

**ANDOVER CITY PLANNING COMMISSION /  
BOARD OF ZONING APPEALS**  
**Tuesday, June 21, 2011**  
**Minutes**

1. Call to order.

2. Roll call.

City Council Members present were Chairman Quentin Coon, Lynn Heath, John Cromwell, Ken Boone, Nikki Huntington, Lee Butler, Andrew Hart, Assistant City Administrator Jennifer McCausland, Director of Public Works and Community Development Les Mangus, Administrative Secretary Daynna DuFriend.

3. Approval of the minutes of the February 15, 2011 and May 17, 2011 meetings.

A motion was made by Ken Boone, seconded by Andrew Hart to approve the minutes of February 15, 2011. Motion carried 5/0/1 with Lynn Heath abstaining.

A motion was made by Ken Boone, seconded by Lynn Heath to approve the minutes of May 17, 2011 as presented. Motion carried 5/0/1 with John Cromwell abstaining.

4. Communications:

- A. City Council Minutes.
- B. Committee and Staff Report.
- C. Potential Residential Development Report.

5. SU-2011-01- Public hearing on an application to approve a Special Use requested to establish a used vehicle sales facility in the B-5 Highway Business District.

Chairman Coon asked Les Mangus for staff comments. Les Mangus explained auto sales lots are listed as a special use in the highway business district because the trend is to be large, and in order to do that they have to fit their surroundings. In this case a site plan was not submitted showing how the applicant will be using the property.

Chris Greene, 13758 SW Hwy 54, Andover, was present to represent the application. Mr. Green explained that he wants to run a small business at the location, involving no more

than 10 vehicles. They will be renting the storage garages along Hwy 54 and the office at the end. All of the storage would remain in the units behind.

John Cromwell asked if this special use would have any impact on the US 54 Corridor study. Les Mangus said that this is an existing building approximately 30 feet from the existing right-of-way line. Our draft section for the highway at that point would put the frontage road at the front door.

Lee Butler asked about access to the neighboring subdivision by customers test driving the vehicles. Les Mangus said there was no access.

Nikki Huntington asked if it would be wise to put conditions on the number of vehicles allowed for this special use. Mr. Green said he would like to start with 10 cars and ultimately have 15 cars.

Les Mangus said that there are 18 units available along the front.

Sylvia McHam, 1109 W. US Hwy 54, Andover, owner of the property said that the lease is being written that only 1 car per unit will be allowed. No further construction will be done to building and landscaping will be done.

## ANDOVER CITY PLANNING COMMISSION

### SPECIAL USE REPORT\*

CASE NUMBER: SU-2011-01

APPLICANT/AGENT: Sylvia McHam/Chris A. Green

REQUEST: Special Use requested to establish a used vehicle sales facility in the B-5 Highway Business District. If recommended for approval, additional requirements may be considered to make such a use compatible to the neighborhood.

#### CASE HISTORY:

LOCATION: 1009 W. HWY 54 - NE corner of US-54 & Ruth St.

SITE SIZE:

PROPOSED USE: Used automobile sales.

#### ADJACENT ZONING AND EXISTING LAND USE:

North: B-4 Central Business - vacant lot & R-2 Single Family Residential - Green Valley golf course

South: R-3 Multiple Family Residential - two family dwellings

East: B-2 Neighborhood Business - legal nonconforming apartments

West: B-5 Highway Business - strip commercial building

Background Information: The subject property currently houses 840 s.f. of office space and 990 s.f. of mini storage warehouse. There are two buildings on the site. Bldg. 1 at the northwest corner of the property is 8340 s.f. of which 840 s.f. is office, and the remainder mini storage. Building 2 is 2400 s.f. of ministorage warehouse located along the south property line. There is approximately 30 feet of paved surface surrounding Building 1, and between buildings 1 & 2. No site plan has been provided to illustrate how circulation of

vehicles to the mini storages warehouses, display of vehicles for sale, and the required 10 ft. front yard can be achieved.

\*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 special use recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses initially provided need to be evaluated with the evidence and reworded as necessary to reflect the Commissions considered opinion. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator. a copy of the report should be provided to the applicant before the hearing. The completed report can be included within the minutes following the statutory required summary of the hearing or attached thereto. The minutes and report should be forwarded to the Governing Body within 14 days to serve as a basis for their decision.

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 applicants reasons for seeking such reclassifications, 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 are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

YES NO

STAFF:

PLANNING:

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

YES NO

STAFF:

PLANNING:

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: The subject property is currently used for mini storage warehouses and office space.

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 changes or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changes or changing conditions?

YES NO

STAFF:  
 PLANNING:  
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: The subject property is currently served by public water, sewer, and has direct access to a public street via one private driveway on Ruth Street.

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: Building setbacks to meet the required minimums for the district would need to be dedicated. A nonconformance would be created because the existing building and lot does not meet the required 150' building setback and 320' lot depth setback from the centerline of US-54.

PLANNING:  
COUNCIL:

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

YES NO

STAFF: A minimum 10' front yard setback is required for the display of vehicles for sale.

PLANNING:  
COUNCIL:

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

YES NO

STAFF: Staff doesn't have records of any available properties currently zoned for the sale of used cars.

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 currently zoning to which it has been restricted?

YES NO

STAFF:  
 PLANNING:  
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 and traffic in the area.  
 PLANNING:  
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: The sale of vehicles is a listed special use in the B-5 Highway Business District.

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: The Comprehensive Plan suggests that businesses that draw customers from the highway be located within 600' of the highway corridor.

PLANNING:

COUNCIL:

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

YES NO

STAFF: Adjacent land owners are concerned with access and traffic circulation.

