

ANDOVER CITY PLANNING COMMISSION /  
BOARD OF ZONING APPEALS  
March 27, 2008  
Minutes

The Andover City Planning Commission reconvened on Tuesday, March 27, 2008 at 909 N. Andover Road in the Andover Civic Center. Chairman Quentin Coon called the meeting to order at 6:02 p.m. Commission members present were Lynn Heath, Jan Cox, John Cromwell, Byron Stout and Jeff Syrios. Others in attendance were City Administrator Jeff Bridges, Director of Public Works and Community Development Les Mangus, and Administrative Secretary Kandace Hunt. Members absent were Dan Beck and City Council Liaison JR Jessen.

Call to order

**Review the minutes of the regular February 19, 2008 Planning Commission meeting and the reconvened February 25, 2008 Planning Commission Meeting.**

Review the February 19, 2008 and February 25, 2008 minutes

*Lynn Heath made a motion to approve the minutes with the correction of O'Riley's to O'Reilly's on page seven of the February 25, 2008 minutes. John Cromwell seconded the motion. Byron Stout abstained. Motion carried 5/0.*

**Communications:**

Communications

**Review the minutes of the February 12, 2008 City Council meeting.** The minutes were received and filed.

**Review the minutes of the February 12, 2008 Subdivision Committee Meeting.** The minutes were received and filed.

**Review the Potential Residential Development Lot Report.**

**Z-2008-02-** Public hearing on proposed change of zoning district from the R-2 Single-Family Residential District to the R-3 Multiple-Family Residential District located in the 200-300 block of West Lee Street.

Z-2008-02

**From Les Mangus' Memo:** This application arises from the contract purchaser's desire to build two multifamily dwellings. The subject parcels are currently zoned R-2 Single Family Residential, and are undeveloped. The proposed change would accommodate the applicant's proposed construction of a duplex on one lot, and a triplex on the other. Staff supports the application as applied for.

Chairman Coon asked if anyone on the commission needed to disqualify themselves for any reason. No member did.

Chairman Coon asked Les Mangus if all the notices had gone out in time. Les Mangus responded yes.

Chairman Coon asked Les Mangus for staff comments. Les Mangus explained to the board this application was for two vacant lots behind the Dairy Queen on the corner of Lee Street. The owner is interested in building a duplex and triplex on the lots currently zoned single family. He continued by saying he had received one phone call from the adjacent property owner to the east who has no feelings one way or the other about the case and one letter of opposition from a commercial owner a block away. The letter of opposition reads as follows:

“As owners of 324 W Central, we were notified of a rezoning application on Lee Street. This letter is to discourage both the Planning Commission and the City Council from approving the rezoning request.

We recently expanded our building and as a result, our entire site was required to be brought up to current city standards. It was required we sprinkle all plantings. A parking lot in front of the building was removed as more green space was desired and the parking lot was not compliant with existing standards. The building addition was fairly simply with very little change from the existing structure. Over \$35,000 in cost was associated with meeting current standards along with several dry runs through the site committee process.

Now that we have met the standards the city mandated, it seems unreasonable to allow a higher density use on a lot where gravel roads and no curb and gutters are present. It is our belief approval of a higher density use would create a hardship as expenses in maintaining this road would increase proportionate to traffic increases. The comprehensive plan states it is more expense to maintain a gravel road than a paved road. (Section 9-2)

Obviously, gravel roads in residential districts are not what the city desires as current policy mandates paving, curb and guttering standards. With that in mind, it seems reasonable that rezoning to higher density on substandard roads would be completely ambiguous with current policy.

Sincerely,  
Dennis & Debie Bush  
726 S 159<sup>th</sup> East  
Wichita, KS 67230  
Off (316) 733-2645”

Byron Stout asked to see the location of 324 W. Central, the location of the business from which the letter of opposition was received, on the aerial map. Les Mangus pointed out the business for commission members.

Chairman Coon asked if there was an applicant present. Craig Sharp was present to represent the application. Mr. Sharp informed the committee he would be the owner of the property if the zoning change

was approved.

Chairman Coon asked if the duplex would be on the east lot and the triplex on the west. Mr. Sharp said the duplex would be on the west lot and the triplex on the east. Byron Stout asked if the larger lot would have the duplex. Mr. Sharp explained the lot behind the Dairy Queen is wider than the lot behind the vacant house, it is not as deep, but it is wider, and to achieve the width they need that lot would be used for the triplex.

Byron Stout asked how many driveways would be needed. Mr. Sharp explained the triplex will have two driveways, one shared and one separate, and the duplex will have two separate driveways.

Chairman Coon asked if the units would be similar in appearance. Mr. Sharp said yes, both units will have brick front and vinyl siding.

Jan Cox asked if the units would be sold or used as rental properties. Mr. Sharp responded they would be rental properties.

Lynn Heath asked Les Mangus what the square footage requirements were on a triplex. Les Mangus responded 3,000 square foot per dwelling unit for a triplex and 5,000 square foot per dwelling unit for a duplex.

Quentin Coon asked if there were any comments from the public other than the phone call and letter Les Mangus had received. With none brought forward the public hearing was closed.

Byron Stout asked if the main concern on the letter opposing the zoning change was the gravel road and if there was any merit to the reference of Section 9-2 of the Comprehensive Plan. Les Mangus stated the concern was about adding more traffic to a gravel road. He continued by saying the area is currently zoned R-2 Single Family Residential District which allows two single family homes, so this application would be adding three additional dwelling units. He informed the commission the gravel road would be an issue for the City Council to take up with the platting and if they want to enforce the Subdivision Regulations to be an improved street as a part of the plat. Byron Stout asked Les Mangus if he thought the City Council would enforce the regulations. Les Mangus said the council could take exception to the requirement if they choose. Jan Cox asked if it was strictly up to the City Council or if the commission could make it a condition. Les Mangus said they could make a recommendation on the plat not on the zoning request. He continued by saying since this is a zoning request the committee can not place any condition other than the property be platted, but they can attach conditions on a plat because they are the approving authority.

