

ANDOVER CITY PLANNING COMMISSION /  
BOARD OF ZONING APPEALS  
November 17, 2009  
**Minutes**

The Andover City Planning Commission met for a regular meeting on Tuesday, November 17, 2009 at 909 N. Andover Road in the Andover Civic Center. Chairman Quentin Coon called the meeting to order at 7:00 p.m. Commission members present were Lynn Heath, Jan Cox, John Cromwell, Byron Stout and Ken Boone. Others in attendance were City Council Liaison member Dave Tingley, Director of Public Works and Community Development Les Mangus and Administrative Secretary Kandace Hunt. Member Dan Beck and City Administrator Sasha Stiles were absent.

Call to order

**Review the minutes of the October 20, 2009 Planning Commission meeting.**

Review the minutes of the October 20, 2009 Planning Commission Meeting.

Ken Boone noted the name Tom Klad in paragraph two of page two needed to be changed to John Plett.

*Byron Stout made a motion to approve the minutes with the correction noted. Jan Cox seconded the motion. Motion carried 6/0.*

**Communications:**

Communications

**Review the minutes of the October 13, 2009 City Council meeting.** The minutes were received and filed.

**Review the minutes of the October 13, 2009 Site Plan Review Committee Meeting.** The minutes were received and filed.

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

**Z-2009-02-** Continuance of the public hearing on a proposed change of zoning district classification from the B-1 Office Business District to the R-3 Multiple-Family Residential District.

Z-2009-02

**From Les Mangus' Memo:** The proposed change of zoning district classification from the B-1 Office Business to the R-3 Multiple-Family Residential District, continued from the October 20, 2009 meeting, is the result of the applicant's inability to market the existing single family residences for business office purposes in today's economy. As you may recall these properties were recently changed from R-1 to B-1 for speculative business purposes. Staff contacted the applicant about the continuance in order to assure his attendance at the November meeting. At that time the applicant stated that a mistake was made on the application, and that he wished to amend his application to reflect R-1 Single-Family Residential District. Staff does not support the intrusion of multifamily zoning in the established single family neighborhood, and therefore would recommend approval of the amended request to change to the original R-1 Single-Family District.

Chairman Coon asked for staff input. Les Mangus said there was a misunderstanding with the applicant about which zoning classification he actually wanted and he is present tonight to amend his application.

Applicant Warren Cowgill was present to represent the application.

Mr. Cowgill explained he had purchased the subject lots with the intention of making the middle home an office building. Once plans for renovations were made the cost of converting the home to an office did not meet the value of the property. Mr. Cowgill continued by saying he tried to sell the lots as commercial property but at this time the market for commercial property is not strong. He has found a buyer who would like to use the property as residential and in order to proceed with loans this buyer needs a residential zoning.

Chairman Coon asked if the homes are currently occupied. Mr. Cowgill said two of the three are.

Lynn Heath asked if all three properties were being purchased by an individual buyer. Mr. Cowgill said yes they are being bought to operate as rental properties for the time being.

Chairman Coon opened to public hearing at 7:05 p.m.

Xury Hole of 318 Willowbrook stated he was concerned that the middle home had been partially remodeled as office space and that it was not always maintained.

With no further input Chairman Coon closed the public hearing at 7:07 p.m.

**ANDOVER CITY PLANNING COMMISSION**

Agenda Item No. 5

REZONING REPORT \*

CASE NUMBER: Z-2009-02

APPLICANT/AGENT: Warren Cowgill Trust

REQUEST: A change of zoning district classification from the B-1 Office Business District to the R-3 Multiple-Family Residential District.

CASE HISTORY:

LOCATION: 114 E. Willowbrook, 216 S. Andover Road, and 226 S. Andover Road. On the east side of Andover Road between Willowbrook Street and Douglas Avenue.

SITE SIZE: +/- 2 acres

PROPOSED USE: Multiple-Family Residential.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-1 Single family residence  
 South: R-1 Single family residence  
 East: R-1 Single family residence  
 West: B-1 & B-2 PUD Office businesses

**Background Information:**

This property was recently rezoned to B-1 by the applicant with the intentions of remodeling the existing house for office businesses or construction of new offices. The downturn in the economy and general overbuilt conditions for office space have limited the possibilities. The applicant has buyers who are willing to buy the residences, but the lenders have a problem with the legal nonconforming residences in a business zone.

\* 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: B-1 Office Business District; North: R-1 Single-Family Residential; South: R-1 Single-Family Residential; East: R-1 Single-Family Residential; West: B-1 & B-2 PUD Office Business.

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: B-1 Office Business District; North: R-1 Single-Family Residential; South: R-1 Single-Family Residential; East: R-1 Single-Family Residential; West: B-1 & B-2 PUD Office Business.

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

X

STAFF:

X

PLANNING:

COUNCIL:

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

YES NO

X STAFF:  
X 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

X STAFF: There is an excessive amount of business property, and unoccupied office buildings available.

X 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

X STAFF: All are in place and adequate.

