

**CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, SEPTEMBER 22, 2022
BUILDING & PLANNING DEPARTMENT
196 LAUREL STREET**

Present: Sandra James, Lesley Hill, Catherine Dingle, Paul Lawson, Jay Sellers
Absent: James Shelley, Charles Byrd
Staff: Kym Wilkerson, Zoning Administrator; Anne Bessant, Planning Assistant
Others: Joy Bailly, Kristan Beglin, Will Morrow, Mike Battle, Tommy Parnell, Ricky Ray, Craig Bourque, Jerry Curtondall, Carl Griffith, Garrett Murray, Jeremy McDowell, Gina Johnston, Jacob Alzars, Joseph Starkey, Joe Windall, Roland Cockfield

I. CALL TO ORDER

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

II. APPROVAL OF MINUTES

James made a motion, seconded by Hill to approve the August 25, 2022 minutes as written. The vote in favor was unanimous and the motion carried.

Lawson swore in the applicants and staff.

III. CRITERIA

Lawson read the following four criteria required to be met in order for the Board to grant a variance:

Extraordinary conditions: There are extraordinary and exceptional conditions pertaining to the particular piece of property;

Other Property: The extraordinary and exceptional conditions do not generally apply to other property in the vicinity;

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;

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. *Previously tabled...* Garrett Murray, agent, requests a variance from the strict application of the *City of Conway Unified Development Ordinance (UDO)*, Table 6.2-Non-Residential Zoning Districts, for the property located on **Millpond Road**. (PIN 338-00-00-0008)

Wilkerson stated that the parcel, originally 39.45 acres, was rezoned on June 20, 2022 from Low-Medium Density Residential (R-1) to Conservation Preservation (CP) to allow for a Gymnasium use.

A minor plat was submitted and approved on August 15, 2022 to subdivide 11.76 acres from the parent parcel for the development of Thomas Gymnastics.

The setback requirements per Table 6.2 for the CP zoning district are 100-ft front, 100-ft rear and 100-ft sides.

The applicant is seeking a variance from: Section 6.3, Table 6.2 – Non-Residential Zoning Districts:

The applicant requests a variance on the setback requirements for the CP zoning district to align with setbacks for the Highway Commercial (HC) zoning district of 30-ft front, 20-ft rear and 15-ft sides of 25-ft on the front, 40-ft in the rear and 60-ft on the northern side.

The applicant cites the following reasons for which a variance should be granted: 1) The property behind ours is all wetlands and not buildable. The shape of our property is unique with a large drainage easement and wetlands that splits part of our property. There is also nothing but wetlands behind our property and is unbuildable. 2) The conditions from #1 and the variance requested will only affect our property. 3) Under current setback requirements for CP, with the layout of our property lines, it would be hard for any business to build on this property. Due to equipment requirements for gymnastics events with the recommended space around the events for safety, we are needing to ask for a variance on the setback requirements to be the same as HC zoning. The HC setbacks will allow us to build the appropriate facility without disturbing properties around us due to the unbuildable wetlands behind us. 4) We are bringing a very well-known and respected business to Conway that will be positive for the community and families within Conway. Granting this variance will not harm any adjacent properties as there is nothing but wetlands behind us and a big utilities easement immediately beside us deeming that piece of property as unbuildable as well. 5) The variance is initiated because of a hardship because under the current setback requirements and due to the wetlands and shape of the property, it would be hard for any business to build on this property. We would like to build a facility that provides a fun and safe environment for the kids and families of Conway.

Staff recommends that the BZA conduct a thorough review of the request and determine if a legal hardship exists and if the best interests of the City of Conway would be served by granting the request.

Garrett Murray, applicant was present to answer any questions.

Lawson made a motion to grant the variance as requested. Hill seconded the motion and the motion carried unanimously.

- B. *Previously tabled...*** Carl Griffith Jr., owner, requests a variance from the strict application of the *City of Conway Unified Development Ordinance (UDO)*, Table 5.2.3-Fences & Walls, for the property located at **1008 Whimbrel Court**. (PIN 383-04-03-0060)

Wilkerson stated that the parcel is zoned PD (Planned Development) and is within Wild Wing Plantation. The setbacks are established by the Wild Wing Plantation Architectural Review Board (ARB). The applicant has a home on Lot 438 in Phase 2 of the development.

The applicant would like to install a fence along his property line; however, he was informed that there is an existing 20-ft drainage easement that runs the length of the eastern property line. The drainage easement is 10-ft on each side of the property line per plat book 225 page 300.