John Cromwell asked Mr. Sharp if the garages for the units would be single vehicle garages. Mr. Sharp said yes. John Cromwell asked if

that meant there would be a possibility of five vehicles in covered garages. Mr. Sharp responded yes. John Cromwell continued by saying if these were single family homes with two or three car garages, there would be the possibility of five or six vehicles, the same as the proposed applications garages, but that does not mean there would not be cars parked outside of garages. So technically whether they are single family or multifamily homes, you are going to have the same potential number of garages with vehicles which would be about the same amount of vehicles traveling the road. He added that there would be less families, so there will probably be more individual drivers which could possibly increase frequency, but the overall number of vehicles is not that sustainably different. Lynn Heath commented that Les Mangus had figures on how many trips per unit was the national average. Les Mangus informed the committee the ITE Manual says a single family home generates about 10 trips per dwelling unit and a multifamily generates about 6 1/2, so there is not a huge difference between permitted and proposed uses.

With no further questions for the applicant, the committee proceeded to the rezoning checklist. Before beginning the checklist Lynn Heath commented that the Comprehensive Plan does recommend and speak of having multifamily dwellings between single family and businesses.

**ANDOVER CITY PLANNING COMMISSION**

Agenda Item No.  
5

REZONING REPORT \*

- CASE NUMBER: Z-2008-02
- APPLICANT/AGENT: Ross Rountree/Craig Sharp
- REQUEST: Proposed change of zoning district classification from the R-2 Single-Family Residential District to the R-3 Multiple-Family Residential District.
- CASE HISTORY: Vacant lots
- LOCATION: 200-300 block of W. Lee St.
- SITE SIZE: 33,723 s.f./0.77ac.
- PROPOSED USE: One duplex and one triplex

**ADJACENT ZONING AND EXISTING LAND USE:**

- North: R-3 multifamily dwelling
- South: B-2 Dairy Queen, and B-3 legal non-conforming single family dwelling
- East: R-2 single family dwelling
- West: B-3 Intrust Bank

**Background Information:**

\* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission’s considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant’s reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

**FACTORS AND FINDINGS:**

1. What is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition?

YES NO

STAFF:

PLANNING: North: R-3 Multi-Family dwelling; South: B-2 Dairy Queen and B-3 legal non-conforming single-family dwelling; East: R-2 Single-Family dwelling; and West B-3 Intrust Bank.

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change?

YES NO

STAFF:

PLANNING: North: R-3 Multi-Family dwelling; South: B-2 Dairy Queen and B-3 legal non-conforming single-family dwelling; East: R-2 Single Family dwelling; and West B-3 Intrust Bank.

COUNCIL:

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

4. Would the request correct an error in the application of these regulations?

YES NO  
X STAFF:  
X PLANNING:  
COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES NO  
X STAFF:  
X PLANNING:  
COUNCIL:

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

YES NO  
STAFF: Water is in place. Sewer is available to one lot and can be extended to service the other. The existing street is an open ditch gravel road.  
X PLANNING:  
COUNCIL:

7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

YES NO  
X STAFF:  
X PLANNING:  
COUNCIL:

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

YES NO  
X STAFF: None required  
X PLANNING:  
COUNCIL:

9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?

YES NO  
X STAFF:  
X PLANNING:  
COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES NO

STAFF: N.A.  
PLANNING: N.A.  
COUNCIL:

11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

YES NO  
X  
X

STAFF:  
PLANNING:  
COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES NO

STAFF: Increased traffic, beyond the existing permitted uses.  
PLANNING: Increased traffic on a gravel road.  
COUNCIL:

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

YES NO  
X  
X

STAFF: This district provides for the co-mingling of one, two, three, and four-family dwellings.  
PLANNING:  
COUNCIL:

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

YES NO  
X  
X

STAFF: Offers a variety of housing types.  
PLANNING:  
COUNCIL:

15. What is the support or opposition to the request?

YES NO

STAFF: None at this time.  
PLANNING: One letter of opposition and a phone call with no strong feelings either way. No public input.  
COUNCIL:

16. Is there any information or are there recommendations on this request available from knowledgeable persons, which would be helpful in its evaluation?

YES NO  
X  
X

STAFF: Approval as applied for contingent on satisfactory platting.  
PLANNING:  
COUNCIL:

17. If the request was not approved, would this result in a relative gain to the public health, safety and general welfare which would outweigh the loss in property value to or the hardship experienced by, the applicant?

YES NO

STAFF:

X PLANNING:

COUNCIL:

*Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I, Jeff Syrios move we recommend to the Governing Body that Case No. Z-2008-02 be approved to change the zoning district classification from the R-2 Single-Family District to the R-3 Multi-Family District based on findings 11, 13, 14 and 17 of the Planning Commission as recorded in the summary of this hearing and that the following conditions be attached to this recommendation. Byron Stout seconded the motion. Lynn Heath stated he felt number 11 did not support the motion. Jeff Syrios amended his motion to withdraw number 11 as bases of support. Byron Stout seconded the amended motion with the removal of number 11. Motion carried 6/0..*

**CONDITIONS:**

1. **Platting:** That all of such property be platted and recorded within one year from the date of Governing Body approval or the case be considered disapproved and closed, and that the Ordinance effectuating the zone change not be published by the City Clerk until the final plat has been recorded with the Register of Deeds during the period stated above.

**Z-2008-03-** Public Hearing on proposed change of zoning district classification from MH-1 Manufactured Home Park District to B-3 Central Shopping District located at the northeast corner of Andover Road and Douglas Avenue.

Z-2008-03

**From Les Mangus Memo:** This application arises from the owner’s desire to utilize the Andover Road frontage of the Mobil Manor mobile home park for strip commercial development. This application covers only a +/- 200’ square at the northeast corner of Andover Road and Douglas Avenue. The homeowner adjacent to the east of the subject property has voiced opposition to the use of what has been enjoyed as open space for many years. Staff supports the application limited to B-2 Neighborhood Business, and conditioned on the construction of a six foot high masonry screening wall along the east property line.

Chairman Coon asked if any member needed to disqualify themselves from the discussion and voting of the case for any reason. Byron Stout informed Chairman Coon that he knew everyone involved in the case, but felt he would not be biased either way.



Chairman Coon asked Les Mangus if all the notices had gone out in time. Les Mangus responded yes.

Chairman Coon asked Les Mangus for the staff comments on the application. Les Mangus explained the property is at the corner of Andover Road and Douglas Avenue was a part of the Golden Spur Addition. It was platted as a reserve, but a reserve at the time was not as we use the word reserve today. A reserve in this case was simply land set aside for another use in the future. It is not a homeowner's reserve, it is just considered a platted lot that was never finished and was broken out into individual lots. He continued by saying the applicant is asking for B-3 Central Shopping District for business uses they would like to consider. Les Mangus informed the commission members he had received phone calls from adjacent property owners in opposition of this case.

