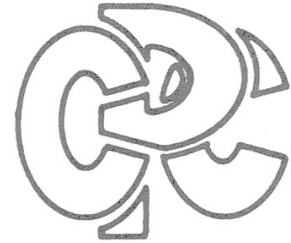




PLANNING COMMISSION MEETING

District Court Building
810 Parkway Street
Conway, AR 72034



Conway Planning Commission

July 18, 2016, 7:00 pm

The regular meeting of the Conway Planning Commission was held Monday, July 18, 2016 in the Russell L. "Jack" Roberts District Court Building. Present: Chairman, Mark Lewis, Vice-Chairman Matthew Brown, Brooks Freeman, Dalencia Hervey, Marilyn Armstrong, Bryan Quinn, Anne Tucker, Wendy Shirar, and Justin Brown. Jerry Rye was absent.

Chairman Lewis called the meeting order.

The Conway Planning Commission (PC) makes recommendations to the City Council on public hearing items. The City Council will make a final decision on these items using the PC's recommendation as a guide. Items not approved by the PC may be appealed to the City Council within 30 days after the PC's denial. If an item is appealed to the City Council a public hearing sign must be placed on the property no less than 7 days prior to the City Council meeting and a public notice will be placed on the City's website at www.cityofconway.org. Items reviewed by the PC on this agenda may be considered by the City Council as early as July 26, 2016.

Minutes from the June meeting were approved unanimously on a motion made by Marilyn Armstrong and seconded by Wendy Shirar.

The procedure followed for public hearing portion of the meeting is to allow the first representative to speak in favor of a request for ten minutes and each subsequent favorable speaker for two minutes each. Then, if there is any opposition, the first speaker opposed to the request may speak for ten minutes and each subsequent opposed speaker for two minutes each. Anyone wishing to speak either for or against an item may do so on any public hearing issue presented. Once all public parties have spoken the item will be brought back into committee for discussion.

I. PUBLIC HEARINGS

- A. Jacob Seiter's request to rezone property located at 2157 Prince Street from R-2A to O-3 was approved 8-1 on a motion made by Justin Brown and seconded by Dalencia Hervey. Jacob Seiter, 2445 Landover Trail, presented the request explaining his desire to build and operate a small dentistry practice on the property. He envisions 5-6 employees at full capacity with the option to expand on the rear of the lot to lease to a specialist such as an orthodontist or endodontist. A life-long resident of Conway, Mr. Seiter wishes to build his practice in his hometown. He intends for the building to have a "homey" feel and believes that it will improve the value in the area as the single-family home that once occupied the lot was demolished 3 to 4 years ago and the lot has been vacant since. Jordan Bittle, 2150 Prince Street, spoke in opposition. Mrs. Bittle implored the PC to consider the area where she lives as a fully functioning neighborhood even though it does not resemble a typical suburban subdivision. She described the different

types of pedestrians, many of whom are children, that travel this corridor to access Conway Junior High School, Conway High School and Laurel Park and stated that any increase in traffic to the area puts these pedestrians at risk. She suggested that a duplex would be a better use for the property. Mrs. Bittle went on to say that the immediate area is "saturated" with dental offices, several of which have unused space. Dale Bittle, 2150 Prince Street, spoke in opposition to the request stating that he wants his neighborhood to remain as it is.

