

**ANDOVER CITY PLANNING COMMISSION /
BOARD OF ZONING APPEALS
Tuesday, December 19, 2017
Minutes**

1. Call to order. 00:00:03

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

2. Roll call 00:00:20

Planning Commission members in attendance: Lynn Heath, Brian Lindebak, William Schnauber, Gary Israel and Alex Zarchan. Members Stephanie Gillespie, Tyson Bean and Kirsten Bender were not in attendance. City Council Liaison Sheri Geisler was also not in attendance.

Staff in attendance: Director of Public Works Les Mangus, City Administrator Mark Detter, Fire Chief Chad Russell and Administrative Assistant Daynna DuFriend.

A/V: Craig Brown

3. Approval of the minutes of the November 21, 2017 meeting. 00:00:43

A motion was made by Gary Israel, seconded by William Schnauber to approve the minutes of the November 21, 2017 meeting. Motion carried 4/0/1. Alex Zarchan abstained.

4. Communications 00:01:20

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

Chairman Lindebak asked for a revision concerning the Decker/Kiser – Apartments listing.

5. Welcome new Planning Commission member Alex Zarchan.

6. Vice-Chairperson appointment. 00:02:04

Chairman Lindebak asked for any volunteers to replace the vacant Vice-Chairperson position.

William Schnauber volunteered to be the Vice-Chairperson.

A motion was made by William Schnauber, seconded by Lynn Heath to accept William Schnauber as Vice-Chairperson to the Planning Commission. Motion carried 5/0.

Gary Israel volunteered to be the Secretary.

A motion was made by Gary Israel, seconded by Lynn Heath to accept Gary Israel as Secretary to the Planning Commission. Motion carried 5/0.

7. [Z-2017-06- Public hearing on an application filed by WAPENSCHAW, LLC to amend the Terradyne General Preliminary Planned Unit Development Plan to create a new Parcel 1-B and change the zoning district classification from the present R-2 Single-Family Residential District to the R-4 Multiple-Family Residential District to allow 125 multiple family residential dwelling units and swimming, tennis, racket ball and similar recreational club activities, located at Northeast corner of North 159th Street East and Terradyne Street, Andover, Kansas.](#) 00:03:09

Les Mangus explained that in 2006 there was an amendment to the PUD that added some uses to the area of the clubhouse and property to the northwest, towards the maintenance building to allow 30 zero lot line single-family dwellings. This also allowed the permitted use of a hotel addition to the existing clubhouse. He described details of the drawings for the layout of the proposed structure. Parcel 1A has been proposed to be subdivided to 1A and 1B. The maintenance building and the clubhouse would remain in Parcel 1A and a new Parcel 1B would be created for the proposed apartment complex and tennis facility. The boundary was also straightened between Parcel 1B and Parcel 2 where the townhouses are. A traffic study and drainage study have been received for this project. There was a petition circulated in the neighborhood. The key is that all but 2 of the signatures on the petition are from outside of the notice area. Because this is an amendment to the Planned Unit Development the notice area is 500 feet for those properties within the PUD, 200 feet outside the boundary of the PUD in the City and 1,000 feet outside the boundary of the PUD in the county. There were only 18 notices mailed out because the majority of the notification area was either golf course or large agricultural tracts. The notification area would cross the turnpike.

Chairman Lindebak summarized this as follows; changes to some boundaries of Parcel 1A and Parcel 2 would create the proposed new Parcel 1B, change the classification of the new Parcel 1B to R-4, limited to 125 multi-family dwelling units and allow for swimming pool, racket ball, tennis and those amenities, change the lot area from existing 3,000 square feet per dwelling unit to 2,000 square feet per dwelling unit, change the minimum yard requirements for zero setbacks, change the required parking areas from 2 parking spaces per unit to 1.6 parking spaces per unit.

Chairman Lindebak stated ground rules for this hearing would be that after the presentation by the applicant a time limit of 5 minutes will be given to each person for public comments.

