CITY OF CONWAY
PLANNING COMMISSION MEETING
THURSDAY, SEPTEMBER 6, 2018
CITY HALL CONFERENCE ROOM – 229 MAIN STREET – 5:30 P.M.

Present: Mark Stanley, Brian O’Neil, Chris Sansbury, Gloria Robinson-Cooper, Brantley Green, Alex Hyman, Chris Guidera

Absent: Kendall Brown, John Thomas

Staff: Jessica Hucks, Zoning Administrator; Alicia Shelley, Secretary

Others: Willie Simmons

I. CALL TO ORDER

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

II. APPROVAL OF MINUTES

Stanley made a motion, seconded by Sansbury to approve the August 2, 2018 minutes as written. The vote in favor was unanimous. The motion carried.

III. REZONINGS

A. Request to rezone approximately 0.21 acres of property located at 1703 Singleton Street (TMS # 137-01-06-033 | PIN: 36802020106) from Neighborhood Commercial (NC) to Medium-Density Residential (R-2).

Hucks said on August 14, 2018, an application was signed by Deloris Swearingen and Willie Simmons requesting the rezoning of the parcel from Neighborhood Commercial (NC) to Medium-Density Residential (R-2). An existing apartment building is located on the property, and the property is for sale. However, property owners are concerned that potential buyers are unable to receive bank financing because the property is zoned commercially, and therefore, if the existing apartment building is removed, or if the building is destroyed beyond 50% (of assessed value), a new apartment building would not be permitted. The property owner was unaware that the property was zoned commercially. Zoning maps dating back to 2002 show the parcels as Neighborhood Commercial. The intent of the R-2 District is to provide areas for medium density attached, detached, semi attached and multi-family residential development in the City of Conway, and to prohibit uses that would substantially interfere with the development or continuation of residential structures in the District.
Hucks said the applicant, Willie Simmons was present.

A. Hyman stated that residential is all around. He made a motion to change the zoning from Neighborhood Commercial (NC) to Medium-Density Residential (R-2).

Green asked if there were any calls in opposition, and Hucks said no.

O'Neil stated that he was in agreement as the property is surrounded by houses and he wasn't sure why it was zoned NC to begin with. Hucks said that the future land use map identifies these parcels as High Density Residential.

A. Hyman’s motion was seconded by Guidera, to recommend the rezoning to City Council. The vote in favor was unanimous. The motion carried.

IV. TEXT AMENDMENTS

A. Discussion on possible amendments to Article 2, Definitions, and Article 5, Specific Use Regulations, of the Unified Development Ordinance relative to accessory structures in residential and non-residential zoning districts.

Hucks gave an overview. She stated that over the past couple of years, staff has seen an increase in the number of variance requests being submitted regarding requirements for accessory structures, including location requirements, separation requirements, maximum number permitted, and setbacks for such structures.

Some of the variance requests have included non-residential parcels zoned CP, FA, LI and HI that proposed to add additional accessory buildings to their already legal nonconforming amount, or proposed to add buildings that were constructed of metal when the principal structure itself is constructed of metal. The aforementioned zoning districts are exempt from having to meet the design guidelines of the UDO which prohibit metal facades, however the accessory structures guidelines for non-residentially zoned parcels do not include this same exemption. As such, the Board of Zoning Appeals has seen multiple variance requests for properties wishing to add accessory structures constructed of the same material the principal structure is, or that exceeded the maximum amount permitted per parcel.

The amendment would exempt accessory structures in some Non-Residential zoning districts; specifically, Conservation Preservation (CP), Light Industrial (LI), Heavy Industrial (HI), Institutional (IN) and Forest Agriculture (FA), from certain requirements. The amendment would omit these districts from requirements regarding the number of accessory structures permitted on a single parcel as well as the design guidelines for accessory structures, with certain exceptions as outlined in the amendment.

Additionally, many residents have submitted building permit applications for accessory structures to be located on existing concrete patios directly behind their homes, which otherwise require a minimum separation of five (5) feet. Many of these structures include pergolas, gazebos, etc., and are not always built onsite,
but rather bought pre-fabricated at home improvement stores, which are easily erected and easily removed. Regardless, such structures require a building permit, which then requires zoning review and approval, and as such, requires such structures meet minimum separation requirements as specified in the accessory structures ordinance, Section 5.2.1 of the UDO. Staff proposes to amend Article 2 and Section 5.2.1 of Article 5 to allow such structures, including pergolas, gazebos and arbors, to be considered a "garden structure", and to exempt such structures from the minimum separation requirements, with the condition that such exemption is in-line with the IRC (International Residential Code) as enforced by the Building Dept.

