

**ANDOVER CITY PLANNING COMMISSION /**  
**BOARD OF ZONING APPEALS**  
**October 21, 2008**  
**Minutes**

The Andover City Planning Commission met for a regular meeting on Tuesday, October 21, 2008 at 909 N. Andover Road in the Andover Civic Center. Vice Chairman Heath called the meeting to order at 7:01 p.m. Commission members present were Jan Cox, John Cromwell, Byron Stout, Dan Beck and Jeff Syrios. Others in attendance were City Administrator Sasha Stiles, Director of Public Works and Community Development Les Mangus, and Administrative Secretary Kandace Hunt. Chairman Coon arrived at 7:25 p.m. City Council Liaison JR. Jessen was absent.

Call to order

**Review the minutes of the September 16, 2008 Planning Commission meeting.**

Review the minutes of the September 16, 2008 Planning Commission meeting.

*Jan Cox made a motion to approve the minutes as presented. Byron Stout seconded the motion. Motion carried 6/0.*

Communications

**Communications:**

**Review the minutes of the September 9, 2008 and September 30, 2008 City Council meetings.** The minutes were received and filed.

**Review the minutes of the September 2, 2008 Site Plan Review Committee Meeting.** The minutes were received and filed.

**Review the Potential Residential Development Lot Report.**

Z-2008-04/SU-2008-02

**Z-2008-04/SU-2008-02-** Continuance of the Public Hearing on a proposed change of zoning classification from the Butler County AG-40 District to the R-4 Multiple Family Residential District with a Special Use request to establish multiple dwelling units for the elderly and handicapped including assisted living and nursing home facilities located at the southwest corner of Allen Street and west Bales Street.

**From Les Mangus' Memo:** This application for change of zoning district classification and special use has been continued from the August meeting in order to allow the applicant to gather more information regarding the traffic generated by the proposed development, and that traffic impact on the surrounding road system. I have met with the applicant, but no new information has been provided at this time. The applicant has once again requested a continuance to allow more time for the preparation of a traffic report.

*Jan Cox made a motion to continue case Z-2008-04/SU-2008-02 to the November 18, 2008 Planning Commission meeting. Byron Stout seconded the motion. Motion carried 6/0.*

VA-2008-03

**VA-2008-03-** Continuance of the Public Hearing on a petition for a vacation of the south 10 feet of the 25 foot front yard setback and utility easement of Lot 11, Block 2, Crescent Lakes Fourth.

**From Les Mangus' Memo:** This petition for vacation of the south 10 feet of the 25 foot front yard utility easement is the result of the owner's desire to place a private water well in the front of the house. The subject property is somewhat of a corner lot, being on the corner of an eyebrow cul-de-sac. AT&T and Westar have responded that they believe they may have facilities in the ground in conflict with the request. The public hearing has been continued from the August meeting in order to allow the petitioner time to provide clarification of the location of the utility easement boundaries and the existing utility facilities.

Les Mangus informed the Commission a survey was received from the applicant and there appears to be no conflict between the well and utility lines, however the final word will need to come from the utility companies. He explained the Commission could recommend approval of the vacation contingent on satisfactory reports from the utility companies or it could be continued until the November meeting.

*Jan Cox made a motion to continue case VA-2008-03 to the November 18, 2008 Planning Commission meeting. John Cromwell seconded the motion. Motion carried 6/0.*

**Z-2008-06-** A Public Hearing on a proposed change of zoning classification from the R-1 Single-Family District to the B-3 Central Shopping District located at 1846 N. Andover Road.

Z-2008-06

**From Les Mangus' Memo:** This application arises from the new owner of the former church site at 1846 N. Andover Road desire to change zoning district classification from the R-1 Single-Family Residential District to the B-3 Central Shopping District. The subject property is now surrounded by more intense land uses and Andover Road. Staff supports the change as applied for subject to platting.

Vice Chairman Heath asked for staff comments.

Les Mangus explained an A frame church once stood on this lot, but was demolished a few months ago. The new owners wish to change the property to a business zoning district to allow them to market the property. The lot is vacant at this time

Vice Chairman Heath asked if an applicant was present. Carl Hebert, property manager for Devlin Enterprises was present to represent the application.

Mr. Hebert explained the site is approximately four acres, but much of it sits in a floodplain. The developers are aware schools are near by and understand the permitted uses may have to be limited. Mr. Hebert explained the developers hope to build to suit options and/or sell the site. There has been interest for possible users who would meet the B-3 regulations.

