



**PLANNING & ZONING**  
1609 E. CENTRAL AVE.  
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**PLANNING COMMISSION  
& BOARD OF ZONING APPEALS AGENDA**  
**NOVEMBER 16, 2021 | 7:00pm**  
ANDOVER CITY HALL | 1609 E. CENTRAL AVE.

**1. CALL TO ORDER**

Chairperson Erik Pedersen called the meeting to order at 7:00 pm.

**2. ROLL CALL**

Commissioners in attendance: Chairperson Erik Pedersen, Secretary Gary Israel, Kirsten Barnes, Marla Canfield, Tim Hendricks, and Vance Garwood. Staff in attendance: Les Mangus, Director of Community Development and Justin Constantino, Assistant Director of Community Development. A/V services provided by WAV Services.

**3. APPROVAL OF THE MINUTES OF THE OCTOBER 19, 2021 MEETING**

*Vance Garwood made a motion to approve the minutes of the October 19, 2021 meeting as presented. Motion seconded by Gary Israel. Motion carried 6/0.*

**4. COMMUNICATIONS**

**A. COMMITTEE & STAFF REPORT**

None.

**B. POTENTIAL RESIDENTIAL DEVELOPMENT REPORT**

Mr. Mangus stated that the City has issued 67 single-family building permits this year, almost on par with the last year-to-date. Mr. Mangus stated that overall, the Wichita metropolitan region has seen an increase of single-family permits of approximately 15% in the area.

**5. AGENDA**

*Gary Israel made a motion to recess the Planning Commission and convene the Board of Zoning Appeals. Motion seconded by Erik Pedersen. Motion carried 4/0.*

**5.1 BZA-V-2021-10 – PUBLIC HEARING ON AN APPLICATION FOR A SETBACK VARIANCE ON THE PROPERTY GENERALLY LOCATED AT 616 TUSCANY DRIVE, ANDOVER, KANSAS**

Chairperson Pedersen opened the public hearing at 7:09 pm.

Mr. Mangus stated that the property owner intends to construct a swimming pool on their property. Mr. Mangus stated that the 20 foot utility easement is normally split between two properties, but in the case of the subject property, the entire 20 foot utility easement is on one property, drastically reducing the amount of buildable space in the rear yard for accessory structures. Mr. Mangus stated that the applicant has some room on the side of the house to construct a pool with a variance.

Robert Strickland of 616 Tuscany Drive, the applicant and owner of the property, stated that they would like to construct a small in-ground pool and fence on the east side of the property as a utility easement does not exist in that location. Mr. Strickland stated that the proposed pool complies with all of the HOA covenants. Mr. Strickland stated that the pool will also have a small wall with a fountain feature located between the pool and the property line.

Mr. Pedersen asked if the HOA dictates the type of fence constructed. Mr. Strickland said yes, and that he intends to construct a wrought-iron fence.

Mr. Israel asked how the gap between the pool and the fence would be maintained. Mr. Strickland stated that the gap would be filled in with concrete and the fence posts would be preset.

Ms. Canfield stated that the application is requesting a five foot variance but asked the applicant if their intent was to extend the variance request beyond the requested five feet. Mr. Mangus stated that the application was for a five foot variance so the Board of Zoning Appeals (BZA) could not grant anything greater than what was advertised.

Mr. Strickland stated that he would like the rock wall to extend beyond the five foot variance allowance and use two of the three feet of remaining space for the rock wall. Mr. Mangus stated that he didn't see an issue with the rock wall being located within the remaining three feet of space because the rock wall would not technically be a structure.

Mr. Israel asked if there was a restriction of how tall the rock wall could be within the three feet of remaining space. Mr. Mangus stated that he believes the height is limited to four feet.

Mr. Pedersen asked how high the rock wall would be built. Mr. Strickland stated that the wall would be 36 inches and the columns would be 42 inches.

Mr. Israel asked if the future neighbor to the east were to construct a house on the neighboring property that there would be nothing that they could do regarding the location of the proposed pool. Mr. Mangus stated that there is an appeal period after the BZA decision is made but once the period ends, the decision stands.

