



**PLANNING & ZONING**  
1609 E. CENTRAL AVE.  
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**PLANNING COMMISSION  
& BOARD OF ZONING APPEALS MINUTES**  
**DECEMBER 17, 2024 | 7:00 P.M.**  
ANDOVER CITY HALL | 1609 E. CENTRAL AVE.

**1. CALL TO ORDER**

Acting Chairperson Israel called the meeting to order at 7:00 P.M.

**2. ROLL CALL**

Committee members in attendance: Acting Chairperson Gary Israel; Acting Secretary Peter Fox; Clint Teinert; David Foley; and Dan Colson.

Staff members in attendance: Jolene Graham, Assistant City Administrator; Les Mangus, Director of Community Development; David Westphall, Zoning Administrator; and Connor Boyd, Planning Technician.

**3. APPROVAL OF THE MINUTES OF THE NOVEMBER 19, 2024 MEETING**

*Dan Colson made a motion to approve the minutes of the November 19, 2024 meeting as presented. Motion seconded by Clint Teinert. Motion carried 5/0.*

**4. COMMUNICATIONS**

**A. COMMITTEE & STAFF REPORT**

None.

**B. POTENTIAL RESIDENTIAL DEVELOPMENT REPORT**

**5. AGENDA**

**5.1 MEETING SCHEDULE – REVIEW AND APPROVAL OF THE 2025 PLANNING COMMISSION & BOARD OF ZONING APPEALS MEETING SCHEDULE**

Mr. Boyd stated that the schedule for 2025 would be very much the same as that for 2024, with the Planning Commission meetings taking place on the third Tuesday of each month.

*Dan Colson made a motion to approve the 2025 Planning Commission & Board of Zoning Appeals meeting schedule. Motion seconded by Peter Fox. Motion carried 5/0.*

**5.2 FINAL PLAT – REVIEW OF AND RECOMMENDATION ON THE SOUTHERN HILLS 1<sup>ST</sup> ADDITION FINAL PLAT, GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF S.W. BUTLER RD. AND S.W. 130<sup>TH</sup> ST., ANDOVER, KANSAS**

Mr. Westphall stated that the plat at hand would establish 57 lots across 36.4 acres, all zoned SF-2 Single Family Residential / Medium Density District. He continued that the plat area was originally under a Planned Unit Development, but that the PUD had been abandoned. Mr. Westphall stated that the plat was recommended for approval at the August 2022 Subdivision Committee meeting, and then stalled while the applicant and owner(s) negotiated water service to the subdivision.

*Gary Israel made a motion to recommend approval of the Southern Hills 1<sup>st</sup> Addition Final Plat. Motion seconded by David Foley. Motion carried 5/0.*

*Dan Colson made a motion to recess the Planning Commission and convene the Board of Zoning Appeals.  
Motion seconded by David Foley. Motion carried 5/0.*

**5.4 BZA-V24-0007 – PUBLIC HEARING ON AN APPLICATION FOR A VARIANCE OF 2 FEET FROM THE 6 FOOT MAXIMUM HEIGHT OF A FENCE, ON CERTAIN LANDS ZONED SF-2 SINGLE FAMILY RESIDENTIAL / MEDIUM DENSITY DISTRICT AND GENERALLY LOCATED AT 308 W. KOOB LN., ANDOVER, KANSAS**

Acting Chairperson Israel opened the public hearing at 7:10 P.M.

Mr. Westphall stated that the subject property is zoned SF-2 Single Family Residential / Medium Density District, and that the applicant is seeking the Variance to be able to install an 8 foot fence along the rear property line. Mr. Westphall stated that Staff was not in support of the Variance, as the property is not considered to be affected by unique circumstances that would qualify if for a variation from the zoning code.