John Cromwell asked if they were considering everything outlined in black on the provided zoning maps or just the northeast sliver. He was informed it was the entire outlined area.

Quentin Coon asked if there was an applicant present. Matthew Cartwright was present to represent owners Richard Peckham, John Peckham and Scott Brummer on the application.

Mr. Cartwright explained the configuration of the northeast sliver by scale is substantially larger than it appears in the graphic. He continued by saying the owners have indicated a desire to come in with a high scale, multi-tenant building on a relatively small scale based on the size limitations of the lot. The owner's anticipation is to have two to three tenants in a building that will be slightly bigger than 4,000 square feet. Mr. Cartwright continued by saying he has produced schematic designs for this project and feels they have a good balance between the buildable area and parking. He also said they will have opportunities with the existing landscape for relocation of the Bradford Pear trees and will bring in more landscaping to conform to the requirements from Site Plan Review.

Mr. Cartwright presented a schematic for discussion of one possible option for the building site. He explained the goal is to create a small scale pedestrian based building. He continued by saying some of the projects that are similar to what they hope to create are El Vicino in College Hill and Great Harvest Breads. Mr. Cartwright said they are not yet sure who the tenants might be and they are going to leave the design open so they can have an impact, but the schematic presented shows the owners goals and the level of design they are looking for.

Lynn Heath asked if this lot went all the way to the driveway of the trailer court. Mr. Cartwright explained there are two lot lines on the north and apologized because the survey came up as an early schematic. He said he will be working with Poe & Associates to go through the plat on this project, but there is a slight revision on the 184

feet, they have asked to change that to 208. Part of the change came from the idea they could proceed with the existing curb cut and not bring it closer to the intersection which would allow them to utilize it as shared access with the balance of land to the north.

Byron Stout asked what would be located at the back to the east on what has previously been referred to as the sliver. Mr. Cartwright responded it will be parking to compliment the building. He continued by showing another concept which is similar to the approach Barnes and Noble has used at its new Bradley Fair location. This would have the building facing Andover Road and in lieu of using a lot of landscaping to hide the parking, the parking would be back around behind the building. He continued by saying instead of having a front and a back, the building will be a full 360 degrees because of its visibility and profile at the intersection. So in this situation they have brought the parking around to the north end and the back of the building would be between the tenant spaces, so the utilities would possibly be brought into the core of the building. Byron Stout asked if cosmetically the building would look the same all the way around. Mr. Cartwright explained with utility entries there would be some level of a backside. Byron Stout asked if the backside would have customer entry. Mr. Cartwright said he could see having entry points on all four sides of this building because utilities would be condensed to one small corner of the building, but basically it would look cosmetically the same all the way around.

Byron Stout asked if the additional parking on the northeast end was necessary per the requirements for this size of building. Mr. Cartwright said they have more parking than is required, but for their goal with these tenants they want more parking than is necessary.

Lynn Heath asked if they were planning on three business units. Mr. Cartwright said up to three, if there are three the businesses would be quite small because the building is just 4,000 square feet.

Lynn Heath asked what would be going into the buildings that would require a B-3 instead of a B-2 zoning. Mr. Cartwright explained what had really been driving the project was bringing coffee to Andover. He feels this would be a great location being central to Andover with the growth in Butler County and the student body in Andover he feels a coffee house is a strong prospect.

Byron Stout asked Les Mangus if there was anywhere else in town this could be placed to avoid encroaching on a residential area. Les Mangus responded this was pretty much the condition up and down Andover Road with the conversion of Andover Road residential property to small businesses. He continued by saying particularly on the west side of Andover Road it is prevalent that there are a lot of mostly neighborhood business that are the conversion of old residential lots, some within the existing houses and some where houses are moved out so buildings can be built. Jeff Syrios asked Les Mangus

what zoning district the committee had been changing the area along Andover Road to. Les Mangus responded anywhere from B-1 Office Business District to the B-3 Central Shopping District.

Lynn Heath asked what allowances were available for B-2. Quentin Coon said B-2 allows for candy or ice creams stores and restaurants except for drive-ins. Byron Stout asked Mr. Cartwright what it was in B-3 that allowed for their need with a coffee house. Mr. Cartwright responded approximately 50 percent of a coffee shop's business is drive-thru and it is critical to the function. Les Mangus explained the city dose not consider a drive-thru to be a drive-in and will allow a drive-thru anywhere a restaurant is allowed which includes B-2.

Les Mangus noted that when the commission begins going through its checklist it will ask if the application is within the intent and purpose of the zone that is being applied for. When reading over the purpose of the B-2 zone he felt it fit this case very well. It says the B-2 zone should be to service the surrounding residential neighborhood and should be at the corner of two arterial streets or an arterial and collector which this location is.

Chairman Coon asked if there were anymore questions for the applicant. There were none.

Chairman Coon opened the public hearing.

Charles Tipton of 116 S. Andover Road informed the committee he felt the proposed application would cost the City of Andover a great deal of money because they would have to hire more police officers and another ambulance crew due to the busy intersection, especially between the hours of 3:00 pm and 5:30 pm. Mr. Tipton said he had seen many almost accidents at the intersection. He also mentioned children travel through the area without paying much attention to the traffic around them. His final comment was he did not think the project was a good idea.

Mr. Tipton was thanked by the commission for his input.

Desree Mussat of 114 E. Douglas informed the committee she had lived in Andover since 1987 and had purchased her home at 114 E. Douglas in 1992. She pointed out that her property line sets along the northeast sliver of the proposed zoning change. She explained the reason she and her family moved to Andover was to place her two small children in the school system. Mrs. Mussat continued by saying when the city came in and took 10 foot out of her front yard for a sidewalk she did not mind, because they were building new schools for the children. But to see this proposed project come in and block her home in and depreciate her property value and everything she stands for she feels is wrong. She informed the committee there are no other commercial properties on the east side of Andover Road and what her neighbor Mr. Tipton had said earlier was true. Children walk up and

down the sidewalk in this area everyday going to and from school and to put any kind of entrance or exit in the way of those kids is dangerous.

Mrs. Mussat expressed her concern over her property line. She said when she bought the home in 1992 the existing fence was already there and her understanding was she had 10 feet behind the fence line. In 1995 her basement was flooded and she lost all of the paper work that shows where her property line starts and ends. She continued by saying as soon as she received her letter notifying her of the proposed zoning change she got in her car and drove to 21<sup>st</sup> Street and back to Kellogg and counted 13 commercial properties that face Andover Road and every one of them had available space for lease. Mrs. Mussat stated she did not feel there was a need for a commercial property in such a small lot.

