

**ANDOVER CITY PLANNING COMMISSION /  
BOARD OF ZONING APPEALS**  
**Wednesday, March 29, 2017**  
**Rescheduled from March 21, 2017**  
**Minutes**

1. Call to order. 00:00:37

Chairman Brian Lindebak called the meeting to order at 7:02 p.m.

2. Roll call. 00:00:57

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

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 February 21, 2017 meeting. 00:01:14

*A motion was made by Mike Warrington, seconded by William Schnauber to approve the minutes of the February 21, 2017 meeting. Motion carried 7/0.*

4. Communications 00:01:55  
A. Committee and Staff Report.  
B. Potential Residential Development Report.

5. Z-2017-01- Public hearing on proposed amendment to the Prairie Creek Addition Preliminary Planned Unit Development Plan. 00:02:14

Les Mangus explained that this will correct an error in the maximum number of dwelling units allowed by the PUD.

Phil Meyer, Baughman Company, agent to the applicant, was present to represent the application.

Mr. Meyer added that the original PUD shows 41 duplex lots in Parcel 2 which would be a maximum total of 82 dwelling units. A maximum total of 80 dwelling units was listed on the PUD rather than the mathematically correct total of 82.

REZONING REPORT \*CASE NUMBER:Z-2017-01APPLICANT/AGENT:Prairie Creek Home, LLC / Baughman Company, P.A.REQUEST:Proposed amendment to the Prairie Creek Addition Preliminary  
Planned Unit Development Plan.Parcel 2

1. Increase the maximum number of dwelling units to reflect  
an increase from 80 to 82 dwelling units.

CASE HISTORY:LOCATION:Northwest corner of Prairie Creek Road and 13<sup>th</sup> Street, Andover,  
Kansas.SITE SIZE:±16.5 acresPROPOSED USE:Two additional dwelling units to match the proposed lot count to  
the maximum number of dwellings allowed.ADJACENT ZONING AND EXISTING LAND USE:North: A-1 Agricultural Transition DistrictSouth: A-1 Agricultural Transition DistrictEast: R-2 Single-Family Residential District (Developed by applicant)West: A-1 Agricultural Transition DistrictBackground Information:

The applicant erred in the previous amendment by not matching the maximum number of dwelling units allowed to the number of lots in the proposed plat.

\* 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 are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

YES   NO

STAFF:  
PLANNING:   N.A.  
COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

YES   NO

STAFF:  
PLANNING:   R-3 Multiple-Family Residential District  
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:   The amendment corrects the applicant's error.  
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:   Adequate sewer and water utilities are available. Streets could be extended as required.  
PLANNING:   Agreed with staff.  
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. Are suitable vacant lands or buildings available or not available for development that currently has the same zoning as is requested?

YES NO

X STAFF: There is no land in the immediate area similarly zoned.  
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 current zoning to which it has been restricted?

YES NO

X STAFF:  
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

STAFF: No detriment is perceived in correcting the error.  
PLANNING: Agreed with staff.  
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 nature of the support or opposition to the request?

YES NO

STAFF: None at this time.  
PLANNING: Agreed with staff.  
COUNCIL:

16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

YES   NO

STAFF:   Approval as requested.  
PLANNING:   Agreed with staff.  
COUNCIL:

17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by **not** approving the request?

YES   NO

STAFF:  
X   PLANNING:  
COUNCIL:

Having considered the evidence at the hearing and the factors to evaluate the zoning application, I, Mike Warrington move that we recommend to the Governing Body that Case No. Z-2017-01 be **approved** for the proposed amendment to the Prairie Creek Addition Preliminary Planned Unit Development Plan

Parcel 2

1. Increase the maximum number of dwelling units to reflect an increase from 80 to 82 dwelling units.

based on the findings **11, 12 & 13** of the Planning Commission as recorded in the summary of this hearing Motion seconded by Lynn Heath. Motion carried 7/0.

**Recess the Planning Commission and Convene the Board of Zoning Appeals**

*A motion was made by Mike Warrington, seconded by Kirsten Bender to recess the Planning Commission and Convene the Board of Zoning Appeals. Motion carried 7/0.*

6. BZA-V-2017-02- A public hearing on an application requesting a variance to reduce the required minimum rear yard setback from 25 feet to 14 feet on the Northeast property boundary line and from 25 feet to 21 feet on the Northwest property boundary line to allow construction of a covered patio structure addition to the existing house on property zoned as R-2 Single-Family Residential District located at 648 Glendevon Pl., Andover, Kansas.      00:15:02

Les Mangus explained that a deck is allowed in the required rear yard setback, however, a covered structure is not allowed. This is an odd shaped lot and the proposed roof structure would meet the 25 feet looking perpendicular to the back of the deck. However, measuring perpendicular from either of the corners to the rear lot lines there is an encroachment into the required 25-foot rear yard.

Chairman Lindebak opened the hearing for public comments.

LaRue Gillespie, 1123 Terradyne Ct., Terradyne HOA and architectural committee member. He explained that the HOA does not approve of any variation to rear yard setbacks.

William Schnauber asked if there is an existing deck currently in the rear yard.

Mr. Gillespie stated that there was an existing deck that met the setbacks because of the strange layout of the land. They are opposing the change to the setbacks.

Charlie Mishler, applicant was present.

