CITY OF CONWAY
ZONING BOARD OF APPEALS MEETING
THURSDAY, APRIL 28, 2016
CITY HALL CONFERENCE ROOM – 229 MAIN STREET – 5:30 P.M.

Present: Travis Donnelly, Alex Hyman, Blake Hewitt, James Battle, Georgia Johnson, James Shelley
Absent: Byron David
Staff: Adam Emrick, Planning Director; Barbara Tessier, Secretary
Others: Creola Harrelson, Larry Fullwood, Terry Huggins, Ted Kacprzyk

I. CALL TO ORDER

Chairman Hewitt called the meeting to order at 5:30 p.m.

II. APPROVAL OF MINUTES

Johnson made a motion, seconded by Shelley, to approve the March 24, 2016 minutes as written. The vote in favor was unanimous. The motion carried.

III. ELECTION OF OFFICERS

Dannelly made a nomination and motion, seconded by Johnson, to elect Alex Hyman as chairman. Hyman accepted the nomination. The vote in favor was unanimous. The motion carried.

Johnson made a nomination and motion, seconded by Blake Hewitt, to elect Dannelly as vice chairman. Dannelly accepted the nomination. The vote in favor was unanimous. The motion carried.

Hyman then chaired the meeting.

IV. VARIANCE REQUESTS

A. Harrelson Properties IV, LLC requests a variance from Section 6.1.6 Minimum Required Yards and Setbacks of the City of Conway Unified Development Ordinance (UDO) for the property located at 1510 Oak Street. (TMS # 123-14-25-025 / PIN 33812010007)

Shelley had recused himself from the meeting in March and did so again for this meeting.
Emrick reminded the Board that this request had come before them in March and they had deferred it until this meeting to have time to better review the case and for him to research the former Zoning Ordinance to determine the setbacks at the time the building was originally constructed. He said they were 20' in the front, 20' in the rear, and 7'5" on the sides.

Emrick said the applicant wished to construct an addition to an existing multi-family building that was situated on a lot that ran between Oak Street and Canal Terrace. He said the building faced north, perpendicular to the street frontage.

Emrick said the while the lot was not a corner lot, it did have two sides abutting streets, and as such both of these frontages would have a 15' setback for building. He said the building faces northwest and did not face either Oak Street or Canal Terrace.

Emrick told the Board what the setbacks were for the Medium Density (R-2) zoning district. They are 15' for the front, 20' for the rear, and 7.5' for the sides. He said the existing building met the required setbacks.

Emrick said the applicant proposed to add to the existing structure by extending the building toward Canal Terrace, and extending the building footprint toward the rear of the building to a distance of 7'0" from the rear parcel lines.

Emrick said he had denied the building permit for the construction due to the building not meeting setbacks on February 25, 2016. He said again that the applicant wished to be granted a variance from the 20' rear setback to a 7'9" rear setback.

Hewitt said at the March meeting, the Board felt that of the four findings that had to be met, they could find in favor of the extraordinary conditions, that other property in the vicinity did not have the same extraordinary conditions, and they did not feel it would be a detriment to the public good or to the character of the district if they granted the variance, however, they could not find that the utilization of the property would be unreasonably restricted.

At this time Harrelson took the floor. Hyman swore her in. She read from a prepared statement that is attached to these minutes. She gave a description of frontage based on her years of being in real estate.
Harrelson said that Emrick had told her to connect the proposed townhouses to the existing building. She said he told her it had to be contiguous.

Hyman asked if Parcel B was vacant at this time. Harrelson there was nothing on Parcel B. Hyman asked her if she had considered abandoning the parcel line. Harrelson asked why she would do that. Hewitt said if she abandoned the parcel line between lots A and B, she would not need the variance. Harrelson said the side setback only had to be 7.5' feet. Emrick said Parcel B had to be 60' feet in width to meet the zoning ordinance or else it would be a substandard lot. Hyman said he was talking about abandoning the parcel line between A&B. Emrick said if it was abandoned completely, it would be fine.

