

**CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, NOVEMBER 16, 2023
BUILDING & PLANNING DEPARTMENT
196 LAUREL STREET**

Present: Paul Lawson, Blake Hendrick, Catherine Dingle, Lesley Hill
Absent: Sandra James, Charles Byrd, Jay Sellers
Staff: Kym Wilkerson, Zoning Administrator; Anne Bessant, Planning Assistant; Marcus Cohen, IT
Others: Pete Hearn, Julie Hearn, Ryan Harvey, Ken Emery, Warren Ochs, Patricia Ochs, James Clement, Bill Ervin, James Ervin, Sharon Clement, & others

I. CALL TO ORDER

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

II. APPROVAL OF MINUTES

Dingle made a motion, seconded by Hendrick to approve the October 26, 2023 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/PUBLIC INPUT

- A. Pete and Julie Hearn, property owners, request a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), *Section 5.2.3-Fences & Walls*, for the property located at **700 Elm Street**. (PIN 338-13-04-0054)

Wilkerson stated that the applicants applied for a permit to replace the existing four (4) foot wrought iron fence with a six (6) foot brick fence to match the existing brick columns at the driveway entrance as well as the brick fence around the pool. The applicants parcel is located on the corner of Elm Street and Seventh Avenue. The UDO defines the location of this parcel as a “Corner Lot”. Corner Lots must meet the four (4) foot height requirement unless a ten (10) foot setback is met and then a six (6) foot fence would be permitted.

Per Section 5.2.3 – Fences & Walls of the UDO

Commercial & Residential:

Front yards - 4 feet

Corner front yards - 6 feet (provided it meets a 10-foot setback from the property line)

Side yards - 6 feet

Rear yards - 8 feet

Corner Lots: A fence or wall located on a corner lot may be up to six (6) feet in height provided it meets a mandatory ten (10) foot setback from the property line. Furthermore, fences and walls installed on corner lots must remain clear of all sight triangles, in accordance with Section 7.1.8.

Per the applicant, the driveway entrance is more than fifty (50) feet from the corner of Seventh Avenue and Elm Street and therefore would remain clear of all sight triangles. The UDO’s definition of “Yards” (on the following page), prohibits staff from being able to approve a six (6) foot fence at the location proposed.

Please keep in mind that the City of Conway’s Unified Development Ordinance was adopted on December 12, 2011; therefore, any existing fences and/or walls that do not meet the current ordinance are considered “legal non-conforming”. Should a legal non-conforming fence and/or wall need to be changed, it would then have to come into compliance with the current ordinance.

Variances requested (per site plan):

Section 5.2.3 – Fences & Walls:

- A variance to allow a six (6) foot brick fence in the corner front yard.

The applicant cites the following reasons for which a variance should be granted: 1) 5.2.3-C refers to fences extending to corner of lots. Purpose is to keep fence from impeding view of traffic at intersection. Not applicable here because proposed fencing does not extend to the corner of the lot. 2) This variance request is consistent with 5.2.3 A3 which provides side yard fencing at six (6) feet in height. This variance is on the side yard and does not extend to the corner. The house on the corner of Seventh and Elm across the street is a corner lot and has six (6) foot fence with does not extend to the corner. 3) Seventh Avenue and Elm Street have an extraordinary amount of pedestrian and vehicular traffic. A brick security fence

will protect us from exposure to vandalism, theft, and other crime. Our bedroom sits about twenty (20) feet from Seventh Avenue. 4) Granting the variance will enhance the character of the area and adjacent property by adding a matching brick fence to the existing brick fence on the back side of the property. 5) The hardship is security or lack of security with the existing four (4) foot metal fence.

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. If the Board chooses to grant the variances requested, staff recommend that it be only those which were requested via the application provided, and that the applicant come into compliance with the remaining items, or request a separate variance to be heard at a future BZA meeting, once proper public notice has been provided.

Pete Hearn, owner, was present and further explained the request.

