CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, MAY 24, 2018
COUNCIL CHAMBERS – 229 MAIN STREET – 5:30 P.M.

Present: Travis Dannelly, George Ulrich, Davis Inabnit, James Shelley, Charles Byrd
Absent: Blake Hewitt, Catherine Dingle
Staff: Jessica Hucks, Zoning Officer; Barbara Tessier, Secretary
Others: Kathy Marcus, Michael Rabon, Analia Gagnon, Adam Gagnon, Craig Smith

I. CALL TO ORDER

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

II. APPROVAL OF MINUTES

Shelley made a motion, seconded by Inabnit, to approve the April 26, 2018 minutes as written. The vote in favor was unanimous. The motion carried.

Dannelly spoke to the public stating how the meeting was conducted and that if they had input on any of the items, they would have time to speak.

At this point he turned the meeting over to Hucks. She began by reading the four criteria that had to be met in order for the Board to grant a variance, which are as follows:

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.

III. VARIANCE REQUESTS

A. 1405 Main Street: The applicant, McKenzie Jordan, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), Section 6.6.2 (B) – Mechanical Equipment, Dumpster, Recycling and Trash Handling (location) for
property located at 1405 Main Street (TMS: 123-14-11-001 / PIN: 338110200040).

Hucks said this property received a variance in October, 2017 for parking to be approved to be stacked (two in one space, one behind the other) in seven (7) of the required parking spaces, located on the 15th Ave side of the building, in order to meet the minimum parking requirements. During Technical Review of the project, one of the comments was regarding the location of the dumpster facility and mechanical equipment, which is not permitted to be located in any required street yard. She said they may, however, be located in side and rear yards. She said because this parcel is a corner lot, the property has two (2) front yards: Main Street is the front and Fifteenth Ave is the “corner front”; both of which are considered street yards.

Hucks said per Section 6.2.2 (B) – Mechanical Equipment, Dumpster, Recycling and Trash Handling (Location) of the UDO, all mechanical equipment and trash handling facilities shall be located on the same lot as the use served unless shared facilities are approved. The location of all utilities and trash handling facilities shall be in the rear or side yards. No such facilities shall be located in the required street yard.

Hucks said the applicant cited the following reasons for which a variance should be granted:

1. This particular property has several site-specific characteristics that influence the development plan. This is a corner property, with frontage on both 15th Ave and Main Street. The building placement and parking layout, previously approved, make it impossible to provide a location for the trash handling and mechanical equipment to be placed in strict accordance with the UDO.

2. The service areas for trash and mechanical equipment are required to be located on the site they serve. The building and parking shown are developed in response to the constraints of the site, including setbacks, traffic, access, etc. The result is that the possible locations for the mechanical equipment and trash handling are limited, essentially to the locations shown on the plan.

3. Inasmuch as the UDO requires that the mechanical equipment and trash handling be located on the site, and that no alternate locations for these would obtain any equal or better compliance, we believe that a strict application of the ordinance would be an unreasonable burden.

4. Granting the variance will not have any negative effect on adjacent properties or on the character of the area. The character of the proposed development will be determined by the design of the building itself, and not be the relatively small enclosures for the equipment. Appropriate screening will be provided as indicated above.

5. Granting the variance request will not have the effect of increasing profitability of the property. Granting the request will simply allow appropriate services to occur on the site.

Hucks said the applicant, who was not present, had requested to have the equipment located on the Fifteenth Ave side of the building.
Dannelly said the Board had seen a similar request before. He asked about screening of the equipment. Hucks said screening would need to be 6’ in height, which would also be reviewed for compliance by the Technical Review Committee (TRC). Ulrich asked what type of material the screening could be. Hucks said it had to be completely opaque and was typically either brick or wood.

Byrd asked if there were two dumpsters and the AC unit. Hucks said the equipment was a generator, the HVAC unit, and the dumpster. Ulrich asked about a door on the front of the enclosure. Hucks said a door/gate would be required for access purposes.

K. Marcus was sworn in. She said she had a home and business on Thirteenth Ave and wanted to know the scale and type of trash would be at this location. Dannelly said it was a medical facility, owned by Vaught Eye Care, currently located across the street, but were expanding to include an eye surgery center. Hucks said the trash would be picked up in accordance with the solid waste pick up schedule, but the waste was strictly for the medical facility.