Chairperson Pedersen closed the public hearing at 7:22 pm.

**DOES THE EVIDENCE DEMONSTRATE THAT:**

1.	The physical surroundings, shape or topography of the property would result in a practical difficulty, as distinguished from a mere inconvenience, for the owner, lessee or occupant.
STAFF	The subject property is a typically shaped rectangular shaped lot that is encumbered by a 20-foot rear yard utility easement that makes placing a pool in the rear yard very difficult.
BZA	Concur.
2.	Granting the variance will result in material detriment or injury to other property or improvements in the neighborhood.
STAFF	No detriment and/or injury to other property or improvements is anticipated.
BZA	Concur.
3.	Granting the variance will result in an inadequate supply of light or air to adjacent property, substantially increase traffic congestion, increased fire risk, or substantially diminished property values in the neighborhood.
STAFF	The subject property is a typically shaped rectangular shaped lot that is encumbered by a 20-foot rear yard utility easement that makes placing a pool in the rear yard very difficult. None of the pool improvements will be visible with the required six-foot fencing. No additional traffic or risk to the neighborhood is anticipated.

BZA	Concur.
4. The request for a variance is not based exclusively on a desire of the owner, lessee, occupant or applicant to make more money out of the property.	
STAFF	The applicant has declared that the pool is for personal use accessory to his single family residence.
BZA	Concur.

**SPECIFIC CONDITIONS TO BE MET:**

1. The requested variance arises from a condition unique to the property in question, which is not ordinarily found in the same zoning district, and which was not created by any action of the property owner or the applicant.	
STAFF	The subject property is a typically shaped rectangular shaped lot that is encumbered by a 20-foot rear yard utility easement that makes placing a pool in the rear yard very difficult.
BZA	Concur.
2. Strict application of the provisions of these Zoning Regulations would result in unnecessary hardship for the owner, lessee or occupant of the land or structures.	
STAFF	The platted 20-foot utility easement consumes the majority of the required 25-foot rear yard leaving very little space for accessory structures.
BZA	Concur.
3. Granting the variance will not adversely affect the rights of adjacent property owners or residents.	
STAFF	The intent of side yard separation is to promote the health, safety and general welfare of residents. The subject property is 9872 sq. ft., which provides adequate separation from nearby residences and unencumbered open space in the rear yard.
BZA	Concur.
4. The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.	
STAFF	The subject property is a typically shaped rectangular shaped lot that is encumbered by a 20-foot rear yard utility easement that makes placing a pool in the rear yard very difficult. None of the pool improvements will be visible with the required six-foot fencing. No additional traffic or risk to the neighborhood is anticipated.
BZA	Concur.
5. The requested variance will not be opposed to the general spirit and intent of these Zoning Regulations.	

STAFF	The proposed pool allows for adequate separation for fire and open space requirements and poses no harm to the health safety and welfare of the neighborhood.
BZA	Concur.

*Having considered the evidence at the hearing and determined that the findings of fact have been found that support all five conditions set out in Subsection 11-106.B.2 of the Zoning Regulations and K.S.A. 12-759(e), Vance Garwood made a motion to authorize the Chairperson to sign a resolution granting the variance for case BZA-V-2021-10. Motion seconded by Gary Israel. Motion carried 6/0.*

*Gary Israel made a motion to adjourn the Board of Zoning Appeals and reconvene the Planning Commission. Motion seconded by Kirsten Barnes. Motion carried 6/0.*

**5.2 Z-2021-02 – PUBLIC HEARING AND RECOMMENDATION ON THE PROPOSED AMENDMENT TO THE CORNERSTONE PRELIMINARY PLANNED UNIT DEVELOPMENT PLAN TO AMEND THE BOUNDARY OF PARCEL 1 TO CREATE PARCEL 15C AND CHANGE THE ZONING OF PARCEL 15C FROM B-3 RETAIL & SERVICE BUSINESS DISTRICT TO SF-3 SINGLE-FAMILY / ZERO LOT LINE DISTRICT ON THE PROPERTY GENERALLY LOCATED AT THE NORTHWEST CORNER OF N. ANDOVER ROAD AND W. 21<sup>ST</sup> STREET, ANDOVER, KANSAS**

Chairperson Pedersen opened the public hearing at 7:31 pm.