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

- B.** Ryan Harvey, PE, agent for Burroughs Brothers Properties Inc., property owners, request a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), *Section 6.6.2-Mechanical Equipment, Dumpster, Recycling, and Trash Handling* as well as *Section 5.1.33-Parking as a Stand-Alone Use*, for the properties located at **University Plaza Drive**. (PIN 383-14-01-0008, 383-14-01-0019 and 383-14-01-0020)

Wilkerson stated that the applicant currently has two (2) projects at University Plaza Drive in review with the City of Conway's Technical Review Committee (TRC). One is a **Medical Building** on PIN# **383-14-01-0008** and the other is a **Restaurant** on PIN# **383-14-01-0019** with a proposed separate parking lot on PIN# 383-14-01-0020. The application for a variance request includes three (3) separate request.

Per **Section 6.6.2 – Mechanical Equipment, Dumpster, Recycling, and Trash Handling**, of the UDO:

B: Location: *The location of all utilities and trash handling facilities shall be in the rear or side yards. No such facilities shall be located in any yard adjacent to a public street.*

Based on the size of PIN# **383-14-01-0008** & PIN# **383-14-01-0019** and fact that both parcels are corner lots (*University Plaza Drive and Waccamaw Medical Park Drive*), the applicant is requesting a variance for both commercial projects to allow the dumpster facilities (*with approved screening*) to be located in the corner front yards along Waccamaw Medical Park Drive. The Sanitation Director, Reggie Jenerette, has approved the locations based on the initial review. Also, Waccamaw Medical Park Drive is a county-maintained right-of-way and the applicant is aware that an encroachment permit from Horry County Engineering will be required prior to plan approval.

Variations requested (per site plan for PIN# **383-14-01-0008** and PIN# **383-14-01-0019**):

Section 6.6.2 – Mechanical Equipment, Dumpster, Recycling, and Trash Handling:

- A variance to allow the location of the trash handling facilities to be located in a yard adjacent to a public street with the condition that it is properly screened. (Waccamaw Medical Park Drive)
- The proposed separate parking lot for PIN# **383-14-01-0020** must meet the requirements of **Section 5.1.33 Parking as a Stand-Alone Use**. This ordinance was passed by City Council in June of 2021. The

ordinance reads that “*The design of any stand-alone parking shall be heightened to offset the potential for traffic and aesthetic disruption to neighboring parcels.*” All neighboring parcels are zoned Highway Commercial (HC) and a stand-alone parking lot is a permitted use in the Highway Commercial Zoning District.

Per Section 5.1.33 – Parking as a Stand-Alone Use, of the UDO:

- a. A brick wall, a minimum of 36” high shall be constructed along a minimum of 50% of all road frontage. This wall shall be setback a minimum of 10’ from the sidewalk or public right of way whichever is greater. The brick wall shall be decorative and contain a finished cap along the top of the wall.
- b. Between the brick wall and the sidewalk or right of way shall be planted a landscaping buffer consisting of the following:
 - i. One canopy tree every 40’ of linear frontage, but in no case less than 3 per frontage. Canopy trees shall be a minimum of 12’ in height at planting.
 - ii. One understory tree every 20’ of linear frontage, but in no case less than 5 per frontage. Understory trees shall be a minimum of 8’ in height at planting.
 - iii. 1 bush or shrub every 3’ of for both width and depth of entire frontage. Bushes or shrubs shall be a minimum of 7 gallon and 3’ in height at planting and shall be of an evergreen species.
 - iv. All landscaping areas shall be irrigated, using a separate irrigation meter. An irrigation plan shall be submitted at the time of the request for the development of the parking lot.
- c. Non-street frontages shall be planted with a Type B buffer; however, all required landscaping materials shall be doubled from the requirements stated in Article 9 of the UDO.

Based on the location of this stand-alone parking lot and the size of the parcel, the applicant is requesting a variance from **Section 5.1.33** requirements.

Variances requested (per site plan for PIN# 383-14-01-0020):

Section 5.1.33 – Parking as a Stand-Alone Use:

- A variance to allow a Type A Landscape Buffer around the perimeter of the property, eliminating the requirements from Section 5.1.33.

Staff feels that if the variance is granted, eliminating the requirements of Section 5.1.33, a condition should be put on the variance stating that the *Front Landscape Buffer must still meet the requirements of the Gateway Corridor Overlay (GCO)*. This would consist of a 10-ft Landscape Buffer at the front property line, along the corridor ROW.

