

**CITY OF CONWAY
BOARD OF ZONING APPEALS MEETING
THURSDAY, APRIL 28, 2022
BUILDING & PLANNING DEPARTMENT
196 LAUREL STREET**

Present: Paul Lawson, James Shelley, Catherine Dingle, Lesley Hill
Absent: Sandra James, Jay Sellers, Charles Byrd
Staff: Kym Wilkerson, Zoning Administrator; Anne Bessant, Planning Assistant
Others: Amanda Elliott, Hayes Hamilton, Sean Hamilton, Jerome Codner

I. CALL TO ORDER

Chairman Lawson called the meeting to order at approximately 5:32 p.m.

II. APPROVAL OF MINUTES

Shelley made a motion, seconded by Dingle to approve the March 24, 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:

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. Shawn Becker, agent for Midtown Oaks LLC, requests a variance from the strict application of the *City of Conway Unified Development Ordinance (UDO)*, Article 9-Landscaping &

Buffer Requirements, for the property located at **Medlen Parkway and Oak Street**. (PIN 325-15-03-0031)

Wilkerson stated that a sketch plan for Midtown Oaks was submitted in February 2017 to develop 20 single-family lots on the corner of Medlen Parkway and Oak Street. The “major subdivision” received civil plan approval on August 13, 2020 after being granted a variance for minimum lot width on January 26, 2018. The TRC conditional approval letter dated July 23, 2020 reiterated the comment that the landscape buffers must be platted fee-simple to be owned and maintained by the HOA.

The parcel is currently zoned R3. Per Article 9 of the UDO, there is a 15-ft (Type B) landscape buffer required behind lots 1-5, as the abutting parcels are zoned R1 or the equivalent. The use of a fence, a minimum of 5-ft in height may be used to reduce the width of the landscaping from 15-ft to 10-ft.

After beginning construction on the project, the applicant discovered that the proposed fence and landscape buffer on the north side of the project is in conflict with an existing retaining wall and existing trees. There is also an existing swale that runs along the base of the wall to remove water. The existing retaining wall is roughly 5-ft tall and runs about 2/3 of the way from the rear of the property to the front and then ends. This would particularly affect the required landscape buffer behind Lots 3, 4 and 5.

The applicant is seeking a variance from **Article 9-Landscaping & Buffer Requirements:**

- The applicant requests a variance to reduce the landscape buffer requirements behind Lot 5 from a Type B to a Type A landscape buffer. Also, to remove 85-ft of required landscaping where the existing retaining wall encroaches into the rear of Lots 3 and 4 with the condition that the existing landscaping remains undisturbed.

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

1. Per the City of Conway ordinance, landscape materials with required irrigation cannot be installed on individual lot owner’s property, as landscape buffers are owned “in-common” with all participating homeowners and the HOA is responsible for the maintenance. Therefore, due to an existing retaining wall and the existing vegetation on the other side of the retaining wall behind Lots 3-5, we are unable to comply with the buffer requirements per the City of Conway’s Landscape Buffer Requirements without encroaching onto Lots 3-4.
2. The existing retaining wall and the existing vegetation on the other side of the retaining wall behind Lots 3-5 are preventing us from complying with the City of Conway’s Landscape Buffer Requirements. Without reducing the buffer requirements, the

landscaping encroaches onto Lots 3 and 4.

3. The strict application of the zoning ordinance prohibits or unreasonable restrict the use of our property. It does not appear that we can meet the City of Conway’s Landscape Buffer Requirements. Without reducing the buffer requirements, the landscaping encroaches onto Lots 3 and 4.
4. Due to existing canopy, understory trees and the existing retaining wall behind Lot 3, the adjacent property owners are sufficiently screened from the proposed development of the property, therefore by reducing the buffer and the amount of planting, we would not harm the adjacent property, the character of the area or the public good.
5. The variance request is initiated because of a hardship and not to increase 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.

Amanda Elliott, agent for Shawn Becker was present and further explained the request.

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

- B.** Landon Hayes Hamilton, owner, requests a variance from the strict application of the *City of Conway Unified Development Ordinance (UDO)*, Section 6.2.2-Accessory Dwelling Units (ADUs), for the property located at **1204 Lakeside Drive**. (PIN 338-12-02-0020)

Wilkerson stated that the applicants spoke with the City of Conway Building Official, Robert Cooper, concerning adding an additional floor for an “Accessory Dwelling Unit” to the existing detached garage. Though the Building Department would permit the structure, the proposal does not meet the requirements of the City of Conway’s Unified Development Ordinance.