Banks Floodman, Business Development Manager, Sunflower Development Group, agent to the applicant, was present to represent the application.

Mr. Floodman explained that this facility embraces Terradyne and presented power point slides for the proposed project. This project will be an up-scale apartment complex valued at \$24 million dollars with amenities not offered in this area, appealing towards 55+ active living individuals. The tennis facility will not be built immediately. Colonial style architecture similar to the existing Terradyne Country Club will be used for the luxury living facility. The entrance to the proposed project will be located northwest of the country club with very limited impact to current neighborhood based on having a separate entrance.

Gary Israel asked if the social membership would allow individuals in this complex to use the golf course and would there be a place to park golf carts.

Mr. Floodman answered that they will be held to the same current standards and will have to be a full member to use the course. Parking garages will be available around the facility for golf carts or cars and if available individuals could have 2 garages.

Gary Israel asked staff if there was any concern from the Fire Department regarding this proposed project layout only having one entrance on the property.

Fire Chief Chad Russell said that his department is very sensitive to this issue, however he would have to defer to the traffic engineers. When dealing with the project being built to the south of this property they worked with Planning and Zoning staff to make changes to that entrance in order to allow their vehicles to enter in an expedient fashion. He expects any issues to be handled with staff just as easily.

Mr. Floodman added that an issue they have worked on was for fire access to the rear of the facility. According to code accessibility must be 150 feet. There will be access from the side to get within that threshold.

Scott Servis, Kaw Valley Engineering, stated that concern about the one entrance was anticipated. One option is having gated access from the parking lot to the south strictly for fire and EMS. There could potentially be an option to go down the fire lane that is currently west of the clubhouse and make a paved connection up to that gate that would be a secondary access to the facility if McCloud wasn't available.

Chairman Lindebak asked Chief Russell for confirmation that if approved, more investigation would be done and if this is reasonable so to assist the commission and audience in understanding.

Chief Russell explained that his main concern is that the fire code is followed. Everything that he would need to have done is prescribed in the fire code and must be done.

Chairman Lindebak opened the public hearing.

LaRoux Gillespie, 1123 Terradyne Ct., asked for confirmation of the issue of the submitted petition failing to meet the criteria for a sufficient protest. Submitted copies of additional signatures of Terradyne homeowners opposed to the rezoning.

Mark Detter explained that the purpose of the petition is if it goes on to the City Council that it would take 5 of 6 members to pass the issue. It is not valid right now to force an extra ordinary majority at the council level.

Kathryn Ewing, 818 N. McCloud Circle, #201, submitted signatures from Highlands at Terradyne homeowners in opposition to the proposed zoning change.

Cindy Ball, 908 W. Terradyne Cir., opposes the request for zoning change and this is not in compliance with the Comprehensive Development Plan.

Chairman Lindebak announced the time limit had expired and asked if the commission would grant the speaker additional time to wrap up comments.

A motion was made by Lynn Heath, seconded by William Schnauber to allow an additional two minutes of speaking time. Motion carried 5/0.

Cindy Ball stated that property values would decrease and stop the completion of the condominium development on south McCloud Circle if approved.

Chairman Lindebak announced the additional time limit had expired and asked if the commission would grant the speaker additional time to wrap up comments.

A motion was made by Lynn Heath, seconded by William Schnauber to allow an additional 30 seconds of speaking time. Motion carried 5/0.

Cindy Ball submitted copies from the developers' market study showing comparable rents and stated that the entrance is the biggest issue.

Bill Downs, 823 Bramerton, opposes the zoning request and asked to yield his speaking time to the previous speaker.

The Planning Commission approved.

Cindy Ball noted that the requested zero lot lines does not allow for property maintenance without infringing and trespassing on the neighboring properties.

Chairman Lindebak announced the time limit had expired.

Barry Anderson, 812 Bramerton St., asked to yield his speaking time to the previous speaker.

The Planning Commission approved.