Vice Chairman Heath opened the public hearing at 7:07 p.m. With no public comment, Vice Chairman Heath closed the public hearing at 7:07 p.m.

Vice Chairman Heath asked if restrictions need to be placed on certain permitted uses due to the proximity of the schools. Les Mangus said the City has ordinances establishing such restrictions.

Chapter 3, Article 1, of the Code of the City of Andover states "It shall be

unlawful to sell or dispense at retail any cereal malt beverage at any place within the city limits that is within 200 foot radius of any church, school or library.”

Chapter 3, Article2 of the Code of the City of Andover states “ No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within two hundred (200) feet of any church or school, said distance to be measured from the nearest property line of such church or school to the nearest portion of the building occupied by the premises”

Vice Chairman Heath noted the lot has a front of 347 feet. Byron Stout said he would prefer to place restrictions by Protective Overlay on the property along with the City’s ordinances.

Jeff Syrios asked Les Mangus the difference between the B-2 and B-3 zoning district. Les Mangus explained the B-2 zone is more neighborhood oriented retail and service businesses, it also limits the square footage of each individual user to 5,000 square feet as well as hours of operation. Les Mangus reminded Commission members the B-3 district accumulates all the permitted uses from the B-2 district.

Jeff Syrios asked what effect the drainage ditch would have on the property line. Les Mangus said the subject property is 347 feet wide and the separation is 200 feet, so in the north 147 feet retail and cereal malt beverage vendors would be allowed.

Commission members discussed the exclusion by Protective Overlay of permitted use number 13, Package liquor stores from the B-2 Neighborhood Business District and number 28, Private clubs and taverns from the B-3 Central Shopping District.

**ANDOVER CITY PLANNING COMMISSION**

Agenda Item No. 7

**REZONING REPORT \***

CASE NUMBER: Z-2008-06

APPLICANT/AGENT: DLD Development Co., LLC/Tom Mack

REQUEST: Proposed change of zoning district classification from the R-1 Single Family Residential District to the B-3 Central Shopping District.

CASE HISTORY: Former church site.

LOCATION: 1846 N. Andover Rd.

SITE SIZE: 347' X 417' = +/- 145,005 s.f.

PROPOSED USE: Speculative business development

**ADJACENT ZONING AND EXISTING LAND USE:**

North: Undeveloped R-4 Multi-family site & B-1 office businesses

South: R-1 Single Family Residential – Andover High School

East: R-1 Single Family Residential – Andover High School & Undeveloped R-4 Multi-family site  
 West: R-2 single family residences & R-3 multi-family residences

**Background Information:** The property is adjacent to a major drainage way and encroaches into the mapped floodplain & floodway

\* 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: Subject Property: R-1 Single-Family Residential; North: Undeveloped R-4 Multi-Family site and B-1 Office Businesses; South: R-1 Single-Family Residential – Andover High School; East: R-1 Single-Family Residential – Andover High School and undeveloped R-4 Multi-Family site; West: R-2 Single Family residences and R-3 Multi-Family residences.

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: Current Zoning: R-1 Single-Family Residential; North: Undeveloped R-4 Multi-Family site and B-1 Office Businesses; South: R-1 Single-Family Residential – Andover High School; East: R-1 Single-Family Residential – Andover High School and undeveloped R-4 Multi-Family site; West: R-2 Single Family residences and R-3 Multi-Family residences.

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: The lot has been vacant for length of time.

## COUNCIL:

YES    NO    4. Would the request correct an error in the application of these regulations?

STAFF:  
 PLANNING:  
 COUNCIL:

YES    NO    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?

STAFF:    The commercial area and the school campus have grown at this location to change the residential character.  
 PLANNING:    Andover Road is becoming more of a commercial area.  
 COUNCIL:

YES    NO    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?

STAFF:    All are available.  
 PLANNING:    All are available.  
 COUNCIL:

YES    NO    7. Would the subject property need to be platted or re-platted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

STAFF:  
 PLANNING:  
 COUNCIL:

YES    NO    8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

STAFF:  
 PLANNING:    Needed due to the R-4 Multi-Family Districts.  
 COUNCIL:

YES    NO    9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?

