CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, JULY 25, 2019
CITY HALL CONFERENCE ROOM – 229 MAIN STREET – 5:30 P.M.

Present: Davis Inabnit, Charles Byrd, Travis Dannelly, George Ulrich
Absent: Lindsay Wallace, James Shelley, Catherine Dingle
Staff: Jessica Hucks, Zoning Administrator; Alicia Shelley, Planning Assistant
Others: Miltonette Clardy, Johnson Clardy, Katie Brookshire, Rose Shaw, Sam Stathos Sharon Boyd, Anthony Skipper, Kevin Skipper, Josh Brookshire, Gloria Wilson, Pete Hughes

I. CALL TO ORDER

Chairman Inabnit called the meeting to order at 5:30 p.m.
Dannelly delivered the invocation.
Chairman Inabnit swore in all the applicants and others in attendance.

II. APPROVAL OF JUNE 27, 2019 MINUTES

Dannelly made a motion, seconded by Byrd, to approve the June 27, 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.

IV. VARIANCE REQUESTS

A. 210 Busbee Street: The applicant, Kathryn Brookshire, requests a variance from the strict application of the City’s Unified Development Ordinance (UDO), from Article 6, Section 6.1.9 – Side Yard Setbacks for Corner Lots and
Section 6.2 – Residential Building Types & Design Standards; Table 6.1: Dimensional Requirements for Residential Zoning Districts, regarding setback requirements for property located at 210 Busbee Street (TMS: 123-10-26-010 | PIN: 339-08-01-0020).

Hucks stated that the applicant is currently renovating a home that was damaged during the flooding after Hurricane Florence. The house is located on a corner lot, and as such, requires a front yard setback from both Busbee Street (front yard) and Little Street (corner front yard) of 20-ft, as this property is zoned R-1 (Low-Density Residential). As part of the renovation, the applicant would like to install a set of steps to gain entry to the laundry room, which is on the side of the home. The home is already considered legal nonconforming, in that it already encroaches into the corner front yard setback by approx. 4-ft. The side adjacent to Little Street is 15.2-ft from the property line. The steps would encroach an additional 2-ft (approx.) and be approx. 13-ft from the property line adjacent to Little Street.

The applicant, Katie Brookshire was present and further explained the request. She presented a letter from the neighbor at 214 Busbee Street in support of the request.

There was no public input.

Davis Inabinit made a motion to grant the request for the corner front yard setback, adjacent to Little Street, to be approximately 13’ for the addition of the steps. The motion was seconded by Byrd. The vote was unanimous and the motion carried.

B. 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 9 – Landscape & Buffer Requirements, regarding a revision to a previously granted variance, which eliminated the requirement to install additional landscaping and trees would satisfy landscape and buffer requirements, for a property located at 902 Buck St. (PIN: TMS: 137-01-25-009 / PIN: 33814030011).

Hucks stated that in January, 2019, the applicant originally requested variances from the parking requirements, parking design standards, handicap accessibility parking requirements, parking requirements for specific uses and landscape and buffer requirements for the property located at 902 Buck Street, which was once a child daycare facility. The applicant is seeking to reopen the building as a daycare as well. This board denied the variance requests regarding parking standards, but did grant the applicants request for a variance from the landscape buffer requirements that would otherwise be required around the property perimeters, on the condition that the existing landscaping and trees would serve to satisfy landscape and buffer requirements. As staff previously stated, this site is very limited with respect to outdoor space and access, and currently, 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.

Since the variance for landscaping has been granted, the applicant submitted a site plan for review to the Planning Dept. The site plan, drawn by Solan Associates, P.C., shows the parking spaces, including ADA spaces, being installed in the rear of the property and also several trees being removed where the parking would be installed. There is a note on the plan with arrows pointing toward these trees that states “all ext. trees to be removed” (site
plan included in this packet). The City Arborist has also been out to this site and has OK’d their removal if necessary. However, if these trees are removed, there would be no trees or landscaping on this property, with the exception of the large oak trees in the front of the building that are technically in the right-of-way in front of this parcel. Those trees are not proposed for removal.

