

**ANDOVER CITY PLANNING COMMISSION /
BOARD OF ZONING APPEALS
Tuesday, February 21, 2017
Minutes**

1. Call to order. 00:00:29

Chairman Brian Lindebak called the meeting to order at 7:00 p.m.

2. Roll call. 00:00:40

Planning Commission members in attendance: Chairman Lindebak, Lynn Heath, Mike Warrington, William Schnauber, Kirsten Bender and Tyson Bean. Member Stephanie Gillespie was absent.

Staff in attendance: Director of Public Works Les Mangus, City Administrator Mark Detter, Administrative Assistant Daynna DuFriend and City Council Liaison Sheri Geisler.

A/V: Craig Brown

3. Approval of the minutes of the January 17, 2017 meeting. 00:00:57

A motion was made by Mike Warrington, seconded by Lynn Heath to approve the minutes of the January 17, 2017 meeting. Motion carried 6/0.

4. Communications 00:01:23

- A. Committee and Staff Report.
- B. Potential Residential Development Report.

Recess the Planning Commission and Convene the Board of Zoning Appeals

A motion was made by William Schnauber, seconded by Mike Warrington to recess the Planning Commission and Convene the Board of Zoning Appeals. Motion carried 6/0.

5. BZA-V-2017-07 – A public hearing on an application filed by Leonard Ellis requesting a variance of 168 square feet from the required 600 square foot maximum aggregate total floor area of all accessory structures for purpose of allowing 768 square feet of residential storage structures on property zoned as R-2 Single-Family Residential District located at 407 W. 1st Street, Andover, Kansas. 00:02:53

Les Mangus explained that staff discovered three storage sheds in the rear yard of this subject property. The aggregate square footage of the three storage sheds exceeds the 600 square feet maximum allowed for accessory building in the R-2 Single-Family Residential District. The applicant responded with this application for a variance to allow the 768 square feet of existing square footage of the three storage buildings.

Chairman Lindebak asked if there had been any public comment received.

Les Mangus replied that he had received a telephone call from a nearby property owner who was opposed to the application.

Chairman Lindebak opened the public hearing.

Leonard and Joann Ellis, applicants, were present.

Mr. Ellis explained that his builder of the sheds told him permits were not be needed for portable buildings and that is why permits were not applied for. This is true for structures less than 120 square feet. In 2015 the first shed was brought in for storing lawn mowers and miscellaneous. Overtime more storage was needed and additional sheds were brought in. After the third shed was brought in he asked his neighbor if this was acceptable to them. They said they were ok with the sheds. He has several signatures from neighbors giving approval of the storage sheds. These sheds are constructed of materials similar to the house and a six-foot privacy fence surrounds the rear yard.

William Schnauber asked if there were also two enclosed trailers on the property.

Mr. Ellis answered that there are two trailers also on the property.

Tyson Bean asked the applicant if they had received any feedback from neighbors regarding these structures.

Mr. Ellis said that he has spoken with a few neighbors who are in favor of the sheds being there.

Chairman Lindebak asked Mr. Ellis if he had spoken with the neighbor directly south of his property.

Mr. Ellis replied that he had and they stated that it was his property to do what he wanted with it.

Cathy and Joe Mendoza, 310 W. 1st Street, expressed concern for property values and setting a precedence for the neighborhood if variance is granted.

Steve Walker, 209 Lioba Dr., is also concerned with this setting a precedence if the buildings are allowed.

Chairman Lindebak asked if he would be opposed to possibly allowing the variance for a limited amount of time.

Mr. Walker said that he would not be opposed to a limited variance.

Mark Donley, 410 W. 1st Street, explained that he helped the applicants move into their home and noted that the neighborhood had more issues with the owners prior to the Ellis' who poorly maintained this property. He is in favor of allowing the variance and feels there was no ill will on the applicants' part in having these storage sheds.

Chairman Lindebak asked staff if the variance could be modified to allow a condition that upon removal of one of the structures, that would then get them to 600 square feet or less, they would notify the City and this variance would then be lifted at that time. They would then have to return for another variance if needed.

Les Mangus stated that the standards allow whatever conditions that the Planning Commission sees fit, such as a time limit.

William Schnauber asked for clarification that if this request were not approved, that forces them to remove one of the storage sheds to then be in compliance. He noted that one of the buildings stands considerably taller than the fence and the other buildings.

Les Mangus said that was correct and there is a 35 feet height limitation for accessory structures.

Joann Ellis, applicant, commented that when they moved in the backyard was just mud. Since then they have made many landscape improvements to their backyard with large raised planters and grassed areas.

Chairman Lindebak closed the public hearing.