X PLANNING:  
COUNCIL:

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

YES NO

X STAFF:

X PLANNING:

COUNCIL:

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

YES NO

X STAFF: Residential to residential does not require screening.

X 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

X STAFF: There is a limited amount of multifamily residential property available in the area.

X PLANNING: Limited amount of R-1 property available.  
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: N.A.

PLANNING: N.A.

COUNCIL:

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

YES NO

X STAFF:

X 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: Multifamily residential would have the potential to increase traffic, noise, lighting, etc.

PLANNING: There will be no affect with the change to R-1 Single-Family.

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

X

STAFF: The placement of multifamily residential in the middle of a single family residential neighborhood is not recommended.

X

PLANNING: As R-1 Single-Family.

COUNCIL:

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

YES NO

X

STAFF: The Comp. Plan suggests a variety of housing types located along major streets, but the future land use map does not contemplate multifamily at this location.

X

PLANNING:

COUNCIL:

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

YES NO

STAFF: Concerns over devaluation of property values in the neighborhood.

PLANNING: Concern for maintaining the property noted 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

X

STAFF: Staff recommends rezoning to the R-1in order to maintain the character of the neighborhood.

X

PLANNING: Applicant amended request to R-1 Single-Family Residential.

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:

X

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-2009-02 be approved as amended to change the zoning district classification from the B-1 Office Business District to the R-1 Single-Family Residential District based on findings 3, 5, 6, 13 and 16 of the Planning Commission as recorded in the summary of this hearing. Motion seconded by Byron Stout. Chairman Coon asked if there*

was any further discussion. There was none. Motion carried 6/0.

Jan Cox made a motion at 7:16 p.m. to recess the Planning Commission and convene the Board of Zoning Appeals. Lynn Heath seconded the motion. Motion carried 6/0.

Recess the Planning Commission and convene the Board of Zoning Appeals

**BZA-V-2009-01-** A public hearing on a request of a variance of 700 square feet from the required 500 square foot maximum floor area of an accessory structure AND a variance to exceed by 1,200 square feet the required maximum aggregate total floor area of all accessory structures of 1,000 square feet permitted by Section 6-100CA for the purpose of constructing a 1,200 square foot residential storage structure on property zoned as the R-1 Single-Family Residential District.

BZA-V-2009-01

**From Les Mangus' Memo:** The proposed variance of the maximum floor area of a single accessory storage structure and maximum aggregate floor area of all accessory structures is the result of the applicant's desire to build a 1, 200 square foot (30'x40') residential style wood framed storage building in addition to the existing 930 square foot detached garage on the 6.2 acre subject property. The property is large enough to support the higher ratio of accessory storage structure to principal structure area, in fact it is adjacent to a horse operation with very large barns just a few feet away and there are several large storage structures within the neighborhood. Staff supports the application as applied for.

Jeff Karst of Karst Garages was present to represent the application.

Mr. Karst explained the owners of the 6.3 acre property have an existing 930 square foot detached residential style garage and would like to build an additional 30'x40' detached residential style garage for added residential storage.

Chairman Coon opened the public hearing at 7:23 p.m.

Les Mangus noted staff had received a letter from Frances M. Broadwell stating she has no objections to the request.

With no further input Chairman Coon closed the public hearing at 7:24 p.m.

**Andover Board of Zoning Appeals**

Agenda Item No. 6  
Date: November 17, 2009

<b>Variance Report</b>	
<b>Applicant/Agent: H. L. &amp; Barbara Boyles</b>	
<b>Request:</b> Variance of the maximum size of an accessory storage building and maximum aggregate floor area of all accessory structures.	
<b>Case History:</b>	
<b>Location:</b> 1157 S. Ginkgo Lane	
<b>Site Size:</b> 6.3 acres	
<b>Adjacent Zoning And Existing Land Use</b>	
<b>North:</b> R-1 Single Residential	
<b>South:</b> : R-1 Single Residential	

<p><b>East:</b> R-1 Single Residential  <b>West:</b> Butler Co. Agriculture</p>
<p>*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 <u>ALL</u> 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.</p>
<p><b>Background Information:</b> The property has an existing +/-1,700 s.f. principal residential structure and a 930 s.f. detached garage. The applicant proposes to build a 1,200 s.f. accessory storage building to store vehicles, mowers, etc.</p>
<p><b><u>Does The Evidence Demonstrate That:</u></b></p> <ol style="list-style-type: none"> <li>1. The particular surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardships upon or for the owner, lessee or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced; <b>True</b></li> <li>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; <b>True</b></li> <li>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; <b>True</b></li> <li>4. The proposed variance will not impair and 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; <b>True</b></li> </ol>
<p><b><u>Specific Conditions To Be Met:</u></b>          The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented at the hearing so that <u>ALL</u> 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.</p> <ol style="list-style-type: none"> <li>1. That the variance requested arises from such condition 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; <b>True</b></li> <li>2. The granting of the variance will not adversely affect the rights of adjacent property owners or residents; <b>True</b></li> <li>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; <b>True</b></li> <li>4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; <b>True</b></li> <li>5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations; <b>True, due to the size of the lot.</b></li> </ol>

*Byron Stout made a motion to approve BZA-V-2009-01 as presented. Jan Cox seconded the motion. Chairman Coon asked if there was any further discussion. There was none. Motion carried 6/0.*

Lynn Heath made a motion at 7:29 p.m. to adjourn the Board of Zoning appeals and reconvene the Planning Commission. Jan Cox seconded the motion. Motion carried 6/0.

