

**ANDOVER CITY PLANNING COMMISSION/
BOARD OF ZONING APPEALS**
Tuesday, October 16, 2012
Minutes

1. Call to order.

Chairman Quentin Coon called the meeting to order at 7:10 p.m.

2. Roll call.

Planning Commission members present were Chairman Quentin Coon, John Cromwell, Lynn Heath and William Schnauber. Others in attendance were Director of Public Works and Community Development Les Mangus, City Council Liaison Kris Estes and Administrative Secretary Daynna DuFriend. Members not in attendance were Ken Boone and Lee Butler. Aaron Masterson arrived at 7:28 p.m.

4. Communications:

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

12. Butler County Case CU-12-12- A request for a conditional use permit application for an automobile towing and recovery business with a short term storage lot by Applicant/Owner-Gary L. Bey located at 1802 E. Hwy 54. The proposed use is some distance from US-54 and has little or no affect on adjacent properties today. However the area shown on the application is +/-5 acres, which allows for considerable expansion. The proposed storage yard lies within the 500-yr. floodplain and very close to the 100 yr. floodplain. There is some concern for flooding and the possibility of leaking automotive fluids being washed into the nearby creek. If approved Staff would recommend either moving the storage yard further from the flood plain and/or creating some sort of containment dike to prohibit possibly hazardous fluids from entering the creek.

A motion was made by Lynn Heath, seconded by John Cromwell to recommend that the Butler County Commission approve case CU-12-12 request based on remaining out of the 100 year flood plain or building a dike to protect that area from possible flooding from the creek so that the fluids are maintained in that area. Motion carried 4/0.

The Andover Planning Commission recessed from 7:25 – 7:30 p.m. while waiting for Aaron Masterson to arrive.

3. Approval of the minutes of the September 18, 2012 meeting.

A motion was made by Lynn Heath, seconded by John Cromwell to approve minutes of the August 21, 2012 meeting. Motion carried 5/0.

5. ZA-2012-01- Public hearing on proposed amendment to the Zoning Regulations of the City of Andover, Kansas. The proposed changes to the Site Plan Review Committee Procedure and Criteria include some language that allows approval of smaller projects by the Zoning Administrator. The proposed guidelines are intended to establish prescriptive standards for the landscaping, screening, and lighting of projects. The Site Plan Review Committee has reviewed the proposed changes and recommends approval by the Planning Commission and adoption by the Governing Body.

A motion was made by Lynn Heath, seconded by John Cromwell to recommend the amendment to the zoning regulations to the City Council for adoption. Motion carried 5/0.

A motion was made by John Cromwell, seconded by William Schnauber to recommend to the City Council the three guidelines for the Site Plan Review Committee as presented. Motion carried 5/0.

6. Z-2012-02- Proposed change of zoning district classification from the A-1 Agricultural Transition District to the R-4 Multiple-Family Residential District at 1831 E. 21st Street. Hope Community Church intends to give Sunlight Children's Advocacy the subject property in order to build a children's shelter. The multifamily zoning is required because of the definition of "family", which limits those living together as a family unit to not more than four persons who are not related. Staff supports the application

William Schnauber let the commission know that he is a member of Hope Community Church and feels that he will be fair and impartial.

Susie Thien, 1100 E. 3rd St. N., Wichita, with SCARF was present to represent the application.

Ms. Thien explained the project to be constructed on the property.

Chairman Coon asked if this would be a single structure and would there be fencing.

Ms. Thien replied that it would be a single, home-like structure with fencing.

Chairman Coon closed the public hearing.

ANDOVER CITY PLANNING COMMISSION

Agenda Item No. 6

REZONING REPORT *

CASE NUMBER: Z-2012-02

APPLICANT/AGENT:

Hope Community Church

REQUEST: Proposed change of zoning district classification from the A-1 Agricultural Transition District to the R-4 Multiple-Family District.

CASE HISTORY: Hope Community Church intends to give the Sunlight Children's Advocacy the subject property in order to construct and operate a home for children.