STAFF:    Vacant land is available in the area.  
 PLANNING:  
 COUNCIL:

YES    NO    10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

STAFF:  
 PLANNING:  
 COUNCIL:

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

YES    NO  
 STAFF:    Not suitable for residences to be adjacent to Andover Road with 15,000 cars a day across the frontage.  
 PLANNING:    Andover Road is more suitable for commercial uses.  
COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES    NO  
STAFF:    Increased traffic, lighting, noise, etc.  
PLANNING:    Slightly increased traffic.  
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:  
COUNCIL:

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

YES    NO  
 STAFF:    Case by case review.  
 PLANNING:  
COUNCIL:

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

YES    NO  
STAFF:    None at this time  
PLANNING:    None presented during the Public Hearing.  
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 as applied for.  
 PLANNING:    Staff suggests approval as applied for.  
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:  
COUNCIL:

**CONDITIONS:**

**Platting:** That all of such property be platted and recorded within one year from the date of Governing Body approval or the case be considered disapproved and closed, and that the Ordinance effectuating the zone change not be published by the City Clerk until the final plat has been recorded with the Register of Deeds during the period stated above.

Chairman Coon arrived at 7:25 p.m.

Jan Cox asked if the hours of operation for the area should be restricted. The Commission chose to not restrict the hours.

*Jeff Syrios made a motion to recommend to the City Council the proposed change of zoning district classification from the R-1 Single-Family Residential District to the B-3 Central Shopping District be approved with the exclusion by Protective Overlay of permitted uses number 13, Package liquor stores from the B-2 Neighborhood Business District and number 28, Private clubs and taverns from the B-3 Central Shopping District based on findings 5, 10, 11, 13 and 14. Byron Stout seconded the motion. Vice Chairman Heath asked if there was any further discussion. There was none. Motion carried 7/0.*

**Z-2008-07-** A Public Hearing on a proposed change of zoning classification from the R-2 Single-Family District to the B-2 Neighborhood Business District located at 1509 and 1513 N. Andover Road.

Z-2008-07

**From Les Mangus' Memo:** This application arises from the new owner of the two-family dwelling at 1509/1513 desire to change zoning district classification from legal nonconforming R-2 Single-Family Residential District to B-2 Neighborhood Business District in order to convert the existing duplex to business uses. Staff supports the application with the restriction of some of the permitted uses by Protective Overlay. Uses proposed to be eliminated: Package Liquor Stores, Restaurants and Service Stations.

Vice Chairman Heath turned the meeting over to Chairman Coon.

Chairman Coon asked if an applicant was present. BJ Sheu owner of the property was present to represent the application.

Ms. Sheu said due to the rapid growth of Andover and the demand for more commercial uses she would like to change the zoning of the duplexes to B-2 Neighborhood Business. She informed the Commission she had executed a purchase contract for the adjacent property to the north which would be used for parking after a zoning change.

Byron Stout asked if the property to the south was still residential. Les Mangus said yes, it is a duplex and is zoned R-3 multi-family.

Les Mangus explained over the years there have been several discussions about what needs to happen with Andover Road in old Andover. At one time it was agreed the traffic was such that single-family residences adjacent to Andover Road were not the right thing, but it was also agreed that the residences behind those lots would probably never change. Through the discussion the idea of a Protective Overlay District was developed.

Chairman Coon opened the public hearing at 7:40 p.m.

Bill Duggan of 1513 N. Main stated he was in opposition to the zoning change based on the existing availability of this type of zoning in Andover and the fact that this property is surrounded entirely by residences. Mr. Duggan noted the Zoning Regulations call for the B-2 district to be located at the intersection of two arterial streets or an arterial and a collector street.

These lots are located in the middle of a block. Mr. Duggan stated he also has concerns with the parking and would be in opposition of changing the zoning of the property to the north for it. He stated any type of access off of Lafayette would be an issue as it is in disrepair and additional traffic would only make the problem worse. Jeff Syrios asked Mr. Duggan where he lived in relation to the subject property. Mr. Duggan said he lives at the southwest corner of Main and Lafayette.

Wayne Duggan of 117 W. Lafayette informed the Commission he owned all of the property adjacent to this area on the west. In the last year and a half he has spent \$80,000 on improvements to his properties and did not do so for commercial businesses to go in next door. Mr. Duggan stated he felt his investment in his property represented a large part for Andover to increase the property value in the area. He noted between 21<sup>st</sup> Street and Central there are 12 empty properties zoned B-2. Mr. Duggan said he is very opposed to the change of zoning in a residential area.

Ms. Sheu said she understands the concerns of the residents. She explained the property to the north has an existing driveway which will lead to the contained parking lot and should not disturb residents. There are currently trees around the driveway and Ms. Sheu intends to keep as many as possible as well as putting in additional landscaping. Ms. Sheu pointed out many new businesses coming into Andover look very modern; she would like to preserve the character of the subject property to make a connection with the past. Ms. Sheu said she thinks the duplex would serve well as office space for insurance agents, lawyers or realtors, which would not generate a lot of traffic. Another concept is a small coffee shop or bakery.