Cindy Ball suggested this request is not moving the City closer to the Comprehensive Plan but rather is an example of spot zoning without planning.

Chairman Lindebak noted that in regards to the mention of “spot zoning”, the property south of this property is a variant of a multi-family housing development as R-6. Across the street in Sedgwick County there is multi-family housing as well. It is important to understand that this is a PUD with multiple kinds of housing districts. This case is not unique for golf course properties and the applicant has presented several similar projects. He stated that it would be inappropriate to characterize this as spot zoning.

Cindy Ball said that since this PUD was filed in 1986 it has been amended several times. All of the amendments have been for R-2 zoning. The golf course is an R-1 use along with the golf club. It was never discussed or recommended in this PUD that it have multi-family housing.

Les Mangus explained that the underlying zone is R-2 Single-Family Residential, however, the Planned Unit Development allows all of the permitted uses in the R-6 Condominium zone. Condominium is multi-family housing.

William Schnauber asked staff for confirmation that the 2006 PUD amendment does allow for a 100-unit hotel to be added to the property.

Les Mangus answered that it does and it is on the parcel that includes the clubhouse and a portion of the golf course and maintenance building which is the parent parcel of the majority of this applicant property.

Ben Kice, 903 Terradyne Cir., asked to yield his speaking time to his wife Megan.

Megan Kice, 903 Terradyne Cir., submitted reference sheets listing issues making this zoning change not suitable for the land. She opposes the zoning request.

Chairman Lindebak announced the time limit had expired.

Shirley Anderson, 812 Bramerton Street, opposes the zoning request.

Trent Brown, 628 Glendevon Ct., is a real estate agent and is concerned for property values of those properties adjacent to this land and increased traffic.

Mark Detter asked Mr. Brown for his estimate of the average value of properties in Terradyne Estates.

Mr. Brown replied that the original part of Terradyne, Glendevon to Bramerton, range from \$275,000 to approximately \$370,000. Toward the end of the Terradyne cul-de-sac, homes could go from a minimum of \$375,000 up to \$600,000.

Mark Detter stated that he looked at the county appraisals for all 81 properties and in certain blocks they were just under \$300,000, closer to the course the average was \$345,000. There are some \$500,000 - \$600,000 homes. Property values have gone up despite the fact that the club value and the golf course dropped \$2.4 million dollars in 2012. He asked why would those home values have stayed so strong?

Mr. Brown said that one reason is supply and demand. Over the last 3 years Wichita has been in a sellers' market. Terradyne is a high demand and he has sold several homes in Terradyne to families with young children.

Mark Detter noted that Andover has high standards for development. There is lower crime, better community and higher incomes. The fundamentals of this community make it very difficult to see huge drops in income and property values. This is about how much the gain will be in this community regardless of what is put in.

Gail Mayfield, 912 W. Terradyne Cir., also a real estate agent, opposes the zoning request and said that the use of land does affect its assessed value either negatively or positively.

Chris Schram, 818 McCloud Cir., explained that the devalue of the golf course is due to the decrease in the numbers of golfers.

William Schnauber asked if this would continue if the Terradyne course was made public.

Gail Mayfield replied that national studies show that in golf course communities the average is 20-25 percent of the homeowners actually belonging to the club. Not everyone buys a home in a golf course community because they want to belong to the club. They buy because of the stability that a golf course community offers.

Chris Dudley, 1124 Terradyne Dr., his property is the closest to this property and feels that this would affect his property value immediately. He is concerned for the future of the development.

Farnoosh Adib, 1111 Teradyne Pl., opposes the zoning request.

James Riley, 909 Terradyne Cir., concerned about the applicant asking for a tax abatement and parking problems.

Chairman Lindebak announced the time limit had expired.

Chairman Lindebak asked if the applicant knew why single-family houses had not been built on this property.

Mr. Floodman said his understanding is that the infrastructure costs to build the 20-25 houses are too high and there are rental houses available across the street on 159th Street.

