

ANDOVER CITY PLANNING COMMISSION /
BOARD OF ZONING APPEALS
March 20, 2007
Minutes

The Andover City Planning Commission met for a regular meeting on Tuesday, March 20, 2007 909 N. Andover Road in the Andover Civic Center. Chairman Quentin Coon called the meeting to order at 7:00 p.m. Commission members present were Jan Cox, Byron Stout, David Martine, Lynn Heath, and JR Jessen. Others in attendance were City Council Liaison Member Caroline Hale, Director of Public Works and Community Development Les Mangus, Administrative Secretary Deborah Carroll and Clerk/Administrator Jeff Bridges. Absent-. Jeff Syrios.

Call to order

Review the minutes of the regular February 20, 2007 Planning Commission meeting.

Review the minutes of the regular February 20, 2007 PC mtg.

Byron Stout made a motion to approve the minutes as presented. JR Jessen seconded the motion. Motion carried 5/0.

Lynn Heath arrived at the meeting at 7:02 p.m.

Communications

Communications:

Review the City Council minutes from the February 13, 2007 and February 27, 2007 meetings. The minutes were received and filed.

Review the minutes of the March 6, 2007 Site Plan Review Committee Meeting. The minutes were received and filed.

Review the minutes of the March 13, 2007 Subdivision Committee Meeting. The minutes were received and filed.

Review the Potential Residential Development Lot Report.

Chairman Quentin Coon asked the audience for a show of hands if they were attending to hear the case concerning the rezoning application for Cedar Park area. The majority of the standing room only audience raised their hand. Chairman Coon then explained the applicant has requested the postponement of this case for 1 month, so the public hearing will not be opened until the April 17, 2007 meeting. A woman from the audience asked if they could express their view on this application. Chairman

Coon said they would need to hold their comments until the applicant was present to hear them. She asked how many times the applicant would be allowed an extension. Les Mangus said he told the applicant only 1- 30 day continuance would be allowed. The same woman suggested this case be heard at a different location next time because of the number of citizens that will be attending then.

The majority of the audience left the meeting.

Z-2007-03: Public Hearing on the proposed change of zoning district classification from the R-1 Single-Family Residential District to the B-2 Neighborhood Business District on property located at: 216 and 226 S. Andover Road & 114 E. Willowbrook.

Chairman Coon asked Les Mangus for his input. Les Mangus explained: The proposed change of zoning district classification from R-1 to B-2 arises from the applicant's recent purchase of four lots with three existing single family homes in the Willowbrook Addition on the east side of Andover Rd. north of Willowbrook St. The applicant intends to convert one of the existing homes to an office for his construction business and rent the other homes until such time as development of the four lots into a commercial strip center is viable. The furthest north of the subject lots was the subject of a request for B-1 zoning in 1998. At that time the Planning Commission sent the message to the applicant, that they were aware that the area would most likely be commercial in the future, but the conversion of one lot to commercial in the middle of a block of single family homes was not acceptable. Since that time the Andover Crossing Shopping Center and the Village Crossing Professional Center have been built in the immediate area. Staff supports the application conditioned on a screening plan being approved by the Site Plan Review Committee.

Chairman Coon asked the members of anyone needed to disqualify themselves. There were none. It was noted this case was advertised in the February 22, 2007 Andover Journal Advocate. Chairman Coon asked if any members had received any ex parte communications on this item. There were none stated. The applicant was asked to step up to the podium, state his name and address, and give an explanation of his request.

Warren Cowgill said his company is Masterpiece Homes and his home address is 15569 SW Butler Road in Rose Hill. He stated

Z-2007-03:
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Willowbrook.

for the past 9 years he has been operating his business out of the basement of his home. When these houses on Andover Road came available, he thought this would be the location for his business to be more centrally located. His plan is to reface the center house (226 S. Andover Road) which will be used for his office, clean up and remodel the other 2 houses to serve as rental homes (114 E. Willowbrook has a current tenant). Mr. Cowgill does not think traffic at the office will be a problem because he only has 2 employees. He said he has no plans to remove any of the 3 homes.