PLANNING:

COUNCIL:

16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

YES NO

STAFF: Staff doesn't know enough information regarding the vehicle circulation, vehicle display, required setbacks, and interaction with the existing uses to form an opinion.

PLANNING:

COUNCIL:

17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

YES NO

STAFF:

PLANNING:

COUNCIL:

Having considered the evidence at the hearing and the factors to evaluate the special use application, I John Cromwell, move that we recommend to the Governing Body that Case No. SU-2011-01 be approved for the establishment of a used car sales facility in the B-5 Highway Business District with the conditions of a minimum of a 10ft. setback from the street property lines and a limit to 20 vehicles based on the findings 6,7,8 and 14 of the Planning Commission as recorded in the summary of this hearing.

A motion was made by John Cromwell, seconded by Lynn Heath approve a Special Use as requested. Motion carried 6/0.

6. VA-2011-01- Public hearing on a petition for a vacation of the west 2 feet of the 20 foot rear yard utility easement of Lot 7, Block 2, Terradyne Estates Second Addition.

Otis Bentley, 1516 W. Oxford Ct., was present to represent the application. Mr. Bentley explained that the same railing will be extended out 6 feet.

Chairman Coon asked what the distance is now from the railing and the fence. Mr. Bentley said that there is 25ft 6 inches on the one corner, the other side is more than that. On the south end of the deck will be about a 1 foot on to the utility easement.

Chairman Coon asked if there were any questions.

A motion was made by Lynn Heath, seconded by Andrew Hart approve the requested vacation as presented. Motion carried 7/0.

**Recess the Planning Commission and Convene the Board of Zoning Appeals.**

A motion was made by Lynn Heath, seconded by John Cromwell recess the Planning Commission at 7:36 p.m. and convene the Board of Zoning Appeals. Motion carried 7/0.

7. BZA-V-2011-01- Public hearing on an application filed by Otis L. Bentley, requesting a variance of six feet from the 25 foot minimum rear yard setback to allow the construction of a deck on property zoned as the R-2 Single-Family Residential District.

ANDOVER BOARD OF ZONING APPEALS  
June 21, 2011

VARIANCE REPORT\*

CASE NUMBER: BZA-2011-01

**APPLICANT /AGENT:** Otis Bentley

**REQUEST:** A variance of six feet from the required 25 foot rear yard setback to allow the construction of a deck on property zoned as the R-2 Single-Family Residential District.

**CASE HISTORY:** Terradyne PUD single family dwellings

**LOCATIONS:** 1516 W. Oxford Ct.

**SITE SIZE:** +/- 126' in depth X +/- 113' in width

**ADJACENT ZONING AND EXISTING LAND USE:**

North: R-2 Single-Family residential Terradyne Estates Planned Unit Development single family dwellings

South: R-2 Single-Family Residential Terradyne Estates Planned Unit Development single family dwellings

East: R-2 Single-Family Residential Terradyne Estates Planned Unit Development golf course

West: R-2 Single-Family Residential Terradyne Estates Planned Unit Development single family dwellings

**\*NOTE:** This report has been prepared by the Zoning Administrator to assist the Board of Zoning Appeals to determine their findings from the evidence presented at the hearing so as to base their decision for a variance on the required five findings found in Section 10-107 D 1 of the Zoning Regulations. The Board may grant a request upon specific written findings of fact when all five conditions, as required by state statutes, are found to exist. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Board of Zoning Appeals considered opinion. 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:** None.

**DOES THE EVIDENCE DEMONSTRATE 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 the regulations were literally enforced; True, because of the large unused easement in the rear yard.
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, because the variance creates no more opportunities for additional dwelling units.

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; True, because the property is adjacent to the golf course with no adjacent neighbors, who would be affected by the deck being located closer to the rear property line.
4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood, True, because the property has no adjacent neighbors, who would be affected by the deck being located closer to the property line.

#### SPECIFIED CONDITIONS TO BE MET:

The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented at the hearing so that all five of the conditions required by K.S.A. 12-759(e) have been met which are listed below. If any of the conditions cannot be met, the condition(s) needs to be reworded from a positive to a negative statement and the variance not granted.

1. That 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 owner or the applicant; True, because of the triangular shape of the subject property, which causes the house to have a narrow but deep foot print;
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, True, because the subject property is not physically adjacent to any property owned by anyone other than the golf course;
3. That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application, True, because the applicant would need to construct steps down from the existing deck to grade in the rear yard.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, True, because no adjacent properties are affected by the variance.
5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, True, because the BZA is specifically authorized to grant variances of bulk regulations and dimensional provisions for yards where unique conditions are found to be a hardship for the owner.

A motion was made by Ken Boone, seconded by Lynn Heath approve case number BZA-V-2011-01 as presented. Motion carried 7/0.

**Adjourn the Board of Zoning Appeals and Reconvene the Planning Commission.**

A motion was made by John Cromwell, seconded by Lynn Heath adjourn the Board of Zoning Appeals at 7:41 p.m. and reconvene the Planning Commission. Motion carried 7/0.

**8. Annual review of the Comprehensive Development Plan.**

Les Mangus suggested that this item be moved to the next meeting as well as the appointment of officers for both the Planning Commission and the Board of Zoning Appeals. Jan Cox has resigned her position due to health issues.

**9. Member items.**

A motion was made by Lynn Heath, seconded by John Cromwell to approve adjourn the meeting of the Planning Commission. Motion carried 7/0.

Respectfully Submitted by

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Daynna DuFriend  
Administrative Secretary

Approved this 16<sup>th</sup> of August, 2011 by the Andover City Planning commission/Board of Zoning Appeals, City of Andover