Adjourn the Board of Zoning Appeals and reconvene the Planning Commission

**Butler County Case CU-09-06-** A request for a conditional use permit to conduct retail and fuel sales on property zoned as the R-1 Single-Family Residential District.

**From Les Mangus' Memo:** This application is an effort to acquire zoning for an existing convenience store operation, which lost its legal nonconforming status due to being closed for more than the six months lapse allowed. I have inquired to Butler County Planning and Zoning about the availability of public water and sewer to the site. The proposed commercial site is not served by public water. The only public sewer in the area is the Flint Hills National Addition about a 1/2 mile away. No information is available about Andover Road R/W encroachments or parking requirements either. The Butler County Engineer shares the staff concern for the lack of parking and access around the proposed site, and the potential safety of customers, employees and the fuel dispensers.

Les Mangus explained this site is located a 1/4 of a mile south of Southwest 130<sup>th</sup> on the west side of the road and once operated as Louie's Convenience Store. The business operated as a legal nonconformance but closed for a period of time. When the new owner came to the county to pull building permits they were informed the legal nonconformance had lapsed and they would need to go through the zoning process to continue operations. Les Mangus said as he understands it the area being applied for as part of the conditional use is only a few thousand square feet of what appears to be an acre or more of land owned by the applicant. He continued by saying he has several concerns with the application and asked the county zoning administrator for further details such as how close are the fuel islands to the road right-of-way and if there are any encroachments of buildings, fuel islands or tanks on the right-of-way. The county zoning administrator did not have answers to these questions but did state the site is not served by public water or sewer. The building is approximately 2,000 square foot, which by city zoning regulations would require eight parking spaces. A 50 x 89 parking lot is shown which produces nine parking spaces, but whether or not they are on public or private property is in question.

Byron Stout asked how the Butler Road Corridor project will affect this property. Les Mangus said at the point of this site the road is proposed to be a divided four lane which will require additional right-of-way. According to the county zoning administrator there appears to be 50 foot of right-of-way from the section line. The consultants of the corridor study assumed there would be 60 foot of right-of-way on either side of the section line, and would probably require right-of-way beyond those 60 feet to accommodate a divided four lane ditch or curb section.

Dave Tingley said his understanding is the applicant would like to operate an antique and gift retail shop at the site as well as reopening the gas station.



Jan Cox asked what responsibility the Committee has beyond its recommendation. Les Mangus said none.

Lynn Heath said as a tax payer of the county he would hate to see the applicant spend a lot of money to improve the site when the county will have to buy back portions of the land in right-of-way acquisitions for corridor improvements.

Ken Boone said he did not feel a recommendation could be made without further information. Lynn Heath noted he felt comfortable with the idea of an antique store, but did not support the reopening of the gas station.

Jan Cox asked why the county was not able to provide right-of-way information. Les Mangus said the county has not yet asked for an as built survey of the property. Byron Stout asked whose responsibility that is. Les Mangus said he feels it would be in the county's best interest to ask for a survey to locate the existing improvements and see if they meet a reasonable standard for the operations being proposed.

Byron Stout asked what will be done with the fuel tanks if they are not used. Les Mangus said the removal and filling of the area the fuel tanks sat would be handled by the Kansas Department of Health and Environment.

*John Cromwell made a motion to recommend to the Butler County Planning Board that the Andover Planning Commission has significant reservations based on current traffic conditions, future southwest Butler Road expansion plans, questionable right-of-way considerations as well as environmental concerns based on the old fuel storage tanks. Ken Boone seconded the motion. Chairman Coon asked if there was any further discussion. Byron Stout said he would like to amend the motion to state until further information is received the Committee can not make a recommendation on nonfuel retail sales at the site. John Cromwell accepted Byron Stout's amendment. Lynn Heath seconded the amendment. Chairman Coon asked if there was any further discussion. There was none. Motion carried 6/0.*

**Member Items:** Les Mangus stated City Council Liaison Dave Tingley has inquired about training courses for the City Council, Planning Commission and Site Plan Review Committee, and staff would like to know if the Commission is interested in learning about how the planning process works or what makes it work. The Commission said it would prefer a session on how the process works.

Member Items

Lynn Heath thanked city street superintendent Bill Braitsch for his timely response to the question he posed at last months meeting.

*John Cromwell made a motion to adjourn the meeting at 7:52 p.m. Byron Stout seconded the motion. Motion carried 6/0.*

Adjourn

Respectfully Submitted by

\_\_\_\_\_  
Kandace Hunt  
Administrative Secretary

Approved this 15<sup>th</sup> day of December 2009 by the Andover City Planning Commission/ Board of Zoning Appeals, City of Andover.