Quentin Coon asked Mr. Cowgill if any future development was planned in this location. Mr. Cowgill restated he will continue to rent out 2 houses indefinitely and use 226 S. Andover Road as his office.

Chairman Coon asked if there were any further questions from the bench. Hearing none, he asked at 7:45 p.m. if there was anyone from the public that wished to speak on this application.

Susan Pung of 218 S. Westview Road asked if any building materials would be stored on the property. Mr. Cowgill stated all equipment and building materials are either stored on the job site or at his personal home in Rose Hill.

Elton Evans of 206 E. Willowbrook Street and has resided there for 50 years. He read his statement of praise for his existing neighborhood and stated he is not in favor of business zoning in this residential area for the following reasons: 1. Negative impact on the quality of life. 2. Decreased value of residential property adjacent to business property. He challenged the Planning Commission to consider the objections of the neighborhood before making a decision on this proposal. Mr. Evans lives straight east of the subject property.

Karen Tones of 200 S. Andover Road and has lived there for 52 years. She does not want to see this neighboring property zoned commercially. She asked if additional driveways or parking spaces will be added. She noted the difficulty of getting in and out of her own driveway during peak hours. Chairman Coon documented the questions of the applicants and will have Mr. Cowgill return to the podium to answer all of them.

Les Mangus stated any changes to the parking situation will be required to be heard by the Site Plan Review Committee. At this time, there is no access control to any of those lots. The Site Plan

Committee would look at them on a case by case basis.

Karen Tones also asked Mr. Cowgill what his intent is if he cannot rent the 2 houses as planned. She knows the safety issues of living on Andover Road.

Xury Hole of 318 E. Willowbrook Street read the first sentence of the B-2 Neighborhood Business District zoning: "This district is designed to provide for the retail sale of convenience goods and services in shipping districts of limited size areas next to residential neighborhoods at the intersection of two arterial streets or an arterial and a collector street". Mr. Hole said Willowbrook Street is not an existing collector street a portion of which is still gravel. He continued to state his request for denial of this rezoning because of the following comments:

1. Willowbrook Street is too narrow for business traffic.
2. Asked for limited uses if the rezoning is allowed to control: increased noise, food smells, and dumpster odor in the summertime.
3. Drainage would change as shown in a photo submitted by Mr. Hole if a parking lot was to be built on the subject property. He was concerned with the Stormwater flow concerning the natural drainage of the houses to the east of the applicant's property.
4. If the zoning change is approved, he would rather the screening be a masonry wall.

Karen Tones returned to the podium to ask about limiting the permitted uses and about the existing alley behind this property. She asked if a road would be required to be built behind the business property. Les Mangus said no, this is a utility easement, not an alley.

Nancy Brox of 130 S Westview Road asked if in the future, the applicant is permitted to change his mind and sell the property to another commercial developer, will the Planning Commission have further input. Quentin Coon explained the zoning change runs with the property irrespective of the owner changes. Zoning decisions made by the Planning Commission take into consideration the potential future uses.

Marilyn Routon of 235 S. Westview Road said she has lived in her home for 26 ½ years and does not want commercial zoning in her neighborhood. She said they also own property at 319 S. Westview Road. The summer breeze blowing from the south to the north carries the bad odors from the restaurant and dumpsters

into the area. She has spoken to the owner of the restaurant who has agreed to bundle the trash better and make an effort to close the lid to the dumpster when not in use. She said that has improved the situation to some extent. She said she is still not in favor of commercial zoning.

At 7:38, Warren Cowgill returned to answer the concerns of the public. Chairman Coon asked what his intent would be if the 2 houses become unable to be rented. Mr. Cowgill said there is continuing interest in the rental properties and he has not planned for anything other than that.

Lynn Heath asked the applicant why he chose to apply for B-2 zoning. Mr. Cowgill said he asked the least restrictive commercial zone. Lynn said the B-1 is Office Business District.

David Martine asked if he intended to made additional parking lot area. Warren Cowgill said with only 2 employees he will not need anything more than the existing circle drive. Mr. Cowgill restated his intent to remodel the 3 structures and clean up the properties.

