



**PLANNING & ZONING**  
1609 E. CENTRAL AVE.  
POB 295  
ANDOVER, KS 67002  
316.733.1303

**PLANNING COMMISSION  
& BOARD OF ZONING APPEALS MINUTES**  
**AUGUST 16, 2022 | 7:00pm**  
ANDOVER CITY HALL | 1609 E. CENTRAL AVE.

**1. CALL TO ORDER**

Acting Chairperson Vance Garwood called the meeting to order at 7:04 pm.

**2. ROLL CALL**

Commissioners in attendance: Acting Chairperson Vance Garwood, Secretary Gary Israel, Kirsten Barnes, and Marla Canfield (virtually). Chairperson Erik Pedersen was absent. Staff in attendance: Jennifer McCausland, City Administrator, Justin Constantino, Assistant Director of Community Development, and Chip Jerauld, Building Official. A/V services provided by WAV Services.

**3. APPROVAL OF THE MINUTES OF THE JUNE 21, 2022 MEETING**

*Gary Israel made a motion to approve the minutes of the June 21, 2022 meeting as presented. Motion seconded by Erik Pedersen. Motion carried 4/0.*

**4. COMMUNICATIONS**

**A. COMMITTEE & STAFF REPORT**

**B. POTENTIAL RESIDENTIAL DEVELOPMENT REPORT**

**5. AGENDA**

**5.1 PRELIMINARY PLAT – REVIEW AND APPROVAL OF THE SOUTHERN HILLS SUBDIVISION  
PRELIMINARY PLAT GENERALLY LOCATED SOUTHEAST OF SW 130<sup>TH</sup> STREET & SW BUTLER  
ROAD, ANDOVER, KANSAS**

Mr. Constantino stated that the applicant is proposing single-family residential housing on 330 lots on approximately 153 acres of property. Mr. Constantino stated that the property is currently located in the Riverstone Reserve Preliminary PUD and is currently zoned R-2, intended for low to medium-density residential neighborhoods of single-family detached dwellings. Mr. Constantino stated that water service for the subject property is under the jurisdiction of Rural Water District #5/8 and sewer service for the subject property is currently served and will continue to be served by the City of Andover. Mr. Constantino stated that staff is currently working with Rural Water District #5/8 to determine their capabilities of servicing the subdivision, and that the subject properties will receive access from the existing SW Butler Road (two access points) and SW 130th Street (two access points). Mr. Constantino stated that the preliminary plat was reviewed by the Subdivision Committee at their July 12<sup>th</sup> and August 9th meetings, and that the Subdivision Committee recommended that the Planning Commission approve the preliminary plat pending the applicant addressing any outstanding staff comments on both the preliminary plat and the traffic study at their August 9<sup>th</sup> meeting. Mr. Constantino stated that staff comments have been addressed but the traffic study still has some outstanding questions.

Mr. Israel asked if there were any issues with getting the Rural Water District to service the subdivision. Mr. Constantino stated that staff is still working with them regarding those details but it shouldn't hold up the approval of the preliminary plat.

Mr. Garwood stated that he, Mr. Israel, and Ms. Canfield are on the Subdivision Committee and have reviewed the preliminary plat extensively.

Will Clevenger of Garver Engineering, representing the applicant, stated that the traffic entrances should be 1320 feet between openings and that the current preliminary plat has two openings along Butler Road that are closer than what is recommended. Mr. Clevenger stated that they would like to have the two openings to allow for greater access and due to the density of the subdivision. Mr. Clevenger stated that the City's traffic engineer was in agreeance with the two proposed openings along SW 130<sup>th</sup> Street. Mr. Constantino stated that he would like to confer with the City's traffic engineer prior to approving the preliminary plat and requested that the Planning Commission approve the preliminary plat contingent upon staff resolving any outstanding traffic report details.

*Gary Israel made a motion to approve the Southern Hills Subdivision Preliminary Plat with the condition that the applicant work with the City to come to a resolution on the traffic study. Motion seconded by Kirsten Barnes. Motion carried 4/0.*

## **5.2 FINAL PUD – REVIEW OF AND RECOMMENDATION ON THE HERITAGE MIXED-USE SECOND ADDITION FINAL PLANNED UNIT DEVELOPMENT PLAN GENERALLY LOCATED NORTH OF US 54/400 AND WEST OF YORKTOWN PARKWAY, ANDOVER, KANSAS**

Mr. Constantino stated that the Final PUD is part of The Heritage Mixed-Use Preliminary PUD Plan, a New Urbanism planning approach with walkable streets, housing, shopping, and public spaces. Mr. Constantino stated that this Final PUD contains Parcels 1, 2A, 2B, and Reserve A on 10 lots of approximately 15.94 acres of property, and that the use of the properties is primarily mixed-use commercial. Mr. Constantino stated that the subject property receives existing water and sewer service from the City of Andover. Mr. Constantino stated that the Subdivision Committee reviewed the Final PUD plan at the August 9th meeting and recommended that the Planning Commission approve the plan upon the applicant addressing any outstanding staff comments. Mr. Constantino stated that all outstanding comments have been addressed.

