CITY OF CONWAY
BOARD OF ZONING APPEALS SPECIAL MEETING
THURSDAY, DECEMBER 13, 2018
CITY HALL COUNCIL CHAMBERS – 229 MAIN STREET – 5:30 P.M.

Present: Travis Dannelly, James Shelley, Charles Byrd, Davis Inabnit, George Ulrich, Catherine Dingle, Blake Hewitt

Absent: None

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

Others: Philip Heisler, Lawrence Gagner, Gloria Wilson, Marc Thomas, Brandon Elvis, Bonnie Matthews, Cindy Wolff, Tom Ellis, Mike Lafayette, Jody Bateman, James Bateman, Marvin Keene, and approximately 15 others.

I. CALL TO ORDER

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

II. APPROVAL OF NOVEMBER 1, 2018 MINUTES

Shelley made a motion, seconded by Dingle, to approve the November 1, 2018 minutes as written. The vote in favor was unanimous. The motion carried.

III. CRITERIA

Hucks 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.

IV. VARIANCE REQUESTS

A. *South Oaks Drive:* The applicant, Amber Wall – Wall Eng., requested a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), from Article 6, Sections 6.1.5 – Measurement of Minimum Lot Width, 6.1.7 – Modification of Yard Regulations, 6.1.10 – Setbacks for Lots Fronting Cul-de-sacs, and 6.2 – Residential Building Types & Design Standards, Table 6.1: Dimensional
Requirements for Residential Zoning Districts, regarding proposed subdivision of property located on South Oaks Drive (PIN: 36912020065).

Hucks stated that the applicant recently annexed a piece of property on South Oaks Drive, and would like to subdivide the parcels into five lots. The property is zoned R-1 (Low-Medium Density Residential), which generally requires a minimum lot width of 75-ft, measured at the right-of-way line, unless it fronts a cul-de-sac or curved street (per Section 6.1.5). Upon conceptual review of the proposed subdivision, staff noted that lot 5 does not meet the minimum lot width at the right-of-way line of 75-ft. The applicant would like lot 5 to be considered a lot which fronts a cul-de-sac, which allows a reduced lot width of 45-ft, in accordance with Section 6.1.10 – Setbacks for Lots Fronting Cul-de-sacs, of the UDO.

Hucks then told the board that typically, lots which front on cul-de-sacs have a curved street frontage, with the lot opening up wider further back in the lot. In these cases, the minimum lot width at the right-of-way line is 45-ft, and the minimum lot width of 75-ft is measured at the front setback line. The lot in question (lot 5) does not have a curved frontage as is the case with lots which front on cul-de-sacs. The applicant would like Section 6.1.10 (b) to apply to lot 5.

Hucks said that the applicant was present to answer any questions.

C. Byrd recused himself from this case.

Chairman Dannely swore in Amber Wall, applicant who further explained the request. She stated that this lot is on the back of the property but fronting the cul-de-sac and the radius ends right at the parking lot so they are considering it not to be a cul-de-sac lot. The way the piece was subdivided from Bernadette, which was just in 2017 and if that lot would have been shifted into the radius of the cul-de-sac just 1 foot then we would not have needed a variance. So, unfortunately the way they split this piece, it hit right off the property corner where the radius comes into the straight line. She said they are matching exact lot widths to the parcels that are directly across the street.

Chairman Dannely asked what everyone thought during the due diligence period. Amber Wall said everyone expected and thought it to be true to be a cul-de-sac lot.

There was no public input. Hucks stated that she had one call and they were concerned about more houses adding to the drainage issues.

Shelley asked about any alternative plans. J. Hucks stated that they can legally without seeking a variance do 4 lots instead of 5 lots. Rezoning is not an option as everything around it is zoned R1 and that could be classified as spot zoning.

Shelley asked what is the hardship without the 1 lot. Amber Wall said that without that being a cul-de-sac lot, they cannot develop as initially intended.
Hewitt stated that he was trying to get through the hardships, particularly extraordinary conditions and failing to grant the variance unreasonably restricting the use of the property.