LOCATION: 1831 E. 21st St.

SITE SIZE: +/- 3.4 acres

PROPOSED USE: Children's shelter home.

ADJACENT ZONING AND EXISTING LAND USE:

North: Butler Co. Agriculture

South: Kansas Turnpike and Butler Co. Agriculture

East: Kansas Turnpike Tollbooth

West: Butler Co. Agriculture

Background Information: Hope Community Church was built several years ago on this unplatted property, which was annexed into the City as an island. The proposed gifting of the property to SCARF requires zoning and platting.

* 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:

YES NO 1. What is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition?
STAFF:
PLANNING:
COUNCIL:

YES NO 2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change?
STAFF:
PLANNING:
COUNCIL:

YES NO 3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?
 STAFF:
 PLANNING:
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:
 PLANNING:
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: Water and roads are in place. Sewer would be provided by an onsite private system, which would not support customary multifamily dwellings at the highest density allowed. The existing gravel road would not support higher density multifamily dwellings at the highest density allowed.
 PLANNING:
COUNCIL:

YES NO 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?
 STAFF:
 PLANNING:
COUNCIL:

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

STAFF:

PLANNING:
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: N.A.

PLANNING: N.A.
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: N.A.

PLANNING: N.A.
COUNCIL:

YES NO 11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

STAFF:

PLANNING:
COUNCIL:

YES NO 12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

STAFF: Multifamily residential uses could create more traffic, noise, lighting, etc.

PLANNING:
COUNCIL:

YES NO 13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

STAFF: The subject property lies along an arterial street.

PLANNING:
COUNCIL:

YES NO 14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

STAFF: The Comp. Plan suggests a variety of housing options.

PLANNING:
COUNCIL:

YES NO 15. What is the support or opposition to the request?

STAFF: None at this time.

PLANNING:
COUNCIL:

YES NO 16. Is there any information or are there recommendations on this request available from knowledgeable persons, which would be helpful in its evaluation?

STAFF: Staff recommends approval with a protective overlay to restrict the use to a children's home.

X PLANNING: COUNCIL:

YES NO 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?

STAFF:

X PLANNING:
COUNCIL:

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-2012-02 be approved changing zoning district classification from A-1 Agricultural Transition District to R-4 Multiple-Family District with a protective overlay restricting the use to a children's home as requested. Based on the findings 6, 7, 13, 14 and 16 of the Planning Commission as recorded in the summary of this hearing. Motion seconded by John Cromwell. Motion carried 5/0.

7. Z-1997-05- Amendment to the Cloud City Subdivision Amended Preliminary General Planned Unit Development Plan. The developer of the Marketplace area proposes to build an apartment complex on a +/- 15 acre tract at the east side of the Marketplace PUD, referred to as Parcel 3b on the PUD plan. The proposed use complies with the US-54 Corridor Study land use plan and would provide a buffer between the future business uses and the existing Reflection Lake 3rd Addition single family residences. Staff supports the application

John Cromwell asked if they would have to put forth a plat and proposals before an apartment complex was put in.

Les Mangus explained that platting would be required and since this multi-family Site Plan Review would be required.

Mark Buckingham, MKEC, was present to represent the application.

Mr. Buckingham explained that they wish to only address the zoning for this parcel at this time.

Lynn Heath expressed concern over having a combination of both and who will have say or control of what goes where. And asked if there was a choice which they would prefer?

Mr. Buckingham replied that the desired product would fit under R-4.

Paul Jackson, Vantage Point Properties, 1625 N. Waterfront Parkway, St. 220, Wichita was also present to represent the application.

Mr. Jackson explained that the flexibility for this property is important.

Doreen Storment, 624 E. Shade, Andover spoke and explained that she chose this area for the lack of apartments. Building apartments will greatly diminish the neighborhood and she strongly opposes it. Has started a petition and has 28 names.

Adam Hankin, 630 E. Shade, Andover spoke and explained that he would not have bought his property had he been told there would be a chance for apartments being built. Apartment complexes bring people that are temporary with no desire to maintain the area and this breeds crime.