Kari Graham of 12580 SW Wagon Wheel Road informed the Commission she is the owner of the property to the north of the subject property. After speaking with Ms. Sheu and learning her intentions, she feels the concept of revamping this part of Andover Road would be in good taste. Ms. Graham stated she felt this would be a good concept for the residents of the area as well as the citizens of Andover.

Chairman Coon closed the Public Hearing at 7:49 p.m.

**ANDOVER CITY PLANNING COMMISSION**

Agenda Item No. 8

**REZONING REPORT \***

CASE NUMBER: Z-2008-07

APPLICANT/AGENT: Bih Jau Sheu

REQUEST: Proposed change of zoning district classification from the R-2 Single Family Residential District to the B-2 Neighborhood Business District.

CASE HISTORY: Legal nonconforming two family dwelling

LOCATION: 1509/1513 N. Andover Rd.

SITE SIZE: 158' X 100' = +/- 15,800 s.f.

PROPOSED USE: Re-development of existing two-family dwelling to business uses

**ADJACENT ZONING AND EXISTING LAND USE:**

North: R-2 single family residence  
 South: R-3 multi-family residence  
 East: R-2 single family residences  
 West: R-2 single family residence

**Background Information:** The two-family dwelling on the property existed before zoning was adopted

\* 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: Subject Property: R-2 Single-Family Residential District; North: R-2 Single-Family Residential District; South: R-3 Multiple-Family Residential District; East: R-2 Single-Family Residential District; West: R-2 Single-Family Residential District.

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: Current Zoning: R-2 Single-Family Residential District; North: R-2 Single-Family Residential District; South: R-3 Multiple-Family Residential District; East: R-2 Single-Family Residential District; West: R-2 Single-Family Residential District.

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:  
COUNCIL:

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

YES    NO

STAFF:  
 PLANNING:  
COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES    NO

STAFF:       The school campuses, district office, large church, and heavy traffic on Andover Rd. in the area have changed the residential character.

PLANNING:    The school campus, district office, large church and heavy traffic on Andover Road, in the area have changed the residential character.

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:       All are available.

PLANNING:  
COUNCIL:

7. Would the subject property need to be platted or re-platted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

YES    NO

STAFF:       Dedications could be made in lieu of re-platting.

PLANNING:    Dedications could be made in lieu of re-platting.

COUNCIL:

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

YES    NO

STAFF:  
 PLANNING:  
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 land is available in the area.

PLANNING:  
COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES    NO

STAFF:  
 PLANNING:  
COUNCIL:

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

YES    NO

STAFF:    Not suitable for residences to be adjacent to, and face Andover Road with 15,000 cars a day across the frontage.

PLANNING:    No longer suitable for residences to be adjacent to and face Andover Road.

COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES    NO

STAFF:    Increased traffic, lighting, noise, etc.

PLANNING:    Increased traffic, lighting, noise, etc.

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:

COUNCIL:

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

YES    NO

STAFF:    Case by case review.

PLANNING:

COUNCIL:

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

YES    NO

STAFF:    None at this time

PLANNING:    During the Public Hearing two citizens spoke in opposition of the request and one spoke in support.

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 with a Protective Overlay to restrict some of the permitted uses.

PLANNING:    Restriction by Protective Overlay to permitted uses number 13, 14, 15, 16, 19 and 22.

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 no conclusion by the Planning Commission on this question.

COUNCIL:

Jeff Syrios asked if standard overlays were developed for the area when the Protective Overlay District was established. Les Mangus said there was never a standard set of exceptions. It was decided not all permitted uses from the B-2 and B-3 districts would fit in a neighborhood. He noted there was talk of establishing an old town business district but they opted to establish Protective Overlays for case by case review.

Jeff Syrios asked if there were lighting restrictions with the B-2 district. Les Mangus explained all of the business zones are required to screen and have lighting which can not cast onto the adjacent residential properties.

Chairman Coon asked if the Commission wanted to have a general concept to preserve old town. Jan Cox noted the applicant had mentioned she would like to preserve the character of the building and she would like something in the motion to that effect. Lynn Heath stated old town is being rebuilt lot by lot and unless something is done to preserve it old Andover will be gone. Byron Stout said Ms. Sheu has come to the table with a relatively good balance of development and preservation, placing such a restriction on the property could make it difficult for the applicant to keep her intent if the structure was in disrepair.