Hewitt made a motion to deny the variance. The motion was seconded by Dingle. The vote to deny was unanimous and the motion carried.

B. **1733 Pocono Street:** The applicant, Marvin Keene, requested a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), from Article 6, Section 6.3 – Non-Residential Design Standards, Table 6.2: Non-Residential Zoning Districts, regarding the setbacks requirements for a property located at 1733 Pocono St. (TMS: 151-42-01-012 / PIN: 38302040003).

Hucks stated that the applicant proposes to install a metal building in the Commerce Plaza Industrial Park. The lot is currently zoned HI (Heavy Industrial) which requires setbacks of 50’ front, 50’ rear, and 30’ each side. The parcel is approx. half an acre. This parcel was formerly zoned PSI, a different type of industrial zoning that no longer exists, which had less stringent setback requirements than the HI zoning district.

A 40’ wide detention pond and a 10’ maintenance easement encompasses the rear of this parcel, so the applicant will have to meet the 50’ rear yard setback. There is also a 10’ portion of a 20’ drainage easement on the left side of the property. The current site plan shows the building meeting the setback requirements, however access to the dumpster area is limited, and there is not enough area for parking or truck turning radius to access the garage doors.

The proposed site plan shows a front yard setback of approx. 41-ft and a right side setback of 15.5-ft. The parking has been moved to the left side/rear of the lot, along with the dumpster enclosure. Staff notes that the proposed site plan shows the dumpster enclosure and some of the parking space being in the left side landscape buffer and the parking does not meet the minimum width for standard spaces or ADA spaces.

Many of the lots within this complex are already developed, and many of them are considered legal nonconforming, as they were built prior to the adoption of the current ordinance, and do not meet the current setback requirements. Those lots that are not yet built upon will likely have setback issues as well, as some of them are the same shape and size as this lot. However, they are not necessarily encumbered by easements on two sides of the lot.

Chairman Dannelly swore in Jeff Solan and Marvin Keene, who further explained the request and said that the easements make it impossible to situate the building for side access to trucks adhering to the HI setbacks. He then stated that the setbacks requesting were the original setbacks.

There was no public input.
Shelley made a motion, seconded by Davis, to grant the request for a 40’ front yard setback and a 15.5’ right side yard setback. The vote in favor was unanimous. The motion carried.

C. **2115 Cultra Road**: The applicants, Alan & Lori Frederick, request a variance from the strict application of the **City of Conway Unified Development Ordinance (UDO)**, from **Article 5, Sections 5.2.1 – Accessory Structures and Article 6, Section 6.2 – Residential Building Types and Design Standards, Table 6.1: Dimensional Requirements for Residential Zoning Districts**, regarding the location of a shed/storage building on property located at 2115 Cultra Rd (PIN: 32514030033).

Hucks stated that the applicants propose to place a storage building in the corner front yard of their property. Corner lots are considered to have two front yards, and are treated the same way as front yards. Accessory Structures are only permitted in rear yards.

Per **Section 6.1.9 – Side Yards Setbacks for Corner Lots**, both yards lying between the primary structure and the intersecting streets shall be considered front yards. This property is at the corner of Cultra Rd and Reta Street.

Per **Section 5.2.1 (A.1) – Accessory Structures**, of the UDO, accessory structures shall be located in the rear yard only. There are some exceptions; however, storage buildings/sheds are not one of them.

The storage building is proposed to be located on the Reta Street side, approx. 27’ from the road and 8’ from the house. The dimensions are 24’ (L) x 12’ (W).

Chairman Dannelly swore in the applicant, Alan Frederick. Frederick stated that there was a 50-year old large oak tree in the rear yard which would restrict access to the yard for the size of the shed needed. He said that the limited space in the rear of the home would prevent use of the area for his pets. He then said that the house was not built according to the plot plan that was provided to the city.

Shelley said that he goes by there all the time and can’t support a shed on that corner.

Hucks stated that they could attach the garage/carport to the home and put it in this location.

There was no public input.

Hewitt said that the board had treated corner lots differently in the past and that this shed could be attached to the house but he could not support a shed in the front yard.

