CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, AUGUST 27, 2015
CITY HALL CONFERENCE ROOM – 229 MAIN STREET – 5:30 P.M.

Present: Travis Dannelly, James Shelley, Blake Hewitt, Alex Hyman
Absent: Bryon David, James Battle, Georgia Johnson
Staff: Adam Emrick, Planning Director; Barbara Tessier, Secretary
Others: Ronald and Faye St. Armand, Steve Powell, Mel and Charlane Fogel, Ben Labunski

I. CALL TO ORDER

Chairman Hewitt called the meeting to order at 5:35 p.m.

II. APPROVAL OF MINUTES

Hyman made a motion, seconded by Dannelly, to approve the June 25, 2015 meeting minutes as written. The vote in favor was unanimous. The motion carried.

III. VARIANCE REQUEST

A. Ronald and Faye St. Armand request a variance from Section 5.2.6 Parking, Storage and Use of Recreational Equipment of the City of Conway Unified Development Ordinance (UDO) for the property located at 1004 Pineridge Street (TMS# 149-22-01-053 PIN# 38102010018) in order to allow parking of a recreational vehicle on a concrete pad on the property’s front/side yard.

Hewitt addressed the Board and the public by saying he would have Emrick introduce the agenda item, allow the public five minutes each to speak if they wished, and then the Board would discuss the information. He also said the Board needed to follow the state guidelines in determining the outcome.

Emrick said on June 25, 2015, the applicants were sent a notice of violation letter regarding the parking of a recreational vehicle in a front/side yard at their home located at 1004 Pineridge Street in the Pecan Grove subdivision.
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Emrick said Section 5.2.6 “Parking, Storage & Use of Recreational Equipment” of the City of Conway Unified Development Ordinance, states that “No major recreational equipment shall be parked or stored on any lot in a residential district except in a car port or enclosed building or the rear yard, provided however that such equipment may be parked anywhere on residential premises not to exceed twenty-four (24) hours during loading or unloading.” As the recreational vehicle was not parked in the rear yard, in a garage or in a carport, the vehicle was found to be parked in violation of 5.2.6. The St. Armand’s were given 14 days to cure the violation.

Emrick said he went out to look at another reported violation and found approximately 4 campers and 8 boats also in violation. He said he sent violation letters to all the owners in violation, giving them also 14 days to cure the violation.

On July 1, 2015, the St. Armand’s filed their request for a variance from the strict application of the UDO for the following reasons:

1. The Pecan Grove HOA allows the parking of RVs and boats on cement pads in side yards.
2. To construct a carport or garage would take away from the appearance of the neighborhood.
3. There is no backyard access due to drainage, a pond, and a protected tree line.

The applicants were requesting a variance to allow them to continue to park their recreational vehicle on the concrete pad in the front/side yard of their home.

The applicants base their hardship request based upon the constrained rear yard of the home and the prior permission of the Home Owner’s Association of Pecan Grove Subdivision.

Emrick said the applicant owned the parcel of land next to the one his house was on and the property adjacent to that one was subdivision open space. He said the applicant had a large swath of trees in his rear yard leaving no way to enter from the rear yard.

Hyman asked about having a metal carport to store the vehicle in. Emrick said a metal carport was not permitted, and that given the setbacks, the St. Armand’s would have to combine their two lots to have a carport erected.

Hewitt said the Board members had each been sent a letter from Roy Swisher. The letters were sent to staff, and he would like each member to open the envelopes, read the letter and then give the letters to staff to record with the minutes from the meeting. The contents of the letter was not discussed. At this time, Hewitt asked the applicant, as well as the other people present if they wished to speak.
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Mr. St. Armand said he would like to speak to the Board. He said they had moved from out of state and had focused on the HOA covenants. He said he had no idea there were City regulations concerning recreational vehicles. He said the person he bought the house from told him it was acceptable to have a concrete pad for a recreational vehicle. He said he had the pad put in and he was parking his 37,000 lb. coach on it. He said they only bought the house because of the ability to put in the pad to keep the vehicle on. He said keeping it at a storage facility would open it up to vandalism.