- B. Preston Robinson's request to rezone property located at 1774 Bill Lucy Drive from R-1 to RU-1 was approved 9-0 on a motion made by Bryan Quinn and seconded by Anne Tucker. Preston Robinson, 401 Shady Oak Trail, Cabot, presented the request explaining that in March 2015 he rezoned the 10 acres directly to the east to RU-1 and got a conditional use permit for a self-storage facility. He wishes to add this 3 acres to that property which would allow for a better located exit gate as well as additional storage units.
- C. Preston Robinson's request for a conditional use permit [amending conditional use permit no. 1354] to allow a self-storage facility for property located at 1774 Bill Lucy Drive was approved, with all existing conditions, 9-0 on a motion made by Bryan Quinn and seconded by Wendy Shirar. Preston Robinson, 401 Shady Oak Trail, Cabot, presented the request. Mr. Robinson echoed his explanation from the rezoning request he just presented.
- D. Bill Akission's request, on behalf of Charles DeBoard, for a condition use permit to allow general retail for property located at 650 Dave Ward Drive was approved 8-1 on a motion made by Bryan Quinn and seconded by Brooks Freeman with Justin Brown voting in opposition. Bill Addkisson, 711 Locust Street, presented the request describing the DeBoards' desire to build and operate one location which combines their electronics (DeBoard Electronics) and ATV (C2 Powersports) businesses. Mr. Adkission understands the need for some limitation regarding the types of businesses that can be allowed by conditional use permit in this zoning district without rezoning for commercial use, but as both businesses also sell accessory products, he requested the permit not be limited "electronics and all terrain vehicles" but rather allow general retail and prohibit restaurants and shopping centers, at the suggestion of City of Conway Planning Director, Bryan Patrick. Charlie DeBoard, 707 Farris Road, spoke in favor of the request. Mr. DeBoard gave a brief history and description of the two businesses and made himself available to answer any questions the PC might have. Some discussion followed regarding the type of vehicles that are sold. It was clarified that, in addition to ATVs, C2 Powersports sells golf carts, lawn mowers, and other [non-commercial] equipment used in landscaping. What defines a 'shopping center' was clarified and a possible condition limiting the permit to the applicant was considered, but ultimately not included. Concern regarding the new curb cut near the base of the overpass was expressed. Bryan Patrick addressed the concern explaining that no new curb cuts are allowed on Dave Ward Drive within 300 feet of an existing curb cut and without approval from three different agencies (the City of Conway, the Arkansas Highway Department, and Metroplan), implying that any new curb cuts that are approved meet the Dave Ward Drive Access Management Plan criteria. Mr. Patrick also noted that this new curb cut would serve any future development to the adjacent area via a shared access agreement.

The condition attached to this motion is:

1. General Retail allowed, excluding restaurants and shopping centers.

II. BOARD OF ZONING ADJUSTMENT

- A. John King's request for a zoning variance to allow reduced front and side setbacks for a new garage was denied 1-8 on a motion made by Marilyn Armstrong and seconded Anne Tucker with Bryan Quinn being the sole favorable vote. John King, 1915 Arrowhead Lane, presented the request. Mr. King explained that he erected the new garage to replace the primary residence's garage which he enclosed to serve as living quarters for his mother in law. He stated that he permitted the structure and received approval at each stage of construction, but was told he was out of compliance once the structure was "pretty much complete." He requested a variance to allow the structure to remain as constructed based on the fact that he does not "have the money to move it" nor "the money to rebuild it" and on the "reliance that the approvals and inspections were valid". When questioned why he did not build the garage as it was indicated on the approved permit, Mr. King explained the due to easements and utilities he had to move the structure. Mr. King was also questioned regarding his knowledge of neighborhood covenants and restrictions. He stated that he sought the approval of [Andrew Worm] the "subdivision trustee" in April and was told that so long as the city was ok with what he was doing the he [subdivision trustee] would allow it. Mr. King said the approval stood for 30 days without protest. Mitchell Larkin, 1915 Arrowhead Lane, spoke in favor of the request. Mr. Larkin also described the meeting with Mr. Worm seeking subdivision approval as well as noting that there are several other structures within the subdivision that seem to be out of compliance. Mr. King allowed the PC to view photos of some of these other structures on his telephone. Wendy Wood, 404 Navaho Trail, spoke in opposition to the request. Ms. Wood presented a petition, signed by 70 neighborhood residents, opposing the variance request. She also stated that the structure violates the neighborhood covenants and restrictions and poses a line of sight safety concern. The PC asked if Ms. Wood's primary concern was the location or the appearance of the structure. She answered that it was a safety concern. Brenda Negus, 1916 Arrowhead Lane, spoke in opposition to the request. Ms. Negus recounted a conversation she had with Andrew Worm on July 16, 2016 in which he agreed for Mr. King to build a new, attached garage that would resemble the house. Ms. Negus referenced an accessory building she has on her property which was built to resemble her house. She was concerned that the Mr. King's building was a metal building, resembling a "pole barn" and that it sits so far out on the property that it is difficult to see around from the nearby stop sign. The PC asked why Andrew Worm was not in attendance to clarify what he told Mr. King. Ms. Negus explained that he is elderly and was not well enough to attend. Another question was posed pertaining to a business that is possibly being operated from the structure. Mr. King clarified that he is not operating a business and that the vehicles on his property are owned by him and his family. He also added that there are 7 people living in the home, 6 of whom are related. Alan McMoran, 1905 Wigwam, spoke in opposition to the request asking if the building was permitted. Chris (last name inaudible), 11 Sylvia Road, spoke in opposition to the request. He owns and rents the property at 356 Navaho Trail and stated that there are numerous cars parked at Mr. King's property and that when you exit his rental property you see the "big monstrosity of a garage". He also commented that the building was completed very quickly and nearby residents may not have understood what was happening. Chris Wallace, 450 Evening Drive, spoke in opposition to the request. Mr. Wallace was initially concerned that Mr. King was operating a business, but knows now that is not the case. He also expressed concern that his request to build a "pole barn" some years ago was denied, but said that is essentially what Mr. King built with a concrete slab without the required amount of