Karen Tones asked if there is an option for the Planning Commission to zone this property B-1. Chairman Coon briefly explained the difference between permitted uses in the B-1 and B-2 zoning districts. Karen asked why this application would even be considered when the request for a dental office in 1998 was denied. Chairman Coon said it is because there is now 1 owner for 3 lots. Karen said the cases are similar because they would both be island commercial properties.

After further discussion, Les Mangus explained if this application is approved, the 2 residential properties would then be legal non-conforming uses in the zone approved. The properties would be single-family use.

At 7:45 p.m., Chairman Coon closed the public hearing.

There was general discussion about adjacent zoning to the subject property. Discussion continued with the explanation of legal non-conforming uses which is found in Chapter 8 of the Zoning Regulations.

Byron Stout asked if the B-2 application can be converted to B-1. Les stated the application can be negotiated down to make it more restrictive zone.

Jan Cox was concerned about the B-1 zone allowing a taller structure height. She suggested that item be included into the motion for Protective Overlay.

At 7:52 p.m., Chairman Coon began the review of the Rezoning Report.

ANDOVER CITY PLANNING COMMISSION

Agenda Item No. 5

REZONING REPORT *

CASE NUMBER: **Z-2007-03**

APPLICANT/AGENT: **Warren Cowgill**

REQUEST: **R-1 to B-2**

CASE HISTORY: **Existing platted Willowbrook Addition single-family lots.**

LOCATION: **East side of Andover Road, North of Willowbrook Road.**

SITE SIZE: **87,272 sq. ft. = +/- 2 acres (436' x 200')**

PROPOSED USE: **Contractors office**

ADJACENT ZONING AND EXISTING LAND USE:

North: R-1 Willowbrook Addition single-family homes

South: R-1 Willowbrook Addition single-family homes

East: R-1 Willowbrook Addition single-family homes

West: B-1 & B-2 Village Crossing PUD- office complex & vacant land.

Background Information: **Lot 8 of the request was denied B-1 zoning in 1998 (see attached minutes & checklist).**

* 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 is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition?

YES NO

STAFF:

PLANNING: Stated above.

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change?

YES NO

STAFF:

PLANNING: Stated above.

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:

PLANNING: No.

COUNCIL:

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

YES NO

STAFF:

PLANNING: No.

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: Increased traffic and nearby commercial development

PLANNING: Concur with increased development of Andover Road.

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:

PLANNING: Yes.
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:
 PLANNING: No.
COUNCIL:

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

YES NO
 STAFF:
 PLANNING: Yes.
COUNCIL:

9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?

YES NO
 STAFF: Vacant property with B-2 zoning is available across Andover Road.
 PLANNING: Concur.
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:
 PLANNING: Yes, it is an opportunity.
COUNCIL:

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

YES NO
STAFF: The property's suitability for single-family residences is effected by the traffic and business activity on Andover Rd.
PLANNING: Maybe not.
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 activity, lighting, noise, etc.
PLANNING: Concerns of the neighbors if certain business uses are implemented.
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:
 PLANNING: Yes.
COUNCIL:

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

YES NO

 STAFF:
PLANNING: There was discussion whether B-2 zoning should be allowed right next to established R-2.
COUNCIL:

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

YES NO

STAFF: Adequate screening of residences to the east is requested.
PLANNING: There were several citizens present tonight all in opposition of this application.
COUNCIL:

16. Is there any information or are there recommendations on this request available from knowledgeable persons which would be helpful in its evaluation?

YES NO

STAFF: Approval contingent on a screening plan approved by the Site Plan Review Committee.
PLANNING: Les said the applicant made it known tonight the uses he intends could fit within the B-1 District.
COUNCIL:

17. If the request was not approved, would this result in a relative gain to the public health, safety and general welfare which would outweigh the loss in property value to or the hardship experienced by, the applicant?

YES NO

STAFF:
PLANNING: There was concern about the number of families with children that would choose to live on Andover Road.