The applicant cites the following reasons for which a variance should be granted: 1) For Medical office, the existing building location and small depth of the site makes it impossible to put the dumpster in the rear yard. Both side yards are street side yards and thus ineligible. The proposed location also allows for the dump truck to circulate through the entire parking lot after picking up the trash, eliminating the need to back out onto the street. A similar situation applies to Restaurant. Both side yards are street side yards and the rear yard is very far away from any proposed parking. The dedicated driveway to the dumpster on Waccamaw Medical Park Drive allows for easy access to the dumpster without having to intrude on the customer parking area. The off-site parking parcel is non-wide enough to accommodate 2-way parking and the required landscape buffers. 2) Our parcels are uniquely challenging in that for dumpster placement, our options have been significantly limited due to the fact that side yards are not eligible for dumpster placement due to them being street side yards. This leaves only the rear yard available, which for the medical office

is practically unusable, and for the restaurant would require paving through a pond. The off-site parking parcel is also uniquely challenging in the fact that it is extremely small in width. 3) For the medical office, without the use of the variance there is no place the dumpster could reasonable go. If it were placed in the rear yard, the dump truck would have to make extremely difficult and dangerous maneuvers just to get to it. For the restaurant, in order to place the dumpster in the rear yard and not have driveway off either side street, a road would have to be paved over an existing pond. For the off-site parking, a full 15-ft Type B Landscape Buffer or even a 10-ft reduced with Type B Landscape Buffer with a fence would only allow for 1-way parking, which given the surrounding area, would likely create confusing and dangerous traffic patterns. 4) The dumpster locations on both sites will not harm any adjacent properties as the variance for the locations of the dumpster allows for easy and safe access of the dump trucks to the dumpster and eliminates excess paved area. The dumpster on medical office property is also shielded from view by an existing and a proposed Type A Landscape Buffer, as well as the required screening for the dumpster itself. The reduced width buffers will not be of harm to any surrounding property as to the NW, there is a drive-thru and to the SE there is a parking lot for a Wendy's that already has some landscaped area buffering it from our property. 5) The variance request is because of a hardship. All variance requested are because of the constraining factors on the sites. Safety for dump truck drivers and customers will be increased by these variances.

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. If the Board chooses to grant the variances requested, staff recommend that it be only those which were requested via the application provided, and that the applicant come into compliance with the remaining items, or request a separate variance to be heard at a future BZA meeting, once proper public notice has been provided.

Ryan Harvey, agent for owners, was present to answer any questions.

The board and applicant discussed the request at length.

There was no public input.

Hill made a motion to grant the variance for the two **Trash Handling Facilities** for PIN #'s 383-14-01-0008 & -0019 as requested. Lawson seconded the motion and the motion carried unanimously.

Lawson made a motion to grant the variance for the **Parking as a Stand-Alone Use** for PIN #383-14-01-0020 with staff's recommendations for the buffer. Dingle seconded the motion and the motion carried unanimously.

C. Patricia and Warren Ochs, property owners, request a variance from the strict application of the City of Conway Unified Development Ordinance (UDO), *Section 5.2.3-Fences & Walls*, for the property located at **1000 Dunraven Court**. (PIN 369-11-03-0007)

Wilkerson stated that the applicants applied for a permit to install an 8-foot white vinyl fence over the existing wooden fence at 1000 Dunhaven Court. The rear of the applicant's house faces Cates Bay Road which is considered a "**Double Front**".

Per **Section 6.1.9** of the UDO: "*In the case of any lot that adjoins two or more streets, yards abutting streets shall be treated as front yards.*"

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This is an older subdivision and the developer was allowed at the time to install 6-foot privacy fence in the double front yards of the lots adjacent Cates Bay Road. These fences are now considered “**Legal Non-Conforming**” and any change to the fences would require that they meet the current regulations of the UDO.

Per **Section 12.1-Nonconforming Uses**: “*A nonconforming use, structure or site shall not be extended, enlarged, or intensified except in conformity.*”

Based on the current UDO, a change to the existing fence would require the regulations of **Section 5.2.3** to be met which would only allow for a 4-foot fence in the **Double Front Yard**.

Per **Section 5.2.3 – Fences & Walls** of the UDO:

A. Commercial & Residential:

1. **Front yards - 4 feet**
2. Corner front yards - 6 feet (provided it meets a 10-foot setback from the property line)
3. Side yards - 6 feet
4. Rear yards - 8 feet

Variations requested (per site plan):

Section 5.2.3 – Fences & Walls:

- A variance of four (4) feet to allow an eight (8) foot fence in the double Front Yard (along Cates Bay Road).