*Gary Israel made a motion to approve the Heritage Mixed-Use Second Addition Final PUD Plan and recommend that the City Council accept the dedication of land for public use. Motion seconded by Kirsten Barnes. Motion carried 4/0.*

## **5.3 Z-PUD22-0001 – PUBLIC HEARING AND RECOMMENDATION ON THE PROPOSED AMENDMENT TO THE VILLAGE CROSSING PRELIMINARY PLANNED UNIT DEVELOPMENT PLAN TO MODIFY THE PERMITTED LAND USES OF PARCEL 3 TO ALLOW FOR THE USE OF DRIVE-IN OR DRIVE THRU RESTAURANTS GENERALLY LOCATED AT 301 S. ANDOVER ROAD, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 7:20 pm.

Mr. Constantino stated that subject property is located at Block 2, Lot A of the Village Crossing First Addition, generally located at 301 S. Andover Road and that the subject property has a base zoning of B-2 Neighborhood Business District, a district intended for retail sales of convenience goods and services which are near residential neighborhoods, of limited size, and along arterial streets. Mr. Constantino stated that the applicant is proposing a text amendment to Parcel 3 of the Village Crossing Preliminary Planned Unit Development Plan to allow for the use of a drive in or drive thru restaurant. Mr. Constantino stated that restaurants are currently permitted on the parcel, but the drive thru component is prohibited.

Mr. Israel asked if the Dunkin Donuts south of the subject property had a drive through. Mr. Constantino said yes.

Phil Meyer of Baughman Company, representing the applicant, stated that when the PUD was originally created in 2005, speaker box technology was not where it is today and that was why drive-thrus were not originally allowed. Mr. Meyer stated that the addition of a drive-thru does not have a negative impact on the neighborhood.

Mr. Israel asked what kind of restaurant would be opening in the proposed location. Mr. Meyer said that he did not know but the owner has provided a preliminary site plan.

Acting Chairperson Garwood closed the public hearing at 7:26 pm.

### STAFF ITEMS

1.	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 if the change in zoning were approved?
STAFF	Public water, sewer, and streets are available to the subject property.
2.	If the zoning change request was approved, would the subject property need to be platted or replatted, or have in-lieu-of dedications made, in order to provide needed rights-of-way, easements, building setback lines, or access control?
STAFF	The subject property is currently platted.
3.	If the zoning change request was approved, would the subject property need a screening plan for existing or potential uses?
STAFF	Screening fence required by the PUD General Provisions and the Site Plan Review Committee Standards
4.	What fact-based information in support of or in opposition to the requested zoning change has staff received?
STAFF	None at this time.
5.	If there has been an error in the application of these Zoning Regulations to the subject property, would the requested zoning change correct the error?
STAFF	No error is known to exist.

### STAFF & COMMISSION/COUNCIL ITEMS

6.	How suitable or unsuitable is the subject property for its current zoning?
STAFF	The subject property is an undeveloped parcel in the Village Crossing PUD that is suitable for the current uses allowed by the PUD
PLANNING	Concur.

COUNCIL	
7. Is the length of time the subject property has been vacant or undeveloped under its current zoning a factor in the zoning change request?	
STAFF	No
PLANNING	Concur.
COUNCIL	
8. How reasonably well-suited will the requested zoning change of the subject property be with the current zoning of nearby properties.	
STAFF	The proposed uses are generally in conformance with the Comprehensive Plan and which suggests commercial mixed uses.
PLANNING	Concur.
COUNCIL	
9. Has the zoning change been requested because conditions in the area of the subject property have changed or are changing? If so, what is the nature and significance of these conditions?	
STAFF	No
PLANNING	Concur.
COUNCIL	
10. What are the current land uses, character and condition of the subject property and the surrounding neighborhood?	
STAFF	The subject property is surrounded by the Village Crossing Mixed PUD mixed uses on the north and south, and single family residences on the east and west.
PLANNING	Concur. Mr. Israel also added that the neighboring Dunkin' Donuts property to the south contains a drive-thru.
COUNCIL	
11. Would the proposed zoning change of the subject property allow land uses which might have detrimental effects on nearby properties, and if so, how?	
STAFF	No more than existing permitted uses, which includes a Dunkin' Donuts adjacent to the south with a drive-thru.
PLANNING	Concur.
COUNCIL	

12. How would the requested zoning change conform with the City's Comprehensive Plan and other adopted master plans and policies.	
STAFF	The proposed use is generally in conformance with the Comprehensive Plan suggested mixed uses.
PLANNING	Concur.
COUNCIL	
13. Do any professional persons knowledgeable on conditions that affect this zoning change request have information or recommendations to provide, which would be helpful in its evaluation?	
STAFF	Approval as applied for.
PLANNING	Concur.
COUNCIL	
14. How would the potential loss in value or hardship imposed on the Applicant compare to the relative gain to the public health, safety and welfare, if there is a change from the current zone to the requested zone?	
STAFF	Staff knows of no loss to public health safety and welfare as a result of the change.
PLANNING	Concur.
COUNCIL	