concrete surrounding each pole. He also stated that he saw the posts set in dirt. When asked by the PC, Mr. Wallace said the building was completed within 1 week to 10 days from the time the posts were set. Patrick Donohue, 401 Choctaw Trail, spoke in opposition to the request. Mr. Donohue is also concerned that Mr. King is/plans to run a business and complained of the vehicle noise. Joe Poulson, 365 Cheyenne Lane, spoke in opposition to the request. Mr. Poulson stated that the building seems to be “more out of compliance than it is in compliance” and questioned how it was allowed to get to that point. Lisa Foster, 355 Navaho Trail, spoke in opposition to the request complaining about the numerous cars that are always at the property, that the property owner has added a lot of extra concrete for parking where grass once was, and that the structure is more commercial than residential in nature, which causes property value concerns. Ms. Foster was concerned as much by the location of the building as she was by the building materials. David Stoltz, 2003 Wiggle Worm Road, spoke in opposition to the request expressing concern for how close to the street the building sits, the fact that the building is a large metal building that does not “fit the neighborhood”, and the numerous cars that are always at the property. Gail Gefroh, 1907 Arrowhead Lane, spoke in opposition to the request saying she feels if Mr. King’s building is allowed to remain that it will open the door for other like buildings in the neighborhood in the future. Marianne Kane, 2115 Wiggle Worm Road, spoke in opposition to the request expressing concern that the building and activity seem commercial in nature and in violation of the neighborhood covenants and restrictions. Theodore Jones, 1990 Favre Lane, spoke in opposition to the request saying he has driven by the property and noted that the building is out of compliance and that there were multiple cars present. He also noted that not only is the building in violation of the covenants and restrictions, but also of the city ordinance. Roger Smith, 402 Choctaw Trail, spoke in opposition to the request. Mr. Smith described witnessing multiple cars coming in and out the building while painting a nearby neighbor’s home over the period of a four or five days. Steve Ward, 1912 Wigwam Circle, spoke in opposition to the request. Mr. Ward agreed with several of the neighbors regarding the building’s appearance, but said that he was more concerned with the placement of the building so close to the street. He is the father of two children who are learning to drive and stated that the location of the building hinders visibility at the stop sign. Rhonda Poulson, 365 Cheyenne Lane, spoke in opposition to the request. Ms. Poulson, a realtor, felt that the building and activity will affect the value of the homes and that they impose on the neighbors’ rights to “quiet enjoyment.” Angela Byrd, 71 Kings Highway, spoke in opposition to the request. While not a resident of Indian Meadows subdivision, Ms. Byrd is typically in the neighborhood two times per week, picking up a co-worker. She said the location of the building causes a problem seeing approaching traffic when at the stop sign. She stated that there was no notification to neighbors regarding the lack opposition to Mr. Worm’s approval of the building which Mr. King referenced. Pamela Hoult, 357 Navaho Trail, spoke in opposition to the request. Ms. Hoult stated that she visited with Mrs. King regarding the new garage and didn’t mind it being constructed, but was of the understanding that it would be attached to the house and would be bricked. As her home is adjacent to the King’s property, Ms. Hoult stated that the building is in a “bad place”, because she must back to the end of her driveway before she can see if it is clear to pull out. The PC asked the Planning Director if something like this had happened in the past. Similar situations have occurred in the past, but city approvals were not given in those situations. Bart Castleberry, Director of the Permits and Inspections Department, reviewed the sequence of events and the timeline of the project with the PC, focusing on when the problem was discovered, when