The applicant, Tim Waggoner, was in attendance. Mr. Waggoner stated that he was replacing his fence due to damage already, and wished to replace it with a taller one so that he could have increased privacy from the renters who had moved into the house behind the subject property. He stated that his neighbors to either side had no issue with the Variance, and were in fact in support. Mr. Waggoner continued that he has seen other fences in town that are 8 feet tall.

Acting Chairperson Israel closed the public hearing at 7:14 P.M.

Mr. Waggoner asked why a regulation exists to cap fence height at 6 feet instead of 8, or any other number. Mr. Mangus stated that the given height is simply an agreed-upon standard for fences in a given zoning district, noting both that different districts have different guidelines, and that 6 feet is very typical for a residential privacy fence.

Mr. Waggoner asked if a rental property is commercial. Mr. Mangus stated that it is still residential.

Mr. Foley asked the applicant if his neighborhood had an HOA. Mr. Waggoner stated that it does not.

**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 physical surroundings and topography do not impose any practical difficulty.
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	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 does not have a motivation to make money out of the property through the request of this variance. It is to allow a higher fence along one of the property lines.
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	There is no evidence of a unique condition that led to the request of a variance. This is a very common occurrence for single-family homes to be adjacent to multi-family homes. Being adjacent to a property that is rented as opposed to owned does not impact the case.
BZA	By a show of hands, the Board of Zoning Appeals voted 4/1 in favor of concurring. David Foley dissented.

Mr. Colson asked the Committee to pause deliberation, and pointed out that 'concur'-ing with Staff would immediately render the Variance application denied. He continued that he himself did concur with Staff. Mr. Israel stated that his home is surrounded by a wrought iron fence, meaning that he can see into certain windows of his neighbors and they can see into his.

Mr. Fox stated that in his view, the existing fence height was adequate for years until the new tenants moved into the house behind the subject property, and so he also concurred with Staff's assessment.

Mr. Foley advocated for allowing the applicant the freedom to do with their property what they like, given that they are without an HOA.

Acting Chairperson Israel mentioned that he recalled residential properties which did qualify for a Variance to construct a taller fence. Mr. Mangus stated that in those cases, the homes abutted school property, specifically a football stadium, so they could demonstrate that the properties were affected by a unique circumstance.

*Dan Colson made a motion to deny the application for a Variance at 308 W. Koob Ln. Motion seconded by Clint Teinert. Motion carried 4/1. David Foley dissenting.*

Mr. Waggoner stated that he would respect the decision of the Board, but could have simply put up an 8 foot fence anyway, as other property owners seemed to have done. Acting Chairperson Israel stated that the applicant could appeal to the district court if they felt aggrieved by the decision, as per City code.

**5.3 BZA-V24-0006 – PUBLIC HEARING ON AN APPLICATION FOR A VARIANCE OF 1275 SF. FROM THE 500 SF. MAXIMUM AREA OF AN ACCESSORY STRUCTURE; AND OF 1585 SF. FROM THE 1000 SF. MAXIMUM GROSS AREA OF ACCESSORY STRUCTURES, ON CERTAIN LANDS ZONED SF-1 SINGLE FAMILY RESIDENTIAL DISTRICT AND GENERALLY LOCATED AT 312 E. CEDAR RIDGE CT., ANDOVER, KANSAS**

Acting Chairperson Israel opened the public hearing at 7:28 P.M.

Mr. Westphall stated that the subject property is a 1.37 acre lot, which, given its size, would only feature approximately 9.7% lot coverage if the proposed structure were built alongside the existing house and detached garage. He added that such pool houses are very common in the neighborhood, including some that had Variances approved within the last few months.

The applicants, Brett and Claire Watson, were in attendance. Mr. Watson reiterated the low lot coverage, and noted that five other Variances had been approved since the end of the pandemic in their neighborhood, for similar structures, including one for their neighbor across the street. He stated that they had tried very hard to communicate with the neighbors in the area of notification, but had been unable to compromise with the demands of one protestor. He stated that there are known drainage issues on the property, which would be referenced by the protestor, but that they had had the property surveyed in order to place the structure in the best possible location with respect to their wishes and the physical state of the property.