*Kirsten Barnes made a motion to adopt the findings of fact and recommend that the City Council approve Zoning Case Z-PUD22-0001 amending the Village Crossing Preliminary PUD Plan based on findings 6, 8, and 11. Motion seconded by Gary Israel. Motion carried 4/0.*

#### **5.4 Z-A22-0003 – PUBLIC HEARING AND RECOMMENDATION ON THE PROPOSED CHANGE OF ZONING DISTRICT CLASSIFICATION FROM THE MF-1 SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL DISTRICT TO THE MF-2 ATTACHED SINGLE-FAMILY RESIDENTIAL DISTRICT ON THE PROPERTY GENERALLY LOCATED AT 1628 E. HIGHLAND LANE, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 7:35 pm.

Mr. Constantino stated that the subject property is located in Block B, Lot 1 of The Highlands First Addition, generally located at 1628 E. Highland Lane just south of US 54/400. Mr. Constantino stated that the four-parcel property is less than one acre and is currently vacant. Mr. Constantino stated that the applicant desires to rezone the subject property from the existing zoning from MF-1 Single-Family and Two-Family Residential District to the MF-2 Attached Single-Family Residential District to allow for the construction of a three-family attached dwelling. Mr. Constantino stated that the proposed MF-2 Attached Single-Family Residential District is intended for medium density residential neighborhoods of single-family attached and detached dwellings and two-family dwellings and townhouses. Mr. Constantino stated that staff has reviewed the application materials and has no objection to the change of zoning district classification request.

Mr. Israel asked if the three-family attached dwelling was the same thing as a triplex. Amanda Flower, the applicant, said yes. Ms. Flower noted that she also owns the property to the east that contains two, four-family units.

Acting Chairperson Garwood closed the public hearing at 7:26 pm.

#### STAFF ITEMS

1. 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 if the change in zoning were approved?	STAFF	Adequate public facilities are in place.
2. If the zoning change request was approved, would the subject property need to be platted or replatted, or have in-lieu-of dedications made, in order to provide needed rights-of-way, easements, building setback lines, or access control?	STAFF	Replating is not necessary. Dedications are necessary to bring the US-54/400 right of way up to the required width.
3. If the zoning change request was approved, would the subject property need a screening plan for existing or potential uses?	STAFF	Screening is not required.
4. What fact-based information in support of or in opposition to the requested zoning change has staff received?	STAFF	None at this time.
5. If there has been an error in the application of these Zoning Regulations to the subject property, would the requested zoning change correct the error?	STAFF	No error is known to exist.

#### STAFF & COMMISSION/COUNCIL ITEMS

6. How suitable or unsuitable is the subject property for its current zoning?	STAFF	The property is suitable for its current zoning.
	PLANNING	Concur.
	COUNCIL	
7. Is the length of time the subject property has been vacant or undeveloped under its current zoning a factor in the zoning change request?	STAFF	No.

PLANNING COUNCIL	Concur.
8. How reasonably well-suited will the requested zoning change of the subject property be with the current zoning of nearby properties.	
STAFF	The proposed use is well suited for the US-54/400 Lifestyle Corridor.
PLANNING COUNCIL	Concur.
9. Has the zoning change been requested because conditions in the area of the subject property have changed or are changing? If so, what is the nature and significance of these conditions?	
STAFF	The new owner simply desires to change the use of the property to use the land more efficiently.
PLANNING COUNCIL	Concur.
10. What are the current land uses, character and condition of the subject property and the surrounding neighborhood?	
STAFF	The surrounding land is used for mixed uses in good condition.
PLANNING COUNCIL	Concur.
11. Would the proposed zoning change of the subject property allow land uses which might have detrimental effects on nearby properties, and if so, how?	
STAFF	No
PLANNING COUNCIL	Concur.
12. How would the requested zoning change conform with the City's Comprehensive Plan and other adopted master plans and policies.	
STAFF	The Comprehensive Plan supports a more dense pattern of land use with more diverse housing choices. The subject property is shown to be future MXD Commercial, but is adjacent to future MXD Residential in the US-54/400 Corridor Study Future Land Use map.