Mr. King was notified, and when the official stop work order was issued. It was noted that the building inspectors did approve the building footing in error due to improper measurements that were taken at the project site. Chuck Clawson, City of Conway Attorney, explained that, per the city building inspectors, the building was begun and completed very quickly. He went on to say that it was at the PC's discretion whether or not to consider other, nearby, non-conforming structures; there might not have been enough information presented, regarding the possible operation of a business, to consider that aspect; and that initial approval by Andrew Worm was likely given on the design as was permitted, which would have been in compliance with the required building setbacks. He clarified the options available to the PC, either to approve the variance, allowing the structure to remain, or deny it. If denied, Mr. King would be required to bring the structure into compliance or he could appeal the decision through litigation. Mr. Clawson cited case law (*Russellville v. Hodges*, 1997) that supports the denial of the variance request stating that it is the intent of the zoning ordinance not to allow permanent structures within 25' of the property line, that Mr. King made a unilateral decision to move the building location due to a condition (utilities) he should have been aware of prior to permitting the project, and that Mr. King was not ignorant of the facts, meaning he was in possession of the neighborhood covenants and restrictions and that he would have been made aware of the required building setbacks, based on the identified 'front' of his corner lot, at the time he requested his building permit. He added that a building inspector does not have the authority to waive the requirements of the zoning ordinance by allowing changes to a permitted project. Mr. Clawson also noted, that if the PC approved the requested variance, Mr. King would still be subject to possible civil litigation on the part of neighborhood residents. The PC went on to discuss the sequence of events further. In response to questions from the PC, Mr. King stated that there is no lift installed in the garage and that if he had been allowed to finish the building he could store 2 cars inside. Commissioner Matthew Brown reminded the the PC this it is their responsibility to act regarding the location of the building, not the type of building materials or any other issue. Commissioner Bryan Quinn asked for leniency to lessen the financial impact for Mr. King in bringing the building into compliance as the city is partially responsible. Bryan Patrick offered guidance to the PC regarding how they could proceed and what they could approve or deny.

III. ITEMS NOT REQUIRING PLANNING COMMISSION ACTION

- A. Development Reviews
 - 1. Home 2 by Hilton, 800 Bill Dean Drive
 - 2. Downey Moving & Storage Shop Addition, 534 Bruce Street
 - 3. Ed's Supply Company Addition, 240 Exchange Avenue

- B. Lot Splits, Lot Mergers, and Minor Subdivisions (filed for record)
 - 1. Guy Murphy Industrial Park Replat Lot 8 [minor replat]
 - 2. Robinson Plan Replat Block 47, Lots 1-2 [minor replat]

There being no further business to conduct, the meeting was adjourned by a unanimous vote on a motion made by Bryan Quinn and seconded Justin Brown.