CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, AUGUST 28, 2014
CITY HALL CONFERENCE ROOM – 5:30 P.M.

Present: Blake Hewitt, Georgia Johnson, James Battle, Rebecca Lovelace

Absent: Alex Hyman, Byron David

Staff: Michael Leinwand, Planning Director; Barbara Tessier, Secretary

Others: John and Linda McKowan, Pat Donovan and her daughter (did not sign in)

I. CALL TO ORDER

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

II. APPROVAL OF MINUTES

After review of the minutes, Johnson made a motion, seconded by Lovelace, to approve the May 22, 2014 minutes as written. The vote in favor was unanimous. The motion carried.

III. VARIANCE REQUEST

A. John E. and Linda M. McKowan request a variance from Section 5.2.1 and Section 5.2.8 of the City of Conway Unified Development Ordinance (UDO) for the property located at 1125 Elkford Drive (TMS# 122-12-10-059 / PIN 33807010007) relating to the setback requirements for a swimming pool

Hewitt asked Leinwand to give the background on this item.

Leinwand said in November 2013, Anchor Fence applied for and was issued a permit to install a fence at 1125 Elkford Drive; however, the fence company who installed the fence did not call for an inspection after the fence had been installed, which is required.

Staff received a complaint from the owner of the property at 1120 Panethon Drive, which abuts 1125 Elkford Drive at the rear property line. Ms. Donovan, the owner of 1120 Panethon Drive said McKowan’s fence was installed on her property.
Staff went to investigate the fence issue. Leinwand said he entered the back yard of 1125 Elkford Drive and noticed an above ground pool for which no permit had been issued. The pool company had not pulled a permit, and they did not have a City of Conway business license.

Leinwand said the pool was only 2’ from the property line. He said the City of Conway Unified Development Ordinance (UDO) required a setback of 5’ and the pool was required to be 3.5’ from the setback for a total of 8.5’ from the property line. Leinwand said the applicant wanted a variance so the pool could remain as it had been installed.

Leinwand reminded the board since there were only 4 members present they would need 2/3 of the board, or 3 members, to vote in favor for the variance to be granted. He also reminded them of the 4 state criteria that must be followed. He also said if the board granted the variance, the pool company would immediately need to pull a permit and obtain a City of Conway business license.

Loveland asked if the fence problem had been corrected. Leinwand said it had not been corrected. Leinwand said he would be sending McKowan a summons about removing the fence. Leinwand said the fence was a completely different issue from what was being requested for the variance.

Loveland said if the fence were corrected, the pool would be even closer to the property line. Hewitt said, if he understood correctly, it was the side fencing and not the rear fencing that was the issue. Leinwand said that was correct. The fencing at the rear of the property was Donovan’s.

Leinwand said staff could see no extraordinary conditions pertaining to this particular piece of property.

Hewitt said he would like to have the applicant and any other public to speak before the board started to go over the criteria.

Donovan stated her name for the record. She said McKowan had attached his fence to her fence. She said she knew he wanted a variance for this pool, but she felt it was too close to the property line and she was not okay with it. She stated he had pulled up her survey stakes.

McKowan stated his name for the record. He said he had not removed her stakes and he had his own survey done. At this time, both Donovan and McKowan were trying to speak. Hewitt asked for one person at a time to speak. Hewitt asked the two not to have direct communication with each other.

McKowan said he wanted to put up another fence, along the rear of his property, which would be 8’ in height. McKowan stated Donovan kept looking over his fence into his yard. Loveland asked Leinwand if an 8’ fence was permitted. Leinwand said it was permitted in the rear yard. Leinwand said a
permit for the fence could be issued as long as it was on McKowan’s property.

McKowan said he had a letter from his pool company. Because staff had not seen the letter, Hewitt read the letter into the record. Hewitt said it was on Pools Up letterhead located in Myrtle Beach and dated August 22, 2014.

“To Whom It May Concern:

I, Richard Owens, owner and CEO of Pools Up LLC would like to offer this information in regards to the location of the above ground swimming pool we built for John McKowan.

I personally helped Mr. McKowan to locate this pool in the place that it sits due to these facts:

1) I was basing my decisions on pool locations on the Horry County laws, truly my mistake. Above ground pools are considered to be non-permanent structures and require nothing more than a lockable gate to meet code. I should have known the setback laws for the City of Conway.

