



**PLANNING & ZONING**  
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**PLANNING COMMISSION  
& BOARD OF ZONING APPEALS MINUTES**  
**AUGUST 17, 2021 | 7:00pm**  
ANDOVER CITY HALL | 1609 E. CENTRAL AVE.

**1. CALL TO ORDER**

Chairperson Erik Pedersen called the meeting to order at 7:03 pm.

**2. ROLL CALL**

Commissioners in attendance: Chairperson Erik Pedersen, Secretary Gary Israel, Kirsten Barnes, Marla Canfield, and Vance Garwood. Member Tim Hendricks was absent. Staff in attendance: Lance Onstott, Assistant City Administrator and Justin Constantino, Assistant Director of Community Development. A/V services provided by WAV Services.

**3. APPROVAL OF THE MINUTES OF THE JULY 20, 2021 MEETING**

*Vance Garwood made a motion to approve the minutes of the July 20, 2021 meeting as presented. Motion seconded by Kirsten Barnes. Gary Israel abstained. Motion carried 4/0/1.*

**4. COMMUNICATIONS**

**A. COMMITTEE & STAFF REPORT**

Mr. Constantino stated that the staff report contains the meeting minutes of the August 10<sup>th</sup> Subdivision Committee meeting and the August 3<sup>rd</sup> Site Plan Review Committee meeting. Mr. Constantino stated that the August 3<sup>rd</sup> SPRC meeting included the approval of The Heritage Mixed-Use Lot 1, Block 3 Site Plan with conditions and a revised landscape plan for the auto body shop located at 115 W. Cloud Avenue.

**B. POTENTIAL RESIDENTIAL DEVELOPMENT REPORT**

Mr. Constantino stated that the City has processed 37 single-family building permits year-to-date and that the number was down from the previous year-to-date total of 52. Mr. Constantino stated that per the new 2020 United States Census data, the City of Andover is the fastest growing city in Kansas, with a population increase of 26% from 2010.

**5. AGENDA**

**5.1 PRELIMINARY PLAT – REVIEW AND APPROVAL OF THE ANDOVER CEMETERY 4<sup>TH</sup> ADDITION PRELIMINARY PLAT GENERALLY LOCATED EAST OF N. ANDOVER ROAD BETWEEN E. 21<sup>ST</sup> STREET AND SW 60<sup>TH</sup> STREET, ANDOVER, KANSAS**

Mr. Constantino stated that the subject property is generally located east of N. Andover Road between E. 21st Street and SW 60th Street within the City of Andover extraterritorial jurisdiction (ETJ). Mr. Constantino stated that the proposed preliminary plat creates one lot of approximately 5.41 acres at the Andover Cemetery for the purpose of cemetery expansion. Mr. Constantino stated that the subject property receives access from N. Andover Road and receives water from the Butler County Rural Water District #5. Mr. Constantino stated that the Subdivision Committee recommended the preliminary plat be approved at their August 10th meeting.

*Gary Israel made a motion to approve the Andover Cemetery 4<sup>th</sup> Addition Preliminary Plat. Motion seconded by Vance Garwood. Motion carried 5/0.*

## **5.2 FINAL PLAT – REVIEW AND APPROVAL OF THE MEADOWBROOK 2<sup>ND</sup> SUBDIVISION REPLAT GENERALLY LOCATED WEST OF S. ANDOVER ROAD AND NORTH OF W. HARRY STREET, ANDOVER, KANSAS**

Mr. Constantino stated that the Meadowbrook 2nd Subdivision is a replat of the Meadowbrook Subdivision Final Plat that was approved by the Planning Commission in October 2019 and the land dedications were accepted by the City Council in July 2020. Mr. Constantino stated that the applicant submitted a replat of the property with the desire to increase the rear yard drainage and utility easement on lots 1 through 9 of block B from 20 feet to 40 feet. Mr. Constantino stated that the revised submittal was recommended for approval by the Subdivision Committee at their June 8th, 2021 meeting and approved by the Planning Commission at the June 15th, 2021 meeting. Mr. Constantino stated that prior to the acceptance of the land dedications by the Governing Body and the official recording of the replat, the applicant submitted another revised replat depicting a reduced rear yard drainage and utility easement on lots 3 through 9 of Block B from 40 feet to 20 feet with lots 1 and 2 continuing to have a 40-foot rear yard drainage and utility easement.