Mrs. Mussat was thanked by the commission for her comments.

Tim Mussat of 114 E. Douglas also spoke in opposition of the project. He said his main concern was there is no separation between the commercial and residential area. Mr. Mussat informed the committee the design shown earlier by the applicants showed the drive-thru up against their property line which he felt could generate a lot of extra noise. Another concern he expressed was trash and the problems that came along with it.

Mr. Mussat was thanked for his input.

Chairman Coon asked if there was any further public input. There was none. Chairman Coon closed the public hearing.

Lynn Heath asked if there was any difference in the two designs the applicants had presented. Jeff Bridges responded one has the drive-thru on the Andover Road side of the project. Byron Stout asked if there had to be some kind of buffer between the project and the residential property line. John Cromwell stated staff had recommended a six foot masonry wall. Byron Stout asked how far that wall would be from the actual area a vehicle would be traveling on. Les Mangus informed the committee that there is no required distance and it would be up to the Site Plan Committee to determine. He continued by saying the Planning Commission could send a message to the Site Plan Review Committee that they expect a masonry wall there as separation at a minimum.

Jeff Syrios asked Les Mangus if the commission was inclined to change the zoning from MH-1 to B-2 and the application is for B-3, what would need to be done. Lynn Heath stated they would need to make a motion to that effect.

Jeff Syrios asked how much needed to be done at this stage to protect the homeowners. Les Mangus explained the only way they could

attach conditions to a zoning case is to use the Protective Overlay where they can zone the property and put limitations on permitted uses and conditions. Jeff Syrios asked if they had to come back to the commission for conditions. Les Mangus responded no. Jeff Syrios asked if the Protective Overlay had to be applied tonight. Les Mangus responded yes. Jeff Syrios asked if the Protective Overlay applied to special uses as well. Les Mangus explained a Protective Overlay would be put on any of the uses and within the Protective Overlay the commission can eliminate permitted uses if so chosen.

Chairman Coon brought up the question of having a restaurant in the area with the traffic it generates. Commission members stated they felt the lot was too small. Chairman Coon said he suggested they strike restaurants from the permitted uses in B-2. Byron Stout asked if there were any other homes in Andover that had restaurants right behind them. Les Mangus informed the commission Andover Crossing is a B-2 district that abuts single family with Taco Bell, Blockbuster, Great Wall and so on. Byron Stout asked if there was a hedge row there or some other type of buffer. Les Mangus explained there is a masonry wall and about a 10 foot strip of grass. Lynn Heath suggested making a masonry wall and a buffer a requirement for approval. He continued by saying historically the commission has worked to protect what is already there.

The commission decided to go through its factors and findings checklist before continuing with more discussion.

**ANDOVER CITY PLANNING COMMISSION**

Agenda Item No.  
6

REZONING REPORT \*

- CASE NUMBER: Z-2008-03
- APPLICANT/AGENT: Mobile Manor, Inc./Matt Cartwright
- REQUEST: Proposed change of zoning district classification from the MH-1 Manufactured Home Park District to the B-3 Central Shopping District.
- CASE HISTORY: Platted Reserve "A" in the Golden Spur Second Addition
- LOCATION: Northeast corner of Andover Rd. & Douglas Ave.
- SITE SIZE: 206' X 205' = +/- 33,231 s.f.
- PROPOSED USE:

**ADJACENT ZONING AND EXISTING LAND USE:**

- North: MH-1 manufactured home park
- South: R-1 single family residence
- East: R-2 single family residence
- West: B-1 St. Vincent de Paul church

**Background Information:**

\* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission’s considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant’s reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

**FACTORS AND FINDINGS:**

1. What is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition?

YES NO

STAFF:

PLANNING: North: MH-1 manufactures home park; South: R-1 single family residential; East: R-2 single family residential; West: B-1 St. Vincent de Paul Church.

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change?

YES NO

STAFF:

PLANNING: North: MH-1 manufactures home park; South: R-1 single family residential; East: R-2 single family residential; West: B-1 St. Vincent de Paul Church.

COUNCIL:

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

YES NO

X STAFF:

X PLANNING:  
COUNCIL:

4. Would the request correct an error in the application of these regulations?

YES NO

X STAFF:  
X PLANNING:  
COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES NO

X STAFF:

X PLANNING: Andover Road has grown into a commercial area and eventually all the residential properties on Andover Road will probably have to deal with this issue.

COUNCIL:

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

YES NO

X STAFF: All are available.

X PLANNING:

COUNCIL:

7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?

YES NO

X STAFF: Vacant land is available in the area.

X PLANNING:

COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES NO

X  
X

STAFF:  
PLANNING:  
COUNCIL:

11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

YES NO

X  
X

STAFF:  
PLANNING: Not suitable for residences to be adjacent to Andover Road at the corner of a collector street and an arterial with 15,000 cars a day across the frontage.  
COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES NO

STAFF: Increased lighting, traffic, noise, etc.  
PLANNING: Increased lighting traffic noise, smell, decreased home value.  
COUNCIL:

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

YES NO

X  
X

STAFF:  
PLANNING: Yes with B-2; not sure with B-3.  
COUNCIL:

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

YES NO

X  
X

STAFF: Case by case review.  
PLANNING:  
COUNCIL:

15. What is the support or opposition to the request?

YES NO

STAFF: Increased traffic, lighting, noise, etc. and devaluation of adjacent residential properties.  
PLANNING: Increased traffic, lighting, noise, smell and devaluation of adjacent residential properties.  
COUNCIL:

16. Is there any information or are there recommendations on this request available from knowledgeable persons which would be helpful in its evaluation?

YES NO



- X STAFF: Approval limited to the B-2 Neighborhood Business District, and conditioned on the installation of a 6' masonry screening wall along the east side of the property.
- X PLANNING: Agree with staff but would also like a buffer.
- COUNCIL:

17. If the request was not approved, would this result in a relative gain to the public health, safety and general welfare which would outweigh the loss in property value to or the hardship experienced by, the applicant?