Mr. Mangus stated that the developer’s intent is to amend the boundary of Parcel 1 to create a new Parcel 15C for the purpose of developing single-family homes with greater density and shorter setbacks. Mr. Mangus stated that the concept is very similar to the Heritage single-family home use discussed over the previous few years.

Jason Gish of MKEC Engineering, representing the applicant, stated that the proposed use will fit a traditional neighborhood design with rear load garages.

Mr. Israel asked for confirmation that the proposed use would be for zero lot line homes and that the home construction meets the fire code requirements. Mr. Gish said yes.

Chairperson Pedersen closed the public hearing at 7:39 pm.

**STAFF ITEMS**

1. 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 if the change in zoning were approved?	
STAFF	Public water, sewer, and streets are available adjacent to the subject property and can be readily extended.
2. If the zoning change request was approved, would the subject property need to be platted or replatted, or have in-lieu-of dedications made, in order to provide needed rights-of-way, easements, building setback lines, or access control?	
STAFF	Platting would be required.

3. If the zoning change request was approved, would the subject property need a screening plan for existing or potential uses?

STAFF | No

4. What fact-based information in support of or in opposition to the requested zoning change has staff received?

STAFF | None at this time.

5. If there has been an error in the application of these Zoning Regulations to the subject property, would the requested zoning change correct the error?

STAFF | No error is known to exist.

### STAFF & COMMISSION/COUNCIL ITEMS

6. How suitable or unsuitable is the subject property for its current zoning?

STAFF | The subject property is an undeveloped parcel in the Cornerstone PUD that is suitable for the current uses allowed by the PUD

PLANNING | Concur.

COUNCIL

7. Is the length of time the subject property has been vacant or undeveloped under its current zoning a factor in the zoning change request?

STAFF | No

PLANNING | Concur.

COUNCIL

8. How reasonably well-suited will the requested zoning change of the subject property be with the current zoning of nearby properties.

STAFF | The proposed uses are generally in conformance with the Comprehensive Plan, which suggest a mixture of residential and medical/commercial uses.

PLANNING | Concur.

COUNCIL

9. Has the zoning change been requested because conditions in the area of the subject property have changed or are changing? If so, what is the nature and significance of these conditions?

STAFF	No
PLANNING	Concur.
COUNCIL	
<b>10. What are the current land uses, character and condition of the subject property and the surrounding neighborhood?</b>	
STAFF	The subject property is surrounded on two sides by the Cornerstone Mixed Use PUD and the surrounding area has a mixture of uses from single family residential to multifamily residential to commercial.
PLANNING	Concur.
COUNCIL	
<b>11. Would the proposed zoning change of the subject property allow land uses which might have detrimental effects on nearby properties, and if so, how?</b>	
STAFF	The proposed uses would increase traffic, noise, lighting, etc. as compared to the existing permitted single-family residential use because of the higher density proposed.
PLANNING	Concur.
COUNCIL	
<b>12. How would the requested zoning change conform with the City's Comprehensive Plan and other adopted master plans and policies.</b>	
STAFF	The proposed uses are generally in conformance with the Comprehensive Plan by providing alternative housing options.
PLANNING	Concur.
COUNCIL	
<b>13. Do any professional persons knowledgeable on conditions that affect this zoning change request have information or recommendations to provide, which would be helpful in its evaluation?</b>	
STAFF	Approval as applied for.
PLANNING	Concur.
COUNCIL	
<b>14. How would the potential loss in value or hardship imposed on the Applicant compare to the relative gain to the public health, safety and welfare, if there is a change from the current zone to the requested zone?</b>	