COUNCIL:

There was general discussion about B-1 and B-2 permitted uses. David Martine was concerned about the screening plan for the commercial property and whether that would include all 3 lots if the zoning is changed. Les pointed out the requirement for screening would be triggered by the use of the property, not the zoning if the use stayed residential. Changes would need to be made to the structures/properties to make them compatible to business use and part of that would require site plan review of screening, lighting, trash facilities, and parking. If the application is approved to change the zoning to business, the owner will be required to convert the structure to comply with city codes which include parking, changes to the exterior of the structure, all of which must be approved by the Site Plan Review Committee. Discussion continued.

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-2007-03 be modified & approved to change the zoning district classification from the R-2 Single-Family Residential District to the B-1 Office Business District based on the findings 5, 10, 13, and 14 of the Planning Commission as recorded in the summary of this hearing and that the following conditions be attached to this recommendation:

1. *Restrict the maximum structure height to 35 feet by Protective Overlay.*

Motion died for the lack of a second.

There was general discussion about screening on 3 sides of the commercial property from all adjacent residences and how that would change the look of the neighborhood. Les stated screening is required but screening can be fences, walls or vegetation.

David Martine made a motion to approve the change of zoning from R-2 to B-2 Neighborhood Business District based on the findings 5, 10, 13, and 14 with the following conditions:

1. *Restrict the maximum structure height to 35 feet by Protective Overlay.*
2. *Will not allow service stations.*

Discussion was had whether restaurants and food stores should be prohibited as well due to citizen concern.

David Martine amended his original motion to include:

3. *Will not allow restaurants.*

Discussion continued about B-2 permitted uses. Caroline Hale

said that most residential property owners along Andover Road realize that commercial zoning is inevitable in the future. She asked if the applicant is approved for B-1 zoning tonight, can he apply at a later date for B-2 if his needs change. Lynn Heath said they could apply for a conditional or special use.

Chairman Coon restated David Martine's original motion and asked if there is a second. Caroline Hale asked Quentin to read all the permitted uses for the B-2 zone for the audience. There was discussion about possible screening style direction for the Site Plan Review Committee.

Motion died for the lack of a second.

Discussion continued about screening of the commercial lot. Les said the western edge of the wall would have to be built to the building setback line.

Lynn Heath made a motion to change the zoning for the subject property from R-2 to B-1 based on the findings 5, 10, 13, and 14 with the following conditions:

1. *Maximum structure height limitation of 35 feet by Protective Overlay.*

Motion seconded by Byron Stout. Motion at 8:19 p.m. carried 6/0.

Jeff Bridges stated this recommendation for zoning change will be heard by the City Council on April 10, 2007.

David Martine made a motion to recess the Planning Commission and to convene the Board of Zoning Appeals at 8:20 p.m. Byron Stout seconded the motion. Motion carried 6/0.

Chairman Coon called for a 2 minute break.

BZA-V-2007-01: Public Hearing on an application by Thomas Mack of Montana Land Development, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 3 feet in height from the required 10 foot maximum sign height limitation for the purpose of constructing a 13 foot residential entrance monument sign on property zoned as the R-2 Single-Family Residential District. (Property located on the Southeast corner of Harry Street and South Logan Pass.)

Chairman Coon asked the Commissioners if they had received

BZA-V-2007-01: Public Hearing on an application by Thomas Mack of Montana Land Development - Property located on the Southeast corner of Harry

any Ex-parte communications. Hearing none he stated this case was published in the Andover Journal-Advocate on February 22, 2007. Street and South Logan Pass

Les Mangus explained that this application arises from the applicant's desire to construct the entry monument to the second phase of the Montana Hills Addition to match the first phase monument, which required a variance of the 10 ft. maximum height limitation. Staff supports the application as presented. This sign will be built 100 yards east of the existing street.

Quentin Coon asked the applicant to approach the podium and explain his request.

Tom Mack from 4104 Plumtree in Wichita represented Montana Land Development in this situation. He said they are trying to match the existing signage from Phase 1 of Montana Hills. He believes this sign appropriately fits the development and is very attractive.