Chairman Lindebak closed the public hearing.

Alex Zarchan asked about the actual ownership of McCloud Circle and who would make the decision for changes.

Les Mangus explained that the proposed driveway McCloud Circle is in a reserve. It is dedicated for use as access and it doesn't have access controls. This is a detail to be worked out at the platting process.

ANDOVER CITY PLANNING COMMISSION

Agenda Item No. 6

REZONING REPORT *

CASE NUMBER: Z-2107-06

APPLICANT/AGENT: Wapenschaw, LLC/Banks Floodman

REQUEST: Proposed amendments to the Terradyne General Preliminary Planned Unit Development Plan to create a new Parcel 1-B and change the zoning district classification from the present R-2 Single-Family Residential District to the R-4 Multiple-Family Residential District to allow 125 multiple family residential dwelling units and swimming, tennis, racket ball and similar recreational club activities

CASE HISTORY: The subject property was part of a PUD amendment in 2006 that allows up 30 zero lot line single family residential dwelling units.

LOCATION: West of 159th St. and north of McCloud St. (Highlands at Terradyne)

SITE SIZE: 8.1 acres

PROPOSED USE: 125 age restricted multiple family residential dwelling units, and swimming, tennis, racket ball and similar recreational club activities

ADJACENT ZONING AND EXISTING LAND USE:

North: Kansas Turnpike

South: R-2 Single Family Residential District with all of the permitted uses of the R-6 Condominium Residential District – Highlands at Terradyne townhouses

East: R-2 Terradyne golf course and clubhouse

West: R-2 Terradyne golf course maintenance building

Background Information:

The subject property was part of a PUD amendment in 2006 that allows up 30 zero lot line single family residential dwelling units. A final PUD Plan was approved, but never developed.

* 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:

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: The subject property is zoned R-2 Single Family Residential District with all of the Bulk Regulations and Permitted Uses of the R-5 Single Family Residential District limited to up 30 zero lot line single family residential dwelling units.

PLANNING: Same

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

- STAFF: The property has not developed since the 2006 amendment to the PUD. The Final PUD Plan submitted at that time for the zero lot line single family homes was abandoned.
- PLANNING:
COUNCIL:

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

YES NO

- STAFF:
 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

- STAFF:
 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 public sewer and water infrastructure are available adjacent to the subject property and can be extended to serve the site. The traffic report provided by the applicant indicates that McCloud Circle can be made adequate to serve the proposed uses with minor improvements.
- 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

- STAFF: An amended final planned unit development plan would be required.
- PLANNING:
COUNCIL:

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

YES NO

STAFF: Site Plan Review Committee approval would be required.

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

STAFF: None are available in the area. Additionally, staff also is not aware of a 6-7 acre parcel of land in the City abutting a private golf course, which has private club associated with such golf course, buffered by an interstate to the north, higher density housing to the south, open space (private golf course) to the east, and a true grid street system to the west as called in the Comprehensive Plan to serve multi-family housing.

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: The applicant has provided a market analysis prepared by a professional accounting and consulting firm that indicates a positive need for senior housing.

PLANNING: Same
COUNCIL:

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

YES NO

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, lighting, noise, etc as compared to the 30 single family zero lot line residences already permitted.

PLANNING:
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

- STAFF: The proposed use provides for medium density multifamily development along an arterial street.
- PLANNING:
COUNCIL:

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

YES NO

- STAFF: Chapter 5 Housing Diversity in the Comprehensive Plan specifically addresses the offering of housing choices through the use of Planned Unit Developments. "The Comprehensive Plan recommends that the City and developers use the PUD tool where feasible to provide greater housing choice through the mixture of small lot single family structures (less than 10,000 square feet), attached housing, townhomes, multi-family structures and others within each development."

Additionally, the Comprehensive Plan specifically states "There are residents who would prefer to live in another type of housing product (different from Single Family Residential). Examples include but are not limited to:

- Older Residents who have moved to Andover to be closer to children and grandchildren.
- Residents who have moved to Andover for the schools, but want to stay in Andover after their children have left the school system.