William Schnauber remarked that intent or not, there is a concern for the amount of money that has been put into these buildings and your residence. But at no point in time was a permit ever taken out on any three of these items. There is also a concern to not let this set a precedence. This is a tough decision. He viewed this as a very busy property as he drove by it.

Mark Detter, City Administrator, asked that the Planning Commission keep any comments about what is unique to the property about the property and not about the individuals' personal characteristics.

ANDOVER BOARD OF ZONING APPEALS

Agenda Item No. 5

February 21, 2017

VARIANCE REPORT *

CASE NUMBER: BZA-V-2017-01

APPLICANT/AGENT: Leonard Ellis

REQUEST: Leonard Ellis, 407 W. 1st Street., Andover, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 168 square feet from the required 600 square foot maximum aggregate total floor area of all accessory structures permitted by Section 6-100C4 for the purpose of allowing 768 square feet of residential accessory structures on property zoned as the R-2 Single-Family Residential District.

CASE HISTORY:

LOCATION: Legal description: Lot 1, Block 5, Countryside 3rd Addition to the City of Andover, Kansas.

General location: 407 W. 1st Street, Andover, Kansas.

SITE SIZE: ±11,172 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-2 Single-Family Residential single family dwellings

South: R-2 Single-Family Residential single family dwellings

East: R-2 Single-Family Residential single family dwellings

West: R-2 Single-Family Residential single family dwellings

*NOTE: This report has been prepared by the Zoning Administrator to assist the Board of Zoning Appeals to determine their findings from the evidence presented at the hearing so as to base their decision for a variance on the required five findings found in Section 10-107 D 1 of the Zoning Regulations. The Board may grant a request upon specific written findings of fact when all five conditions, as required by state statutes, are found to exist. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Board of Zoning Appeals considered opinion. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

BACKGROUND INFORMATION:

DOES THE EVIDENCE DEMONSTRATE 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, **because the applicant has placed three portable storage sheds in the rear yard in lieu of adding a detached garage.**
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, **because the applicant has placed three portable storage sheds in the rear yard in lieu of adding a detached garage.**
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, **because the portable storage sheds are located in the rear yard behind a six-foot privacy fence and are constructed of high quality materials similar to the houses in the area.**
4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood, **because the portable storage sheds are located in the rear yard behind a six-foot privacy fence and are constructed of high quality materials similar to the houses in the area.**

SPECIFIED CONDITIONS TO BE MET:

The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented at the hearing so that all five of the conditions required by K.S.A 12-759(e) have been met which are listed below. If any of the conditions cannot be met, the condition(s) needs to be reworded from a positive to a negative statement and the variance not granted.

1. That 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 owner or the applicant, **because the house has no basement.**

2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **because the portable storage sheds are located in the rear yard behind a six-foot privacy fence and are constructed of high quality materials similar to the houses in the area.**
3. That 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, **because the house has no basement.**
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **because the portable storage sheds are located in the rear yard behind a six-foot privacy fence and are constructed of high quality materials similar to the houses in the area.**
5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, **because the applicant is allowed to construct a detached garage up 600 sq. ft.**

Date Granted: February 21, 2017

Valid Until (date): March 31, 2019

(180 days Sec. 10-107G)

/s/ _____

Brian Lindebak, Chairman

/s/ _____

William Schnauber, Secretary

Certified to the Zoning Administrator on this date of: February 21, 2017

Having considered the evidence at the hearing and determined that the findings of fact in the Variance Report have been found to exist that support all of the five conditions set out in section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the state statutes which are necessary for granting of a variance, I William Schnauber move that the Chairperson be authorized to sign a Resolution granting the Variance for Case No. BZA-V-2017-01 as modified subject to the condition listed: Variance limited to a term expiring on March 31, 2019 in the Report. Motion was seconded by Mike Warrington. Motion carried 6/0.

Closing remarks by Chairman Lindebak:

A Resolution will be prepared and made available to the applicant by February 28, 2017. If anyone is aggrieved by this decision, a further appeal can be made to the District Court to determine its reasonableness within 30 days after the Resolution is signed and filed with the Zoning Administrator.

We want to thank all of you for participating in this hearing and you are welcome to stay for the remainder of the meeting. I call for Agenda item #6.

Adjourn the Board of Zoning Appeals and Reconvene the Planning Commission

A motion was made by Mike Warrington, seconded by Lynn Heath to adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 6/0.

7. Member items.

01:06:44

Mike Warrington, everyone is safe at Andover Central High School after a fire alarm went off during the basketball game this evening.

8. Adjourn.

01:07:35

A motion was made by William Schnauber, seconded by Kirsten Bender, to adjourn at 8:07 p.m. Motion carried 6/0.

Respectfully Submitted by

Daynna DuFriend
Administrative Assistant

Approved this 29th day of March, 2017 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.