Staff is unable to approve the site plan for the parking area and driveway due to the fact that the variance that was granted was on the condition that existing landscaping/trees would satisfy buffer requirements. Since that was a condition of this board in granting the variance, staff is bringing this request back before you to consider granting a variance to eliminate the landscape buffer requirements with no requirement to maintain existing landscaping and trees. The 15-ft landscape buffers shown on one side and the rear of the property were drawn for reference only and would not be feasible with the requirement to have a 1,500 sq. ft. fenced-in play area in conjunction with a daycare.

Additionally, since the applicant had a survey completed in March of this year which showed the existence of the 12-ft alleyway, the adjacent property owner, Mr. Holmes, has also submitted a survey of his property to be approved that shows his property line stopping just short of the 6’ portion of the alleyway that was previously believed to be located on his property (6’ on Mr. Holmes property and 6’ on Ms. Wilsons property). The surveyor for Mr. Holmes submitted a probate court order from 2009 which ordered that 6’ of the alley to be deeded to the previous property owner of 902 Buck Street, which could be argued that 6’ of the alley no longer exists; however, Mr. Holmes is not claiming ownership of the remaining 6-ft, and every plat we have record of shows the 12’ alley. Regardless of what this board decides regarding the revised variance request, Ms. Wilson will need to seek legal guidance in order to pursue clarification and possible ownership of the remaining 6’ portion of the alley. This has no effect on the issue with removing existing trees in order to install the required parking for the daycare, but should a legal determination be made in the future that the alleyway no longer exists due to past probate court order(s) or any quit claim deeds that may be done in the future for the property, it would once again present the applicant with a legal access issue for getting to the rear of this parcel that complied with the requirements of the UDO. Staff has made the applicant aware of this issue. Again, the status of the alleyway does not restrict the applicant’s ability to request a revision to the previously granted variance and it be approved by this board. If the trees were removed and the parking spaces were installed, staff would still be unable to approve a plan or any proposed use that did not definitively address the access issue.

Hucks then said that the requirements are as follows:

- **Per Art. 12, Sec. 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 the UDO, certain standards must be met, one of which states that when the land area of the subject property and location of existing structures precludes provision of 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 which would have the same effect as would be accomplished in the nonconforming use did comply with the landscaping and screening standards of Article 9.

- **Article 9 – Landscape and Buffer Requirements, Section 9.2 – Landscape Requirements, Table 9.1,** requires a street buffer of 8-ft in the front and a Type A buffer on all other sides (5-ft).
Gloria Wilson, applicant further explained the request. She stated that four of the trees required mitigation. Hucks stated that she would need to speak to the City Arborist about tree mitigation.

The board also discussed the easement issue and it was determined that the status of the alleyway does not restrict the applicant’s ability to request a revision to the previously granted variance and it be approved by this board.

Dannelly made a motion to eliminate the requirement of the previously granted variance (originally granted in January 2019) to allow existing landscaping/trees to satisfy landscape buffer requirements and to permit removal of the trees in the rear and/or side which were to serve as the landscape buffer for the property, on the condition that the applicant comply with any mitigation requirements, as required by the City Arborist. Byrd seconded the motion. The motion carried unanimously.

C. **411 Todd Blvd:** The applicant, Pete Hughes, requests a variance from the strict application of the *City of Conway Unified Development Ordinance (UDO)*, from Article 9, Section 9.2 – Landscaping and Buffer Requirements and Section 9.3 – Landscaping Design Standards, regarding landscape buffer requirements for property located at 411 Todd Blvd (TMS: 150-00-06-035 | PIN: 38205040044).

Hucks stated that the applicant is currently constructing a student housing development on Todd Blvd. During the civil plan review process, the applicant proposed to install an opaque fence around the perimeter of the property that was a minimum of 5-ft in height in order to receive a 5-ft reduction in the landscape buffer width requirement. The required buffer on all sides (front, sides and rear) of the property is 15-ft. With the addition of an opaque fence, the required buffer is 10-ft. However, the Todd Blvd and Carter Lane side have an aluminum fence installed with an access gate on the Todd Blvd side that will be used by the residents. The Carter Lane side will have the same gate, only this gate will be accessible by emergency vehicles only. The sides will be a solid fence.