Dan Beck asked if the Protective Overlay District could be used for historical preservation. Les Mangus said the Protective Overlay District can be used for whatever conditions the Commission deems necessary as long as it is more restrictive than what was applied for and advertised. John Cromwell asked how old the structure is. The duplex was built in 1945. Jeff Syrios asked if a building had ever been preserved by Protective Overlay. Les Mangus said he was sure it had been done before. In many cases a city with a historical district would have a zoning district that protects structures. Jeff Syrios stated he felt it was a good idea to preserve the character, but was not sure Protective Overlays were the way to get it done. Lynn Heath said his concern was unless the City put restrictions on the entire neighborhood the character could change at anytime.

Les Mangus noted this particular structure is not completely period correct unlike the structure on the adjacent lot to the north, it shows that it is a 40's house.

Dan Beck said although the applicant expressed interest in preserving the structure it should not be mandated.

Jeff Syrios noted there are residential lots all along the backside of Andover Road and screening is always going to be critical, but Andover Road is going to be more difficult to restrict as it continues to grow.

The Commission decided to exclude by Protective Overlay the following permitted uses from the B-2 Neighborhood Business District number 13, Package liquor stores; number 15 Self-service laundries and dry cleaning stores; number 16, Service stations; number 19, Automobile parts stores; number 22, Child care centers and preschools. Restaurants will be allowed except for drive-thru style restaurants.

Jan Cox asked for Commission member's opinion on preserving the character of the property. The Commission decided to not include the condition of preserving the character of the property in its recommendation

based on the understanding that if the character of the area changes, the character of the subject property may need to change as well.

*Jeff Syrios made a motion to recommend to the City Council the proposed change of zoning classification from the R-2 Single-Family District to the B-2 Neighborhood Business District be approved with restriction by Protective Overlay to exclude the following permitted uses: number 13, Package liquor stores; number 14, Restaurants, will be allowed with the exclusion of drive-thru style restaurants; number 15, Self-service laundries and dry cleaning stores; number 16, Service stations; number 19, Automobile parts stores; and number 22, Child care centers and preschools based on finding 5, 10, 11, 13 and 14. Lynn Heath seconded the motion. Chairman Coon asked if there was any further discussion. There was none. Motion carried 7/0.*

**VA-2008-06-** A Public Hearing on a petition for a vacation of the westerly 10 feet of the rear yard utility easement of Lot 5, Block 4, Final Planned Unit Development Plan, Phase 4, Flint Hill National Addition, EXCEPT the north 92.27 feet thereof.

VA-2008-06

**From Les Mangus' Memo:** This petition for vacation of a portion of the rear yard utility easement is in order to construct a swimming pool and related accessories. The utilities in the easement have already been relocated to a new easement granted by a separate document, and the pool structure is under construction. The utility providers have been notified and no conflicts have been identified that haven't already been dealt with.

Chairman Coon asked Les Mangus for staff comments.

Les Mangus explained the owner of the lot acquired the subject sliver of land from the Flint Hills National Addition in order to have a larger back yard. By doing so the utility easement bisected the new piece of property from the remainder of the lot. Butler Rural Electric Company had an electric line in the existing easement which has been relocated and a separate dedication easement was filed to cover it. The applicant is asking to vacate the utility easement from the southeast corner of the lot around the circle to where the new easement ties in, 92 feet short of the northwest corner of the lot.

Chairman Coon opened the Public Hearing at 8:23 p.m.

Applicant Robert Stangl stated a pool is being put in on the property, but falls within the existing easement. There is a grassland reserve area behind the property so they are not butting up to other homes.

Chairman Coon closed the Public Hearing at 8:25 p.m.

*Byron Stout made a motion to recommend to the City Council that case VA-2008-06 be approved as presented. Jan Cox seconded the motion. Motion carried 7/0.*

*Jan Cox made a motion at 8:26 pm to recess the Planning Commission and convene the Board of Zoning Appeals. Lynn Heath seconded the motion. Motion carried 7/0.*

Recess the  
Planning  
Commission and  
convene the Board  
of Zoning Appeals

**BZA-V-2008-05-** A Public Hearing on a request of a variance of the required 10,000 square foot minimum lot area limitations for the purpose of allowing a lot to be reduced to 7,500 square feet on property zoned as the R-3 Multiple-Family Residential District located at 1146 N. Main Street.