The parcel is currently zoned R1 with setbacks of 20-ft Lakeside Drive, 20-ft Hart Street and 20-ft Rear. This parcel is considered “**Legal Non-Conforming**”.

Per **Article 2-Definitions** of the *Unified Development Ordinance (UDO)*:

Nonconforming Lot: A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the UDO but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Nonconforming Structure: A structure or building, the size, dimensions, or location or

which was lawful prior to the adoption, revision, or amendment to the UDO but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Per **Article 12-Nonconformities** of the *Unified Development Ordinance* (UDO):

Extension or enlargement: A nonconforming use, structure or site shall not be extended, enlarged, or intensified except in conformity.

Nonconformity with residential development regulations: Any residential structure that is nonconforming in regard to minimum side or rear yard width may be expanded provided such expansion does not increase the degree of nonconformity along a particular lot line or violates any other provision of this Unified Development Ordinance.

In order to permit an “*Accessory Dwelling Unit*” above the existing garage, a variance must be granted for several of the requirements from **Section 6.2.2-Accessory Dwelling Units (ADUs)** of the UDO. Per Section 6.2.2:

Location: ADUs shall be located in the rear yard as defined by Article 2 with the exception of being part of an attached or detached garage, which may be located in a side yard. If located in a side yard, it shall not be located more forward than the front façade of the principal structure on the property, and it shall meet the setback requirements of the district. *The applicant requests a variance on the location of the ADU since the parcel is surrounded by public row on all but one side.*

Setbacks: The front, side, and rear yard setbacks shall adhere to the requirements set forth in Table 6.1.

The applicant requests a variance on the setback requirements for the R1 zoning district.

Height: The height of the ADU shall be subject to the maximum height requirements set forth for that particular zoning district (40-ft) found in Table 6.1 or Table 6.2. Additionally, the ADU shall not exceed the height of the principal structure on the property.

The applicant requests a variance to allow the height of the ADU to exceed the height of the principal structure.

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

1. This is an existing structure and the parcel is surrounded on three (3) sides by ROW.
2. The parcel and structures have been in the family for over 60 years.
3. Based on where the existing garage sits, there would not be any other alternative.
4. Granting the variance will not harm adjacent property, the character of the area or the

public good.

5. This request is not to increase profitability. It is a hardship since there is ROW on three (3) sides.

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.

Dingle recused herself from this request.

Hayes Hamilton, owner was present and further explained the request with saying that he uses this building as a cook shed and a lot of their storage has taken over. He wants to add a second story to move that storage and open up his cook shed.

Wilkerson noted that it was staff's understanding that this would be permitted as an accessory dwelling unit for a family member and the variance that are being presented to the board are strictly for that type of request.

Lawson made a motion to table the variance request until next meeting allowing the property owner to provide staff with updated information. Shelley seconded the motion and the motion carried unanimously.

- C. Jerome Codner, 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 **1266 Park Hill Drive**. (PIN 338-06-04-0021)

Wilkerson stated that the parcel is zoned R-1 (Low/Medium Density Residential) and is located between Park Hill Drive and Elm Street.

Per **Section 6.1.9-Side Yard Setbacks for Corner Lots** of the City of Conway's Unified Development Ordinance (UDO), in the case of any lot that adjoins two or more streets, yards abutting streets shall be treated as front yards.

Per **Article 2-Definitions** of the City of Conway's Unified Development Ordinance (UDO), **Yard:** A required undeveloped area of a property that lies between the principal building or buildings and the nearest lot line.

Per **Section 5.2.1-Accessory Structures** of the City of Conway's Unified Development Ordinance (UDO), **Location:** Shall be located in the **rear yard only**.

The applicant is seeking a variance from: Section 5.2.1-Accessory Structures (A-1):

The applicant requests a variance to allow an Accessory Structure in the double front yard along Elm Street.

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

1. Property has double frontage.
2. The condition is particular to my piece of property.
3. The double frontage would prohibit or restrict the use of my property.
4. Granting the variance will not harm adjacent property.
5. Hardship is I cannot get a building permit for my storage shed.

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.

Jerome Codner, owner was present and further explained the request

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

A. 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 6:01 p.m.

Approved and signed this _____ day of _____, 2022.

Paul Lawson, Chairman