Steve Powell said he was one of the original developers for Jasmine Woods and Pecan Grove. He said part of their sales features was to allow storage for campers and boats. He said people bought with that expectation. He said the UDO had disallowed what was always permitted in their subdivision. He said it was a property right. He asked the Board to consider the request.

Hyman said for the record, he was currently in a case with Mr. Powell being on the opposing side. He said he did not think it would affect his ability to hear and vote on this issue. Powell said he had no issues with Hyman hearing and voting on the issue at hand.

Mel Fogel, owner of 1124 Pineridge Street, said he brought his boat with him when he moved. He said the HOA told him he had to put in a pad for the boat and he did. He said at his house closing nothing was mentioned about City regulations. He said his neighbor had to put in a pad 10 years ago per the HOA. He said it was expensive to put the pads in and he begged the Board to consider approving the request because they only did what the HOA allowed.

Ben Labunski showed a picture of his boat and his pad to the board. Hewitt said because Mr. Labunski was not part of the variance request, he was not going to put the pictures into the record. He said he had stored his before and it had been vandalized. He said he has 4 cameras aimed on the boat now.

Charlane Fogel said they were considering the sale of their house and moving out of Conway because of this issue.

Hyman asked Powell what year Pecan Grove was established. Powell said the master plan was in 2005. Hyman said the UDO was adopted in 2011. Hyman said he did not know if restriction in the UDO was in place before the UDO. Emrick said he did not know.

Mrs. Fogel said no one was complaining about the boats and campers. Mr. Fogel said one neighbor intentionally left his camper in his driveway for months.

Hewitt said it was now time for the Board discussion to begin.

Shelley asked Emrick what the City’s position on the issue was. Emrick said the City’s position was to enforce the requirements of the UDO.
Hyman said he had a concern that if the Board prohibited the allowance of the storage of boats and recreational vehicles that was permitted prior to the UDO, it would amount to a taking. Hyman said, in his opinion, any future HOAs, regardless of what they permitted via their covenants, would have to go by the UDO.

Emrick asked about all the other subdivisions established prior to the UDO that did not have a covenant like this. Hyman said if the subdivision covenants did not permit the storage of boats and recreational vehicles, then it was not an issue. Hyman said he felt the extraordinary condition would be Pecan Grove permitted the storage of boats and recreational vehicles by its master deed prior to the adoption of the UDO. He said it would be similar to telling someone their house was built in the setbacks when setbacks had not been an issue when the house was built. Hyman said granting the St. Armand’s a variance would probably open the door for all of Pecan Grove residents to storage of their boats/recreational vehicles.

Hewitt said a nonconformity was usually a structure. Emrick said that was right. He said there were some provision for lot layouts and uses. He said the way staff saw it was the pad was conforming, but the vehicle / boat was not. He said his question was when was the nonconformity cured. He said if the vehicle/boat came off the pad, was the nonconformity cured, and if it went back on the pad, was the nonconformity re-established. He under normal circumstances, if you moved a shed, for example, that was a nonconformity, you could not move it back. Hyman said he thought they had permitted the rebuilding of a nonconforming garage that had come down because it was the only place on the lot it could go. Hyman said he didn’t know if granting a variance in Pecan Grove would be forever or if they had not been installed by a certain date, they would not be permitted. Emrick said the question then arose that if the nonconforming vehicle was replaced, did that permit the continuation of the nonconformity.

Powell said the continuity of the use specified in the covenant was the nonconformity they would vote on. He said that was the only way to make it applicable and equitable to all lot owners was not to approve the pad or the specific vehicle, but the use of the side/front yard as specified in the covenants.

Hyman said again that if they did approve the variance, it would be for Pecan Grove and not for other subdivisions to change their covenants.