PLANNING	Concur.
COUNCIL	
13. Do any professional persons knowledgeable on conditions that affect this zoning change request have information or recommendations to provide, which would be helpful in its evaluation?	
STAFF	Approval as applied for, conditioned on the dedication of adequate US-54/400 corridor right of way.
PLANNING	Concur.
COUNCIL	
14. How would the potential loss in value or hardship imposed on the Applicant compare to the relative gain to the public health, safety and welfare, if there is a change from the current zone to the requested zone?	
STAFF	Staff perceives no detriment to the public health, safety, or welfare.
PLANNING	Concur.
COUNCIL	

*Kirsten Barnes made a motion to adopt the findings of fact and recommend that the City Council approve Zoning Case Z-A22-0003 changing the zoning district classification from the MF-1 Single-Family and Two-Family Residential District to the MF-2 Attached Single-Family Residential District based on findings 6, 8, 9, and 12 and conditioned on adequate US 54/400 corridor right-of-way. Motion seconded by Gary Israel. Motion carried 4/0.*

## **5.5 Z-A22-0004 – PUBLIC HEARING AND RECOMMENDATION ON THE PROPOSED CHANGE OF ZONING DISTRICT CLASSIFICATION FROM THE SF-2 SINGLE-FAMILY RESIDENTIAL / MEDIUM DENSITY DISTRICT AND B-2 NEIGHBORHOOD BUSINESS DISTRICT TO THE B-3 RETAIL AND SERVICE BUSINESS DISTRICT WITH AN ARTERIAL TRANSITION OVERLAY DISTRICT ON THE PROPERTY GENERALLY LOCATED AT 1533-1539 N. ANDOVER ROAD, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 7:49 pm.

Mr. Constantino stated that the subject property is generally located at 1533- 1539 N. Andover Road, just south of Harrison Street and the Redbud Trail. Mr. Constantino stated that the four-parcel property is less than one acre and is currently vacant. Mr. Constantino stated that the property is currently zoned B-2 Neighborhood Business District on the northern portion of the property and SF-2 Single-Family Residential / Medium Density District on the southern portion of the property, and that the applicant desires to rezone the entire property to the B-3 Retail and Service Business District with an Arterial Transition Overlay (or ATO) for the purpose of constructing a restaurant with outdoor patio seating. The ATO is intended to allow or encourage the conversion of single-family residential properties along arterial streets to limited business uses. Mr. Constantino stated that the purpose of the ATO in this case is to limit the allowed uses on the subject property to those of the B-2 zoning district. In other words, it's like the property is zoned B-2, but allows a restaurant with outdoor patio seating. Mr. Constantino stated that the applicant's desire for a restaurant with patio seating as an accessory use will require a separate, corresponding conditional use permit and that the



conditional use is the next item on the agenda. Mr. Constantino stated that staff has reviewed the application materials and has no objection to the change of zoning district classification request.

Ben Thomas, representing the applicant, stated that he was available for questions. Mr. Israel asked if the applicant would ever be seeking the addition of a drive-thru at the location. Mr. Thomas said he wasn't sure but wouldn't want to limit their options. Mr. Constantino stated that the addition of a drive-thru component would require another public hearing and approval.

Mr. Israel asked what kind of restaurant would be opening in the proposed location. Mr. Thomas stated that it would not be a national chain and would be more limited in scope.

Acting Chairperson Garwood closed the public hearing at 7:55 pm.

#### STAFF ITEMS

1. 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 if the change in zoning were approved?	STAFF	Adequate public facilities are in place.
2. If the zoning change request was approved, would the subject property need to be platted or replatted, or have in-lieu-of dedications made, in order to provide needed rights-of-way, easements, building setback lines, or access control?	STAFF	Dedications are necessary to bring the Andover Rd. ½ street right of way up to the required width and establish building setbacks.
3. If the zoning change request was approved, would the subject property need a screening plan for existing or potential uses?	STAFF	The site plan for any new commercial building would require a screening plan as a part of the Site Plan Review process.
4. What fact-based information in support of or in opposition to the requested zoning change has staff received?	STAFF	None at this time.
5. If there has been an error in the application of these Zoning Regulations to the subject property, would the requested zoning change correct the error?	STAFF	No error is known to exist.

#### STAFF & COMMISSION/COUNCIL ITEMS

6. How suitable or unsuitable is the subject property for its current zoning?	STAFF	The property is not desirable for single-family dwellings permitted by the current zoning.
---	-------	--

PLANNING COUNCIL	Concur.
<p>7. Is the length of time the subject property has been vacant or undeveloped under its current zoning a factor in the zoning change request?</p> <p>STAFF Yes. The property is not desirable for single-family dwellings permitted by the current zoning.</p> <p>PLANNING Concur.</p> <p>COUNCIL</p>	
<p>8. How reasonably well-suited will the requested zoning change of the subject property be with the current zoning of nearby properties.</p> <p>STAFF Not all of the permitted uses in the B-3 Retail &amp; Service Business District are compatible with the adjacent single family residential uses.</p> <p>PLANNING Concur.</p> <p>COUNCIL</p>	
<p>9. Has the zoning change been requested because conditions in the area of the subject property have changed or are changing? If so, what is the nature and significance of these conditions?</p> <p>STAFF The new owner simply desires to change the use of the property to be more reflective of the "more vibrant, aesthetically pleasing, and pedestrian-friendly retail corridor." suggested by the Comprehensive Plan.</p> <p>PLANNING Concur.</p> <p>COUNCIL</p>	
<p>10. What are the current land uses, character and condition of the subject property and the surrounding neighborhood?</p> <p>STAFF The area around the subject property is a diverse mix of uses. The north lot of the subject property is zoned B-2 Neighborhood Business District formerly a convenience store. Further north is the Redbud Trail and an auto repair business. Adjacent to the south are multifamily dwellings and further south a mixed-use business. Across Andover Rd. to the east are single-family dwellings. Adjacent to the west are two single family dwellings and a trucking firm office.</p> <p>PLANNING Concur.</p> <p>COUNCIL</p>	