YES NO

- STAFF:
- X PLANNING:
- COUNCIL:

Byron Stout wanted to ask a question of the applicant. Mr. Cartwright returned to the podium. Byron Stout asked if there was anyway they could move the project to the other end of the property and move the current office to the northeast end. Mr. Cartwright said the reserve in its entirety has great potential. He continued by saying there are width benefits at the north end already being utilized where the office sits. He then said he would like to allow the owners of the property to further answer the question. Dick Peckam, president and general council for Mobil Manor Inc., which owns the property being discussed, explained to the commission that the long term goal is to put similar types of businesses all the way across the property and it would be inconvenient for them to shift the office at this point. He continued by saying there will be a problem with the northeast portion of the land at some point because the hope is to gradually move up Andover Road with properties that are consistent and give a contiguous look throughout the area in the near term.

Jeff Syrios asked Les Mangus if they had any limitations on their restrictions within the definitions of permitted uses. Les Mangus responded no. Jeff Syrios stated he felt the B-3 zone was a little aggressive for the area. He continued by saying the commission is really looking at B-2 and they need to start thinking about how they can protect the property owner and be sympathetic to there concerns. However, they also need to take into consideration the location these people chose to live in is an area that was obviously going to be developed. He continued by saying unless they purchased the property 20 years ago before anything was developed they knew there would be risks, but that does not mean the commission turns its back to them. The commission needs to protect the residents as much as possible, but also realize they are living in an area that is a stones throw from Andover Road and the commission also has a responsibility to the landowner who wants to do something with his property that is in an ideal commercial location.

Lynn Heath noted although the decrease in property value had been discussed if the homeowners sold their property as commercial

property it may go for a higher value than residential property would. Jeff Syrios mentioned it is hard to tell what will decrease value of a property.

The commission then moved on to the 22 permitted uses in the B-2 district and how they planned to restrict them using Protective Overlay.

From the Zoning Regulations for the B-2 Neighborhood Business District, "The B-2 district is designed to provide for the retail sale of convenience goods and service in shopping districts of limited size areas near to residential neighborhoods at the intersection of two arterial streets or an arterial and a collector street."

The Planning Commission discussed each of the permitted uses within the B-2 District to decide which uses would be excluded as part of the Protective Overlay. Permitted uses number 15 and 16 were excluded in their entirety, number 14 was allowed with the exclusion of fast food restaurants, and restaurants was redefined to exclude fast food restaurants. All other permitted uses were accepted.

#### Permitted Uses

1. Appliance sales and repair shops – Yes
2. Barber Shops – Yes
3. Beauty Shop – Yes
4. Business, professional and public office – Yes
5. Candy and ice cream stores – Yes.
6. Drug Store – Yes
7. Dry cleaning and laundry receiving stations and where processing or cleaning of clothing is done on the premises by no more than five employees – Yes
8. Food stores, including grocery stores, meat markets, bakeries and delicatessens – Yes
9. Florist shops – Yes
10. Gift shops – Yes
11. Hardware store – Yes
12. Key shops – Yes
13. Package liquor stores - Yes
14. Restaurants – Yes, with the exclusion of fast food restaurants. For case number Z-2008-03 restaurants shall now be defined as "A public eating house, including but not limited to the types of business establishments customarily referred to as cafeterias, coffee shops, dairy bars and soda fountains, but not a drive-in establishment unless specifically permitted by the district regulations. Drive-up type windows however are permitted.
15. Self-service laundries and dry cleaning stores – No
16. Service stations – No
17. Shoe repair shops – Yes
18. Tailor Shops – Yes
19. Automobile parts stores – Yes

20. Bed and breakfast inns – Yes
21. Philanthropic institutions, including distributions and/or merchandising of goods for the needy when permitted – Yes
22. Child care centers and preschools – Yes

*Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I Jeff Syrios, move that we recommend to the Governing Body that Case No. Z-2008-03 be modified & approved to change the zoning district classification from the MH-1 Manufactured Home District to the B-2 Neighborhood Business District as an alternative to the B-3 Central Shopping District which the applicant had requested with the following restrictions by Protective Overlay to the permitted uses. Restrictions include all permitted uses with the exception of number 14, which is restaurants, the entire definition will be included but the commission will except-out fast food restaurants to restrict that part of the definition of restaurant, so restaurant will read to include everything except fast food restaurants. Number 15, self-service laundries and dry cleaning stores, would be excluded in whole and 16, service stations would also be excluded in its entirety. Lynn Heath moved to add to the motion that there be a six foot masonry screening wall and a 10 foot restriction from the homeowners' property line to any type of street or road. The commission decided on a 10 foot buffer with an 8 foot masonry screening wall along the R-2 property line. The commission based its decision on the findings number 5, 6, 10, 11, 14 of the Planning Commission as recorded in the summary of this hearing and that the following conditions be attached to this recommendation. Lynn Heath seconded the motion. Motion carried 6/0.*

#### **CONDITIONS:**

18. **Platting:** That all of such property be platted and recorded within one year from the date of Governing Body approval or the case be considered disapproved and closed, and that the Ordinance effectuating the zone change not be published by the City Clerk until the final plat has been recorded with the Register of Deeds during the period stated above.

It was noted that this case will go before the City Council on April 29, 2008. City Council meetings are held at 7:00 pm in the Andover Civic Center, 909 N. Andover Road.

**Z-97-05-** Public hearing on a proposed amendment to the Cloud City/Marketplace Preliminary Planned Unit Development Plan located south of US-54 and east of Andover Road.

**From Les Mangus' Memo:** This application is to once again amend the Cloud City/Marketplace Preliminary Planned Unit Development adds two small adjacent properties, and makes some slight adjustments to parcel boundaries and road alignment. One significant change is the elimination of the roundabout at the intersection of Cloud Avenue and

Plaza Street. Staff opposes the elimination of the roundabout because it would provide a traffic calming measure for what will be a very heavily traveled half mile long commercial collector street. Staff supports the amendment with the roundabout.

Chairman Coon asked Les Mangus for staff comments. Les Mangus explained the developer had purchased two additional tracts that were adjacent to the original Cloud City PUD and desires to add those into the Planned Unit Development. One of the tracts is located in the northeast corner of the site the other is at the northwest corner. He also noted the roundabout at the "T" intersection of the collector street had been eliminated from the approved plan.

Jeff Syrios asked where the roundabout was located. Lynn Heath stated it was at the intersection of Cloud Avenue and Plaza Street. Les Mangus explained the current plan shows a roundabout at the "T" intersection. He continued by saying this intersection will be a right in right out approach to Highway 54.

Chairman Coon asked if there was an applicant present. Mark Buckingham of MKEC Engineering Consultants represented the application.

Mr. Buckingham explained the purpose of this application was to add two tracts into the overall Market Place Commercial Addition.