Fogel asked Emrick the hypothetical question if he (Fogel) was a developer and had just purchased 30 acres to be used as a subdivision, would he not have to come to Planning first. Emrick said he did, but Planning did not see the subdivision’s covenants. Fogel asked if it would not behoove Planning to ask if there would be an HOA. Emrick said HOA’s were required to maintain common areas. Fogel said he would then have to produce to Planning the HOA covenants. Emrick said the City did not review or arbitrate covenants. Fogel said then it would be his responsibility as the developer, to know the laws of the City. Emrick said that was correct.
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Powell said if the developer had things in the covenant that did not meet the City’s regulations per the UDO, those sections of the covenant would be considered invalid. He said if Pecan Grove’s covenants were recorded after the UDO was adopted, this would be a very short meeting.

Hyman asked Emrick is staff had received any calls. Emrick said the call he got was from the owner across the street from the applicants and it had been in support.

Hyman said if they could agree on the extraordinary conditions, they should move on to check the other three findings required.

Hewitt said he would read into the record, the standards and laws that must govern their decision. He said as the Board knew, they could grant a variance when a strict application of the Zoning Ordinance would cause unnecessary hardship and when approval of a variance would not be contrary to the public interests. He said the Board did that by looking at four factors which were:

1. **Extraordinary Conditions:** There are extraordinary and exceptional conditions pertaining to the particular piece of property.

2. **Other Property:** The extraordinary and exceptional conditions do not generally apply to other property in the vicinity.

3. **Utilization:** Because of the extraordinary or exceptional conditions, the application of the ordinance to a particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

4. **Detriment:** The authorization of a variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by granting a variance.

Dannelly said because the UDO came after the HOA covenants, it was his opinion that the extraordinary condition had been met. He said he agreed that if this variance was approved that it did not open the door for all other subdivisions that did not have this written into their covenants.

Hyman said the problem they did have was this condition not generally applying to other properties in the vicinity. He said this being a subdivision, it was a bit different. Hyman said obviously the extraordinary conditions applied to all the properties in the subdivision. He said that being said, was vicinity the subdivision or the area. He said no other subdivision in the area would have the same extraordinary conditions. Powell said unless another subdivision had the same covenant that permitted the storage of the recreational vehicles in place prior to the UDO, the granting of this variance would not affect anyone other than Jasmine Woods and Pecan Grove.
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Hewitt said a master deed and covenants did not generally grant rights, but restricted them. He said to take a hypothetical subdivision that pre-existed before the UDO. He said this subdivision really liked outdoor recreation and because of that, they were going to let every property owner put an above ground swimming pool in their yard. He said the UDO requires pools to be in rear yards and fenced and to be a certain distance from the property setbacks. He said if you didn’t have enough space in your rear yard, you didn’t get an above ground pool. He said what would they do if such a subdivision did exist with this permitted in the covenants and purchasers came in after the UDO adoption. He said his question was were they allowed to have a pool in their front yard. Hyman said he did not know. Hyman said that was what Emrick was getting at - where was the line drawn.

Hyman said in Pecan Grove the restriction on the boats and campers from the covenants was that a pad had to be installed. He said that didn’t answer Hewitt’s question. He said he did not know if there was an answer to where you stopped it. Hyman said again that in his opinion, this development was a little different. He said if someone purchased 30 acres for a development now they would have to have abide by the UDO. He said when this development was established, the UDO was not in place.

Hewitt said that answered the detriment question. He said there would clearly be no detriment to the other residents of the development. He said even though there was a letter of complaint, residents knew what they were buying into when the purchased their properties.

Hyman asked Hewitt if his question was more about utilization. Hewitt said it was utilization, and a little bit or extraordinary conditions. He said the applicant was certainly in a sympathetic position, but they had to be sure they were basing their decision within the confines of the law. He said they did not want to be putting the City in a position of where they are just exempting people out of the UDO.

