CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, OCTOBER 24, 2019
CITY HALL CONFERENCE ROOM – 229 MAIN STREET – 5:30 P.M.

Present: Davis Inabnit, Charles Byrd, Travis Dannelly, Lindsay Smith, James Shelley
Absent: Catherine Dingle, George Ulrich
Staff: Jessica Hucks, Planner; Vicki Stone, Zoning Inspector
Others: Vernon Hochstetler, Sandye Hicks, Mr. & Mrs. Lee Ford, Brandon Enander, Scott Harrelson, Eric Curtis

I. CALL TO ORDER

Chairman Inabnit called the meeting to order at 5:33 p.m.

II. APPROVAL OF SEPTEMBER 26, 2019 MINUTES

Byrd made a motion, seconded by Shelley, to approve the September 26, 2019 minutes as written. The vote in favor was unanimous. The motion carried.

III. CRITERIA

Chairman Inabnit read the four criteria required to be met in order for the Board to grant a variance. They are:

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 the adjacent property or the public good and the character of the district will not be harmed by granting a variance.

Dannelly swore in all the applicants.
IV. VARIANCE REQUESTS

A. PREVIOUSLY DEFERRED – 802 Elm Street: Sandye Hicks, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), from Article 5, Section 5.2.3 – Fences & Walls, regarding fence requirements for property located at 802 Elm Street (TMS: 137-02-16-015 | PIN: 338-13-01-0016).

Hucks stated that the applicant would like the installed fence to be able to remain, as has been installed, with the more “finished” side facing the interior of her property versus the exterior. The applicant believed that a permit had been obtained with the pool permit. The fence was installed and the exterior was painted. Pictures of the fence were shown. Per Section 5.2.3 – Fences & Walls, D. Design, wherever a fence or wall is installed, if one side of the fence or wall appears more “finished” than the other (i.e. one side has visible support framing and the other does not), then the more “finished” side of the fence shall face the perimeter or outside of the lot, rather than facing the interior of the lot.

The applicant, Sandye Hicks was present to answer questions and further explained the request. She presented the board with a letter from neighbor, Bobby Richardson who had no objections.

There was no public input.

Shelley made a motion to grant the variance request as presented. Dannelly seconded the motion and the motion carried unanimously.

B. 1311 Fourth Avenue: Timothy F. Harrelson, requests a “use” variance from per Section 14.2.1 – Duties and Powers (C) of the City of Conway Unified Development Ordinance (UDO), and variances from Article 5, Section 5.1.18 – Open Air Storage, Article 8, Section 8.2.12 – Parking Requirements for Specific Uses, Table 8.3 – Parking Requirements, Article 9, Landscaping & Buffering and Article 12, Section 12.1.4 – Nonconforming Sites, for property located at 1311 Fourth Ave (TMS: 137-06-13-005 / PIN: 368-04-02-0025).

Hucks stated that 1311 Fourth Ave is currently zoned Core Commercial (CC), and Auto Plus operates at this location. In July, staff denied zoning approval for a business license application for an auto repair / tire store business to operate from this address, based on the following factors:

1. The CC zoning district permits only auto accessory shops and auto dealerships, not auto repair or tire stores.
2. The previous business that was located on this property (TJ’s Tires) relocated in March of this year to a site outside the city limits. While located at 1311 Fourth Ave, there were multiple property maintenance code violations that occurred on a regular basis. The use was considered
legal nonconforming at the time. No new business offering tire sales / replacement or auto repair would be permitted on this property or any other property zoned CC otherwise.

Upon denial of the license, the applicant contacted staff to see what recourse was available to them in order to continue leasing that part of the property to a tenant that engaged in auto repair or a tire store. The applicant chose to appeal the Zoning Administrator’s decision to deny zoning approval of the business license for the proposed business. This board upheld the Zoning Administrator’s decision at the August 22nd BZA meeting. There was discussion at that meeting as to whether or not the applicant could apply for a special use permit or a “use” variance instead. Staff explained that another property, owned by the applicant, had done so within the last year, and this board granted the use variance, as the applicant had proven it had historically been used as an auto garage.

Per Article 14, Section 14.2.1 (C), an affirmative vote of two-thirds of the Board members present and voting shall be required before a variance may be granted for a use of land, a building or a structure that is prohibited in a given district, provided however that City Council may overrule the decision of the Board within 30 days following the decision of the Board. In order to grant a use variance, the following finding must be determined and made part of the record: the use requested can be documented to have been a past use of the property; however, historic use alone may not be sufficient to grant a use variance. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for any variance.

The applicant states that there has been an auto repair business in the rear of the property for several decades. To disallow a repair service simply because the previous tenant will change is detrimental to the part store’s livelihood and the livelihood of the surrounding community who depends on it.