Inabnit made a motion, seconded by Shelley, to approve the request based on it meeting all four of the criteria. The vote in favor was unanimous. The motion carried.

B. **300 Twelfth Ave:** The applicant, George Craig Smith, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), Section 5.2.6 (A) – Parking, Storage & Use of Recreational Equipment for property located at 300 Twelfth Ave (TMS: 123-14-47-001 / PIN: 33909010003).

Hucks said this property was one of several that city staff received complaints on regarding the location of recreational vehicles (i.e. campers) during the month of April. She said staff sent a letter notifying the property owner that their property was in violation of the City’s Unified Development Ordinance (UDO) regarding Parking, Storage & Use of Recreational Equipment. The homeowner, G. Craig Smith, came in to discuss the letter with staff and to discuss where a suitable location would be on his parcel since it was a pie-shaped lot, surrounded by a city street on all sides. Staff informed the homeowner that he could possibly put the RV in his rear yard, if he could get it behind the fence. Mr. Smith explained that due to a shed behind his home and the amount of right-of-way from Snowhill Drive, he was unable to store the RV without encroaching into the right-of-way because of the length of the RV. Staff advised Mr. Smith that his only other option would be to apply for a variance from the location requirements, which would stay any enforcement until such time this board could hear and consider his request. The RV is currently being stored/parked in the driveway of the front yard, where the homeowner would like for the RV to remain when not in use.
Hucks read Section 5.2.6 (A) – Parking, Storage & Use of Recreational Equipment: No major recreational equipment shall be parked or stored on any lot, on any right of way owned by the City of Conway, or upon any street in a residential district except:

1. In a car port or enclosed building
2. Rear yard
3. Side yard

Provided however that such equipment may be parked anywhere on residential premises not to exceed twenty-four (24) hours during loading or unloading.

No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

Hucks said the applicant cites the following reasons for which a variance should be granted:

1. The lot is triangular in shape.
2. There are no other triangular parcels in the vicinity.

Hucks told the Board that staff had been directed to be diligent now, and that council had amended the ordinance (Section 5.2.6) to add that RV's could be stored in side yards as well. She added that a big misconception among many property owners was that they understood their property lines to begin where the road pavement ends and were unaware that right-of-ways alongside the roads were not part of their property.

Inabnit asked if the right-of-way went all the way around the property. Hucks said that it did. Ulrich asked what the setbacks were. Hucks said the property was zoned R-1 and that the setbacks were 20' on all sides. She said it was possible the house did not meet all of the setback requirements, but that the house was considered "legal nonconforming" if that was the case.

Ulrich asked if there were any options. Hucks said the rear yard, but the applicant had stated his existing shed would keep him from being able to fit the RV in the rear yard without encroaching into the right-of-way due to the length of the RV.

Smith (property owner) was sworn in and said that the RV was 35' x 9'. He said the only place to store it was on the side of the garage. He said if that side was not a street yard, he could have it there without a variance. He asked the Board to consider allowing the garage side of the lot be his side yard. He said the RV was not unattractive and that there was no one else around him.

Byrd asked Smith how close to the fence he could get. Smith said if he parked two feet from the fence, he would be about 3.5 – 4 feet past the front of the garage. Hucks asked if he could move the fence back. Smith said he could not because of existing trees.

Smith said the bottom line was that he had nowhere else to park it – either the driveway or on the garage side and preferred not to have to put it in storage.
somewhere else because he felt he could keep a better eye on it if it were kept
on his property and did not want to risk it being vandalized in a storage yard.

Byrd asked if the people who called knew where he was requesting to park it.
Hucks said they did.

Dannelly questioned whether or not they could justify that side of his parcel as a
side yard. Hucks said that the request before them was not to re-classify the
"type" of yard, but rather to determine if the RV would be allowed to remain in the
front yard, which is not permitted per the ordinance.

Byrd asked if the RV would be on a pad. Smith said either a pad or two runners
for the tires.

Hucks said that while staff understood Smith's predicament, other
properties within the vicinity of this property had also been notified (via
letter) that they were in violation of the ordinance with regard to location of
recreational vehicles; one of whom was issued a citation. She added that
Council also recently amended the ordinance to give residents the option
of storing recreational vehicles in "side yards" in addition to rear yards
and/or enclosed structures, and granting a variance to allow an RV to be
stored in a front yard may set a precedence.