Quentin Coon asked if there will be any more entrances built into Montana Hills. Mr. Mack said there will only be these 2, no more.

David Martine stated the Site Plan Review Committee has already approved this sign contingent upon the approval of the variance application.

F.	The Board shall not grant a variance unless it shall, in each case, make specific written findings of fact directly based upon the particular evidence presented to it which support all the conclusions as required by K.S.A. 12-715 as listed below:	True/ Yes	False/ No
1.	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 owners or the applicant;	X	
	Lynn Heath stated this is a unique situation due to the restrictions created to control excessive signage along Andover Road.		
2.	The granting of the variance will not adversely affect the rights of adjacent property owners or residents;	X	
3.	The strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property	X	

owner represented in the application.

4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and X

5. Granting the variance desired will not be opposed to the general spirit and intent of these regulations. X

G. In determining whether the evidence supports the conclusions required by Section 1-107(D)(1), the Board shall consider the extent to which the evidence demonstrates 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. X

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. X

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, and X

4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood. X

Having considered the evidence at the hearing and determined the findings of facts have been found to exist that support the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the state statutes which are necessary for granting of a variance, I David Martine move that the Chairperson be authorized to sign a resolution granting the variance for Case No. BZA-V-2007-01 as requested. JR Jessen seconded the motion. Motion carried 6/0.

David Martine made a motion at 8:30 p.m. to adjourn the Board of Zoning Appeals and to reconvene the Planning Commission. Byron Stout seconded the motion. Motion carried 6/0.

Review the Sketch Plat for the Marketplace East Multiple Family Residential Development.

From Les Mangus memo: The proposed addition is located south of the new YMCA site and #3 Elementary School on Yorktown Rd. south of US-54. The developer intends to apply for a planned unit development in order to build four-plex buildings with individual ownership. The concept plan faces the garages of 4 units onto a common driveway to avoid the continuous string of driveways that would be required to meet the direct access to a public street required by the Subdivision Regulations. Staff and the Subdivision Committee support the concept with the details of ownership and maintenance of the common driveways to be worked out with access easements and restrictive covenants, and the addition of sidewalks and recreation amenities.

Review the Sketch Plat for the Marketplace East Multiple Family Residential Development.

Jason Gish of MKEC Engineering represented Jeff Bennett the developer and presented the sketch plan which included comments from the Subdivision Committee meeting. Jeff Bennett may return to the meeting from a prior commitment. Jason said this site was zone R-3 Multiple-Family Residential district about 6 months ago. He said the developer would like to apply for a PUD for quad units that will be sold separately following individual lot split approvals. Jason explained the floor plans and property lines.

Les Mangus asked Jason to explain the common maintenance that will be provided with each of these dwelling units. Jason said there will be a Home Owners Association funded by dues to pay for upkeep of the grounds and driveways.

There was general discussion about the sidewalk, increased pond area, public park, "walkability" of the site, and future entrances onto Yorktown. Jason said he will speak with the Fire Chief about the street width and emergency access to all the units.

Discussion continued about the limited amount of overflow parking. JR Jessen asked if the road around the Village Green should be one-way traffic. Jason said no, it will handle 2-way traffic.

Developer Jeff Bennett arrived at the meeting to explain the restrictive covenant detail. He also explained his plan for wrought iron fencing and that he will talk with the school district to build compatible fencing between the units and the school.

Jason Gish showed an elevation drawing of one unit and consensus of the board was that the exterior finished should be different. Quentin Coon recommended adding some porches.

No formal action was taken on this sketch plan.

Member items.

David Martine said he asked Les to include a map of available multi-family property in Andover. Les said there is a total of 44 acres and that he will ask Rick to revise the information about the properties.

Member items.

Byron Stout made a motion to adjourn the meeting at 9:15 p.m. Adjourn JR Jessen seconded the motion. Motion carried 6/0.

Respectfully Submitted by

Deborah Carroll
Administrative Secretary

Approved this 17th day of April 2007 by the Andover City Planning Commission/ Board of Zoning Appeals, City of Andover.