PLANNING:
COUNCIL:

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

YES NO

- STAFF: Opponents fear loss in property values in the area and increased traffic.
- PLANNING: Same
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: Based on the facts presented at the time of this writing staff knows of no reason not to approve of the amendment. The applicant has provided a traffic report prepared by a licensed engineering professional that addresses the concerns for traffic. No factual evidence has been submitted to support the fear of loss in property value (evidence may be presented at the public hearing that provides proof of property value impact or additional traffic issues and other matters that negatively reflect on the request, but staff has not received any such information in the preparation of this report). The applicant has provided a market analysis prepared by a professional accounting and consulting firm that indicates "The Subject will be located adjacent to Terradyne Country Club and will be a complimentary use to it and the surrounding good quality single-family housing stock. In addition, the Subject will create a positive impact upon the neighborhood by providing a newly constructed, senior rental housing development in excellent condition."

PLANNING: Same

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:

PLANNING:

COUNCIL:

Having considered the evidence at the hearing and the factors to evaluate the (rezoning) application, I Lynn Heath, move that we recommend to the Governing Body that Case No. Z-2017-06 be modified & approved to change the zoning district classification from the R-2 Single-Family Residential District to the R-4 Multiple-Family Residential District based on the findings 3, 5, 9, & 14 of the Planning Commission as recorded in the summary of this hearing. And that the following modifications be attached to this recommendation,

1. *The entirety of new Parcel 1-B shall be limited to either 125 multiple-family dwelling units with an age restriction that 80 percent of the residents are age 55 or older and swimming, tennis, racket ball and similar recreational club activities and related clubhouse.*
2. *To change the required parking spaces from the existing two parking spaces per unit to 1.7 parking spaces per unit.*
3. *If multiple-family dwellings are constructed the architectural style and materials must be compatible with the existing Terradyne clubhouse structure.*

Motion seconded by Gary Israel.

Chairman Lindebak made a motion to amend the motion to include a condition that if the 125 multiple-family dwelling units are not constructed, single-family residential dwellings would be the only other permitted residential use.

Motion to amend the original motion was seconded by Gary Israel. Motion carried 5/0.

The original motion was amended to include the following modifications:

1. *The entirety of new Parcel 1-B shall be limited to either 125 multiple-family dwelling units with an age restriction that 80 percent of the residents are age 55 or older or single-family residential dwellings, and swimming, tennis, racket ball and similar recreational club activities and related clubhouse*
2. *To change the required parking spaces from the existing two parking spaces per unit to 1.7 parking spaces per unit.*
3. *If multiple-family dwellings are constructed the architectural style and materials must be compatible with the existing Terradyne clubhouse structure.*

Amended motion seconded by Gary Israel. Motion carried 3/2. William Schnauber and Alex Zarchan opposed.

Read by Chairman Lindebak:

CLOSING REMARKS AND PROTEST PETITIONS:

This case will be forwarded to the Governing Body with the Planning Commission's recommendation and a written summary of the hearing for consideration at their regular meeting of **January 9, 2018** which begins at 7:00 p.m. in the Council's meeting room in City Hall. (The video recording of this hearing will be retained for at least 60 days after the final determination is completed on this case.)

Protest petitions against the change in zoning and/or special use, but not directed at the Planning Commission's recommendations as such, may be received by the City Clerk for 14 days after tonight, i.e. **January 2, 2018 at 4:30 p.m.** If there are properly signed and notarized protest petitions with accurate legal descriptions from the (owners of record of 20% or more of any real property proposed to be rezoned) (or) (owners of record of 20% or more of the total real property within the official area of notification) both inside and outside the City not counting public street rights-of-way, then such a change shall not be passed except by a three-fourths vote of all the members of the Governing Body. (See Section 11-103.)