Inabnit asked her if the other RVs were in front yards. Hucks said some of
were also in front yards and some were in "corner" front yards or there
were reports of the RV being used as living quarters.

Smith asked how many other three-sided lots were there and that he did
not feel it would be setting a precedence.

Shelley said that the first two criteria were met. Inabnit said that the third
had also been met. Ulrich added it would cause no detriment.

Inabnit made a motion, seconded by Ulrich, to approve a variance to allow
the RV to be stored/kept in the side yard, beside the garage, on the
condition that the RV did not encroach past the front façade of the home
(or any closer to Twelfth Ave than the house) or into any rights-of-way.
The vote in favor was unanimous. The motion carried.

C. **417 Palmetto Street**: Adam & Analia Gagnon, applicants, request a
variance from the strict application of the City of Conway Unified
Development Ordinance (UDO), Sections 5.2.1 – Accessory
Structures, 5.2.3 – Fences and Walls and 5.2.8 – Residential
Swimming Pools and Spas, for property located at 417 Palmetto
Street (TMS: 136-08-03-003 / PIN: 36807010014).

Hucks said the applicants were notified in March by City staff that the work being
done on their property was not permitted and could not continue until such time a
permit was issued. Mr. Gagnon subsequently came into our department to apply
for a building permit for a fence and a shed. Upon review, staff denied the permit
application on the basis that the fence exceeded the height limit for fences in front and side yards and because of the placement of the shed in the front yard. Staff informed the applicants that their permit had been denied, at which time Mr. Gagnon applied for a variance for the structures. He also explained how the home is set back all the way to the rear of the lot, to the property line, leaving no rear yard for which any accessory structures could be located and that much of the front yard is a driveway.

The height limit for fences in front yards is 4-ft. The height limit for side yards is 6-ft. The applicant’s requested fence height is 8-ft. See below:

- **Section 5.2.3 Fences and Walls:** A fence or wall of any construction may project into or enclose required yards (but not over any boundary) in all zones providing that a maximum height, measured from the natural grade at which the fence or wall occurs, does not exceed the following:

  A. **Commercial and Residential:**

    1. Front yards—4 feet,
    2. Side yards—6 feet. (Fences and walls on corner lots, adjacent to major and minor arterial roads, may be up to six (6) feet in height)
    3. Rear yards—8 feet,

Sheds / storage buildings must be located in rear yards. The applicant is requesting to leave the shed in the front yard. See below:

- **Section 5.2.1 (A) – Accessory Uses & Structures:**

  1. **Location:** Shall be located in the rear yard only. Detached garages and gazebos may also be located in the side yard.
  2. **Setbacks:** Shall be located a minimum of 5-ft from all property lines, other accessory structures, and the principal structure.

Hucks said the applicants would also like to install an above-ground swimming pool in their front yard, as they have no other viable location for the structure. Pool are permitted in rear or side yards, but edge of the water must be a minimum of 3.5-ft from the required setback. Since the required setback for accessory structures is 5-ft, the edge of the pool water must be 8.5-ft from the side yard property line. If they install the pool “beside” their home, the pool would be unable to meet the minimum setback and separation requirements and there is no backyard for which the pool could be located. See below for pools and spas requirements:

- **Section 5.2.8 Residential Swimming Pools & Spas:** A swimming pool, hot tub, or other type of spa may be constructed on the side or rear yard of a private residence under the following conditions:

  A. The edge of the water must be at least three and a half (3.5) feet from all required setbacks and from any buildings.
  B. Fencing and/or a suitable enclosure device shall be provided, in compliance with applicable building codes.
C. Pool lighting shall be shielded and oriented away from adjacent properties. If individual light shielding is not provided, they shall be placed so that enclosure walls or fences direct light away from adjacent properties.

Hucks said the applicants state the following reasons for which the variances should be granted:

1. The home is placed to the rear of the property leaving them with no backyard.
2. Other homes in the vicinity are not placed near the rear property line.
3. The applicants do not believe granting of the variance would affect the character or public good.
4. The applicant states they cannot use their property as others use their backyards.