Staff proposes the amendment to include "garden structures" to be permitted in side yards, as well as "corner" front yards.

The amendments proposed, as described above, will allow residents to have further use and enjoyment of their property. Many people seeking permits for such structures are unaware of the requirements of the UDO with regard to accessory structures, and many times, have already had these structures delivered to their property. Sub-contractors who work for home improvements companies are also unaware of the City’s requirements and many times, misinform the homeowner of the requirements, as surrounding jurisdictions have differing requirements, or none at all, for certain structures. Staff is then left to enforce the current law on the property owners or give them the option of applying for a variance. Such requests for variances can be time-consuming, and if granted, sets a precedence that requesting a variance will not only stay enforcement of the violation but also that future violations can be remedied and permits subsequently issued by applying for a variance.

Below is a list of the affected Sections of the UDO that are proposed to be amended:

- **Section 2.2.1** of the UDO provides the definitions for accessory structures and structures, in general. Staff proposes to add a definition for "garden structures" to address the proposed amendments in Section 5.2.1 of the UDO, which defines a garden structure as outdoor structures that are freestanding or attached to a principal structure, and which includes the following:
  1. **Pergola**: a freestanding structure with an open roof that is supported by columns or posts. A pergola may be used to cover a walkway or to provide filtered shade for an outdoor living space. This does not include "pop-up tents", which are prohibited.
  2. **Gazebo**: an outdoor structure, permanent or temporary, with a closed roof (but open on all sides) and may include pop-up, canopy, metal, wooden, and resin. This does not include "pop-up tents", which are prohibited.
  3. **Arbor**: a relatively simple, small landscaping structure. Compared to a pergola, they are typically lacking architectural flourishes such as masonry columns, may or may not have curved arches at the top, made from vinyl or more traditional materials and are freestanding (not attached
to houses, although they may be attached to a fence, in which case they sometimes house a gate).

- **Section 5.2.1 (A)** of the UDO sets forth the regulations regarding accessory structures for single-family detached, single-family attached, and two-family dwelling uses, which are accessory to the principal use of the property. Staff proposes to amend the following:
  1. **5.2.1, A**: delete gazebos and replace with garden structures (gazebos, arbors, pergolas).
  2. **5.2.1, A.1 – Location**: Shall be located in the rear yard only. Detached garages and gazebos garden structures may also be located in the side yard. Staff proposes (in addition to the above) to add a subsection (a) Garden structures may be located in corner front yards.
  3. **5.2.1, A.2 – Setbacks**: Shall be located a minimum of 5 feet from all property lines. Exempting garden structures, accessory structures shall be a minimum of 5 feet from other accessory structures and the principal structure. Detached garages and gazebos garden structures located in the side yard shall meet the setback requirements of the zoning district in which they are located and shall not be located more forward than the front façade of the primary structure.
  4. **5.2.1, A.4 – Number**: shall be limited to three (3). Book exchange boxes, education facilities, public recreation facilities and children’s playhouses shall not contribute to this number.

- **Section 5.2.1 (B)** of the UDO sets forth the regulations regarding accessory structures for non-residential, multi-family dwellings, single-family attached dwellings, religious institutions, and governmental uses, which are accessory to the principal use of the property. Staff proposes to amend numbers 4 – Number and 6 – Design.
  1. **5.2.1, B.4 – Number**: Shall be limited to three (3). Staff proposes to add a subsection (a) to state “exempting parcels zoned CP, FA, IN, LI and HI that are a minimum of one (1) acre in size, or parcels that contain education, medical, or public recreation facilities”.
  2. **5.2.1, B.4 – Design**: Shall not be constructed with any corrugated metal, sheet metal, and/or exposed metal and shall be required to use stucco, tabby, wood siding, brick, fiber cement siding, or other material with similar texture. Accessory structures visible from any public or private roads shall architecturally complement the primary structure in exterior finish. Staff proposes to add 2 subsections:

   (a) Exempting parcels zoned CP, FA, LI and HI, or parcels that contain education, medical, or public recreation facilities not located in the GCO or VCO.
   (b) Parcels zoned IN that are not located within the GCO or VCO and do not contain multi-family residential uses or student housing developments are also exempt.
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- Section 5.2.1 (C) of the UDO provides certain exemptions from the requirements in 5.2.1 (A) and (B) for accessory structures in Residential and Non-Residential zoning districts. Staff proposes to amend numbers 3 and 5 of this section.