A motion was made by Lynn Heath, seconded by William Schnauber to recess the Planning Commission for 5 minutes. Motion carried 5/0.

Recess the Planning Commission and Convene the Board of Zoning Appeals

A motion was made by Lynn Heath, seconded by William Schnauber to recess the Planning Commission and Convene the Board of Zoning Appeals. Motion carried 5/0.

8. [BZA-V-2017-14- A public hearing on an application filed by Nathan & Angela Haberichter requesting a variance for an increase in maximum lot coverage area from the existing 3,500 square foot limitation to 5,000 square feet to allow construction of a structure addition to the existing two-family dwelling on property zoned as the R-3 Multiple-Family Residential District located at 409 / 411 W. Gamm Court, Andover, Kansas.](#) 03:08:48

Chairman Lindebak asked staff to confirm that there is an 8-foot side yard setback on this property.

Les Mangus said that is correct.

William Schnauber asked staff if this is to be a third attached dwelling with a third driveway. A third driveway is not shown on the drawing.

Les Mangus replied that the driveway details are not known. This discussion is for the allowable square footage only.

Gary Israel asked if a garage was included in the square footage.

Les Mangus said that it is. The limitation is on the foot print of the building.

Nathan Haberichter, applicant, was present to represent the application.

Chairman Lindebak opened the public hearing.

Greg Schneider, 1338 N. Valley Ct., Cedar Park HOA President, is concerned with the additional parking in the cul-de-sac.

Chairman Lindebak suggested making sure that 4 off street parking stalls be made available.

Les Mangus noted that the driveway could not go out to Glancy Street because this property does not touch Glancy Street. All of the lot frontage is on the cul-de-sac.

Gary Israel asked staff if the driveway would have to come out in the circle of the cul-de-sac or could it be at the corner point of the property.

Les Mangus said that it could come out to the straight away but according to Mr. Schneider that may take up some parking space. If it was added on to the existing driveway less street parking would be given up.

William Schnauber mentioned that he drove by this site and the cul-de-sac is a small circle.

Lynn Heath asked if a vehicle could drive around the cul-de-sac if there were vehicles parked in the street.

Chairman Lindebak asked the applicant if 4 off street parking stalls could be guaranteed in the driveway.

Mr. Haberichter said that he would.

Alex Zarchan added that there are other 3 unit dwellings in this neighborhood with shared driveways.

Lynn Heath asked where the entrance to the garage would be.

Mr. Haberichter replied that based on preliminary work the garage would be on the north end into Gamm Court and will have a separate driveway.

Janine Porter, 6758 SW Church, owns several neighboring properties, is concerned with parking in the cul-de-sac.

Gary Israel noted that drainage may be an issue with an additional structure.

Mr. Haberichter said that with the layout of the lot today, drainage would go to the southwest and follow the contour of the land.

William Schnauber asked if there was a reason the proposed addition is 400 square foot larger than the other units and if there was anything preventing the placement of the addition on the other side of the lot.

Mr. Haberichter explained that there would be additional living space. His preference would be to have the proposed addition on other side but building setbacks and easements do not allow for that.

William Schnauber asked staff if the other duplexes/triplexes are limited to 3,500 square feet.

Les Mangus replied that they are.

Chairman Lindebak asked staff if a parking area could be placed in the open area on the west side of the structure.

Les Mangus said that it could.

Chairman Lindebak closed the public hearing.

ANDOVER BOARD OF ZONING APPEALS

Agenda Item No. 7

December 19, 2017

VARIANCE REPORT *

CASE NUMBER: BZA-V-2017-14

APPLICANT/AGENT: Nathan & Angela Haberichter

REQUEST: Nathan & Angela Haberichter, 12301 E. Tipperary Circle, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance for an increase in maximum lot coverage to 5,000 square feet to allow construction of a 28ftx70ft. structure addition to the two-family dwelling on property zoned as the R-3 Multiple-Family Residential District

CASE HISTORY: The subject property is in the Cedar Park PUD Parcel 2, which allows one two and three family dwellings, but imposes an additional limit on the size of buildings beyond the typical bulk regulations. The 3500 square foot limitation makes the construction of a three family difficult to keep the size of the individual dwelling units similar. The subject property is an unusually shaped large lot with over twice the minimum lot area required.