11. Would the proposed zoning change of the subject property allow land uses which might have detrimental effects on nearby properties, and if so, how?	
STAFF	Many of the permitted uses allowed in the B-3 Retail and Service Business District are not compatible with the adjacent existing single family residences. The increased traffic, noise, and hours of operation would be detrimental to the single-family residences without adequate screening and buffering.
PLANNING	Concur.
COUNCIL	
12. How would the requested zoning change conform with the City's Comprehensive Plan and other adopted master plans and policies.	
STAFF	The Comprehensive Plan recommends "the transformation of Andover Road from an auto-oriented commercial strip to a more vibrant, aesthetically pleasing, and pedestrian-friendly retail corridor" in the subject property area.
PLANNING	Concur.
COUNCIL	
13. Do any professional persons knowledgeable on conditions that affect this zoning change request have information or recommendations to provide, which would be helpful in its evaluation?	
STAFF	Given the incompatibility of some of the uses permitted in the B-3 Retail & Service Business District Staff recommends approval of the change with the addition of an Arterial Transition Overlay District, which limits the permitted uses to those permitted in the B-2 Neighborhood Business District.
PLANNING	Concur.
COUNCIL	
14. How would the potential loss in value or hardship imposed on the Applicant compare to the relative gain to the public health, safety and welfare, if there is a change from the current zone to the requested zone?	
STAFF	With the addition of the Arterial Transition Overlay District limitations suggested Staff perceives no detriment to the public health, safety, or welfare.
PLANNING	Concur.
COUNCIL	

Mr. Israel asked about the hours of operation for the proposed restaurant. Mr. Thomas said nothing is set in stone but they plan to service the Redbud Trail area and they don't intend on operating late into the evening.

Ms. Barnes asked about whether or not the business hours would be limited by the City. Mr. Constantino stated that the City Code limits typical business hours range from 7:00 am until 10:00 pm and that those hours are included in the permissible noise levels outlined in the code.

*Kirsten Barnes made a motion to adopt the findings of fact and recommend that the City Council approve Zoning Case Z-A22-0004 changing the zoning district classification from the existing SF-2 Single-Family / Medium Density District and B-2 Neighborhood Business District to the B-3 Retail and Service Business District with an Arterial Transition Overlay limiting the subject property to B-2 uses but allowing the outdoor patio seating as a conditional use. Motion seconded by Gary Israel. Motion carried 4/0.*

*Gary Israel made a motion to recess the Planning Commission and convene the Board of Zoning Appeals. Motion seconded by Kirsten Barnes. Motion carried 4/0.*

**5.6 CONDITIONAL USE – PUBLIC HEARING AND RECOMMENDATION ON THE PROPOSED CONDITIONAL USE TO PERMIT THE CONSTRUCTION OF A RESTAURANT WITH OUTDOOR PATIO SEATING IN THE PROPOSED B-3 RETAIL & SERVICE BUSINESS DISTRICT GENERALLY LOCATED AT 1533-1539 N. ANDOVER ROAD, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 8:10 pm.

Mr. Constantino stated that the applicant's desire to include patio seating as an accessory to the restaurant requires a corresponding conditional use permit. Mr. Constantino stated that while the B-3 zoning district permits the outright use of a restaurant, the patio seating component requires a conditional use for allowance. Mr. Constantino stated that staff has reviewed the application materials and has no objection to the conditional use request.

Mr. Garwood asked if this conditional use is indefinite or runs for a certain period of time. Mr. Constantino stated that the conditional use will stay with the property and will not sunset.

Acting Chairperson Garwood opened the public hearing at 8:13 pm.

**DOES THE EVIDENCE SUPPORT THE CONCLUSION THAT:**

1.	The proposed conditional use complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards; unless a concurrent application is in process for a variance.
STAFF BZA	Yes Concur.
2.	The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood.
STAFF BZA	Yes Concur.
3.	The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:

	<p>a. The location, nature, size and height of building, structures, walls and fences on the site; and</p> <p>b. The nature and extent of landscaping and screening on the site.</p>
STAFF	The sheer volume of traffic and interspersed commercial development on Andover Rd. have driven the Comprehensive Plan to recommend “the transformation of Andover Road from an auto-oriented commercial strip to a more vibrant, aesthetically pleasing, and pedestrian-friendly retail corridor” in the subject property area. The Site Plan Review Committee Standards will assure that the additional traffic, noise, lighting, etc. from the proposed operation will be adequately buffered from surrounding residences.
BZA	Concur.
4.	Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of these regulations. Such areas will be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.
STAFF	Yes. Parking and unloading areas will be reviewed for compliance by the Site Plan Review Committee.
BZA	Concur.
5.	Adequate utility, drainage and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.
STAFF	Yes. All are currently in place.
BZA	Concur.
6.	Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and roads.
STAFF	Yes. Street right of way dedication to minimum standards will be required
BZA	Concur.