Hucks said that the proposed amendment was discussed at the July 16th Council workshop, and again at the August 6th workshop after some revisions to the proposed amendments were made, at the request of Council.

Hucks showed several examples and there was much discussion amongst the board regarding accessory structures including children’s playhouses, dog kennels, treehouses, greenhouses.

A. Hyman made a motion, seconded by Guidera, to accept the changes to Article 2 Definitions and Article 5 Specific use Regulations. The vote in favor was unanimous. The motion carried.

B. Discussion on possible amendment to Article 5, Section 5.2.3 – Fences and Walls, of the Unified Development Ordinance relative to fence and wall height limitations on corner lots in residential and commercial zoning districts.

Hucks gave an overview. She said that Section 5.2.3 – Fences and Walls, sets forth regulations for fences and walls in residential, commercial and industrial zoning districts, including height, design and maintenance requirements for fences and walls.

Per Section 5.2.3, a fence or wall of any construction may project into or enclose required yards (but not over any boundary) in all zones provided that a maximum height, measured from the natural grade at which the fence or wall occurs, do not exceed the height limits for the yard in which the fence is proposed to be installed.

In residential and commercial districts, the maximum heights for fences and walls are as follows:

- Front yards: 4-ft,
- Side yards: 6-ft, and
- Rear yards: 8-ft

For side yards, the current ordinance (Section 5.2.3, C.) specifies that fences and walls located on corner lots, adjacent to major and minor arterial roads, may be up to 6-ft in height, provided they meet a 10-ft setback from the public right-of-way or lot line. There have been several instances where this has caused confusion in residential communities throughout the city, as most residential lots are located within subdivisions where corner lots are adjacent to local, residential streets, not major or minor arterial roads. Many residential lots within subdivisions have fences, including corner lots, that exceed the 4-ft height limit; some of which existed prior to the adoption of the ordinance.

Corner lots are held to more stringent requirements compared to interior lots, as they are considered as having two front yards: a front and “corner” front yard.
Anything prohibited in front yards is also prohibited in corner front yards, regardless of whether or not the lot is adjacent to a major or minor arterial road. Many residents who purchase corner lots wish to have more privacy and peaceful enjoyment of their yards by installing fences that exceed the 4-ft height limit in yards considered “corner” front yards, but have been unable to do so given the way in which the ordinance is written and interpreted.

In order to clear up the confusion within the ordinance, staff proposes to amend Section 5.2.3 (A) and (C), allowing fences and walls on corner lots in commercial and residential districts to be up to 6-ft in height, whether it’s located adjacent to a major/minor arterial road or local, residential streets within subdivisions, provided that such fences or walls installed on corner lots meet the already required 10-ft setback from the public right-of-way or lot line.

Hucks provided the board with examples of different residential lots which have fencing installed in corner front yards at different heights (4-ft and 6-ft) as well as lots that have fences installed in accordance with the current ordinance.

Hucks stated that this amendment was discussed at the July 16th Council workshop, and again at the August 6th workshop after Council requested to see more information (i.e. examples) relating to the proposed amendment.

Green recommended adding sight triangle language. Hucks stated that she would add that to the end of C. to read, “and complies with Section 7.1.8 for Sight Triangles.”

Robinson-Cooper asked how violations would be handled and once the amendment is established, how would the information get out. Hucks said that we are complaint driven and the public really don’t know because subcontractor usually tell them they will handle everything and then they find out that no permit was applied for. Hucks stated that Mary Catherine Hyman recently did a video that was on the Public Access Channel.

A. Hyman made a motion, subject to the addition of the site triangle language, to recommend the amendment of Article 5, Section 5.2.3 to City Council. The motion was seconded by Robinson-Cooper. The motion carried unanimously.

V. PUBLIC INPUT

None.

VI. ADJOURN

Green made a motion, seconded by Hyman, to adjourn the meeting. The vote in favor was unanimous. The motion carried. The meeting adjourned at 6:13 p.m.

Approved and signed this _______ day of ________, 2018.

Brantley Green, Chairman