Lynn Heath asked if there would be any zoning change required on the northeast corner. Les Mangus explained the property was recently annexed and is unplatted so with annexation it would have come in with an A-1 Agriculture zone so what they are doing tonight is changing it from A-1 to the B-3 Planned Unit Development. The second property is within Parcel 3 which is already zoned B-3 Central Shopping District, so all the commission will do is add the PUD restrictions and overlays to it.

Jeff Syrios asked why the roundabout was removed. Mr. Buckingham explained they felt the traffic could be controlled by signage and also save on cost. Jan Cox asked if there would be a stop sign stopping the traffic coming south off Kellogg. It was explained that the stop sign would be on Cloud Avenue. Byron Stout asked if the argument was there would not be an advantage to the roundabout traffic wise. Mr. Buckingham explained there would be free movement coming in off of Kellogg and you would be stopped if you were in the development. Lynn Heath asked Les Mangus if that was how he saw it, that Cloud Avenue would be stopped to allow free traffic coming in off Kellogg similar to Wal-Mart on East Kellogg. Les Mangus responded yes, and he was sure everyone was familiar with how that functions or rather dysfunctions. Byron Stout stated he would like to hear Les Mangus' argument for why a roundabout would work better in the area. Les Mangus explained the situation at Wal-Mart and Lowes forces traffic to stop were as a roundabout allows it to free flow. He continued by

saying it has been proven that there are fewer accidents at roundabouts than at stopping intersections.

Lynn Heath stated cross lot circulation throughout the area needed to be required. Mr. Buckingham said that would not be a problem.

Chairman Coon asked if there were any comments from the public. As there were none the public hearing was closed. The commission next moved to its factors and findings.

**ANDOVER CITY PLANNING COMMISSION**

Agenda Item  
No. 7

REZONING REPORT \*

CASE NUMBER:

Z-97-05

APPLICANT/AGENT:

Vantage Andover, LLC

REQUEST:

1. Adds an additional +/-2 acres with a proposed change of zoning district classification from the A-1 Agricultural Transition District to the B-3 Central Shopping District with the Cloud City Subdivision Planned Unit Development District Overlay.
2. Adds an additional 0.38 acres with the proposed Cloud City Subdivision Planned Unit Development District Overlay on the existing B-3 Central Shopping District zoning classification.
3. Reconfigures the boundary between Parcels 2 & 3.
4. Reconfigures the boundary between Parcels 3 & 3A.

CASE HISTORY:

Cloud City PUD was established in 1997, and has been amended many times.

LOCATION:

South of US-54 & East of Andover Rd.

SITE SIZE: +/-64 acres of commercial property

PROPOSED USE: Commercial development

**ADJACENT ZONING AND EXISTING LAND USE:**

North: B-3, B-4, and B-5 Andover Crossing PUD

South: R-2 Reflection Lakes single family development, and B-2 Cloud City vacant parcel

East: Butler County RR single family residence, and B-3 USD 385 elementary school

West: B-3 vacant commercial property, and R-1 single family residences

**Background Information:** This proposed change adds two adjacent parcels to the project.

\* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission’s considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant’s reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

**FACTORS AND FINDINGS:**

1. What is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition?

YES NO

STAFF:

PLANNING: North: B-3, B-4 and B-5 Andover Crossing PUD; South R-2 Reflection Lakes single family development and B-2

Cloud City vacant parcel; East: Butler County RR single family residence and B-3 USD 385 elementary school; West: B-3 vacant commercial property and R-1 Single Family residences.

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change?

YES NO

STAFF:

X PLANNING: North: B-3, B-4 and B-5 Andover Crossing PUD; South R-2 Reflection Lakes single family development and B-2 Cloud City vacant parcel; East: Butler County RR single family residence and B-3 USD 385 elementary school; West: B-3 vacant commercial property and R-1 Single Family residences.

COUNCIL:

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

4. Would the request correct an error in the application of these regulations?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES NO

X STAFF: In part, the parcel at the northeast corner has had commercial development around it and will be adjacent to a new collector street with a traffic signal on US-54.

X PLANNING: The addition of parcels.

COUNCIL:

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

YES NO

STAFF: All are in place or can be extended to service the properties.

X

PLANNING:  
COUNCIL:

7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

YES NO

X

STAFF:

X

PLANNING:  
COUNCIL:

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

YES NO

X

STAFF:

X

PLANNING:  
COUNCIL:

9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?

YES NO

X

STAFF: A considerable amount of commercial property is available in the area.

X

PLANNING:  
COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES NO

X

STAFF:

X

PLANNING:  
COUNCIL:

11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

YES NO

X

STAFF: In part, the parcel being added to the PUD on the northwest is already zoned commercial, and has an



operating auto service business.

X PLANNING:  
COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES NO

X STAFF: No detriment is perceived  
X PLANNING: No detriment.  
COUNCIL:

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

YES NO

X STAFF:  
X PLANNING:  
COUNCIL:

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

YES NO

X STAFF:  
X PLANNING:  
COUNCIL:

15. What is the support or opposition to the request?

YES NO

STAFF: None at this time.  
PLANNING: No opposition noted.  
COUNCIL:

16. Is there any information or are there recommendations on this request available from knowledgeable persons which would be helpful in its evaluation?

YES NO

X STAFF: Approval as applied for  
X PLANNING: Keep the roundabout and create cross lot circulation.  
COUNCIL:

17. If the request was not approved, would this result in a relative gain to the public health, safety and general welfare which would outweigh the loss in property value to or the hardship experienced by, the applicant?

YES NO

STAFF:  
X PLANNING:  
COUNCIL:

*Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I Byron Stout, move that we recommend to the Governing Body that Case No. Z-97-05 a proposed amendment to the Cloud City/Marketplace Preliminary Planned Unit Development be approved as presented with the addition of cross lot circulation and a roundabout at the intersection of Cloud Avenue and Plaza Street based on findings 5, 6, 10, 11, 13, 14 and 15 of the Planning Commission as recorded in the summary of this hearing and that the following conditions be attached to this recommendation. Jeff Syrios seconded the motion. Motion carried 6/0.*

**CONDITIONS:**

- 2. **Platting:** That all of such property be platted and recorded within one year from the date of Governing Body approval or the case be considered disapproved and closed, and that the Ordinance effectuating the zone change not be published by the City Clerk until the final plat has been recorded with the Register of Deeds during the period stated above.