Harrelson asked why she would have to abandon the line saying again that the side setback was only 7.5'. Hyman said he understood that was her view. Hyman said there looked to be a drainage easement along the front. Hewitt said it was along the top. Harrelson started to say how the front of a lot was defined and Hewitt said it was defined by the UDO. Hewitt said he was not sure the Board had the right to supersede how the UDO. Harrelson asked what the UDO was. Hewitt said it was the Uniform Development Ordinance adopted by City Council has the force of law in this city.

Harrelson asked what the UDO said about frontage. Emrick read from Section 6.1.9 Side Yard Setbacks for Corner Lots, “For corner lots both yards lying between the primary structure and the intersecting streets shall be considered front yards.” Hewitt said if any part of the lot touched a street, it was a front yard. Hewitt said she had two front yards.

Hyman said they could not suspend the UDO based on what beliefs were. Harrelson asked Emrick to continue reading what the UDO said about front yards. He said “a space extending the full width of the lot between any building and the front lot line is the Front Yard” For corner lots, both yards lying between the primary structure and the intersecting streets shall be considered front yards; however, the front lot line shall be designated by the shorter of the two property lines adjacent to the street. The other front yard at the side property line shall be known as a Corner Front Yard.” Harrelson said it was not a corner. Johnson said the UDO’s definition defined that this property had two fronts.

Emrick said where the UDO did not specifically address her situation was up to him to interpret and what is what he had done. Emrick told Harrelson that he did not remember telling her that the building had to be contiguous,
but that the easement on the property might have been why they discussed continuity. He said he remembered asking her to check with the Building Department to be sure she could build contiguous, but he did not require that she build contiguous. Dannelly said the Board had brought it up during the March meeting to see if building it contiguous to the other building would work in alleviating the setback issues.

Harrelson asked if it would be advisable if she subdivide the back of the existing apartment into a separate parcel. Emrick said she would then not have any parking for the existing building. He said it would be on a different parcel and creating a nonconformity.

Hyman said the easier fix would be to abandon the lot line between parcels A and B making it one piece of property. He said if the two parcels were combined into one, there would be no setback issues. Harrelson asked if she could still put another building on what is currently parcel B because that would be fine with her. Dannelly said if she abandoned the line, the variance issue would be resolved in that no variance would be needed.

Harrelson said the solution would be to abandon the parcel line between parcels A and B, allowing her to build two buildings. Emrick said without seeing building plans, he could not tell if it would work.

Dannelly asked Emrick if the line was abandoned, would the need for a variance go away. Emrick said that it would.

Hewitt said Harrelson would have to withdraw her request for a variance because the Board could not make a motion for her to do so.

Harrelson wanted to be sure she understood correctly. She said if she abandoned the line and connected the new building to the existing (Harrelson said she wanted to connect the two buildings) she could build that and another building for her sister on what was now Parcel B. Hyman said if she abandoned the line, the rear would be to the back of parcel B. Emrick said that would be correct for the building she might build for her sister. Emrick said that building she built for her sister would face Canal Terrace. Harrelson asked if she could get a building permit. Emrick said once the line was abandoned, it would be up to the Building Department to see that what she was proposing met the Building Codes.

Harrelson said she would be more than happy to have the line abandoned.

At this time, Harrelson left the meeting.
B. Larry W. Fullwood requests a variance from Section 5.2. Accessory Uses and Structures - Section 5.2.1.A.2 Setbacks, Section 5.2.1.A.3 Height, and Section 5.2.1.A.5 Size of the City of Conway Unified Development Ordinance (UDO) for the property located at 1203 Laurel Street. (TMS# 123-14-03-012/ PIN 33812040033)

Emrick said the applicant had submitted a building permit and plans to construct an addition to an existing garage in December 2015. He said the existing garage was 28’ x 24’, and the proposed addition was 28’ x 28’ and 19” in height.