2) The location was picked because it placed an 18’ Oracle pool in the center of the only space big enough for this pool. It centered the pool from left to right between the storage building and the 6’ side fence and it centered the pool from front to back between the back property line and the landscaped area at the back of the house.

3) To place this pool anywhere else, we would have to remove an Oak tree and a sweetgum tree along with taking out about half of the existing landscaping.

4) This pool is aesthetically pleasing where it sits.”

Hewitt said it was signed Sincerely, Richard Owens, Owner and CEO Pools Up LLC. Hewitt said it looked like an original signature and it had been notarized. Hewitt said that was the substance of the letter.

Lovelace asked Leinwand if he had pictures of the trees. Leinwand showed the photographs of the rear yard. Linda McKowan stated her name for the record and said the trees were by the pool. Mr. McKowan said the Oak tree was about 30 feet tall.

Hewitt asked Mr. McKowan if there was anything else he wanted to say. McKowan showed the board where he wanted to put the fence. He said according to the survey the fence was only between 2.19 feet to 3.19 feet on her property and not 4 feet.

McKowan said he had gotten the plat and given it to Anchor Fence. He said he had contracted them over the internet in October. He said he gave it to them to show them where the markers were and how far to go back. He said
they went all the way to Donovan’s fence. He said he never knew his fence was on her property. He said he did not know it was her property when he claimed it was his. He said he did not know it was her property until December and his fence and the pool were already installed. He asked if the inspectors would have come out and looked at the fence once it had been installed. Leinwand said the fence company should have called for an inspection. McKowan said he didn’t know the laws. He said he didn’t know if the pool people were licensed or if they had pulled a permit. He said he was taken advantage of by both contractors.

There was another verbal outburst between McKowan and Donovan. Hewitt said the meeting could not be closed because it was a public meeting, but it was going to have to proceed in an orderly fashion.

McKowan said there was nowhere else on the property to put the pool. Hewitt asked if anyone else wanted to speak. Mrs. McKowan said they had not touched Donovan’s stakes. The parties became disorderly again and Hewitt told them to control themselves. Hewitt said he understood they were frustrated, but they were not at this meeting to decide who was in the right or who was in the wrong. He said they were there to decide about granting a variance.

McKowan again stated there was no other place in his yard to put a pool.

Hewitt said he would open the discussion to the board members. He said they could seek input from staff. He said the board could direct questions to those who had offered testimony.

Lovelace asked to be reminded of the 4 criteria. Hewitt said the first was extraordinary conditions that pertained to that particular piece of property. Lovelace said she saw no extraordinary conditions which pertained uniquely to this property. Lovelace said every piece of property had trees and landscaping. McKowan said there was no other place to put the pool. He said he could not utilize his property. Lovelace told McKowan the board did not make the laws. She said the variance could not be granted on the fact that was the only place he could put the pool. She gave the example of what could be considered extraordinary about the property was a stream running through the property or there was a 200 year old Live Oak tree. Hewitt said the pictures did not seem to show any protected trees. McKowan asked if the Oak was protected. Hewitt and Lovelace both said it would have to be a certain size and type of Oak.

Hewitt said assuming they could get past the first criteria, he struggled to see anything different about the McKowan’s property than from any other property in the vicinity. Lovelace and Johnson agreed with Hewitt.
Johnson asked for staff’s recommendation. Leinwand said staff could not recommend a variance for this property. He said staff saw no extraordinary conditions relating to this property.

Hewitt said he had not been on the board all that long, but this one of the most egregious things he had encountered. He said hadn’t seen a variance he wanted to grant more personally, but he also felt there was none other which so clearly compelled the board to deny.

Lovelace made a motion, seconded by Johnson, to deny the request based on the fact the board could not identify extraordinary circumstances on the property and this property was no different from any other in the vicinity. The vote in favor was unanimous. The motion carried.

McKowan said there was a pool down the street without a fence. He said the code police were just against him. He said he would not have invited Leinwand into this back yard if he had known this would happen. He was upset the board had denied his request. Hewitt again stressed the law did not permit them to do otherwise.

Mrs. McKowan asked if they had to take the pool down. Hewitt said it was not his place to tell them that.

IV. PUBLIC INPUT

There was none.

V. ADJOURN

Lovelace made a motion, seconded by Battle, to adjourn the meeting. The vote in favor was unanimous. The motion carried. The meeting adjourned at 5:55 p.m.

Approved and signed this 7th day of October, 2014.

[Signature]
Blake Hewitt, Chairman