The applicant cites the following additional reasons why the “use” variance should be granted:

1. The extraordinary conditions pertaining to the particular piece of property is that the vacant property has been used for decades as a supporting repair business to the main business. Now that the tenant has left, a new tenant is needed to maintain the primary business.
2. Conditions are particular to this property, as the tenant’s work hand-in-hand.
3. Strict application of the Zoning Ordinance prohibits or unreasonably restricts the use of the property, as disallowing the garage directly affects the supported business, which causes a down turn in that business.
4. Granting the “use” variance would not harm adjacent property, the character of the area or the public good, as it will support the main business to help it maintain traffic.
for business and neighboring businesses depend on this business for their needs and support that a new tenant is welcome.

5. The variance is initiated because of hardship and not to increase the profitability of the property. If the variance is not granted, the primary business could suffer and then 2 businesses would be lost downtown. In addition, neighboring businesses would suffer greater inconvenience in having to locate somewhere else to meet their needs.

In addition to a “use” variance, the applicant will also need variances for parking requirements, landscape buffer requirements and open air storage requirements in the event they have vehicles temporarily stored onsite awaiting customer pick up.

Section 5.1.18 – Open Air Storage (C) requires that open-air storage be located in the side and/or rear yard of a permitted use. Open Air storage is defined as the placement of merchandise, equipment, machinery, or misc. materials outside of any enclosed building for the purpose of storage and/or stockpile. 5.1.18 (D) requires that the portion of the premises used for open storage be shielded from public view by an opaque fence or wall 7-ft in height with one tall shrub per 5 linear feet installed around the perimeter of the screened area. The property does not appear to have adequate areas for storage of vehicles, and staff recommends against the granting of a variance allowing extended outdoor storage of vehicles and/or parts. Junk yards/salvage yards are strictly prohibited, per Section 5.1.18 (B), which states “salvage and junk yard which utilize premises for open storage of old and dilapidated automobiles, trucks, tractors, and other such vehicles and parts thereof, scrap building materials, scrap contractors equipment, tanks, cases, cans, barrels, boxes, drums, piping, etc., shall be specifically prohibited”.

Per Section 8.2.12, Table 8.3 – Parking Requirements, service stations require a minimum of two (2) parking spaces per bay. Staff would normally require this to be installed prior to approval of a business license, when applicable.

The parcels directly adjacent to this parcel are also zoned CC. Per Section 9.2.2, Table 9.1 (Landscaping & Buffer Requirements), a “Type A” buffer would be required, which is 5-ft in width and requires 2 canopy trees and 18 shrubs per 100 linear feet. Staff recognizes that landscaping is not possible in some areas. The applicants are requesting that existing landscaping be used to satisfy buffer requirements. Additionally, per Section 12.1.4 (B), Nonconforming landscaping and screening, in the event that a site or structure is nonconforming as a result of the landscaping and screening requirements of this UDO, the following standards are required:

1. All required vehicular use area perimeter screening for service and storage areas shall be provided for all new or additional parking, service, or storage areas being added to the structure or site.
2. When the land area of the subject property and location of existing structures precludes provision of the required landscaping and screening, the nonconformity shall, as a pre-condition to the issuance of a permit, be required to fully comply with conditions determined by the Zoning Administrator. This will accomplish substantially the same effect as would be accomplished if the nonconforming use did comply with the landscaping and screening standards of Article 9.

A petition with signatures in support of the requested was presented.

The applicant, Frenchie Harrelson further explained the request. He stated that the vehicles will not be kept longer than one night and none will be untagged. He gave the board his word that what happened before would not happen again.

There was no public input.

Shelley made a motion to grant the use variance to allow an auto garage. Inabnit seconded the motion and the motion carried unanimously.

Dannelly made a motion to exclude the open air storage variance. Smith seconded the motion and the motion carried unanimously.

Hucks stated that any violations of the City’s open air storage/open display ordinance will result in revocation of zoning approval for the City’s business license.

Inabnit stated that it was determined that a parking variance was not needed but that two (2) parking spaces per bay will be required, in accordance with Article 8, Section 8.2.12 of the City’s UDO.

Shelley made a motion that the existing landscaping will satisfy the buffer requirements. Smith seconded the motion and the motion carried unanimously.

Shelley made a motion that the existing landscaping will satisfy the landscaping requirements. Dannelly seconded the motion and the motion carried unanimously.

C. 933 Taylor Square: DSW Homes, applicant, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), Article 6, Section 6.2 – Residential Building Types and Design Standards, Table 6.1: Dimensional Requirements for Residential Zoning Districts, regarding setback requirements for property located at 933 Taylor Square (TMS: 137-01-13-047 | PIN: 338-15-03-0087).

Hucks stated that the applicant requested a variance from the setback requirements for a proposed home to be rebuilt at 933 Taylor Square. The property is a South Carolina Recovery Reconstruction project and in order for the home to be constructed, a variance is needed from the setback requirements due to a minimum square footage requirement for the H.U.D. Program. The property
itself is a legal nonconforming lot, totaling approx. 2,350 sq. ft., per a site plan provided by the applicant. The property is zoned R-2, which normally requires a minimum lot size of 6,000 sq. ft. for a single-family structure.


Ruby Livingston, adjacent property owner informed the board that the property owner was in the hospital.