Mr. Foley asked if the Flint Hills Homeowner's Association had approved the building. Mr. Watson stated that their builder had contacted the HOA, but that they were waiting to move forward with a presentation to the HOA until after the City had issued its approval. Mr. Watson indicated that the HOA was likely to take no issue with the structure as long as it met City code and the aesthetic character of the neighborhood.

Chris & Gordon Ens, at 224 E. Cedar Ridge Ct., were in attendance. Mrs. Ens stated that this meeting marked their first opportunity to see the building plans. She continued that communication with the Watsons had broken down after expressing concern. She stated that they had requested that the pool house be placed on the eastern side of the Watsons' backyard, rather than the western side as planned. Mrs. Ens stated that the planned location would place the structure 15 feet from their bedroom window, and would therefore be an obstruction. She noted that the building looked to be a second house on the property, not just a pool house, and that its presence would decrease her property value. Mrs. Ens stated that her property had drainage issues due to the presence of the detached garage on the Watsons' property, and that she and her husband had not been notified when the garage was built.

*Note: Mrs. Ens stated that a Variance was approved for the detached garage, which measures 810 sf. No such Variance exists, as the garage predated the adoption of zoning regulations that designated 500 sf. as the maximum size of an accessory structure (that regulation was adopted in 2018). Thus, the garage is permitted as a legal nonconforming structure.*

Mrs. Ens continued that she had protested her property taxes with the County, and had them adjusted due to the aforementioned drainage issue. She stated that, due to HOA regulations, they could not install a privacy fence, as only a wrought iron fence was permitted.

Acting Chairperson Israel asked if the garage was within the normal setbacks as required by the zoning district. Mr. Mangus confirmed as much.

Acting Chairperson Israel asked what the City's responsibility is to maintain the drainage characteristics of a development. Mr. Mangus stated that, while the drainage is required to be accounted for at the time that a Planned Unit Development is established, the City does not track changing conditions as a result of construction, and that it is left up to the builders and architects that do work in the neighborhood. He added that most of the runoff in this area is on the surface.

Mrs. Ens stated that, according to their HOA rules, 25% of land on each property must feature native grass landscaping. She stated that a 12 foot tree in the area would not survive due to the drainage characteristics. She added that the HOA does not allow for accessory structures to be taller than 1 story, and that this building appeared to be 2 stories. She stated that they would move, but cannot sell their house due to the possibility of the pool house being built.

Mr. Ens stated that even if young trees were planted, they would not grow much for the Ens family to enjoy a blocked view while they reside in their house.\

Acting Chairperson Israel stated that many of these concerns seemed to be HOA-related issues, not zoning, and therefore out of the jurisdiction of the Board of Zoning Appeals. He asked the Watsons if the structure would be an accessory house (*an Accessory Dwelling Unit*), and if it would be 2 stories. Mr. Watson stated that it was a 1 story structure, with a high sloped roof to match the aesthetic of the primary dwelling, as per HOA requirements. He stated that it would not be an accessory dwelling unit, but would feature an office and an exercise room.

Acting Chairperson Israel asked why the Watsons did not wish to place the building on the eastern side of the property. Mr. Watson stated that they were trying to find the best location to create screening and shade for their backyard, and would reduce the impact of sound from their children that had caused issues with the Ens family before. He added that the structure would be further in from the side property line than is required by the side yard setback.

Mr. Foley asked if any trees would be removed to build the pool house. Mr. Watson confirmed as much, but stated that additional trees may be planted to make up for it. He stated that a berm may be installed as well, if need be.

Acting Chairperson Israel asked if the distance from the side property line would be 15 feet, as seemingly depicted. Mr. Watson stated that it would be 15.25 feet.