Emrick said that although his home had an alleyway behind it, it was not considered double frontage. He said the proposed structure would be 11’ from the rear property line or 9’ less than required.

Emrick went on to say that the house was 1,786 square feet. The UDO states that total square footage of all accessory structures on a lot shall not exceed fifty (50%) percent of the rear yard. The square footage of one (1) accessory structure shall not exceed fifty (50%) percent of the area of the primary structure on the same lot. Emrick said the existing garage is 672 square feet and the proposed additional would add an additional 784 square feet for a combined total of 1,456. Based on the size of the house, the largest an accessory structure could be is 893 square feet. This proposed structure far exceeds the maximum size allowed given the size of the primary structure.

Emrick said the UDO also established the height limitation for accessory structures at 15’, unless it is located entirely in the buildable area of the which in which it is located, then the height limitation is set at 40’ for the R-1 Zoning District. Emrick said since the garage addition would be located within the rear setbacks of this lot, the proposed 19’ height exceeded the maximum allowed for this site.

Emrick said staff denied the building permit due to the building not meeting setbacks, exceeding height limitations and exceeding maximum size. Fullwood submitted a request for variance on March 31, 2016.

Hyman swore Fullwood in. Hyman asked Fullwood if he wanted to address the Board. Hyman asked Emrick about the alley. Emrick said it was not a road and it did not give this property double frontage. Fullwood said he had been in this house since 1997 and that his family owned the land since the 1960’s. Hyman asked Fullwood if the property was fenced. He said his property was not fenced, but that the property on the corner was fenced and it was 2’ into the right-of-way. Fullwood said the alley was 30’ wide and was put in as a sewer right-of-way. Fullwood said the corner
property had a structure in the rear that was taller than the house. Johnson said it was quite a bit taller than the house.

Fullwood said that the garage height at 19' would still be lower than the house height. Hyman asked him why he wanted a 19' height. Fullwood said he wanted a car lift and it was 12' tall. He said he had tried to figure out how to fit it into a 15' structure, but he would have to do a pancake ceiling or recessed ceiling. He said he thought it would weaken the structure.

Fullwood said the houses around his were rental properties, and one had a building built on the property line of the alley. Fullwood said his addition would not be visible from the street.

Hyman asked what the existing garage was used for. Fullwood said it full of things – an antique car and a golf cart, too, as well as all his tools. Hyman asked if he would enter the garage from the alley. Fullwood said he could but he had thought of entering from the same side as the existing garage.

Shelley said to Fullwood that if he understood correctly, the most important issue to him was the height of the building. He asked if Fullwood had considered a redesign that met the UDO. Fullwood said he had a drawing showing the height at 15', but it would lessen the stability of the trusses. Shelley said it could be beefed up with a series of LVL (laminated veneer lumber). Shelley said Universal Forest would probably do his trusses and they could beef them up with LVL. Fullwood said he did not know what LVL was.

Hyman said the other issue was the square footage. Hyman asked Emrick what made a garage a garage or was it just an attached structure. Emrick said it was not a shed. He said if you could pull a car into it, it was a garage. He said there was no definition of a garage in the UDO. He said the size limit was not because it was a garage, but that this applied to all accessory structures. He said this also applied to the height restriction. Emrick said if the garage met all setbacks, and was within the setbacks for the principle structure, then it could be the height of the house. He said the height was an issue only because it did not meet setbacks. Fullwood said he had had it drawn up to be within the 20' setback, but he could not put a car in at that length. Hyman asked if the size was still an issue if it was built within the setbacks. Emrick said it would still be an issue.

Hyman said that Emrick's decision to deny the permit was based on the laws. He said whether or not the Board could grant a variance would depend on whether or not there were extraordinary conditions pertaining to that piece of property, whether or not those same conditions applied to
other nearby properties, whether not granting a variance would hinder the utilization of the property, and whether or not granting the variance would be detrimental to surrounding properties or to the public good.

Fullwood said there were currently five buildings within 5' of the property line. He said his receiving a variance would not be seen as non-conforming to the neighborhood.