Section 5.2.3-Fences & Walls of the UDO was amended on July 19, 2021 by City Council to eliminate the placement of fences and/or walls within public drainage easements. Prior to this amendment, the zoning compliances for fences stated “any fence that is required to be removed from a drainage easement will be at the expense of the owner”. This has caused issues for City staff when the easements need maintenance, in that City staff has to notify the property owner in advance of upcoming maintenance and many times, has to remove the fencing before the scheduled maintenance can occur and then re-install it. In the process of updating the Stormwater Ordinance, Public Works has also addressed this issue in order to maintain consistency throughout the City’s ordinances. Section 3-6-9 (11-C) of the City of Conway’s General Ordinances states “Restriction on easements shall include prohibiting all fences and structures, which would interfere with access to the easement areas and/or the maintenance function of the drainage system”

The applicant is seeking a variance from: Section 5.2.3 (H) – Fences & Walls: The applicant requests a variance to allow a fence to be installed within the existing public drainage easement running along the eastern property line.

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

1. The extraordinary condition is that my property has a public drain line running along the east side of my lot that would prohibit me from placing my backyard fence on my property line and effectively alienate 900 sq ft of my backyard.
2. The conditions are particular to my property as they effectively work to single out a group of homes that happen to have a public drain line on their property.
3. The application of the zoning ordinance would unreasonably prohibit the use of approximately 900 sq ft of my backyard, therefore limiting the recreational use of my backyard and creating an unsightly area of space between my neighbor and I.
4. The granting of the variance would not harm the adjacent property, and would greatly improve the character of the particular area as well as conform to the majority of pre-existing fences in the development that are on a public drain line. I have already spoken with my neighbor at the adjacent property and he has no issues with me placing my fence on my property line, as his is. He also agrees that moving it in 10-ft would create an unsightly space between our homes.
5. The variance request is based on the clear hardship of losing the ability to fully utilize 900 sq ft of recreational space on my property. My wife and I have two dogs, a two-year-old son and a child on the way. We built this house to raise our family in and we would like to have the ability to fully utilize the space in our yard.

Staff recommends that the BZA conduct a thorough review of the request and determine if a legal hardship exists and if the best interests of the City of Conway would be served by granting the request.

Carl Griffith, applicant was present and further explained the request.

The board and applicant discussed the request in length.

Lawson made a motion to deny the variance request. Sellers seconded the motion and the motion carried unanimously.

- C. Will Morrow, agent, requests a variance from the strict application of the *City of Conway Unified Development Ordinance* (UDO), Section 5.1.32-Community Support Services / Facilities and Outpatient Treatment Facilities, for the property located at **1800 Husted Road**. (PIN 383-02-04-0016 & -0020)

Wilkerson stated that the applicant, Mr. Will Morrow, is proposing an “Outpatient Treatment Facility” at 1800 Husted Road. The name filed on the City of Conway business license application is Pathway Clinic LLC. The parcel is zoned Heavy Industrial (HI) and per the City of Conway Unified Development Ordinance (UDO) Article 4-Use Table, “Outpatient Treatment Facility” is permitted as a “Conditional Use”.

The conditions for the use are listed in Section 5.1.32 of the UDO, including not being located closer than 1,000 feet from any religious institution. The UDO defines a religious institution as “A structure or place in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held”.

In December of 2020, an email was sent to Mr. Tom Miller of Miller Design Services, stating that the Traveler’s Chapel would not be considered a religious institution by staff. Staff’s interpretation was based on religious services not being held at this location on a regular basis. Nearly 2 years later (August 2022), Pathway Clinic LLC applied for a City of Conway business license. The business license was denied based on information gathered online regarding the Traveler’s Chapel. The interpretation was made that the Traveler’s Chapel is considered a religious institution. Staff was made aware of the previous email to Mr. Miller and responded to Mr. Morrow with Pathway Clinic LLC stating “Revising earlier interpretations of the Zoning Ordinance is at the core of what the Planning Department does on a regular basis”. Mr. Morrow was advised that a variance may be requested. Though the Traveler’s Chapel is considered a religious institution by staff, staff does not oppose the variance request. The Traveler’s Chapel is approximately 880-ft from 1800 Husted Road which is zoned industrial.

Attorney Michael Battle has since become an agent for Pathway Clinic LLC. The application submitted by Attorney Battle request a variance on the 1,000 feet requirement in Section 5.1.32. Should the variance not be granted, Attorney Battle is appealing the interpretation of the Zoning Administrator defining the Travelers Chapel as a religious institution.

The applicant is seeking a variance from: Section 5.1.32 (B3b) – Outpatient Treatment Facilities:

The applicant requests a variance to allow the facility to be within 1,000 feet of a religious institution.

If the variance is granted, Pathway Clinic LLC must still meet the additional conditions of Section 5.1.32 of the UDO including providing staff with a copy of the South Carolina license for an outpatient treatment facility.