*Having considered the evidence at the hearing and determined that the findings of fact have been found to exist that support all five conditions set out in Subsection 11-107C of the Zoning Regulations, Kirsten Barnes made a motion that the Chairperson be authorized to sign a Resolution granting the conditional use for Case No. BZA-CU22-0001 as requested. Motion seconded by Gary Israel. Motion carried 4-0.*

#### **5.7 BZA-V22-0006 – PUBLIC HEARING ON AN APPLICATION FOR A VARIANCE OF 2 FEET FROM THE REQUIRED 6-FOOT FENCE HEIGHT FOR THE PURPOSE OF CONSTRUCTING AN 8-FOOT WALL ON THE PROPERTIES GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 159<sup>TH</sup> STREET EAST AND KANSAS TURNPIKE, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 8:18 pm.

Mr. Constantino stated that the subject property is located in Block A, Lots 1 through 16 of Speyside at Terradyne Estates and is zoned SF-2 Single-Family Residential / Medium Density District. Mr. Constantino stated that the applicant is seeking a variance of 2 feet from the required 6-foot fence height permitted by

Subsection 7-103.C2.b of the Unified Development Manual (UDM) for the purpose of constructing an 8-foot wall fence along the subject properties, and that Staff knows of no reason not to grant the requested variance pending the outcome of the public hearing.

Mr. Israel asked if the Board of Zoning Appeals was restricted to 8 feet. Mr. Constantino said no, but raising the wall any higher would require a re-notification to the nearby property owners and new public hearing date.

Mr. Israel asked what kind of fence will be constructed. Phil Meyer of Baughman Company, representing the applicant, stated that it would be a concrete masonry wall about eight inches thick. Mr. Israel asked if the fence would be painted. Mr. Meyer stated that the wall will be made of natural material and the developer will have the ability to paint the all as they see fit and the HOA will be responsible for the maintenance once construction is complete.

Acting Chairperson Garwood closed the public hearing at 8:24 pm.

**DOES THE EVIDENCE DEMONSTRATE THAT:**

1. The physical surroundings, shape or topography of the property would result in a practical difficulty, as distinguished from a mere inconvenience, for the owner, lessee or occupant.	
STAFF	The subject property lies to the south of the Kansas Turnpike, which creates substantial traffic noise, and east of the Terradyne Golf Club maintenance building, which has outdoor storage of golf course maintenance equipment and materials.
BZA	Concur.
2. Granting the variance will result in material detriment or injury to other property or improvements in the neighborhood.	
STAFF	If granted, the variance would result in no detriment to the neighborhood, as the proposed wall would be isolated from any other properties by the Kansas Turnpike and the Terradyne Golf Club maintenance building.
BZA	Concur.
3. Granting the variance will result in an inadequate supply of light or air to adjacent property, substantially increase traffic congestion, increased fire risk, or substantially diminished property values in the neighborhood.	
STAFF	If granted, the variance would result in no detriment to the neighborhood, as the proposed wall would be isolated from any other properties by the Kansas Turnpike and the Terradyne Golf Club maintenance building.
BZA	Concur.
4. The request for a variance is not based exclusively on a desire of the owner, lessee, occupant or applicant to make more money out of the property.	
STAFF	The applicant has declared the proposed wall is to reduce the visual effects and noise of the Kansas Turnpike and Terradyne Golf Club maintenance building on the new Speyside at Terradyne patio homes.

BZA	Concur.
-----	---------

**SPECIFIC CONDITIONS TO BE MET:**

1. The requested variance arises from a condition unique to the property in question, which is not ordinarily found in the same zoning district, and which was not created by any action of the property owner or the applicant.	
STAFF	The subject property lies to the south of the Kansas Turnpike, which creates substantial traffic noise, and east of the Terradyne Golf Club maintenance building, which has outdoor storage of golf course maintenance equipment and materials.
BZA	Concur.
2. Strict application of the provisions of these Zoning Regulations would result in unnecessary hardship for the owner, lessee or occupant of the land or structures.	
STAFF	Denial of the proposed variance would result in an unnecessary hardship for the future owners of patio homes in the new Speyside at Terradyne patio homes.
BZA	Concur.
3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.	
STAFF	If granted, the variance would result in no detriment to the neighborhood as the proposed wall would be isolated from any other properties by the Kansas Turnpike and the Terradyne Golf Club maintenance building.
BZA	Concur.
4. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.	
STAFF	If granted, the variance would result in no detriment to the neighborhood, as the proposed wall would be isolated from any other properties by the Kansas Turnpike and the Terradyne Golf Club maintenance building.
BZA	Concur.
5. The requested variance will not be opposed to the general spirit and intent of these Zoning Regulations.	
STAFF	The intent of the maximum fence height regulation is to protect supply of light and views of adjacent properties. In this case, the adjacent properties are an interstate highway and a commercial maintenance facility, which would not be adversely affected.
BZA	Concur.