STAFF	Staff knows of no loss to public health safety and welfare as a result of the change.
PLANNING	Concur.
COUNCIL	

*Gary Israel made a motion to adopt the findings of fact and recommend that the City Council approve Zoning Case Z-2021-02 amending the Cornerstone Addition Preliminary PUD Plan to amend the boundary of Parcel 1 to create Parcel 15C from B-3 Retail & Service Business District to SF-3 Single-Family / Zero Lot Line District based on findings 6, 8, 10, and 12. Motion seconded by Tim Hendricks. Motion carried 6/0.*

**5.3 Z-2021-03 – PUBLIC HEARING AND RECOMMENDATION ON THE PROPOSED AMENDMENT TO THE CLOUD CITY PRELIMINARY PLANNED UNIT DEVELOPMENT TO CHANGE THE ZONING DISTRICT CLASSIFICATION FROM B-4 CENTRAL BUSINESS / MIXED USE DISTRICT TO MXR MULTIPLE-FAMILY / MIXED RESIDENTIAL DISTRICT ON THE PROPERTY GENERALLY LOCATED AT 615 E. CLOUD AVENUE, ANDOVER, KANSAS**

Chairperson Pedersen opened the public hearing at 7:48 pm.

Mr. Mangus stated that the applicant is seeking to construct a multi-story senior living facility in a multi-family district. Mr. Mangus stated that the use of a senior living facility is not outright permitted in the current zoning district, hence the applicant’s desire to amend the preliminary PUD.

Jason Gish of MKEC Engineering, representing the applicant, stated that the meeting packet contains visuals of the proposed project that will be similar to what the Site Plan Review Committee will be receiving in the near future.

Mr. Israel asked if there was only one entrance into the proposed parking structure. Mr. Mangus stated that an emergency access for a fire apparatus exists on the site plan and that the applicant has discussed potentially using a grass paver system for the purpose of fire truck circulation around the building.

Chairperson Pedersen closed the public hearing at 7:55 pm.

**STAFF ITEMS**

1. 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 if the change in zoning were approved?	STAFF	Public water, sewer, and streets are available adjacent to the subject property and can be readily extended.
2. If the zoning change request was approved, would the subject property need to be platted or replatted, or have in-lieu-of dedications made, in order to provide needed rights-of-way, easements, building setback lines, or access control?	STAFF	The subject property is currently platted.
3. If the zoning change request was approved, would the subject property need a screening plan for existing or potential uses?		

STAFF	No
4. What fact-based information in support of or in opposition to the requested zoning change has staff received?	
STAFF	None at this time.
5. If there has been an error in the application of these Zoning Regulations to the subject property, would the requested zoning change correct the error?	
STAFF	No error is known to exist.

**STAFF & COMMISSION/COUNCIL ITEMS**

6. How suitable or unsuitable is the subject property for its current zoning?	
STAFF	The subject property is an undeveloped parcel in the Cloud City PUD that is suitable for the current uses allowed by the PUD
PLANNING	Concur.
COUNCIL	
7. Is the length of time the subject property has been vacant or undeveloped under its current zoning a factor in the zoning change request?	
STAFF	No
PLANNING	Concur.
COUNCIL	
8. How reasonably well-suited will the requested zoning change of the subject property be with the current zoning of nearby properties.	
STAFF	The proposed uses are generally in conformance with the Comprehensive Plan and US-54/400 Corridor Study, which suggest a mixture of high density residential and commercial uses.
PLANNING	Concur.
COUNCIL	
9. Has the zoning change been requested because conditions in the area of the subject property have changed or are changing? If so, what is the nature and significance of these conditions?	
STAFF	No
PLANNING	Concur.