Mr. Mishler explained that a 25-foot rear yard setback was shown on an original plot plan but not on a survey that was done. Plans for a new deck with a roof covering were submitted to and approved by the Terradyne HOA and architectural committee in December/January. When his contractor applied for a building permit City staff asked for a survey indicating where the 25-foot rear yard setback was in relation to the house and the proposed deck and roof. This was provided and the building permit was approved for the new deck only. A hearing for a variance request would have to take place for the roof structure. He has a petition signed by nine of his neighbors to approve the construction of the deck and roof.

Chairman Lindebak requested that the petition information be placed in the case file and stated that this case is somewhat cut and dry, but certainly they must go through neighborhood provisions beyond what the Planning Commission determines because they have covenants. He said a substantial amount of due diligence appears to have been done. The zoned setbacks need to be honored. A difference being that this is not an enclosed structure extending in the rear setback. The HOA is a separate body that the applicant obviously has to go through but the Planning Commission must review this separately from any other boards or committees.

William Schnauber confirmed with Mr. Gillespie that their opposition was with changes in the setbacks not with the structure.

Chairman Lindebak closed the public hearing.

**ANDOVER BOARD OF ZONING APPEALS**

**Agenda Item No. 6**

**March 29, 2017**

**VARIANCE REPORT \***

**CASE NUMBER: BZA-V-2017-02**

**APPLICANT/AGENT: Glen C. Mishler**

**REQUEST:** Glen C. Mishler, 648 Glendevon Pl., Andover, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance to reduce the required minimum rear yard setback from 25 feet to 14 feet on the Northeast property boundary line and from 25 feet to 21 feet on the Northwest property boundary line to allow construction of a covered patio structure addition to the existing house on property zoned as the R-2 Single-Family Residential District.

**CASE HISTORY:**

**LOCATION:** Legal description: Lot 4, Block J, Terradyne Estates Addition to the City of Andover, Kansas.

General location: 648 Glendevon Pl., Andover, Kansas.

**SITE SIZE:**  $\pm 0.3$  acres

**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:**

The applicant desires to replace an existing back deck with a larger covered deck.

**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 rear yard of the subject property abuts homeowner's association open space.**
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 desires to cover an existing back deck.**
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 rear yard of the subject property abuts homeowner's association open space adequate separation between adjoining structures is maintained.**
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 rear yard of the subject property abuts homeowner's association open space adequate separation between adjoining structures is maintained.**

**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 rear yard of the subject property abuts homeowner's association open space.**
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **because the rear yard of the subject property abuts homeowner's association open space.**

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 rear yard of the subject property abuts homeowner's association open space adequate separation between adjoining structures is maintained.**
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **because the rear yard of the subject property abuts homeowner's association open space adequate separation between adjoining structures is maintained.**
5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, **because the rear yard of the subject property abuts homeowner's association open space adequate separation between adjoining structures is maintained.**

Date Granted: March 29, 2017

Valid Until (date): September 15, 2017  
(180 days Sec. 10-107G)

/s/

Brian Lindebak, Chairman

/s/

William Schnauber, Secretary

Certified to the Zoning Administrator on this date of: March 29, 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 Mike Warrington move that the Chairperson be authorized to sign a Resolution granting the Variance for Case No. BZA-V-2017-02 as requested in the Report. Motion was seconded by Lynn Heath. Motion carried 7/0.*

Closing remarks by Chairman Lindebak:

A Resolution will be prepared and made available to the applicant by March 31, 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.

**Adjourn the Board of Zoning Appeals and Reconvene the Planning Commission**

*A motion was made by Mike Warrington, seconded by William Schnauber to adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 7/0.*

**7. Review for approval the Prairie Creek Addition – Second Phase Final Planned Unit Development Plan.** 00:41:38

Les Mangus explained that with the correction in the Preliminary Planned Unit Development to be in line with the number of lots and proposed dwelling units for the subdivision. The Subdivision Committee has reviewed final corrections and additions in response to the prior months Subdivision Committee meeting requests. Staff is in support of the plat as presented.

Phil Meyer, Baughman Company, agent to the applicant, was present to represent the application.

Mr. Meyer stated that they are in agreement with staff comments as written. All requested changes by the Subdivision Committee have been made.

*A motion was made by Mike Warrington, seconded by Lynn Heath, to approve the Prairie Creek Addition – Second Phase Final Planned Unit Development Plan as presented. Motion carried 7/0.*

**8. Review for approval the Marketplace Commercial Fourth Addition Final Planned Unit Development Plan.** 00:44:40

Brian Lindebak recused himself from any discussion due to business relations.

Les Mangus explained that this is a replat of two lots reconfiguring the boundaries of the lots taking into account that a portion of one of the lots has sold. Issues with access and easements have been worked out with the Subdivision Committee. Staff is in support of this plat.

Jason Gish, MKEC, agent to the applicant, was present to represent the application.

Mr. Gish said he did not have anything to add.

*A motion was made by William Schnauber, seconded by Lynn Heath, to approve the Marketplace Commercial Fourth Addition Final Planned Unit Development Plan as presented. Motion carried 7/0.*

Brian Lindebak rejoined the Planning Commission.

9. Member items.

00:47:13

No member items.

10. Adjourn.

00:47:30

*A motion was made by Lynn Heath, seconded by Tyson Bean, to adjourn at 7:49 p.m. Motion carried 7/0.*

Respectfully Submitted by

Daynna DuFriend  
Administrative Assistant

Approved this 18<sup>th</sup> day of April, 2017 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.