BZA-V-2008-05

**From Les Mangus' Memo:** This application for a variance arises from the owner of the subject property and the adjacent B-2 Neighborhood Business District strip business centers desire to deed a portion of the residential lot to the business lot in order to provide for more parking. This situation is peculiar because the two lots are owned by the same person, and the residential lots in the area vary from 5,500 to 20,000 square feet. The situation is further compounded by the ambiguous wording of the Zoning Regulations regarding the granting of variances. Article 10, section 107 C provides specific instances where variances may be granted, but paragraph one gets convoluted in that the subject property could receive a 25 percent reduction in width or depth, but just 20 percent of the minimum lot area. Staff opinion is that the variance is justified because it would not be out of scale with the wide variety of lot sizes in the area, but if the words in the regulations are read literally, only a 20 percent reduction would be allowed. Bickley Foster has suggested that if the BZA is not comfortable granting the variance as applied for, then an amendment to the Zoning Regulations could be called for in a public hearing.

Chairman Coon asked Les Mangus for staff comments. Les Mangus explained the retail office building was built with the minimum parking requirement and the applicant is finding he does not have enough parking for his tenants, so he is asking to take portion of his residential property and devote it to parking for the commercial property. Both lots are owned by the applicant and he would like to reduce the residential lot from 10,000 to 7,500 square feet. Les Mangus explained he feels the Zoning Regulations are a little ambiguous in saying the minimum lot depth and width can be reduced by 25 percent but you can only reduce the lot area by 20 percent. In this case if the applicant dedicated 25 feet of the residential property that would be a 25 foot reeducation in the lot area. Les Mangus said he spoke with City Planning Consultant Bickley Foster and he agreed it could be construed to be a gray area. Mr. Foster suggested it could be approved by requiring an amendment to the regulations that would require a 25 percent reduction in the area or to in this case, reduce the minimum depth by 25 percent.

Jeff Syrios asked what the process would be for making an amendment to the Zoning Regulations. Les Mangus said Public Hearings would have to be held to change the Zoning Regulations which would be a 90 or more day process.

Lynn Heath stated he felt this request would interrupt the character of the area as, more than likely, main street will stay residential and Andover Road commercial. Taking the 25 by 100 feet would infringe on the residential area along Main Street. Les Mangus explained this neighborhood is extremely cut up, with lots in the area ranging from 5,500 to 20,000 square feet. None of the property lines between the Andover Road frontage and the Main Street frontage line up. Some properties are 60 feet deep on the Main Street side and 200 plus on the Andover Road side. The lots were platted by survey as long narrow lots between Andover Road and Main Street and then subdivided to fit whatever structure was put in at that time. Jan Cox said she felt by making the lot on Main Street narrow the Board is contributing to the issue. Les Mangus said he did not feel it was a problem; it is the character of the neighborhood.

Chairman Coon opened the Public Hearing at 8:33 p.m.

Jake Newman of Newman Investments, LLC. was present to represent the application.

Mr. Newman stated he and a partner had built the commercial property a year and a half ago. Since that time he has bought out his partner. The property was built with the minimum parking requirement and has lost several tenants because of the need for more parking. The building houses a busy medical weight loss company which will be taking more space in the building and need additional parking. Mr. Newman would like the new parking area to be used for employees with 10 stalls. Mr. Newman said he plans to keep the fence on the perimeter by moving to the west, abutting the residence. He explained the residence was moved from the lot the business was built on and is in need of repair. If it is not rezoned, the building will probably have to be torn down. Mr. Newman said the only reason he has attempted the request for a variance is because several lots in the area are smaller than the reduction he is requesting.

Byron Stout asked if the new parking lot would be accessed from Andover Road. Les Mangus said yes, there is enough room in between the applicant's north property line and the retail office building for perpendicular parking through an access aisle.

Lynn Heath asked if the full 25 feet was needed. Les Mangus said yes. The existing building is built at the minimum rear yard, which is 20 feet, and there is a five foot sidewalk along the back of the building, this only allows for 40 feet for parking. Lynn Heath asked if parking would face both east and west. Les Mangus said parking would face west only. Jan Cox asked if the situation allowed for a side yard setback. Les Mangus explained the house is set back 25 feet from the front property line and the house is about 25 feet wide. This leaves a 25 foot rear yard, which is the minimum for the district. Jan Cox asked if the parking would be right up against the fence. Mr. Newman said yes.

Gary Evans of 14788 SW Cowslip Court, Rose Hill informed the Board he owns the properties at 1149, 1205 and 1110 N. Main in Andover. Mr. Evans stated he felt if the applicant had met the parking requirements for the district and was already having parking issues, maybe the City needs to revisit the parking regulations for this type of zoning district. He also stated his concern that this would set a precedent for other business developing along Andover Road in the future. Mr. Evans asked if the R-3 zoning classification would remain on the residential lot. Chairman Coon said yes.