The applicant cites the following reasons for which a variance should be granted: 1) Our house has a road both Front (Dunraven Court) and Back (Cates Bay Road). 2) Particular to our piece of property, height limits come into play on our back fence. 3) The strict application of the zoning ordinance would prohibit or unreasonably restrict the use of my property by privacy violation from Cates Bay Highway from tall vehicles passing by with an unfair night advance to look over our 6-foot fence into our back yard. An 8-foot fence would avoid that. 4) Granting the variance would not harm adjacent property, the character of the area or public good. It will only strengthen community safety by preventing drive distraction. 5) The variance is initiated because of a hardship and not to increase the profitability of the property.

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. If the Board chooses to grant the variations requested, staff recommend that it be only those which were requested via the application provided, and that the applicant come into compliance with the remaining items, or request a separate variance to be heard at a future BZA meeting, once proper public notice has been provided.

Warren Ochs, owner, was present to answer any questions.

The board and applicant discussed the request at length.

There was no public input.

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

D. Ken Emery, agent for Yahnis Real Estate Holdings LLC, property owner, request a

variance from the strict application of the City of Conway Unified Development Ordinance (UDO), *Section 5.2.3-Fences & Walls*, for the properties located at **Daytona Street**. (PIN 383-02-04-0014, 383-02-04-0013, and 383-02-04-0027)

Wilkerson stated that the applicants are proposing to combine the above PIN#'s via a platting action, in order to use the two parcels on Daytona Street for Yahnis Facility employee overflow parking and tractor trailer parking.

The parcels are all zoned Heavy Industrial (HI) with setbacks of 50-ft Front, 50-ft Rear and 30-ft Sides.

Per **Section 5.2.3 – Fences & Walls** of the UDO:

A. Commercial and Residential:

1. Front yards—4 feet,
2. Corner front yards-6 feet (provided it meets a 10-foot setback from the property line)
3. Side yards--6 feet,
4. Rear yards--8 feet,

B. Industrial Zoning Districts:

1. **Front yards--6 feet (not permitted in any required front setback),**
2. Side yards--10 feet,
3. Rear yards--10 feet,

Based on Section 5.2.3 (B-1) of the UDO, the 6-ft proposed fence at Daytona Street would have to meet a 50-ft setback from the property line. The applicants are proposing a 6-ft fence meeting a 10-ft setback from the front property line at Daytona Street.

Variations requested (per site plan):

Section 5.2.3 – Fences & Walls:

- A variance to allow a 6-ft fence to be placed 10-ft from the front property line instead of remaining out of the 50-ft front setback for the Heavy Industrial zoning district (once the parcels are combined).

The applicant cites the following reasons for which a variance should be granted: **1)** This property will be used for employee parking as well as tractor trailer parking. The tractor trailers will require the full amount of space available to maneuver into the area where their concrete pads will be for their landing gear. The proposed parking lot will be made of stone.**2)** The property is adjacent the Yahnis facility. The extra parking is needed to relieve the over-crowding caused by a lack of space around the existing facility.**3)** The strict application of the zoning ordinance would greatly limit the number of vehicles able to use the proposed parking lot and therefore limit the area available for expansion around the existing building. **4)** The fence will be well-maintained as are the other fences in the area. It will have no impact on adjacent property or the public good.**5)** The variance is initiated only to make the property more functional for the Yahnis Company.

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. If the Board chooses to grant the variations requested, staff recommend that it be only those which were requested via the application provided, and that the applicant come into compliance with the remaining

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items, or request a separate variance to be heard at a future BZA meeting, once proper public notice has been provided.

Ken Emery, agent for owners, was present to answer any questions.

There was no public input.

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

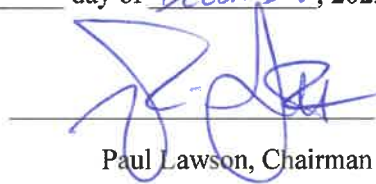
V. 2024 MEETING SCHEDULE

Lawson made a motion, seconded by Hill to approve the 2024 meeting schedule as presented. The vote in favor was unanimous and the motion carried.

VI. AJOURN

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 6:03p.m.

Approved and signed this 14th day of December, 2023.


Paul Lawson, Chairman