Brandon Enander, applicant showed a photo of what the house would look like. Ruby Livingston said the house is beautiful.

Dannelly made a motion to grant the variance as requested. Shelley seconded the motion and the motion carried unanimously.

D. **1103 Oak Street:** Benjamin Scott Harrelson, applicant, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), Article 6, Section 6.2 – Residential Building Types and Design Standards, Table 6.1: Dimensional Requirements for Residential Zoning Districts, regarding setback requirements for property located at 1103 Oak Street (TMS: 123-14-21-014 | PIN: 338-12-04-0078).

Hucks stated that the applicant proposes to construct an addition to their home and extend the existing side porch roof line down the entire length of the home. The existing home is considered legal nonconforming in that the porch encroaches into the side yard setback by approximately one foot. New construction is subject to current setback requirements. A site plan was shown.

Hucks said that after speaking with the applicant today it appears that the addition will encroach about 1.5' into the side yard setback. The required side yard setback is 10'.

Scott Harrelson, applicant was present to further explain the request and answer any questions.

Mr. and Mrs. Lee Ford, neighbors behind this parcel were present and had no opposition to the request.

Byrd made a motion to grant the variance as requested. Dannelly seconded the motion and the motion carried unanimously.

E. **2300 Church Street:** Brandrite Sign Co. Inc., applicant, requests a variance from the strict application of the City's Unified Development Ordinance (UDO), Article 11 – Signage, regarding sign requirements for property located at 2300 Church Street in
the Bay Village Shopping Center (TMS: 122-00-04-046 | PIN: 338-00-00-0006).

Hucks stated that Citi Trends is relocating into a tenant space within the Bay Village Shopping Center. The property is zoned Highway Commercial (HC), which permits a maximum of 200 sq. ft. in sign area but a max of 100 sq. ft. for wall signage per tenant space. Per Section 11.3.1 – Sign Regulations by Zoning District, Table 11.1: Sign Standards by District, the following sign standards apply for the HC zoning district:

- Allowable sign types: All sign types
- Total number of signs allowed: 4 per tenant space
- Max cumulative sign area per tenant space: 200 sq. ft.

Per Section 11.4.1 (B), wall signs may be a maximum of 100 sq. ft. or 15% of the building face where the sign is attached, whichever is less.

Vernon Hochstetler, applicant informed the board that he received a text from Citi Trends saying they would reduce the wall sign from 8x32 to 7x30.

After the boards discussion, they concluded that this unit is far away from Highway 501 and it also faces Village Street, which is not heavily traveled. The total signage also includes the road sign.

Dannelly made a motion to grant the variance with the wall sign as being 7x30 in size, 210 sq. ft. Smith seconded the motion and the motion carried unanimously.

F. 2121 Oak Street: Eric Curtis, applicant for Serenity Point Recovery, LLC, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), Article 5 – Section 5.2.3 – Fences & Walls, regarding fencing requirements for property located at 2121 Oak Street (TMS: 123-09-01-007 | PIN: 338-06-01-0004).

Hucks stated that in August, staff noticed that a fence had been installed on the property, and was done without a building permit. Staff sent the applicant a notice of violation and listed the requirements for fencing. The applicant did make application for a building permit and was reviewed by staff for compliance. For the past few years, a pre-inspection has been required for fencing that is proposed to be installed, which requires that the property lines be clearly marked to ensure that the proposed fence does not cross property boundaries and/or meets any required setbacks. Because this fence had been installed without a permit, a pre-inspection was not possible.

The property is surrounding by a road on three sides, and therefore is considered as having three (3) front yards. Because the building is addressed specifically off of Oak Street, staff considers the side adjacent to Elm Street a “corner” front yard. Per Section 5.2.3 – Fences & Walls (C), a fence
or wall located on a corner lot may be up to 6-ft in height provided it meets a mandatory 10-ft setback from the road right-of-way or lot line.

Elm Street is likely a 50’ ROW, which would mean that the property line for the edge of the property along Elm Street is 25’ from the center line of the road. The fence appears to be installed along the edge of the property line and does not comply with the 10’ setback requirement for fences installed in corner front yards.

Additionally, Section 5.2.3 (E) requires that the structural and aesthetic integrity be maintained for all new and existing fences and walls. The fence appears very uneven, on the top and bottom, and staff has concerns about the structural integrity of the fence.

Eric Curtis, applicant further explained the request.

After some discussion with the applicant regarding the property line, it was determined that a survey is needed.

Inabnit made a motion to defer this request until a survey is done and brought back before the board. Byrd seconded the motion. The motion carried unanimously.

V. PUBLIC INPUT

None.

VI. BOARD INPUT

None.

VII. STAFF INPUT

None.

VIII. ADJOURN

There being no further business to come before the Board, Shelley made a motion, seconded by Danelly to adjourn the meeting. The vote in favor was unanimous. The motion carried and the meeting was adjourned at 6:40 p.m.

Approved and signed this 21st day of November, 2019.

[Signature]

Davis Inabnit, Chairman