Shawn Dull, 704 Hedgewood Cir., Andover spoke and explained that they have lived near rentals and have been of victims of vandalism and burglary several times. Since they have lived here it has been nice and quiet with no problems.

Brandon Marcan, 703 S. Cherrywood, Andover asked what the market value is and will a berm or wall be constructed.

Mr. Jackson replied that a market rate apartment is defined as an apartment complex that is built without any government assistance.

Chairman Coon closed the public hearing.

ANDOVER CITY PLANNING COMMISSION

Agenda Item No. 7

REZONING REPORT *

CASE NUMBER: Z-97-05

APPLICANT/AGENT: Vantage Andover, LLC

REQUEST: Proposed change of zoning district classification within the current zoning parcel 3 B-4 Central Shopping district to allow all of the uses in the R-4 Multiple-Family District.

CASE HISTORY: The developer intends to construct and maintain ownership of +/- 200 apartments on the site.

LOCATION: South of the future Cloud Ave. and west of Yorktown St.

SITE SIZE: +/- 15 acres

PROPOSED USE: Multifamily dwellings.

ADJACENT ZONING AND EXISTING LAND USE:

North: B-3 Central Business District – vacant land owned by the applicant

South: R-2 Reflection Lakes 3rd Addition – single family dwellings

East: Butler Co. Commercial – legal nonconforming residence

B-3 Central Shopping District - Prairie Creek Elementary School

West: B-4 Central Shopping District – vacant land owned by the applicant

Background Information: The developer feels that the changes in the real estate market make the possibilities of developing the subject property for a large commercial venture not good, and that a higher density of residential would be good for the nearby retail and service businesses survival and new development.

* 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:

YES NO 1. What is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition?

STAFF:

PLANNING:

COUNCIL:

YES NO 2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change?

STAFF:

PLANNING:

COUNCIL:

YES NO 3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

X STAFF: The subject property has been for sale with commercial zoning for 15 years.

X PLANNING:
 COUNCIL:

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

X STAFF:

X 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 real estate market for commercial property is over built, with many vacancies, and there is a considerable amount of vacant commercial property available in the area.

 PLANNING:
 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: Water, sewer, and streets are available on the property or within a reasonable extension.

 PLANNING:
 COUNCIL:

YES NO 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?

 STAFF:

 PLANNING:
 COUNCIL:

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

 STAFF: Screening of multifamily to single family is not required.

 PLANNING:
 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:

 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: N.A.

PLANNING:
 COUNCIL:

YES NO 11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

 STAFF:

 PLANNING:
 COUNCIL:

YES NO 12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

X STAFF: Multifamily residential uses could likely create less traffic, noise, lighting, etc. than the permitted B-4 commercial uses.

X PLANNING:
 COUNCIL:

YES NO 13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

X STAFF: The subject property lies along a collector street and creates a buffer around commercial uses.

X PLANNING:
 COUNCIL:

YES NO 14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

X STAFF: The Comp. Plan suggests a variety of housing options, and the US-54 Corridor Study suggests mixed residential uses.

X PLANNING:
 COUNCIL:

YES NO 15. What is the support or opposition to the request?

X STAFF: None at this time.

X PLANNING: Crime, noise, traffic, etc.
 COUNCIL:

YES NO 16. Is there any information or are there recommendations on this request available from knowledgeable persons, which would be helpful in its evaluation?

X STAFF: Staff recommends approval with a landscaped buffer area along the common property line with the Reflection Lake 3rd Addition.

X PLANNING:
 COUNCIL:

YES NO 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?

 STAFF:
 PLANNING:
 COUNCIL:

Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I John Cromwell move that we recommend to the Governing Body that Case No. Z-1997-05 be disapproved to change the zoning district classification within the current zoning parcel 3 B-4 Central Shopping District to allow all of the uses in the R-4 Multiple-Family District. Base on the opposition expressed,

request for additional information and by findings 15 and 17 of the Planning Commission as recorded in the summary of this hearing. Motion seconded by William Schnauber.