Emrick said he had received one email, which was not fully an objection, but asked that it conform to the UDO requirements. Johnson asked if it was from a property owner. Emrick said it was a neighboring property owner.

Hewitt said if Fullwood took down the existing garage, he could build a larger one in its place. Fullwood said he had looked at tying the existing garage to the house, which would eliminate the fact that it was a detached garage. He said he could then have asked for a variance to attach to the other garage making it one continuous structure. Hyman said that didn’t sound like a bad idea. Hewitt said if he brought the structure within the setbacks, it would eliminate the height issue. Fullwood said it would then not be long enough to house a vehicle.

Hewitt said he did understand because he had to follow the UDO requirements at his personal property as well. Fullwood said there were already five existing buildings on the alleyway that were in the 20' setback. Johnson said the UDO was not in place when the other structures were built.

Hyman asked Emrick if there were any easements. Emrick said there were none that impacted the garage.

Fullwood told Shelley that if he could get the trusses done as Shelley had suggested, he would do that if it had to be done.

Hyman said he hated to make an applicant come back twice. Hewitt made a motion to table this item over until Fullwood’s engineer could make plans that conformed to the UDO requirements, otherwise his motion would be to deny, Hewitt said he could not see a case being made for allowing the encroachment into the setbacks. Battle said there was not a condition particular to the property. Battle said this was something Fullwood wanted to do as opposed to something he was required to do to be able to use the property. The motion was seconded by Dannelly, The vote in favor was unanimous. The motion carried.
C. Ramchard Dinanauth requests a variance from Section 6.1 Setbacks, Yard and Height Requirements of the City of Conway Unified Development Ordinance (UDO) for the property located at 1812 Ambridge Drive. (TMS# 136-21-01-042/ PIN 36904020031)

Emrick said All American Fence Company had submitted a building permit on behalf of Ramchard Dinanauth to construct a patio roof structure over an existing concrete pad. Emrick said the concrete pads did not have to be permitted because they were not a structure. Emrick said sometimes the concrete pads were built in the setbacks. Emrick said the applicant wanted to build a 12’ x 12’ patio roof over the existing concrete pad.

Emrick said the Unified Development Ordinance (UDO) setback requirements for the R-1 Zoning District were 20’ in the front and rear and 10’ on the side. Emrick said the proposed patio roof structure would be 0’ from the side property line or a full 10’ less than the required side setback. Emrick said the roof enclosure was considered a structure and it would have to meet the UDO requirements, which was different from an accessory structure because the roof would be attached to the house.

Emrick said staff denied the permit due to the patio roof not meeting setbacks. He said the applicant was requesting a variance to reduce the setback of 0’ on the side of the lot instead of the 10’ required side setback.

Hewitt asked Emrick if a retractable awning would be permitted. Emrick said a retractable awning would be fine. Hyman asked about a pergola. Emrick said a pergola would not be permitted there.

Hyman asked who was present for this item. He swore in Huggins. Huggins said the property owner just wanted a place where he could sit out of the sun. Huggins said the roof would not be an eyesore and take away from the looks of the property. Hyman asked if the fence went up to the front of the house. Huggins said it went three quarters of the way to the front of the house. Huggins said the roof would be inside the fenced area. Huggins said it was just a roof and that it would be open. He said it was a place to put his barbeque. He said the owner did not want a retractable awning.

Shelley said if the Board approved a variance, they would be in danger of setting a precedent.

Hyman asked Emrick if there had been any community input. Emrick said there had not been any calls. Emrick said just about every house in Rosehaven had a concrete pad. He said three requests came in and two did not meet the setback requirements with relatively the same set of facts. He said he could easily envision multiple requests and appeals.
Emrick said the problem he foresaw was if they started noting on the building permit that any concrete pads could not be covered if they were in the setbacks, would still result in variance requests coming in.

Huggins said not every lot had the same setbacks. Emrick said that was true.