Mr. Garwood stated that he remembered the applicant stating that they requested the larger easement for protection of the existing tree row and asked if that was still the case. Mr. Constantino stated that the applicant reasoning was twofold: for the protection of trees and actual placement of the rear utility line.

Michael Edwards of KE Miller Engineering, representing the applicant, stated that the original intent of the utility easement shift was to make room for the proposed drainage lines to get them away from the existing trees and the drainage lines only extend along the first two lots and that the trees will not be impacted as part of this project.

*Vance Garwood made a motion to approve the Meadowbrook 2<sup>nd</sup> Subdivision Replat and recommend that the Governing Body accept the dedication of land for public purposes. Motion seconded by Gary Israel. Motion carried 5/0.*

## **5.3 FINAL PLANNED UNIT DEVELOPMENT – REVIEW AND APPROVAL OF THE HERITAGE SECOND ADDITION FINAL PLANNED UNIT DEVELOPMENT PLAN GENERALLY LOCATED SOUTH OF E. DOUGLAS AVENUE AND WEST OF YORKTOWN PARKWAY, ANDOVER, KANSAS**

Mr. Constantino stated that the subject property is part of The Heritage Preliminary Planned Unit Development (PUD) Plan, a single-family residential development fostering active transportation with shorter block lengths and higher residential densities. Mr. Constantino stated that the plan creates 68 lots on approximately 10.72 acres and that water and sewer service for the subject properties will be served by the City of Andover. Mr. Constantino stated that the subject properties will receive access from Douglas Avenue and the newly constructed Shay Road.

Mr. Constantino stated that the Subdivision Committee approved the final PUD plan at their August 10th meeting on the condition that staff work with the applicant to address two outstanding items, including the temporary termination of road improvements at Shay Road and the need for a public water main with a 15-foot public easement along Reserve A near Douglas Avenue. Mr. Constantino stated that the first item has been addressed with the Shay Road improvements continuing and intersecting at Sunset Drive, while the second item is still being discussed between the applicant representative and staff from the City of Wichita Public Works & Utilities Department. Mr. Constantino stated that any approval by the Planning Commission would be contingent upon the resolution of the public easement item.

Mr. Garwood stated that at last week's Subdivision Committee meeting, Mr. Jason Gish of MKEC, representing the applicant, asked if Shay Road should be blocked off or whether it should be completed.

Mr. Constantino stated that the intent to hold improvements on Shay Road was to promote traffic calming in the neighborhood and that Shay Road improvements would be temporarily terminated.

*Gary Israel made a motion to approve the Heritage Second Addition Final Planned Unit Development Plan and recommend that the Governing Body accept the dedication of land for public purposes with the condition that the applicant continue discussion with the City of Wichita Public Works & Utilities Department regarding the need for a public water main with a 15-foot public easement along Reserve A. Motion seconded by Kirsten Barnes. Motion carried 5/0.*

*Gary Israel made a motion to recess the Planning Commission and convene the Board of Zoning Appeals. Motion seconded by Erik Pedersen. Motion carried 5/0.*

#### **5.4 BZA-CU-2021-03 – PUBLIC HEARING ON AN APPLICATION FOR A CONDITIONAL USE TO CONSTRUCT AN OUTDOOR PATIO ON THE PROPERTY GENERALLY LOCATED AT 403 W. CENTRAL AVENUE, ANDOVER, KANSAS**

Chairperson Pedersen opened the public hearing at 7:19 pm.