Chairman Coon closed the Public Hearing at 8:44 p.m.

**BOARD OF ZONING APPEALS ACTION**

Hearing Date: October 21, 2008  
Publication Date: September 25, 2008

**VARIANCE**

R-3 Multiple-Family Residential Zoning District

**Case No. BZA-V-2008-05**

**A. Variances from the provisions of the zoning regulations shall be granted by**

the Board only in accordance with the standards in Section 10-1077(d), and only in the following and NO others: (A through G)

1. To vary the applicable lot area, lot width, and lot depth requirements, subject to the following limitations
  - a. The minimum lot width and lot depth requirements shall not be reduced more than 25%.
  - b. The minimum lot area for a single or two-family dwelling shall not be reduced more than 20%.
  - c. The minimum lot area per dwelling unit requirements for multiple-family dwellings shall not be reduced more than 10%.

Dimensions of lot - 100' X 100' = 10,000 Sq. Ft.

Variance requested – Reduction of the minimum lot area to 7,500 sq. ft.

- B. To vary the applicable bulk regulations, including maximum height, lot coverage and minimum yard requirements:
  1. The bulk regulations for this district are:
  2. Variance would change bulk regulations as follows:
- C. To vary the applicable off-street parking and off-street loading requirements. (Must establish time schedule for compliance) N.A.
- D. To vary the sign provisions of Section 7-102 regarding general standards and Section 7-104 regarding nonresidential district regulations:
- E. To vary certain provisions of the FP Flood Plain District as provided for in Section 4-114(L): N.A.
- 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; | _____     | _____     |

Lynn Heath asked what the parking requirements were for the B-2 district. Les Mangus explained retail and financial business require one space per 250 square feet and one space per 300 square feet for office space. When applicants submit their Site Plan applications they are informed the parking requirements are the minimum and should consider what type of tenants they will have and the amount of traffic they will generate.

Lynn Heath stated he did not know if poor planning on the applicant's part created a problem on the Boards part. The building was built to the maximum allowed with minimum parking by choice of the applicant. Mr. Newman stated he agreed with Mr. Heath but wanted the Board to know he had been a silent partner throughout the project. He understands this was poor planning on his part, but all he can do at this point is try to address the problem.

Byron Stout said he feels the request is reasonable because the applicant met City requirements.

John Cromwell asked Les Mangus how the Board could justify answering yes to all three parts of questions one. Les Mangus said the request is unique in that the applicant has several tenants who are at the higher end of the parking requirements versus a more generic mix that would fit better. The issue was not created 100 percent by the applicant; it is created more by the market. He has a permitted user and an unusually high demand for parking that was not there when the building was designed.

Lynn Heath asked if the variance was not an option, what the applicant would do. Les Mangus said the several thousand dollar building could fail because the applicant can not keep it occupied or if the following conditional use case to allow the parking is granted and the variance is not, the two properties would have to remain married in that the conditional use would either be a covenant or a lease on the residential property that would have to run with its sale.

By a vote of 5/2 the Board found question one to be true based on the belief the condition was created by a change in the market and unique because of the tenants and character of neighborhood.

|    |   |      |
|----|---|------|
| 2. | The granting of the variance will not adversely affect the rights of adjacent property owners or residents;                               | True |
| 3. | This situation already exists throughout the neighborhood.  | True |
| 4. | The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and | True |
| 5. | Granting the variance desired will not be opposed to the general spirit and intent of these regulations.                                  | True |
| 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. True
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. True

The approval of the variance will help to maintain what already exists.

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 True
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. True

*Byron Stout made a motion to approve case BZA-V-2008-05 as presented. Lynn Heath seconded the motion. Chairman Coon asked if there was any further discussion. There was none. Motion carried 7/0.*

**BZA-CU-2008-01-** A Public Hearing on a request of a conditional use to establish an off-premises parking area on property zoned as the R-3 Multiple-Family District located at 1146 N. Main Street.

BZA-CU-2008-01

**From Les Mangus' Memo:** This application is the use component of the preceding case to provide for additional parking for the business at 1145 N. Andover Road, but on the adjacent residential property. The Zoning Regulations provide for the granting of a conditional use for parking within 300 feet given certain situations. Staff supports the granting of the conditional use with conditions that vehicular access to the parking area be prohibited from the residential properties, and a site plan be approved by the Site Plan Review Committee before a permit is issued.