*Having considered the evidence at the hearing and determined that the findings of fact have been found to exist that support all five conditions set out in Subsection 11-106.B2 of the Zoning Regulations, Kirsten Barnes made a motion that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V22-0006 as requested. Motion seconded by Gary Israel. Motion carried 4-0.*

**5.8 BZA-V22-0004 – PUBLIC HEARING ON AN APPLICATION FOR A VARIANCE OF 795 SQUARE FEET FROM THE 500 SQUARE FOOT MAXIMUM FLOOR AREA OF AN ACCESSORY STRUCTURE ON THE PROPERTY GENERALLY LOCATED AT 311 CEDAR RIDGE COURT, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 8:30 pm.

Mr. Constantino stated that the subject property is located in Block 1, Lot 10 of the Flint Hills National Addition, Phase 2 and is zoned SF-2 Single-Family Residential / Medium Density District. Mr. Constantino stated that the applicant is seeking a variance of 795 square feet from the 500 square foot maximum floor area of an accessory structure permitted by Subsection 7-100.E5.a(1) of the Unified Development Manual (UDM) for the purpose of constructing a 1295 square foot accessory structure on the property and that staff knows of no reason not to grant the requested variance pending the outcome of the public hearing.

Brad Peniston of Cornerstone Builders, representing the applicant, stated that the structure will house all of the pool equipment inside of the building to avoid keeping it outside.

Acting Chairperson Garwood closed the public hearing at 8:35 pm.

**DOES THE EVIDENCE DEMONSTRATE THAT:**

1. The physical surroundings, shape or topography of the property would result in a practical difficulty, as distinguished from a mere inconvenience, for the owner, lessee or occupant.	
STAFF	The subject property is a 1.24-acre lot. The large parcel provides adequate space while allowing adequate separation from nearby residences.
BZA	Concur.
2. Granting the variance will result in material detriment or injury to other property or improvements in the neighborhood.	
STAFF	No detriment and/or injury to other property or improvements are anticipated.
BZA	Concur.
3. Granting the variance will result in an inadequate supply of light or air to adjacent property, substantially increase traffic congestion, increased fire risk, or substantially diminished property values in the neighborhood.	
STAFF	The subject property is a 1.24-acre lot. The large parcel provides adequate space while allowing adequate separation from nearby residences. No adverse effects are anticipated.
BZA	Concur.
4. The request for a variance is not based exclusively on a desire of the owner, lessee, occupant or applicant to make more money out of the property.	



STAFF	The applicant has declared the intended use to be a detached garage/pool house as an accessory residential use.
BZA	Concur.

#### **SPECIFIC CONDITIONS TO BE MET:**

1. The requested variance arises from a condition unique to the property in question, which is not ordinarily found in the same zoning district, and which was not created by any action of the property owner or the applicant.	
STAFF	The subject property is a 1.24-acre parcel. The large parcel provides adequate space while allowing adequate separation from nearby residences.
BZA	Concur.
2. Strict application of the provisions of these Zoning Regulations would result in unnecessary hardship for the owner, lessee or occupant of the land or structures.	
STAFF	The intent of lot coverage maximum is to promote the health, safety and general welfare of residents. The subject property is 1.24-acres, which provides a substantial area for accessory structures while remaining below the zoning district's maximum allowable lot coverage of 35%.
BZA	Concur.
3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.	
STAFF	The intent of lot coverage maximum is to promote the health, safety and general welfare of residents. The subject property is 1.24-acres, which provides a substantial area for accessory structures while remaining below the zoning district's maximum allowable lot coverage of 35% and providing adequate separation from adjacent neighbors.
BZA	Concur.
4. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.	
STAFF	The subject property is a 1.24-acre parcel. The large parcel provides adequate space while allowing adequate separation from nearby residences.
BZA	Concur.
5. The requested variance will not be opposed to the general spirit and intent of these Zoning Regulations.	
STAFF	The intent of lot coverage maximum is to promote the health, safety and general welfare of residents. The subject property is 1.24-acres, which provides a substantial area for accessory

	structures while remaining below the zoning district's maximum allowable lot coverage of 35% and providing adequate separation from adjacent neighbors.
BZA	Concur.

*Having considered the evidence at the hearing and determined that the findings of fact have been found to exist that support all five conditions set out in Subsection 11-106.B2 of the Zoning Regulations, Kirsten Barnes made a motion that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V22-0004 as requested. Motion seconded by Gary Israel. Motion carried 4-0.*

**5.9 BZA-V22-0005 – PUBLIC HEARING ON AN APPLICATION FOR A VARIANCE OF 780 SQUARE FEET FROM THE 500 SQUARE FOOT MAXIMUM FLOOR AREA OF AN ACCESSORY STRUCTURE ON THE PROPERTY GENERALLY LOCATED AT 1435 S. ALDRICH DRIVE, ANDOVER, KANSAS**

Acting Chairperson Garwood opened the public hearing at 8:41 pm.