Hyman said he was thinking about other areas of the City that existed before the UDO. He said going in a place like Snowhill, he was sure there were sheds and houses that were in what was now considered setback areas. He said he had a hard time saying that was okay and this request was not. Dannelly said the residents in Pecan Grove did what they did in good faith based on what the HOA permitted. Hyman said if the residents purchased their property with the express reason to park a boat or RV, he understood that.

Hewitt asked Emrick to state again where RVs and boats could be stored per the UDO. Emrick said in the rear yards or an enclosed area. Hewitt asked what was considered the rear yard. Emrick said the rear yard ran from the back of the house to the rear property line. Hewitt said he wondered, for example, if it was a 20’ boat whether there was room to make it conforming within the UDO. Labunksi said he had a 22’ boat and had extended his pad as far back as it would go, but it went down to the water’s edge. He said the boat would turn over if he tried to move it back farther. Hyman asked Powell
what the general lot size was. Powell said they were approximately 75’ x 120’. He said one of the things here was that quite a few of the properties were waterfront. He said one of the reasons the HOA permitted the side yard use for storage was so that the boats or RVs would not be blocking the water view for other property owners. He said the HOA did not even permit a storage building in the rear of lakefront lots. Labunski said even the fencing had to be such that it did not block the views. Powell said they wanted to preserve the aesthetic views.

Emrick said going down the line of logic, did this sort of logic prevent the City from passing a new regulation to be applicable in all areas of the City. He said the City could not search every subdivision’s covenants. He said, for example, the UDO prohibited the keeping of chickens. He said he knew people had chickens throughout the City. He said as he got a complaint, he had to address it, and consequently, people had to get rid of their chickens. He said if their HOA permitted chickens, did that mean that would keep the City from outlawing chickens. Hyman said he got Emrick’s point, but he thought there was a large difference between boats and RVs and chicken coops. He said if they granted a variance for these applicants, it should be worded to specifically to prevent something like that. He said they would have to be careful with their wording in the motion. Emrick asked for the motion to be written out so there was no question when the minutes were transcribed as to what the Board approved, if they did approve the variance.

Shelley asked if they would just grant the variance to the St. Armand's. Hewitt said he thought that was all they could do as that was all that was in front of them. Hyman asked if they did approve it, would each homeowner had to request a variance. Emrick said it was his opinion that enforcing this section of the UDO in Pecan Grove would be a moot cause because they could all come back and get relief. He said if he got complaints, the complaintant would have to come before the Board. Emrick said he was not sure that was how the UDO would require it to be done, but he said it was his interpretation.

Hewitt asked St. Armand if he knew the depth of his lot from front to back. Powell said it was 120’ but with the wetlands about 105’. St. Armand said the pad was 85’ long. He said he could almost hide the coach behind the garage, but not quite. He said the pad went just about to the wetland area. Hewitt asked if the driveway could be taken back any farther. St. Armand said it could not. He said there were trees, wetland and it dropped off. St. Armand said the garage hid most of the coach and there was nobody living on the other side as he owned the lot.

Hewitt said he thought they should close the discussion, and for the Board to consider making a motion.

Hyman made a motion, seconded by Dannelly, to grant the variance request based on the following: Extraordinary circumstances: there are extraordinary circumstances because storage of a recreational vehicle was specifically allowed in the HOA
covenants, which preceded the adoption of the HOA. Other property: this extraordinary condition is specific to this particular development, of which the applicant is a homeowner/member. Utilization: application of the UDO would unreasonably restrict the utilization of the property because of the predating HOA covenants, which specifically envision the activity in question. Detriment: there will not be a detriment to adjoining property because this activity was clearly envisioned as a part of the development's master plan, which predated the UDO. The vote in favor was unanimous. The motion carried.

IV. PUBLIC INPUT

There was none,

V. ADJOURN

There being no further business to come before the Board, Hyman made a motion, seconded by Shelley, to adjourn the meeting. The vote in favor was unanimous. The motion carried. The meeting adjourned at 6:45 p.m.

Approved and signed this 24TH day of SEPTEMBER, 2015.

[Signature]

Blake Hewitt, Chairman