Mrs. Gagnon was sworn in. She said she did not know they needed a permit. She said because the fence was in the state right-of-way, it would have to be moved back 8 feet. She said they had no back yard and they had 4 children, one of which was autistic. She said he needed to be entertained and they felt a pool would benefit him in that way.

Shelley asked where the pool would be located. Gagnon said it would be between the trees in the front yard.

Hucks said that the shed being metal was not an issue because you could have a metal shed as long as it was under 200 sq. ft.

Dannely asked Hucks how high the fence could be. Hucks said 4’ in front yards and 6’ in side yards. Byrd said it was 8 feet in the photos. Gagnon said she wanted an 8-ft fence so that people could not see the children getting into and out of the pool.

Shelley asked if she had said she had a child with special needs. Gagnon said her son was a high functioning autistic, but that he could not control his behavior.

Dannely asked Gagnon if the pool would be taken up and down. She said it was an above ground pool that would be taken down before winter. Hucks said that any pool that will hold at least 24” (high) of water required a permit. Dannely said pools in general in front yards in Conway was very challenging situation.

Shelley asked if the request was for the pool, the shed and the fence. Hucks said the request was for the height of the fence, the location of the shed and the location of the pool. Dannely asked what the front fence was permitted to be, and Hucks said 4’ max. Hucks said there was nowhere on their property that they could legally put the shed unless a variance was granted.

Shelley asked Gagnon how long they had been in the house. She said they had just purchased it. She said they chose that house in particular because of the yard as it gave them the space they needed.
Hucks said there had been some calls in opposition to the variance request. Hucks read a letter from a neighbor, who did not sign the letter, into the record:

*My suggestion is that the ordinance states you can have a 4' fence in your front yard and 8' in the back yard so a compromise to allow 6' in the front yard. Concerning the storage shed, it should be moved to the back side yard away from the road because it looks bad where it is now and be made to match the house. Hucks said it was not a requirement for the shed to match the house if it was under 400 sq. ft. She said they also stated in their letter they had no concerns about the pool being located in the front yard.*

Inabnit asked Gagnon if the storage shed could go in the back side yard. She said there was a power line there and she could not put it underneath it.

Michael Rabon was sworn in. He said he was a real estate agent who had the property under contract previously to an investor. He said his buyer decided not to purchase. Rabon said he lived nearby and had no problem with an 8' high fence. He said it was a very busy street. He said the Gagnon’s had not done enough due diligence. He said he thought the shed might obstruct of vision where it was currently located. He said they could move the fence and the shed back closer to the house.

Dannelly said there were three parts to this variance request. He said even with the fence moving back toward the house, this request was a challenge. He said the Board could look at perhaps 6’ for the fence. He said the shed and the pool location were a problem.

Ulrich asked if they permitted the pool in the front yard and it went up every spring, would they have to pull a permit each year. Hucks said they would not have to pull a permit yearly.

Hucks said the fence would have to have the finished side facing out. Gagnon said the fence would be made of wood, and that both sides of the fence would be finished.

Inabnit asked if anyone had looked at the setbacks for the area where the power lines were. Hucks said she was not aware of any power line easement however it was possible and it could also just be power service lines running above. Gagnon said she had a picture of the area. Gagnon said the line ran from the pole in her neighbor’s yard to her house. Several of the Board members said it was a service line and not power line, and that changed things.

Shelley asked if the house was legal nonconforming. Hucks said that it was. Hucks said if the house ever was destroyed, it would have to meet setbacks and all requirements in effect at the time of application in order to be rebuilt.
Shelley commented that there was a lot going on in the front yard. Dannelly said he could see a 6-ft fence, and with the line being a service line, the shed could go on the side, however he could not see a pool in the front yard.

Inabnit made a motion, seconded by Byrd, to approve a max fence height of 6-ft, approve the shed to be in the back next to the house but not in the front yard and to deny the request for an above-ground pool to be located in the front yard. The vote in favor was unanimous. The motion carried.

IV. PUBLIC INPUT

There was none.

V. BOARD INPUT

There was none.

VI. STAFF INPUT

There was none.

VII. ADJOURN

There being no further business to come before the Board, Inabnit made a motion, seconded by Shelley, to adjourn the meeting. The vote in favor was unanimous. The motion carried. The meeting adjourned at 6:29 p.m.

Approved and signed this 28th day of June, 2018.

[Signature]

Travis Dannelly, Chairman

[Signature]