Chairman Coon asked Les Mangus for staff comments. Les Mangus explained the parking regulations allow for parking on an adjacent or near by parcel by conditional use only, the parking has to be within 300 feet of the user. In this case it is adjacent, but rather then the applicant asking for the 25 foot strip of property to be zoned business for parking, he is asking for a conditional use. Les Mangus said he had recommended the conditional use because if accomplished by a zoning change, by right, the building could be expanded. With a conditional use it will be limited to parking or residential use only.

Chairman Coon asked if the conditional use applied to the entire R-3 zone. Les Mangus said no, only to the 25 foot piece of property. The applicant's intent is to attach the 25 foot strip to the retail office parcel under one title and the R-3 on a separate title for the home. Chairman Coon asked if the property would need to be re-platted. Les Mangus said no it is a boundary shift

between two owners.

Chairman Coon opened the Public Hearing at 9:12 p.m. With no comments from the public Chairman Coon closed the Public Hearing at 9:12 p.m.

**ANDOVER BOARD OF ZONING APPEALS**

**Agenda Item No. 11**

For October 21, 2008

**CONDITIONAL USE REPORT**

CASE NUMBER: BZA-CU-2008-01

APPLICANT/ AGENT: Jack R. & Helen R. Newman

REQUEST: Conditional Use for a parking area in the R-3 Multiple Family Residential District

CASE HISTORY: Existing B-2 business strip center adjacent to the existing single family residence, both owned by the applicant, needs additional parking to accommodate the permitted uses.

LOCATION: 1146 N. Main St.

SITE SIZE: 100' X 100' = 10,000 sq. ft.

**ADJACENT ZONING AND EXISTING LAND USE:**

North: R-2 single family residence

South: R-2 accessory building

East: B-2 business strip center

West R-2 single family residence

**NOTE:** This report is to assist the Board of Zoning Appeals to determine their findings from the evidence presented at the hearing in order to decide whether a conditional use as an exception should be granted with the evidence and reworded as necessary to reflect the Board of Zoning Appeals 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.

**BACKGROUND INFORMATION:** The applicant purchased the properties and moved the single family residence from the Andover Rd. frontage to construct the business building. The business building was built with the minimum parking required and the maximum lot coverage. The uses that the business building has attracted require additional parking. Single Family Residential lot sizes in the area range from +/-5,500-20,000 sq. ft.

**HAS THE APPLICANT SUBMITTED STATEMENTS ATTACHED TO THIS REPORT COMPLYING WITH SECTION 10-108A 1-4? Yes        No X**

If no, provide explanation: \_\_\_\_\_

**IN WHAT ZONING DISTRICT(S) IS THE CONDITIONAL USE REQUESTED EXPRESSLY AUTHORIZED TO BE PERMITTED?**

A conditional use for a parking area may be granted in any zoning district.

**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. **True**
2. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood. **True**
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:
  - a. The location, nature, size and height of building, structures, walls and fences on the site; and
  - b. The nature and extent of landscaping and screening on the site. **True**
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. **True**
5. Adequate utility, drainage and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees. **True**
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. **True**

*Having considered the evidence at the hearing for Case No. BZA-CU-2008-01 and determined that the findings of fact in the conditional use report support the conclusions which are necessary for granting a conditional use as set out in Section 10-108C of the Zoning Regulations, I Byron Stout move that the Chairperson be authorized to sign a Resolution granting the conditional use as subject to the following conditions:*

1. *That vehicular access to the parking area from the residential property be prohibited.*
2. *That a screening and landscaping plan be approved by the Site Plan Review Committee before a zoning permit is issued.*

*Jan Cox seconded the motion. Chairman Coon asked if there was any further discussion. There was none. Motion carried 7/0.*

*Jan Cox made a motion to adjourn the Board of Zoning Appeals and reconvene the Planning Commission. Lynn Heath seconded the motion. Motion carried 7/0.*

Adjourn the Board of Zoning Appeals and reconvene the Planning Commission

**Member Items:** John Cromwell asked about the handout Bickley Foster had provided Commission members. Les Mangus explained the handout pertained to the importance of noting findings before action is taken on cases.

Member Items:

*Lynn Heath made a motion to adjourn the meeting at 9:20 p.m. Jan Cox Adjourn seconded the motion. Motion carried 7/0.*

Respectfully Submitted by

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Kandace Hunt  
Administrative Secretary

Approved this 18<sup>th</sup> day of November 2008 by the Andover City Planning Commission/ Board of Zoning Appeals, City of Andover.