*Lynn Heath made a motion at 8:02 p.m. to recess the Planning Commission and convene the Board of Zoning Appeals. Byron Stout seconded the motion. Motion carried 6/0.*

Recess the  
Planning  
Commission and  
convene the  
Board of Zoning  
Appeals

**BZA-V-2008-02-** Public hearing on an application for a variance of two feet from the required four feet maximum fence height limitation in the front for the construction of a six foot fence around the south and west front yard of a neighborhood swimming pool for the purpose of both safety and liability reasons on property zoned R-2 Single Family Residential District.

BZA-V-2008-02

**From Les Mangus' Memo:** This application arises from the owner's desire to increase the height of a wrought iron fence in the front yard area around the neighborhood swimming pool to six feet for security purposes. Staff supports the application as applied for.

Chairman Coon asked Les Mangus for staff comments. Les Mangus explained this parcel is a homeowner's reserve which they plan to

build a community pool and parking lot on. He continued by saying because it is on a sweeping curve it is considered to be a corner lot which makes the street frontage a front yard. A six foot fence is not allowed in a front yard so the request is simply to add two more feet to a fence on the west side of the property that is considered a front yard. The zoning regulations also include the requirement of a five foot fence around a pool, so the application is one serving the other.

Chairman Coon asked if there was an applicant present. Rob Ramseyer of Ritchie Development was present to represent the application.

Mr. Ramseyer informed the board the request for a variance of fence height was primarily for safety and liability purposes. He stated he felt uncomfortable with anything less than a six foot fence all the way around the pool.

Byron Stout asked what type of fence would be put up. Mr. Ramseyer said it would be a wrought iron fence. Jeff Syrios commented it needed to be conditioned to be a wrought iron fence so it could be seen through for traffic purposes.

The board next moved to its factors and findings checklist.

**BOARD OF ZONING APPEALS ACTION**

**VARIANCE**

**Case No. BZA-V-2008-02**

February 21,  
2008  
Publication Date  
March 18, 2008  
Hearing Date  
R-2 Single  
Family  
Residential  
Zoning District

**A.** Variances from the provisions of the zoning regulations shall be granted by the Board only in accordance with the standards in Section 10-1077(d), and only in the following instances and NO others:

1. To vary the applicable lot area, lot width, and lot depth requirements, subject to the following limitations
  - a. The minimum lot width and lot depth requirements shall not be reduced more than 25%.
  - b. The minimum lot area for a single or two-family dwelling shall not be reduced more than 20%.
  - c. The minimum lot area per dwelling unit requirements for multiple-family dwellings shall not be reduced more than 10%.

Dimension of lot \_\_\_\_\_ Variance requested \_\_\_\_\_

N.A.

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- B. To vary the applicable bulk regulations, including maximum height, lot coverage and minimum yard requirements:
  - 1. The bulk regulations for this district are:
  - 2. Variance would change bulk regulations as follows:
- C. To vary the applicable off-street parking and off-street loading requirements. (Must establish time schedule for compliance) N.A.
- D. To vary the sign provisions of Section 7-102 regarding general standards and Section 7-104 regarding nonresidential district regulations:
- E. To vary certain provisions of the FP Flood Plain District as provided for in Section 4-114(L): N.A.

- |   | True/ Yes | False/ No |
|---|-----------|-----------|
| F. The Board shall not grant a variance unless it shall, in each case, make specific written findings of fact directly based upon the particular evidence presented to it which support all the conclusions as required by K.S.A. 12-715 as listed below: |           |           |
| 1. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owners or the applicant;       | X         |           |
| 2. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;  | X         |           |
| 3. The strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.  | X         |           |
| 4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and  | X         |           |
| 5. Granting the variance desired will not be opposed to the general spirit and intent of these regulations.   | X         |           |
| G. In determining whether the evidence supports the conclusions required by Section 1-107(D)(1), the Board shall consider the extent to which the evidence demonstrates that:   |           |           |
| 1. The particular physical surroundings, shape, or topographical condition of the specific property involved  |           |           |

would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee, or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced. X

2. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property. X

3. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, and X

4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood. X

H. Restrictions imposed by the Board of Zoning Appeals as per Zoning Regulations Section 10-5G:

1. Fence installed must be a wrought iron fence.

Date Granted: \_\_\_\_\_

Valid Until (date) \_\_\_\_\_  
(180 days Sec. 10-107G)

\_\_\_\_\_  
Quentin Coon, Chairman

\_\_\_\_\_  
Janice Cox, Secretary

Certified to the Zoning Administrator on this date of:  
\_\_\_\_\_

*Lynn Heath made a motion to approve the variance for a six foot fence rather than a four foot fence on the street side as requested with the restriction as posted on a wrought iron fence. John Cromwell seconded the motion. Motion carried 6/0.*

*Byron Stout made a motion at 8:13 pm to adjourn the Board of Zoning Appeals and reconvene the Planning Commission. John Cromwell seconded the motion. Motion carried 6/0.*

Adjourn the Board of Zoning Appeals and reconvene the

Planning  
Commission

**Review and approve the Final Plat of the Sharp Tracts** located in the 200-300 block of West Lee Street.

Final Plats of the  
Sharp Tracts

**From Les Mangus' Memo:** The developer is simply cleaning up dedications and easements on two existing parcels as required with the rezoning of the properties in case Z-2008-02. Staff supports the plat with the satisfaction of all of the remaining unaddressed Staff Checklist comments.

Lynn Heath mentioned the Subdivision Committee had reviewed the plat and noted there was not much they felt needed to be added to it, but he did think there should be consideration of paving the corner of Lee and Joye. Jan Cox agreed. Byron Stout asked what was and was not paved. Jan Cox stated the paving ends at the bank. Quentin Coon asked if the paving recommendation would be just a note to the City Council. Jan Cox said that is all they can do. Byron Stout asked if it was just a half block they wanted to recommend to be paved. Lynn Heath responded yes.

Jeff Syrios asked who the specials were assessed to if it is just a half block. Jeff Bridges explained the equity would call for every adjoining property owner to pay their proportionate share, but in that particular instance there needs to be some permission given by the other property owners in order to receive specials, and if they protest out of the project the full cost could go to the two proposed lots. He continued by saying in a paving project unless everyone was willing to sign the petition in favor of it, the city would initiate the project and the property owners would have an opportunity to protest out of it. If that was done and it was required for the area to be paved in order for the property owner to get their zoning, they would have to pay for the whole paving project. Lynn Heath noted they did not want to require the paving only recommend it. Byron Stout stated even with the request Jeff Bridges' explanation could ultimately be the result. Lynn Heath asked if only one person needed to opt out of the project. Jeff Bridges responded no, 51 percent would have to opt out. He continued by saying looking at the configuration of the benefit district, this property does not make up the majority of what would be assessed.