The applicant cites the following reasons for which a variance should be granted: 1) Applicant's property lot line is located approximately 600-ft from 4.5-acre tract outside the City on which a building known as the Traveler's Chapel is located. Applicant's use is limited to HI zones which are very limited inside the City. The limited HI zones together with applicant's use create a peculiar hardship for this particular piece of property and for applicant's use of property as a healthcare facility. 2) The 1000-ft buffer is only applied to applicant's property because of applicant's use of the property as a healthcare facility. 3) Applicant would not be able to locate the healthcare facility on the property because the property lines are fixed. 4) The character of the area is heavy industrial and applicant's use is allowed as a conditional use. Access from applicant's property to the 4.5-acre tract would require a journey of 5000-ft. 5) The variance is requested for a hardship. Applicant will not be allowed to use the property because the City will not issue a business license.

Staff recommends that the BZA conduct a thorough review of the request and determine if a legal hardship exists and if the best interests of the City of Conway would be served by granting the request.

Mike Battle, agent for applicants was present and further explained the request in length.

Tommy Parnell spoke on behalf of The Yahnis Company with safety concerns for his employees.

Craig Bourque spoke on behalf of Carolina Testing with traffic and population concerns.

Will Morrow, applicant addressed the neighbors concerns and noted that this is appointment only clinic with patients paying for treatment. There will be no loitering, patients drive to the clinic get their prescriptions and go to the pharmacy to pick up the medication.

Lawson made a motion to grant the variance as presented and stated that it was only a 120-foot variance from the religious institution. Hill seconded the motion and the motion carried unanimously.

- D. Jeremy McDowell, owner, requests a variance from the strict application of the *City of Conway Unified Development Ordinance* (UDO), Article 5.2.1-Accessory Structures, for the property located at **1900 Highway 378**. (PIN 338-16-03-0030)

Wilkerson stated that Car Quest is an existing business located on the corner of Mill Pond Road and Highway 378. The applicant, Jeremy McDowell, would like to combine the Car Quest parcel with the adjacent vacant parcel in order to build an accessory structure to provide additional room for inventory.

Both parcels are zoned Highway Commercial (HC). Per the City of Conway's Unified Development Ordinance (UDO), non-residential uses may utilize accessory structures provided they meet the requirements found in Section 5.2.1-Accessory Structures.

The size of a non-residential accessory structure shall not exceed 50% of the area of the primary structure on the same lot. Based on Horry County Land Records website, the primary structure is approximately 8,342 square feet. This would limit the proposed accessory structure to 4,181 square feet. The applicant is limited to a maximum of three (3) accessory structures on one lot which would equal 12,000 square feet. To eliminate the need for three (3) accessory structures, the applicant is proposing one (1) accessory structure at 12,000 square feet.

The location of a non-residential accessory structure must be in the rear or side yard only. The proposed location for the accessory structure, if forward of the primary structure, is considered the front yard.

The applicant is seeking a variance from: Section 5.2.1 (B) – Accessory Structures:

The applicant requests a variance to allow an accessory structure over 50% of the primary structure and to be located in the front yard (along Mill Pond Road).

The applicant cites the following reasons for which a variance should be granted: 1) I currently own and run a retail automotive and truck parts resale establishment, which I also own a vacant lot beside. I would like to be able to combine these two pieces of property in order to build a storage facility to allow my inventory to grow for future business growth. I am also requesting to be able to build one large storage facility instead of 3 smaller buildings in order to be able to store product in an organized unified environment for ease to my employees. 2) My particular property would benefit from the ability to be able to merge lots as well as build one large unified storage facility for ease of use considering I will be a storing bulk, heavy, vast array of products in this facility to be able to grow my business for the future here in the city of Conway. 3) The strict application of the ordinance would prohibit me from using my property in a way that would allow me to use my property in a way that best benefits my business and its future. I need room to grow my business, as well as the ability to have one unified space to be able to keep a vast array of products that can easily be found in order to make sales as well as ease of stocking. Three separate storage structures would create confusion and be time costly for business. 4) I believe that joining my two properties and having one large storage facility instead of 3 individual ones would be much more physically appealing. It would look like a large nice structure instead of 3 small structures with alleys that could create issues with not being seen and being easier to break into and have uninvited loitering around. Three structures would make it look like a large mobile home lot so to speak. 5) The variance would be initiated in the intentions to grow my family owned business, creating revenue for my business and thus the City of Conway as well.

Staff recommends that the BZA conduct a thorough review of the request and determine if a legal hardship exists and if the best interests of the City of Conway would be served by granting the request.

Jeremy McDowell and Gina Johnston, applicants were present and further explained the request.

Joe Windall, Trustee with Christ Church of Horry County asked questions to the applicant about the building proposal.

The board and applicants discussed the variance in length.

Lawson made a motion to grant the variance as requested. Sellers seconded the motion and the motion carried unanimously.

V. ADJOURN

There being no further business to come before the Board, a motion was made and seconded to adjourn the meeting. The vote in favor was unanimous. The motion carried and the meeting was adjourned at 6:57 p.m.

Approved and signed this 27th day of October, 2022.



Paul Lawson, Chairman