Battle said again that the pad did not cause the issue, it was the roof covering. Emrick said that was correct. Emrick said anything under 12” tall was not considered a structure.

Huggins said granting this variance would not set up for precedents. Huggins said this roof covering was not going to bother anyone. Johnson said that was not the issue. She said the issue was the setbacks and the law.

Shelley made a motion, seconded by Johnson, to deny the request for the additional of the roof covering. The vote in favor was unanimous. The motion carried.

D. Ramchard Dinanauth requests a variance from Section 6.1 Setbacks, Yard and Height Requirements of the City of Conway Unified Development Ordinance (UDO) for the property located at 2111 Belladora Road. (TMS# 136-21-01-0008/ PIN 36904020043)

Emrick said this was a corner lot and the UDO called for 20’ setbacks on each of the road frontages. He said the UDO called for the house to be situated so it faced the narrowest side of the property, but this house was not situated on the property in the way it should have been. The builder did not want to situate the house correctly on the lot because he said it would change the model of the house, and that he had approved it. He said what the owner had was a 20’ setback on both fronts and the rear and 10’ on the one side.

Emrick said the owner wanted to cover the patio with a roof structure and it would encroach into the setbacks.

Hyman asked who initiated the request to change the orientation of the house on the property. Emrick said the request came from the builder who was under contract.

Emrick said he denied the permit request due to the patio roof addition not meeting required setbacks.
Ted Kacprzyk, the neighbor to the rear of this parcel, was sworn in, and said he had no complaints about the roof over the patio.

Hyman asked Emrick what the lot size was. Emrick said it was .28 acres. He said it was a large parcel for that area. He said the typical parcel was 7,500 square feet and this parcel was 12,000 square feet.

Hyman asked Emrick if a retractable awning would be acceptable. Emrick said it would be. He said he was not even sure if a permit was required for a retractable awning.

Hyman said the request as presented did not meet the 4 criteria that the Board needed to follow. Shelley asked if the property owner was aware that he did not have a 10’ setback in the rear. Emrick said he did not make him aware of that.

Battle made a motion, seconded by Hewitt, to deny the request as presented because the Board could not make the findings required by the four criteria. The vote in favor was unanimous. The motion carried.

**E. Anchor Sign, Inc. requests a variance from Section 11.4.1.A&B of the City of Conway Unified Development Ordinance (UDO) for the property located at 2756 Church Street for additional wall signage (TMS #122-00-04-084 / PIN 33703030009)**

Hyman swore in Mike Cohen.

Emrick said Aspen Dental had made a request for wall signage on the frontage, and a wall sign west toward Cultra Road. He said they also had an existing freestanding sign in the front as well. Emrick said they were permitted a total of 200 square feet of signage. He said the freestanding sign was 60 square feet. He said they were requesting an additional 84 square feet per wall sign, putting them 28 square feet over what was permitted. Emrick said the reason they could have two wall signs was because the front and the side each had customer entrances. He explained that if they did not have the customer entrance on the side, they would not have been permitted a second sign because they are not on a corner.

Cohen said they felt there was a hardship because the signage was blocked by the Hugo billboard and that Mattress Firm, who was located adjacent to them had a row of trees that blocked them.
Shelley asked if Aspen Dental was a franchise. Cohen said that it was. Shelley said there were other offices that had the same signage. Cohen said the signage was pretty uniform from office to office.

Dannelly said they had to look at the four criteria to see if they could find in favor of any of them. Dannelly said what type of trees were on the Mattress Firm property. Emrick said they were Live Oaks and they could not be removed. He said Mattress Firm was required to have trees along the road frontage.

Dannelly made a motion, seconded by Johnson, to grant the variance due to finding in favor of the four criteria. The vote in favor was unanimous. The motion carried.

V. PUBLIC INPUT

There was none.

VI. ADJOURN

There being no further business to come before the Board, the meeting adjourned at 6:44 p.m.

Approve and signed this 11 day of June, 2016.

B. Alex Hyman, Chairman