Mrs. Ens asked if the depicted garage door would be an additional garage for vehicles. Mr. Watson stated that it would be storage for yard tools and possibly a lawn mower.

Acting Chairperson Israel closed the public hearing at 7:57 P.M.

**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 property is over three times the minimum lot area required for the underlying zoning district.
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	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 does not have a motivation to make money out of the property through the request of this variance. It is to allow a structure to be used as a pool house.
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 generally larger than other comparable SF-1 housing sites. Comparing it to a smaller lot that might comply with the 500 square foot maximum for accessory structures, it would have a comparable impact on the maximum lot coverage as what is being requested.
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	Strict application of the provisions in this case would result in some unnecessary hardship for the owner given the size of the lot and what is being requested.
BZA	Concur.
3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.	
STAFF	No adverse effects are anticipated.
BZA	Concur.
4. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.	

STAFF	No adverse effects are anticipated.
BZA	Concur.
5. The requested variance will not be opposed to the general spirit and intent of these Zoning Regulations.	
STAFF	Because the requested variance would still allow the subject property to comply with the maximum lot coverage specified for this zoning district in the bulk regulations, it is not in opposition to the general spirit and intent of the Zoning Regulations.
BZA	Concur.

Acting Chairperson Israel asked if a condition could be attached to the approval motion to require the applicant to obtain approval of the HOA as well. Mr. Mangus stated that that would not be in the powers of the Board of Zoning Appeals, and would be between the property owner and the HOA.

*Peter Fox made a motion to authorize the chairperson to sign a resolution granting the Variance at 312 E. Cedar Ridge Ct. Motion seconded by Gary Israel. Motion carried 5/0.*

#### 5.5 **BZA-CU24-0003 – PUBLIC HEARING ON AN APPLICATION FOR A CONDITIONAL USE PERMIT TO ALLOW FOR OUTDOOR RESTAURANT SEATING, ON CERTAIN LANDS ZONED B-3 RETAIL & SERVICE BUSINESS DISTRICT AND GENERALLY LOCATED AT 418 N. ANDOVER RD., ANDOVER, KANSAS**

Acting Chairperson Israel opened the public hearing at 8:05 P.M.

Mr. Westphall stated that the subject property is a 1.1 acre lot with 2 tenants, one of which is a future bar and grill which wishes to have outdoor patio seating. He stated that the restaurant is a permitted use outright, but that the patio requires a Conditional Use permit. He stated that an additional Conditional Use would be necessary to solve parking capacity issues on the property.

Mr. Boyd reminded the committee that this Conditional Use permit was just for the outdoor seating, and that the property owner had not yet applied for a Conditional Use for parking.

*David Foley made a motion to table discussion of the case until the next meeting, as the applicant was not in attendance. Motion seconded by Peter Fox. Motion carried 4/1. Dan Colson dissenting.*

Bob Kaplan, owner of the Andover Square shopping center across the street from the subject property, wished to have his comments recorded in the meeting minutes. Mr. Kaplan stated that he had been approached by the owner of the subject property to enter into a parking agreement, but that Mr. Kaplan was not in favor of sharing or ceding any parking to the subject property. He continued that his lot is already at capacity, with frequent parking shortages. Mr. Kaplan added that he did not want to encourage jaywalking, especially by bar patrons who may have been drinking.

Richard Wheeler, at 213 E. Central Ave., stated that his property abutted the subject property, and he wished to see the privacy fence on the subject property repaired satisfactorily, as it had been in disrepair for years. Acting Chairperson Israel stated that they would have Staff dispatch a Code Enforcement officer to investigate the fence.

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

**6. MEMBER ITEMS**

Acting Chairperson Israel pointed out a string of decorative lights near City Hall that needed repair.

**7. ADJOURN**

*Clint Teinert made a motion to adjourn the meeting. Motion seconded by Peter Fox. Motion carried 5/0.*

Meeting adjourned at 8:23 P.M.