Mr. Constantino stated that the subject property is located in Block B, Lot 6 of the Lakeview Heights Addition and is zoned SF-1 Single-Family Residential / Low Density District. Mr. Constantino stated that the applicant is seeking a variance of 780 square feet from the 500 square foot maximum floor area of an accessory structure permitted by Subsection 7-100.E5.a(1) of the Unified Development Manual (UDM) for the purpose of constructing a 1280 square foot accessory structure on the property and that staff knows of no reason not to grant the requested variance pending the outcome of the public hearing. Mr. Constantino stated that the prior existing structure on the property was severely damaged by the April tornado.

Dan Davis, the applicant, stated that he would like to rebuild the accessory structure exactly like it was prior to the tornado. Mr. Garwood asked if the applicant's home sustained any damage during the tornado and asked about their general well-being. Mr. Davis stated that their home sustained minor roof damage and that they're doing fine.

Acting Chairperson Garwood closed the public hearing at 8:35 pm.

**DOES THE EVIDENCE DEMONSTRATE THAT:**

1. The physical surroundings, shape or topography of the property would result in a practical difficulty, as distinguished from a mere inconvenience, for the owner, lessee or occupant.	
STAFF	The subject property is a 0.84-acre lot. The large parcel provides adequate space while allowing adequate separation from nearby residences.
BZA	Concur.
2. Granting the variance will result in material detriment or injury to other property or improvements in the neighborhood.	
STAFF	No detriment and/or injury to other property or improvements is anticipated.
BZA	Concur.
3. Granting the variance will result in an inadequate supply of light or air to adjacent property, substantially increase traffic congestion, increased fire risk, or substantially diminished property values in the neighborhood.	

STAFF	The subject property is a 0.84-acre lot. The large parcel provides adequate space while allowing adequate separation from nearby residences. No adverse effects is anticipated.
BZA	Concur.
4. The request for a variance is not based exclusively on a desire of the owner, lessee, occupant or applicant to make more money out of the property.	
STAFF	The applicant has declared the intended use to be a detached garage as an accessory residential use.
BZA	

**SPECIFIC CONDITIONS TO BE MET:**

1. The requested variance arises from a condition unique to the property in question, which is not ordinarily found in the same zoning district, and which was not created by any action of the property owner or the applicant.	
STAFF	The subject property is a 0.84-acre parcel. The large parcel provides adequate space while allowing adequate separation from nearby residences.
BZA	Concur.
2. Strict application of the provisions of these Zoning Regulations would result in unnecessary hardship for the owner, lessee or occupant of the land or structures.	
STAFF	The intent of lot coverage maximum is to promote the health, safety and general welfare of residents. The subject property is 0.84-acres, which provides a substantial area for accessory structures while remaining below the zoning district's maximum allowable lot coverage of 35%.
BZA	Concur.
3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.	
STAFF	The intent of lot coverage maximum is to promote the health, safety and general welfare of residents. The subject property is 0.84-acres, which provides a substantial area for accessory structures while remaining below the zoning district's maximum allowable lot coverage of 35% and providing adequate separation from adjacent neighbors.
BZA	Concur.
4. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.	
STAFF	The subject property is a 0.84-acre parcel. The large parcel provides adequate space while allowing adequate separation from nearby residences.

BZA	Concur.
5. The requested variance will not be opposed to the general spirit and intent of these Zoning Regulations.	
STAFF	The intent of lot coverage maximum is to promote the health, safety and general welfare of residents. The subject property is 0.84-acres, which provides a substantial area for accessory structures while remaining below the zoning district's maximum allowable lot coverage of 35% and providing adequate separation from adjacent neighbors.
BZA	Concur.

*Having considered the evidence at the hearing and determined that the findings of fact have been found to exist that support all five conditions set out in Subsection 11-106.B2 of the Zoning Regulations, Kirsten Barnes made a motion that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V22-0005 as requested. Motion seconded by Gary Israel. Motion carried 4-0.*

*Gary Israel made a motion to adjourn the Board of Zoning Appeals and reconvene the Planning Commission. Motion seconded by Marla Canfield. Motion carried 4/0.*

## 6. MEMBER ITEMS

Ms. Barnes stated that the Planning Commission was able to get through the agenda quickly due to the work done by the Subdivision Committee prior to the Planning Commission meeting and the work done by staff leading up to the meeting.

## 7. ADJOURN

*Gary Israel made a motion to adjourn the meeting. Kirsten Barnes seconded the motion. Motion carried 4/0. The meeting was adjourned at 8:59 pm.*

Respectfully submitted by:

Justin Constantino, AICP  
Assistant Director of Community Development

Approved on the 20<sup>th</sup> day of September 2022 by the City of Andover Planning Commission.