LOCATION: Legal description: Lot 12, Block 4, Cedar Park Addition, City of Andover, Kansas.

GENERAL LOCATION: 409 / 411 W. Gamm Court, Andover, Kansas.

SITE SIZE: ±23,862sq.ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-3 Multiple-Family Residential District, two-family dwelling homes

South: West 13th Street & Kansas Turnpike

East: R-3 Multiple-Family Residential District, two-family dwelling homes

West: R-3 Multiple-Family Residential District, two-family dwelling homes

*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 add a third dwelling unit to the existing two family dwelling.

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 subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished.**
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, **the proposed addition would generate more income for the owner.**
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 subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished.**

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 subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished.**

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 additional limit to the building size is unique to the Cedar Park PUD Parcel 2. And because the subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished.**
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **because the subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished. The applicant could build the addition vertically in compliance with the building coverage limitation, but a multi-story building would not be in character with the neighborhood.**
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 subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished. The applicant could build the addition vertically in compliance with the building coverage limitation, but a multi-story building would not be in character with the neighborhood.**
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **because the subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished.**

5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, because the subject property is an irregularly shaped lot which has more than twice the minimum lot area for the proposed structure and the required setbacks can be accomplished.

Date Granted: December 19, 2017

Valid Until (date): June 17, 2018
(180 days Sec. 10-107G)

/s/

Brian Lindebak, Chairman

/s/

Gary Israel, Secretary

Certified to the Zoning Administrator on this date of: December 19, 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 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 Brian Lindebak move that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V-2017-14 as requested. Seconded by Lynn Heath.

Alex Zarchan asked for clarification of required off street parking.

Brian Lindebak made a motion to modify the original motion to require four off street parking stalls, seconded by William Schnauber. Motion carried 5/0.

Read by Chairman Lindebak:

CLOSING REMARKS AND PROTEST PETITIONS:

A Resolution will be prepared and made available to the applicant by December 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 Lynn Heath, seconded by Alex Zarchan to adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 5/0.

9. Review for approval the Hodges Fourth Subdivision Final Plat.

03:42:36

Tom Baalman, TCB Ventures, LLC, applicant, was present.

Lynn Heath asked if this was an empty lot.

Mr. Baalman replied that there were two lots combined into one lot and the houses have been cleared away.

Gary Israel asked what is planned to be done with this lot.

Mr. Baalman explained that they would like to put in a private street and a multi-family type of structure.

Les Mangus added that the zoning for the multi-family was heard at the November Planning Commission meeting.

Chairman Lindebak asked if all of the parking would be on this lot.

Mr. Baalman said that all parking would be on the lot. They will take a road from old Main Street back to the west with a hammerhead turn per requirements from the Fire Marshall.

A motion was made by Lynn Heath, seconded by William Schnauber, to approve the Hodges Fourth Subdivision Final Plat as presented. Motion carried 5/0.

10. Review and approve the City of Andover 2018 Planning Commission & Board of Zoning Appeals meetings and closing dates schedule.

03:46:43

A motion was made by Lynn Heath, seconded by William Schnauber to approve the City of Andover 2018 Planning Commission & Board of Zoning Appeals meetings and closing dates schedule with name and date corrections. Motion carried 5/0.

11. Member items.

03:50:10

All members wished everyone a Merry Christmas and thanked staff for a well put together meeting packet.

12. Adjourn.

03:51:30

A motion was made by Lynn Heath, seconded by Gary Israel, to adjourn at 10:51p.m. Motion carried 5/0.

Respectfully Submitted by

Daynna DuFriend

Administrative Assistant

Approved this 16th day of January, 2018 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.