Lynn Heath asked Les Mangus if all his comments had been addressed. Les Mangus stated he received a drainage plan but had not yet received a title report.

Jan Cox noted that the Comprehensive Plan discourages gravel roads in the city. Quentin Coon asked if the recommendation to the City Council that the road be paved would be a separate comment from the motion to approve the plat. Jeff Bridges explained if the paved road was made a requirement by the Planning Commission when the plat was brought before the City Council it would have to be included with

a petition for improvements, a developer's agreement and the letters of credit just like potential subdivisions. If it was just a recommendation it would go to City Council and they would discuss it just as the Planning Commission is and then decide. The commission decided that was what they wanted to do. Lynn Heath stated he did not want to stop the development just because they could not afford to pave the street and felt the cost of paving should be shared between all five lots.

Les Mangus explained that if the motion were conditional it would be a go or no go situation when it got the City Council. Jan Cox asked if the City Council could send it back to the commission if they did not like it or override the Planning Commission. Les Mangus responded no, they could not approve it without the condition because the Planning Commission is the approving authority. Jeff Syrios asked what the process for getting the road paved would be if it was approved without a requirement. Lynn Heath stated he thought the City Council could attach the requirement to the plat but they would have to go through a petition and get over 50 percent of the people in the benefit district to approve the improvement. Jeff Syrios asked if that would be something instigated by the City. Jeff Bridges explained a petition would be instigated by the property owners. Jeff Syrios asked if that was the only way it could happen. Jeff Bridges responded no, in the absence of a petition the City Council can declare its intention to have the road paved using special assessments, hold a public hearing and then have a protest period whereby the owners could sign a petition against the improvement. Jeff Syrios said that is how they need to go about getting the road paved and he did not feel they needed to make it a condition, they could make a recommendation, but he did not think it meant anything. He continued by saying there is another appropriate mechanism to start this process that the City fathers can do. Jeff Bridges said he would like to request the cost associated with the notice and the publications be born by this property because without it the City is going to pay those bills if the project does not go through. Byron Stout asked how much that would be. Jeff Bridges stated around \$1,500 for the lawyer's time and publications. Lynn Heath stated he did not have a problem with that. Byron Stout said he did and felt it was a timing issue and just because the developer was just now working on this project did not mean the cost should fall to them if it does not go through. He continued by saying even without this development the road needs to be paved. He felt it was not right to saddle one owner with the cost. Lynn Heath stated the reason this was becoming important was because the owners of the land want to develop their lot and those two lots being developed will increase the traffic. Byron said he understood but still felt with or without the development the road should be paved. Jeff Bridges said this is not the only situation like this, there are a dozen unpaved streets in the City they would like to pave but the specials on a single family home to pave a street are almost \$12,000 on a residential lot. Jan Cox stated she did not think it was too much to ask for the developer to pay the \$1,500 the City might be out. Jeff Bridges explained all they need is one adjacent property owner to agree to it

then they will have sufficient benefit district to do a petition and that cost is minimal. Lynn Heath noted adjacent property owners might agree to the improvement to increase the value of their property. Jan Cox asked if the developer was aware of the requirements. Roger Cutsinger of Goedecke Engineering represented the application. He informed the commission that he and the owner Craig Sharp were aware of the fact they may incur some of the costs.

*Lynn Heath made a motion to approve the final plat of the two lots of Lee Street as presented. John Cromwell seconded the motion. Motion carried 6/0.*

*Lynn Heath made a motion to recommend to the City Council to create a paving improvement for the half block of Lee Street as well as a benefit district, and if this benefit district fails the two proposed lots will pay for the cost of trying to get the improvement project done. Jan Cox seconded the motion. Motion carried 6/0.*

**L/S 2008-01-** Review a proposed lot split of Lot 7 Block 1 in the Autumn Ridge Subdivision located at 615/619 Autumn Ridge Ct.

L/S 2008-01

**From Les Mangus' Memo:** This lot split is the division of a two family dwellings into separate ownership as has been done many times in the Autumn Ridge Subdivision. The lots as split meet the bulk regulations. Staff supports the lot split as submitted.

Chairman Coon asked Les Mangus for staff's comments on the application. Les Mangus explained there have been several lot splits in this neighborhood; it is a two and three family neighborhood. Typically the lots are sold, the structures are built and the structures are sold to separate owners which triggers a lot split to divide the lot between the two attached dwelling owners.

Lynn Heath stated on most other lot splits they had seen they had to go through a variance because one of the lots was less than 5,000 square feet, but since both lots are the required 5,000 square feet this lot split is much easier.

*Lynn Heath made a motion to approve Block 7 Lot 1 lot splits each having square footage of 5,000 square feet. John Cromwell seconded the motion. Motion carried 6/0.*

**Member Items:** Byron Stout stated he felt the new style of control devices on the traffic lights is lousy. Les Mangus responded there are some glitches but they far out weigh the failures of the other system. Byron Stout asked if Les Mangus was referring to the underground method. Les Mangus responded yes. Byron Stout said he liked those because they had some sort of timer, but maybe it is just a matter of tweaking the video system. Les Mangus said there is a fail safe system on the cameras so if something went wrong the system would revert to

Member Items:



a timer. He continued by saying Sedgwick County programs the lights at both 159<sup>th</sup> Street and 13<sup>th</sup> Street and 159<sup>th</sup> Street and Central. They have had the common problem on the Central signal a lot of cities have where the camera that faces north in a cold wind or snow will fog over. He continued by saying the system will diagnose itself and corrects the problem in a few seconds.

Lynn Heath said he felt there might be a problem with the light at Andover Road and US 54 because while he was setting in the left lane waiting to turn north on to Andover Road he was skipped over but noticed when someone pulled into the right lane it triggered the sensor.

Les Mangus said the latest fix he has heard is to switch from black and white cameras to color cameras so there is a higher recognition between the gray pavement and the colored car that pulls up.

*Lynn Heath made a motion to adjourn the meeting at 8:40 p.m. John Cromwell seconded the motion. Motion carried 6/0.*

Respectfully Submitted by

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Kandace Hunt  
Administrative Secretary

Approved this 15<sup>th</sup> day of April 2008 by the Andover City Planning Commission/ Board of Zoning Appeals, City of Andover.