Hewitt made a motion to deny the variance. The motion was seconded by Shelley. The vote to deny was unanimous and the motion carried.

Chairman Dannelly moved 164 Sherwood Drive to the bottom of the Agenda.
D. **902 Buck Street**: The applicant, Gloria Wilson, requests a variance from the strict application of the *City of Conway Unified Development Ordinance (UDO)*, from Article 8, Sections 8.2 – Design Standards, 8.2.3 – Handicapped Accessible Parking Requirements and 8.2.12 – Parking Requirements for Specific Uses, and Article 9 – Landscape & Buffer Requirements, regarding parking and landscaping requirements for a property located at 902 Buck St. (TMS: 137-01-25-009 / PIN: 33814030011).

Hucks stated that the applicant proposes to reopen the building located at 902 Buck Street which was once a child care facility. The site is very limited with respect to outdoor space and access, and does not meet the minimum requirements of the UDO regarding parking, landscaping, access, etc. Because the building has been vacant for longer than 180-days, the entire site must be brought up to current standards before any business can operate at this location.

Per Section 8.2.1 – General Design Standards (A), “unless no other practicable alternative is available, any off-street parking area shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street”. Even if staff could allow what was formerly used as the parking areas to be considered as acceptable parking area(s), they do not meet the minimum requirements for parking stall length or widths and a portion of the spaces would be within the public right-of-way.

The building is approx. 8-ft from the front yard property line, 7-ft on the left side, and 7.5-ft on the right side property line, which is adjacent to a vacant lot that has historically been used for parking by prior establishments at this location. In addition to the large trees in front of the building, because a standard parking space is 19’ in length, any parking that is currently provided onsite does not meet the minimum requirements and cannot be considered parking for this establishment. Additionally, parking is based on the proposed use in conjunction with the square footage of the building. While there is space in the rear of the property to install parking, it is a fenced in area that could be used in conjunction with a daycare space, as required per ordinance. While there is only 7.5-ft provided between the building and the right side property line, the plat recorded in 1989 shows a 12-ft alley way between this property and the adjacent property; likely for vehicles to access the rear of the property.

If the proposed use is a daycare facility, as this building was historically used for, the required parking would be a minimum of 4 spaces; one of which shall be an ADA accessible space. This figure is based on the square footage shown on the construction plans that were provided. Other uses may require that more (or less) spaces be provided. In addition to the parking requirements for a daycare facility, *Section 5.1.7 – Child Day Care Facility, (5)*, requires that an on premises area adequate for loading and unloading of children to be accommodated shall be provided and that area shall not be located within any public right-of-way.
The required landscaping for this property includes an 8-ft street buffer along Buck Street as well as a Type A, five-foot buffer on the sides and rear of the property. If required, the street side buffer would encumber the entire front of the lot and almost entirely both sides of the lot. The applicant is asking for a variance to be exempt from these requirements, given the constraints of the lot.

Hewitt asked for clarification on the variances needed, parking and landscaping. Hucks said yes. Hucks stated that when a property is abandoned for 6 months it has to come into compliance with the current requirements of the UDO.

Chairman Dannelly swore in the applicant, Gloria Wilson. She stated that she could use the neighbor’s alleyway for parking. However, says that the neighbors survey does not show this alleyway.

Hucks stated that the last recorded survey that we could find, the alleyway was platted on there as an access easement. She said that there could be one that was done for informational purposes but that hasn’t been recorded.

Wilson said that the neighbor is also open to her renting for parking but the City says, she can’t do that.

Hucks said that parking has to be on the site that is being served.

Dannelly asked about using the rear as parking. Hucks said she wasn’t sure how much room was back there but there might be a possibility if they have the 1500 sq. ft. for a playground.

Hucks stated that if they were granted a variance they would still have to meet the Daycare Ordinance and would have to have a loading and unloading station. Parking cannot be in this area.

There was no public input.

After much discussion amongst the board regarding access, parking in the rear and loading and unloading, etc. Inabnit recommended that the request be deferred in order for the applicant to get legal opinion regarding access from the adjacent landowner.