Mr. Buckingham requested that this case be deferred as opposed to not approving it.

John Cromwell withdrew the previous motion made.

Having considered the evident at the hearing and the factors to evaluate the rezoning application, I John Cromwell move that Case No. Z-1997-05 be continued until November 20, 2012 at 7:00 p.m. in this same meeting room for further information in regard to the opposition expressed and based on the findings 15 and 17. Motion seconded by William Schnauber. Motion carried 5/0.

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

A motion was made by John Cromwell, seconded by Lynn Heath to recess the Planning Commission and Convene the Board of Zoning Appeals. Motion carried 5/0.

8. [BZA-V-2012-09- Public hearing on an application filed by Andover United Methodist Church, requesting a variance of 29.06 feet from the required 40 square feet limitation for the purpose of installing 69.06 total square foot pole signage on property zoned as the R-2 Single-Family Residential District. The Andover United Methodist Church has had a pole sign for many years that apparently was never permitted in the City system. The church intends to purchase a new LED sign, which would exceed the maximum surface area allowed when combined with the existing static message sign. Staff supports the variance as long as the required conditions that the sign shall not be lighted between the hours of 11 p.m. and 7 a.m. are complied with.](#)

Jim Edwards, AUMC Pastor, 1936 N. Northridge was present to represent the application.

Pastor Edwards explained that the original sign has been there since 1988. Storm damage from the wind storm in April took out some of the existing signage.

Chairman Coon asked if the size of the new sign would be the same size as the old one.

Ron Smith, LED Sign Co., 1104 W. Harry was present to represent the application.

Mr. Smith said that the LED sign was a few inches larger.

Chairman Coon closed the public hearing

ANDOVER BOARD OF ZONING APPEALS
For October 16, 2012

Agenda Item No. 8

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-09

APPLICANT/AGENT: Andover United Methodist Church / LED Sign Co.

REQUEST: Andover United Methodist Church, 1429 N. Andover Rd., Andover, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance to increase the required 40 square feet permitted for churches for the purpose of installing additional pole signage on property zoned as the R-2 Single-Family Residential District.

CASE HISTORY:

LOCATION: Legal description: E305 SE4 SE4 N KTA LESS ROW, City of Andover, Kansas.

General location: 1429 N. Andover Rd., Andover, Kansas.

SITE SIZE: . 3.5 acres

ADJACENT ZONING AND EXISTING LAND USE:

North: R-3 Multi-Family Residential District

South: R-2 Single-Family Residential single family dwellings

East: B-1 Office Business District

West: B-1 Office Business District

*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:

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 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**.
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**.
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**.

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**.
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**.
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**.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**.
5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, **True**.

Having considered the evidence at the hearing and determined that the findings of fact in the Variance Report (as amended) have been found to exist that support all the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the States statutes which are necessary for granting of a variance, I John Cromwell move that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V-2012-09 as requested. Motion was seconded by William Schnauber. Motion carried 5/0.

9. BZA-V-2012-10- Public hearing on an application filed by Ben & Megan Kice, requesting a variance of 4 feet from the 30 foot side yard utility easement to allow the construction of an additional two car garage to be located in the front of the existing garage. The applicant proposes to build an addition that would encroach in the required 8' minimum side yard, which is also a 30' utility easement. Staff supports the variance contingent on the granting of a vacation of the utility easement because the remainder of the 30' easement assures adequate separation between the neighboring dwellings.

Tony Zimbelman, Zimbelman Construction, 8737 W. Northridge Ct., Wichita, was present to represent the application.

Chairman Coon closed the public hearing.

**ANDOVER BOARD OF ZONING APPEALS
For October 16, 2012**

Agenda Item No. 9

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-10

APPLICANT/AGENT: Ben & Megan Kice

REQUEST: Ben & Megan Kice, 903 Terradyne Circle., Andover, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 4 feet from the required 8 foot side yard for the construction of an additional two car garage property zoned as the R-2 Single-Family Residential District.