In addition, the UDO requires that buffers be installed on the perimeter of the property and the outside of the fence. The applicant would like to install the fence on the outside perimeter of the property (along each side) and install the required buffer plantings on the inside of the fence, and would also like to reduce some of these plantings along the sides and add to the buffer plantings in the front and rear of the property (Carter Lane and Todd Blvd sides). Per the applicant, some of the surrounding property owners have asked that the fencing be installed on the property perimeter.

*Hucks said that the variance(s) requested were as follows:*

**Requirement:**

- **Per Section 9.2 – Landscaping and Buffer Requirements (Table 9.2 – Landscaping Rate Chart, Type B**
  landscape buffer) **Walls and Fences, a minimum of 5-ft in height (constructed of masonry, stone, pressure treated lumber) may be used to reduce the widths of landscaping by 5-ft in Type B and C landscaping.**

- **Per Section 9.3 – Landscaping Design Standards, 9.3.1 (K), Fences and Walls: Walls and fences constructed to satisfy buffer requirements stated herein shall be placed in a linear, serpentine, or stepped alignment and shall be a minimum of 5-ft in height, but shall not exceed 10-ft in height. Such walls and**
fences shall be solid, continuous structures that screen incompatible land uses. Walls shall be constructed of brick, stone, stucco or concrete. Fences shall be constructed of wood or synthetic wood material.

In landscape buffers that require wooden fences or masonry walls, the required plant materials shall be installed on the opposite side of the fence from the subject parcel. The finished side of the fence to be required on the outside of the property. In order to provide the finished side of the fence on the inside of the property, written documentation that is notarized and witnessed shall be provided by the adjacent property owner(s) to the Planning Director.

Proposed:

- Install a less opaque, aluminum fence on the Todd Blvd and Carter Lane side versus a solid opaque fence. Install the required fencing along the side property lines on the outside of the required buffer versus the inside of the buffer. Maintain the 10-ft buffer width on these sides but reduce the amount of plantings and instead beef up the landscaping on the Todd Blvd (front of property) and Carter Lane sides (rear of property).

Hucks announced that Planning did receive some calls and also a letter in opposition.

Pete Hughes, applicant was present to answer questions. He said he was asking for approval to do as shown and have the buffer on the inside of the fence with the fence on the property line. He said that fire was ok with this proposal.

Dannelly asked about any easements. Hucks said that there did not appear to be any easements on the sides. Hughes said that there was not a drainage easement.

Sam Stathos, attorney for the adjacent neighbor, Mr. Skipper, spoke in opposition of the request. He stated that Mr. Skipper has lived here all his life and has concerns that the variance will affect his property’s value and will adversely affect his enjoyment and limit the future use of the rear of his property given the proposed placement of the fence.

There were approximately 7 family members of Mr. Skipper in attendance and in opposition to this request.

Inabnit made a motion to place the fence on the property line on the Pine Valley side and place the fence on the inside of the buffer on the opposite side which is the side that adjoins Mr. Skipper’s property. Dannelly seconded the motion.

There was then some discussion about placing the fence in the center of the buffer.

Chairman Inabnit called for a 3-minute recess.

Chairman Inabnit called the meeting back to order.

There was no further discussion.

The motion previously made by Inabnit and seconded by Dannelly carried unanimously. Therefore, the variance was partially granted allowing the applicant to install the fencing, in conjunction with a reduction in the width of the landscape buffer (from 15' to 10' in width), along the side property line on the outside of the landscape buffer.
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plantings versus the inside of the buffer on the Pine Valley Estates side (lots 1, 3 and 5). The variance to install the fence on the property line (outside perimeter) on the opposite side, adjacent to the property owned by Bill Skipper, ETAL (PIN: 38205040045), was denied, and fencing must be installed inside the landscape buffer perimeter, as shown on the approved landscape plans for the development.

V. PUBLIC INPUT

None.

VI. BOARD INPUT

None.

VII. STAFF INPUT

None.

VIII. ADJOURN

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

Approved and signed this 25 day of August, 2019.

[Signature]
Davis Inabnit, Chairman