Inabnit made a motion, seconded by Hewitt to defer the request to next month. The vote in favor was unanimous. The motion carried.

E. **Hemingway Chapel Multi-Family**: The applicant, Marc Thomas, S.I.G. Construction, LLC, requests a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), from Article 6, Sections 6.2.7 –Multi-Family Residential (dimensional requirements), regarding proposed subdivision of property located on South Oaks Drive (TMS: 136-11-01-008 / PIN: 369120100005).

Hucks stated that the applicant proposes to develop a multi-family residential project on approximately one acre, located on Hemingway Chapel Rd. Upon review of the
civil plans, staff noticed that the size of the parcel (1.01) would not be able to accommodate 30 units, as proposed, using the dimensional standards in Section 6.2.7 of the UDO.

Per Section 6.2.7 – Multi-family Residential (2): “In the R-2 zoning district, the first unit on each lot shall require a minimum of 6,000 sq. ft. of gross lot area and each additional unit shall require 2,500 sq. ft. of gross lot area”. This is regardless of the total number of beds proposed. The applicant proposes 30 two-bedroom units, which would require a lot size (minimum) of 78,500 sq. ft., or 1.81 acres. The lot in question is 43,865 sq. ft., or 1.01 acres. Without a variance, the most that could be built is 16 units.

If the applicant wanted to construct 30 one-bedroom units (30 beds), he would need 1.81 acres (approx.) in order to develop. If the applicant wanted to construct 16 four-bedroom units (64 beds), he would need 1.01 acres, based on the requirements of Section 6.2.7 of the UDO. The applicant proposes 30 two-bedroom units (60 beds). The only difference between the one-bedroom and two-bedroom units is the amount of parking that would be required, which is calculated based on the number of bedrooms per unit vs. the total number of units.

Inabit recused himself from this case.

Chairman Dannelly swore in Marc Thomas and Brandon Elvis, who further explained the request. Elvis stated that the main thing was the number of bedrooms as retirees and millennials are wanting to downsize to smaller spaces. When you look at the overall square footage, 30 units seems like a lot, it is comparable to 1200 sq. ft. units, these units are more efficiency type as this will help keep the costs down and keep their budgets in check. This is what SIG Construction is looking to put here for retirees and the younger generation. These units are about 550 sq. ft.

There was approximately 15-20 in attendance in opposition for this request.

Chairman Dannelly asked that everyone that speaks to stay on point as to what is being presented. If it does not pertain to the actual variance request, then we will ask you to wrap it up.

Chairman Dannelly swore in Bonnie Matthews, Phillip Heisler, Walter Freedrick and Francis Boling whom all spoke in opposition to the request.

Bonnie Matthews asked if it was going to be housing for Seniors or low income housing, Section 8. Dingle stated that if it was for retirees it would be Section 2 and with that it could not be a mixed use.

Matthews said she has concerns with the trees being gone on this parcel, traffic, taxes, flooding and drainage issues, and crime. Says she moved here to get away from the urban sprawl and crime. Said she didn’t want to but is crying nimby as she wants it in someone else’s back yard.

Chairman Dannelly reminded everyone that we are here for the variance request only.
Hewitt suggested that a time limit be set for each speaker as we have lots wanting to speak.

Byrd stated that we are only here for the density issue. The issue is not whether they can do multi family, it is only how much.

Chairman Dannelly reminded everyone that we are here for the variance request only, which is density. City staff would answer their other questions.

Phillip Heisler asked what type of homes. He wants a copy of the plan and he also understands that there has to be a tree line between areas of housing. He then had concerns with building on the pipeline. He also wants a study on Micro Climate if they are putting more than a one story building up.

Hewitt said that this is not germane, you either oppose it or not and what reason.

Heisler asked the board to table the request until the community is given a chance to study this so we can decide whether they oppose or accept what they are doing. He then asked if this would go to Council for final approval.

Hucks stated that this property is zoned R-2 which allows development of multi-family or single family. The question is not whether or not they can develop it because it is already zoned for it. The question is can they develop 16 units or 30 units. If this is approved they will develop 30 units and if it is denied they can still develop 16 units.