Mr. Constantino stated that the subject property is zoned B-4 Central Business / Mixed-Use District, a zoning district intended for retail sales and service businesses. Mr. Constantino stated that the applicant desires to offer outdoor patio seating as an accessory use to the tenant space currently occupied by Renew Consign and Café. Mr. Constantino stated that because the use of outdoor patio seating is not permitted by right in the B-4 zoning district, the applicant is required to submit a conditional use application and receive approval from the Board of Zoning Appeals (BZA). Mr. Constantino stated that per the Unified Development Manual, the BZA may attach conditions to its approval to ensure that it is compatible with its particular location within a zoning district. Mr. Constantino stated that should the applicant desire to make the patio seating permanent, review and approval from the Site Plan Review Committee would be required.

Ms. Barnes asked if Mr. Constantino could define the meaning of the term “permanent” in relation to the case. Mr. Constantino stated that “permanent” would mean that the outdoor patio seating would exist as a year-round seating option as an accessory use to the primary restaurant.

Taylor Julius, the applicant and property owner, introduced himself and stated that the tenant, Rene West, operates a restaurant with limited seating and that due to social distancing guidelines it was difficult to operate inside the building. Mr. Julius stated that Ms. West approached him to build temporary outdoor seating while dealing with COVID-19.

Mr. Pedersen asked how much seating was available inside the restaurant. Ms. West stated that she has a booth that seats 10 and one two-top table.

Mr. Israel stated that the outdoor seating appears to already be constructed and asked how long the patio seating has been completed. Ms. West said it has been completed for eight months. Mr. Israel asked how much seating was available on the outdoor patio. Ms. West said that she has four four-tops located on the patio. Mr. Israel asked if that was adequate for proper social distancing. Ms. West said yes and that there are side walls between each area.

Mr. Garwood asked the applicant about her desired timeframe for the outdoor seating. Ms. West stated that she would like to have the seating for a year and then revisit the use again in a year. Mr. Garwood stated that the dated application was from November 2020 but that the City received the application on June 25, 2021 and asked about the discrepancy. Mr. Julius stated that there wasn't a lot of detail in the initial application so a revised application was submitted.

Mr. Pedersen stated that it looks like four parking spaces are taken up by the outdoor seating. Ms. West stated that three spots were taken up but the handicapped stall was still available.

Mr. Garwood asked if any of the neighboring businesses have mentioned the project. Ms. West stated that the neighboring businesses were excited and that she has received positive comments.

Mr. Pedersen asked about the details of a conditional use permit as it relates to length of time. Mr. Constantino stated that the length of time could vary by month or by year and it was at the discretion of the BZA to make that determination. Mr. Constantino stated that considering parking spaces have been removed as part of the project, the BZA could recommend that a parking plan be submitted by the applicant to ensure that adequate parking, including ADA parking, exists on the subject property. Mr. Pedersen asked at what point the seating becomes permanent. Mr. Constantino stated that if the applicant intends to have the structure in place for a year, he would consider it permanent and would recommend that the plan be reviewed by the Site Plan Review Committee (SPRC).

Ms. Canfield asked if the other businesses in the area were notified of the applicant's permit request. Mr. Constantino stated that the other businesses and 200-foot surrounding area were notified of the public hearing.

Mr. Pedersen asked if the seating could be moved if necessary. Ms. West said yes, the seating was designed to be broken up in four-foot sections within a day. Mr. Pedersen asked if other businesses in the area could also come forward and request outdoor seating, potentially resulting in significantly reduced parking on the subject site. Mr. Constantino stated that is why staff would request a parking plan, to ensure that any future outdoor seating additions would meet the City's parking standards and that any future applicant would have to go through the same process. Ms. West added that they have never had a problem with parking and that the different businesses are busiest during different times of the day.

Mr. Israel asked if other businesses would be able to use the outdoor patio seating should it be approved. Ms. West said yes and that she told the neighboring businesses that they were welcome to use it.

Mr. Onstott stated that the City's parking requirements are regulated through the zoning regulations and that retain establishments are required to offer one parking space per 250 square feet of building space or one parking space per two-and-a-half seats for restaurants. Mr. Onstott stated that if the minimum requirements aren't met, the applicant could apply for a variance. Mr. Onstott stated the SPRC reviews exterior building modifications and that any approval great than three to six months should require review by the SPRC.

