case. Staff will present this petition to the BZA at the next scheduled meeting, granted a quorum is available. Prior to the BZA reconsidering the petitioned case, the BZA must find that the applicant's petition has provided sufficient grounds for the subject case to be reconsidered. Any member may motion to reconsider the case. If the motion to reconsider the case is granted, then the case will be heard by the BZA at the same meeting, provided all required notifications have been met. Following the approved motion, staff will present the subject case for reconsideration. A case may be reconsidered only once.~~

e.a. A case may ~~also~~ be reconsidered upon the receipt of new evidence that has not been entered into the record of the decided case, or that it has been acknowledged submitted evidence of a decided case has erred in its application or matter, as determined by the BZA Secretary and or legal staff, only within seventy-two (72) hours from the date of the decided vote. The BZA Secretary and or legal staff shall make a determination of the new evidence submitted within ten (10) calendar days. If it is determined that new evidence has been found, the BZA must have a majority vote to have the case be reconsidered. ~~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.

21.19. The Chairperson or her/his designee shall sign all orders.

22.20. Board members may participate virtually in meetings where no applications are to be considered.

23.21. 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**

\_\_\_\_\_  
**Signature of the Secretary of the BZA**

\_\_\_\_\_  
**Signature of the Attorney for the BZA**