COUNCIL	
10.	<p>What are the current land uses, character and condition of the subject property and the surrounding neighborhood?</p> <p>STAFF      The subject property is surrounded by the Cloud City/Marketplace Mixed Use PUD. The surrounding area has a mixture of uses from single family residential to multifamily residential to commercial. All part of the greater Cloud City/Marketplace/ Reflection Lakes PUD.</p> <p>PLANNING    Concur.</p> <p>COUNCIL</p>
11.	<p>Would the proposed zoning change of the subject property allow land uses which might have detrimental effects on nearby properties, and if so, how?</p> <p>STAFF      No.</p> <p>PLANNING    Concur.</p> <p>COUNCIL</p>
12.	<p>How would the requested zoning change conform with the City's Comprehensive Plan and other adopted master plans and policies.</p> <p>STAFF      The proposed uses are generally in conformance with the Comprehensive Plan and US-54/400 Corridor Study by providing alternative housing options and services for seniors in a high density mixed use walkable environment.</p> <p>PLANNING    Concur.</p> <p>COUNCIL</p>
13.	<p>Do any professional persons knowledgeable on conditions that affect this zoning change request have information or recommendations to provide, which would be helpful in its evaluation?</p> <p>STAFF      Approval as applied for.</p> <p>PLANNING    Concur.</p> <p>COUNCIL</p>
14.	<p>How would the potential loss in value or hardship imposed on the Applicant compare to the relative gain to the public health, safety and welfare, if there is a change from the current zone to the requested zone?</p> <p>STAFF      Staff knows of no loss to public health safety and welfare as a result of the change.</p>

Ms. Barnes asked for clarification regarding item number 11 regarding detrimental effects on nearby properties, stating that the subject property doesn't appear to have a retention pond and water tends to drain into waterway that runs south into Reflection Lakes and asked if there could be an impact from potential runoff. Mr. Mangus stated that there was an encompassing drainage detention study earlier in the Marketplace development so drainage is already in place.

Mr. Israel asked how tall the apartment buildings are on the east side that will be adjacent to the proposed senior living facility. Mr. Mangus stated that the apartments are three stories. Mr. Mangus stated that the base of the three-story apartment buildings is higher than the base of the proposed senior living facility so there won't be a very dramatic difference in the visual skyline. Mr. Mangus stated that since the application has been submitted, the developer has indicated that the proposed senior living facility buildings will not exceed four stories.

*Erik Pedersen made a motion to adopt the findings of fact and recommend that the City Council approve Zoning Case Z-2021-03 amending the Cloud City Addition Preliminary PUD Plan to change the zoning district classification from B-4 Central Business / Mixed Use District to MXR Multiple-Family / Mixed Residential District based on findings 2, 6, 8, 10, and 12. Motion seconded by Gary Israel. Motion carried 6/0.*

#### **5.4 FINAL PLAT – REVIEW AND APPROVAL OF THE ANDOVER CEMETERY 4<sup>TH</sup> ADDITION FINAL PLAT GENERALLY LOCATED EAST OF N. ANDOVER ROAD BETWEEN E. 21<sup>ST</sup> STREET AND SW 60<sup>TH</sup> STREET, ANDOVER, KANSAS**

Mr. Constantino stated that the proposed final plat creates one lot of approximately 5.41 acres at the Andover Cemetery, generally located east of N. Andover Road between E. 21st Street and SW 60th Street within the extraterritorial jurisdiction. Mr. Constantino stated that the subject property receives access from N. Andover Road and receives water service from the Butler County Rural Water District #5. Mr. Constantino stated that the Planning Commission approved the preliminary plat at their August 17, 2021 meeting, and the Subdivision Committee reviewed and recommended that the final plat be approved by the Planning Commission at last week's meeting.