Mr. Israel asked Ms. West about her business hours. Ms. West said Tuesday through Saturday, 11:00 am to 6:00 pm. Mr. Israel asked if the parking regulations contained language pertaining to business hours. Mr. Onstott stated that it is an emerging best practice to allow shared parking based on business hours and that the City takes land use into account when determining parking requirement totals.

Ms. West stated that she would like to request the use of outdoor patio seating for 12 months. Mr. Onstott stated that if the BZA requires review by the SPRC, the purpose of the SPRC is to review the aesthetics of the outdoor seating and the SPRC may put further requirements or restrictions on the outdoor patio seating structure.

Ms. Barnes asked if it would be possible to grant approval of the use while the applicant decides whether they want to submit an application for SPRC approval. Mr. Constantino said yes.

Mr. Stacy Van Tassel, a resident of Benton, Kansas, spoke in favor of the outdoor patio seating and stated that he wanted to support the applicant.

Chairperson Pedersen closed the public hearing at 7:46 pm.

**SPECIFIC CONDITIONS TO BE MET:**

1.	The proposed conditional use complies with all applicable zoning regulations, including lot size requirements, bulk regulations, use limitations and performance standards, or a concurrent application for variance is in process.	
	STAFF	The proposed patio seating would occupy parking spaces and require analysis of the required parking spaces for the strip center.
	BZA	Concur.
2.	The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood.	
	STAFF	The proposed patio seating facility is well separated from nearby residences, businesses, and public streets.
	BZA	Concur.
3.	The proposed conditional use will not dominate the immediate neighborhood, preventing development and use of neighboring property in accordance with applicable zoning district regulations.	
	STAFF	The proposed location is approximately 150' off of Central Ave. & 50' off of Lioba St. The proposed patio seating should not have a substantial effect on traffic or the outward appearance of the building so as to dominate the immediate neighborhood.
	BZA	Concur.
4.	Off-street parking and loading areas for the proposed conditional use will be provided in accordance with the standards set forth in Article 6 of the Zoning Regulations.	
	STAFF	The proposed location revises the number of parking spaces available and the general circulation of the west side of the existing parking layout. A revised parking and circulation plan will have to be reviewed.
	BZA	Concur.
5.	Adequate utility, drainage and other such necessary facilities have been installed, or will be provided by platting, dedications or guarantees.	
	STAFF	N.A.
	BZA	Concur.

6. Adequate access roads, entrance and exit drives, or access control, designed to prevent traffic hazards and to minimize traffic congestions in public streets and roads, is available, or will be provided by platting, dedications or guarantees.

STAFF     The proposed location does not interfere with the existing exit drives.

BZA        Concur.

*Having considered the evidence at the hearing and determined that the findings of fact have been found that support all six conditions set out in Subsection 11-107.C of the Zoning Regulations and K.S.A. 12-759(e), I, Vance Garwood, move that the Chairperson be authorized to sign a Resolution granting the conditional use for BZA-CU-2021-03 not to exceed 180 days during which time the applicant will work with staff and the Site Plan Review Committee to address parking and traffic concerns. Should the property owner receive approval from the Site Plan Review Committee the 180-day conditional use will be lifted. Motion seconded by Gary Israel. Motion carried 5-0.*

*Gary Israel made a motion to adjourn the Board of Zoning Appeals and reconvene the Planning Commission. Motion seconded by Kirsten Barnes. Motion carried 5/0.*

## 6. MEMBER ITEMS

## 7. ADJOURN

*Erik Pedersen made a motion to adjourn the meeting. Motion seconded by Gary Israel. Motion carried 5/0. The meeting was adjourned at 7:53 pm.*

Respectfully submitted by:

Justin Constantino, AICP  
Assistant Director of Community Development

Approved on the 21<sup>st</sup> day of September 2021 by the City of Andover Planning Commission.