Heisler then said as long as it is for seniors, disabled or Veterans then it is ok.

Chairman Dannelly reiterated that we cannot change the development that is coming. We can only change 30 to 16 units.

Walter Freedrick said that the applicant stated that this would be Senior housing and younger housing, are they going to be sold units or rentals. He says that this should not go through until residents have had a chance to put our questions forward to be answered. Statistically, if these units are rented to younger families especially if they are subsidized, the crime rate in a middle income area will go sky high. He states that 30 units on one acre is ludicrous.

Byrd stated that this has nothing to do with how he rents or sales and that is not what we are here for.

Frances Boling asked if there is a minimum size on the units.

Hucks said that she believed the building code required a certain square footage on living area, having a separate cooking facility, etc., however was not certain if 550 sq. ft. of the entire unit would be something the building code considered. The Building Dept. would be better informed on the minimum square footage of an individual unit. The Planning Dept. could only speak to the density of the request. Hewitt made a motion to close public discussion. Shelley seconded the motion. The motion carried unanimously.
Chairman Dannelly asked who was in favor of the variance request to add 14 additional units to say "I." No one responded. He then asked for those that deny the variance to say "I." All board members said I. The variance was denied.

F. **164 Sherwood Drive:** The applicants, Davis and BobbiDawn Inabnit, request a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), from Article 6, Sections 6.1.9 – Side Yard Setbacks for Corner Lots and 6.2 – Residential Building Types and Design Standards, Table 6.1: Dimensional Requirements for Residential Zoning Districts, regarding setback requirements for property located at 164 Sherwood Dr. (TMS: 123-10-28-003 / PIN: 33908010032).

D. Inabnit recused himself from this case.

Shelley stated that he had reviewed the information and was familiar with the property. He made a motion to grant the request for a 12 ft. rear setback.

There was no public input.

Dingle seconded the motion. The vote in favor was unanimous. The motion carried.

Hewitt made a motion to reconsider and open up the floor for the previous case to respond to the comments, but said that doing so would not change his mind; however, he wanted to give the applicant a chance to respond.

Brandon Elvis stated that typically we would rezone from R-2 to R-3 to tackle the density problem. Under the UDO the first unit is 6,000 sq. ft. and then 2500 each additional in R-2. In R-3 it is 5000 sq. ft. and 2500 each additional so the difference is only 1,000 sq. ft., which is only .4 units. Whenever we first approached this and looked at the density, we said we would have to rezone to R3 but the hang up with that is that the UDO the only difference is .4 units so we are here for a variance because the traditional route of rezoning will not work under the current guidelines.

Hewitt stated that it does not change his position, so he withdrew his motion to reconsider.

Phillip Heisler asked if it was required by the zoning board or the city that you only notify people within 200 ft. of a rezoning. Hucks said that it is for variance requests but may be different for rezoning requests.

Heisler then asked who can he ask to change the requirement. Hucks said that would require a change in the ordinance and possibly the bylaws; however, she said she believed letters being sent to surrounding property owners was done so as a courtesy only and not required by law.

Heisler then wanted clarification on the vote by the board. Hewitt said that we denied the request for 30 homes.

Heisler then asked about a rezoning request. Hucks said that if he applied for a rezoning, the notification would go to Planning Commission and City Council.
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Chances of rezoning are slim as that could be considered spot zoning which staff does not support. If the applicants took that route, the property would be posted and letters would be sent to surrounding property owners.

V. 2019 Meeting Schedule

Inabnit made a motion to approve the 2019 Board of Zoning Appeals meeting schedule for 2019. It was seconded by Hewitt and the motion carried unanimously.

VI. PUBLIC INPUT

None.

VII. BOARD INPUT

None.

VIII. STAFF INPUT

None.

IX. ADJOURN

There being no further business to come before the Board, Hewitt made a motion, seconded by Ulrich, to adjourn the meeting. The vote in favor was unanimous. The motion carried.

Approved and signed this 24th day of January, 2019.

[Signature]
Travis Dannelly, Chairman