*Gary Israel made a motion to approve the Andover Cemetery 4<sup>th</sup> Addition Final Plat and recommend that the Governing Body accept the dedication of land for public purposes. Motion seconded by Kirsten Barnes. Motion carried 6-0.*

#### **5.5 PRELIMINARY REPLAT – REVIEW AND APPROVAL OF THE COURSE AT GREEN VALLEY GREENS 11<sup>TH</sup> ADDITION PRELIMINARY REPLAT GENERALLY LOCATED NORTH OF US 54/400 BETWEEN S. ANDOVER ROAD AND S. ONEWOOD DRIVE, ANDOVER, KANSAS**

Mr. Constantino stated that the subject property is generally located north of US 54 between S. Andover Road and S. Onewood Drive. Mr. Constantino stated that the applicant is proposing apartment dwelling units on one lot of approximately 15.9 acres of property located on Parcel 16 within the Green Valley Greens Final PUD. Mr. Constantino stated that water and sewer service for the subject property are currently served and will continue to be served by the City of Andover. The subject property will receive access from the existing Onewood Drive and the proposed Founders Parkway. Mr. Constantino stated that the Subdivision Committee reviewed the preliminary replat at their November 9th meeting last week and recommended that the Planning Commission approve the preliminary replat with the condition that the applicant provide a visual illustrating the berm and drainage cross section located along the northern property line.

Mr. Israel thanked the applicant for providing the cross section exhibit.

*Erik Pedersen made a motion to approve the Course at Green Valley Greens 11<sup>th</sup> Addition Preliminary Plat and recommend that the Governing Body accept the dedication of land for public purposes. Motion seconded by Gary Israel. Motion carried 6-0.*

## **5.6 FINAL PLANNED UNIT DEVELOPMENT – REVIEW AND APPROVAL OF THE COURTYARDS AT CORNERSTONE FINAL PLANNED UNIT DEVELOPMENT PLAN GENERALLY LOCATED AT THE NORTHWEST CORNER OF E. 21<sup>ST</sup> STREET AND N. ANDOVER ROAD, ANDOVER, KANSAS**

Mr. Constantino stated that the applicant is proposing 58 total lots on approximately 21.87 acres generally located at the northwest corner of N. Andover Road and W. 21st Street and that the subject properties will receive access from W. 21st Street and that water and sewer service for the subject properties are currently served and will continue to be served by the City of Andover. Mr. Constantino stated that the Subdivision Committee reviewed the Final PUD plan and recommended approval by the Planning Commission at their meeting last week. Mr. Constantino stated that the property is currently zoned B-3 Retail and Service Business District, and that the applicant has submitted a corresponding (zoning) amendment to the Cornerstone Addition Preliminary PUD plan to amend the boundary of Parcel 1 to create Parcel 15C and change the zoning of Parcel 15C from the B-3 zoning district to the SF-3 zoning district. Mr. Constantino added that any motion for approval of the Final PUD shall be contingent upon the passage of the preliminary PUD amendment by the Governing Body.

Mr. Israel stated that the Subdivision Committee has thoroughly reviewed the plans and discussed various details of the final and preliminary plats with the applicants. Mr. Pedersen thanked the Subdivision Committee for their service and hard work in reviewing the submittals.

*Gary Israel made a motion to approve the Courtyards at Cornerstone Final PUD Plan and recommend that the Governing Body accept the dedication of land for public purposes with the condition that the preliminary PUD amendment is approved by the Governing Body. Motion seconded by Marla Canfield. Motion carried 6-0.*

## **6 MEMBER ITEMS**

Mr. Israel asked for an update regarding the temporary sales tax. Mr. Constantino stated that the next step would be a design contract for the park, new fire station, and existing fire station improvements. Mr. Constantino stated that the City is anticipating an August 2022 groundbreaking on the new fire station and a 6-month remodel on the existing fire station, with all fire station work to hopefully be completed by mid-2024.

Mr. Israel stated that City Administrator Jennifer McCausland anticipates that the 13<sup>th</sup> Street Sports Park construction will likely begin next July and the Fire Station construction will begin in August 2022.

## **7 ADJOURN**

*Gary Israel made a motion to adjourn the meeting. Kirsten Barnes seconded the motion. Motion carried 6/0. The meeting was adjourned at 8:20 pm.*

Respectfully submitted by:

Justin Constantino, AICP  
Assistant Director of Community Development

Approved on the 15<sup>th</sup> day of February 2022 by the City of Andover Planning Commission.