CASE HISTORY:

LOCATION: Legal description: Lot 12, Block C, Terradyne Estates Addition, City of Andover, Kansas.

General location: 903 Terradyne Circle, Andover, Kansas.

SITE SIZE: .29 acres

ADJACENT ZONING AND EXISTING LAND USE:

North:	R-2 Single-Family Residential single family dwellings
South:	R-2 Single-Family Residential single family dwellings
East:	R-2 Single-Family Residential single family dwellings
West:	R-2 Single-Family Residential 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:

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 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**.
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**.
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**.

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**.
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**.

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**.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**.
5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, **True**.

Having considered the evidence at the hearing and determined that the findings of fact in the Variance Report (as amended) have been found to exist that support all the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the States statutes which are necessary for granting of a variance, I John Cromwell move that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V-2012-10 as requested. Motion was seconded by Lynn Heath. Motion carried 5/0.

10. BZA-CU-2012-01- Public hearing on an application filed by Andover Landing Leasing, LLC, to allow a community pool, park and restrooms for the Andover Landing Leasing Duplex Development on property zoned as R-4 Multiple-Family Residential District located at southeast corner of 21st Street and Andover Road. The developer proposes to build a community pool and park for the residents of the Andover Landing neighborhood. Staff supports the application because the request would provide recreation opportunities for the residents within walking distance.

No applicant was present.

Chairman Coon closed the public hearing.

ANDOVER BOARD OF ZONING APPEALS

Agenda Item No. 10

For October 16, 2012

CONDITIONAL USE REPORT

CASE NUMBER: BZA-CU-2012-01

APPLICANT/ AGENT: Andover Landing Leasing, LLC

REQUEST: A conditional use to allow a community pool, park and restrooms for the Andover Landing Leasing Duplex Development.

CASE HISTORY: The Andover Landing Subdivision is located at the northeast corner of 21st St. and Andover Rd.

LOCATION: 2022/2026 N. Harvest Ridge Ct., Andover, Kansas

SITE SIZE: 16,250 square feet.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-4 Multiple Family Residential District.

South: R-4 Multiple Family Residential District.

East: R-4 Multiple Family Residential District.

West: R-4 Multiple Family Residential District.

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 Andover Landing Subdivision is 42 lots with two & three family dwellings. The proposed swimming pool and park provides recreation space for the residents within walking distance.

HAS THE APPLICANT SUBMITTED STATEMENTS ATTACHED TO THIS REPORT COMPLYING WITH SECTION 10-108A 1-4? Yes X No _____
If no, provide explanation: _____

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

N.A.

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. **YES**

2. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood. **The proposed swimming pool and park would be owned by the same owner as all of the houses in the neighborhood.**
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.**The proposed swimming pool and park would be owned by the same owner as all of the houses in the neighborhood.**
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. **Offstreet parking is provided around the proposed site.**
5. Adequate utility, drainage and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees. **The subject property is platted.**
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. **Public streets are in place.**

Having considered the evidence at the hearing for Case No. BZA-CU-2012-01 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 John Cromwell, move that the Chairperson be authorized to sign a Resolution granting the conditional use as requested. Lynn Heath seconded the motion. Motion carried 5/0.

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

A motion was made by John Cromwell, seconded by Lynn Heath to approve Adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 5.0.

11. VA-2012-06- Public hearing on a petition for a vacation of the 4 feet of the West portion of the 30 foot utility easement along the East property line of Lot 12, Block C, Terradyne Estates Addition. Staff supports the proposed vacation of the utility easement. No public utilities are located within the area requested to be vacated.

A motion was made by Lynn Heath, seconded by John Cromwell to approve vacation of the 4 feet of the West portion of the 30 foot utility easement. Motion carried 5/0.

13. Member items.

No member items.

A motion was made by Lynn Heath, seconded by John Cromwell to adjourn. Motion carried 5/0.

Respectfully Submitted by

Daynna DuFriend
Administrative Secretary

Approved this 20th of November, 2012 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.