

**ANDOVER CITY PLANNING COMMISSION/
BOARD OF ZONING APPEALS
Tuesday, July 17, 2012
Minutes**

1. [Call to order.](#)

2. [Roll call.](#)

Planning Commission members present were Chairman Quentin Coon, John Cromwell, Lynn Heath, Ken Boone and William Schnauber. Others in attendance were City Administrator Sasha Stiles, Administrative Secretary Dayna DuFriend and City Council Liaison Kris Estes. Members not in attendance were Director of Public Works and Community Development Les Mangus, Lee Butler and Shane Davis.

3. [Approval of the minutes of the June 19, 2012 meeting.](#)

A motion was made by Ken Boone, seconded by Lynn Heath to approve the minutes of the June 19, 2012 meeting. Motion carried 5/0.

4. [Communications:](#)

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

5. [Review Revised Preliminary Plat for The Course at Green Valley Greens 11th Addition. STAFF: The proposed preliminary plat of The Course at Green Valley Greens 11th Addition reflects the concept and conditions discussed earlier. The unresolved issues regarding access across the Green Valley Reserve "B" on Onewood Dr. along the western boundary of the plat remain unanswered, but the developer assures us that the separate dedications of access are being negotiated with the Green Valley Homeowners Association. Staff supports the approval of the plat contingent on the resolution of the access issue.](#)

Russ Ewy, Baughman Company and Bill Johnson, Evans Building Company were present to represent the application.

Mr. Ewy explained that of the two outstanding issues, the final drain plan was submitted to Poe & Associates last week. The remaining issue deals with the dedication or acceptance of an access easement or right-of-way from their lot on to Onewood. They are currently working with the Homeowners Association for this access agreement at the northern tier of the property. The southern access point will be handled through an access easement that will be negotiated between the two parties.

Lynn Heath ask what the results were from the meetings with the Homeowners Association.

Mr. Ewy said during an early January meeting Reserve A was discuss and that this reserve was intended to account for some drainage and buffering from the proposed church use to the homes to the North. The Homeowners Association is in acceptance of what they are proposing.

Don Kimble, representing Dr. A.J. Reed and the Minor Emergency Group presented a graphic of what the design of the 60 foot right-of-way does to this landowners' property.

City Administrator Sasha Stiles stated that the backage road is part of the (US Hwy 54) Corridor Study that everyone has seen and creates a connection to the commercial development that is envisioned along the corridor for the residents and the neighborhood.

Bill Johnson, Evans Building Company explained that they have worked on this project for 9 months and have tried to do everything they can to meet the City's requirements for the backage road. If this is not completed by July 31st the property will revert back to the previous owner. The Doctor (Revelation Ministries) wants everyone to feel good about what is being done.

John Cromwell asked if this project were to not develop the backage road would not change based on someone else going in there. This road is part of the comprehensive plan regardless.

Lynn Heath stated that the road will go in, however its' location will vary. Sasha Stiles confirmed.

A motion was made by Lynn Heath, seconded by Ken Boone to approve the Revised Preliminary Plat for The Course at Green Valley Greens 11th Addition contingent upon the resolution of the access to Onewood Drive from the easement (Reserve B).

Motion carried 5/0.

6. [Review and approve the final plat of Green Valley Greens 11th Addition.](#)
[STAFF: The proposed final plat of The Course at Green Valley Greens 11th Addition reflects the concept and conditions discussed at the preliminary plat stage. The unresolved issues regarding access across the Green Valley Reserve "B" on Onewood](#)

Dr. along the western boundary of the plat remain unanswered, but the developer assures us that the separate dedications of access are being negotiated with the Green Valley Homeowners Association. Staff supports the approval of the plat contingent on the resolution of the access issue.

Russ Ewy, Baughman Company representing the applicant stated that they would like the opportunity to address the B-1 issue with the City Council since it is a dedication of public right-of-way.

A motion was made by John Cromwell, seconded by William Schnauber to approve the final plat of Green Valley Greens 11th Addition contingent upon the resolution of the access to Onewood Drive from the easement (Reserve B).

Motion carried 5/0.

7. LS-2012-01- Review and approve the proposed lot split of Lot 15, Block 2, The Countryside Second Addition to City of Andover, Butler County, Kansas. STAFF: The proposed lot split meets the requirements of the Zoning District and Subdivision Regulations.

A motion was made by Lynn Heath, seconded by Ken Boone to approve the proposed lot split of Lot 15, Block 2, The Countryside Second Addition to City of Andover, Butler County, Kansas. 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-2012-02- Public hearing on an application filed by Nies Homes, Inc., requesting a variance of 6 feet for the construction of a 8'x10' foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property located at 914 Threewood Ct. zoned as the R-4 Multiple-Family Residential District. STAFF: The proposed variance would allow the builder to construct an 8'X10' deck more than 30" above grade in the rear yard to serve the main level patio of the home. The subject property is uniquely shaped, which makes it difficult to place a home of comparable size to those already in the neighborhood on the lot while meeting all of the bulk regulations. Staff supports the application.

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-02

APPLICANT/AGENT: Nies Homes

REQUEST: Nies Homes, Inc., 10333 E. 21st St., Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 6 feet for the construction of a 8’x10’ foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property zoned as the R-4 Multiple-Family Residential District.

CASE HISTORY: The subject property is an unusually shaped lot that meets the minimum lot size, width, and depth requirements, but does not lend the remaining building envelope to build a house in the size and character of the rest of the neighborhood.

LOCATION: Legal description: Lot 19, Block 2, Green Valley Greens 10th Addition to the City of Andover, Kansas.

General location: 914 Threewood Ct., Andover, Kansas.

SITE SIZE: . 6788 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-2 Single-Family Residential single family dwellings Green Valley PUD

South: R-4 Multiple-Family Residential single family dwellings

East: R-4 Multiple-Family Residential single family dwellings

West: R-4 Multiple-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:

This property was platted with the intentions of being a “patio home” development with smaller homes and smaller lot sizes.

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**, because of the unusual shape of the lot and location of the utility easement.
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 proposed deck would be permitted if it were 30” or less above the ground.
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 proposed deck would be permitted if it were 30” or less above the ground.

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 the unique shape of the lot does not easily allow for the most effective use of the required lot depth;
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.;
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 be forced to build a minimal deck or lower the deck height

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**, because the proposed deck would be permitted if it were 30" or less above the ground.

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.

9. BZA-V-2012-03- Public hearing on an application filed by Nies Homes, Inc., requesting a variance of 3 feet for the construction of a 8'x10' foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property located at 922 Threewood Ct. zoned as the R-4 Multiple-Family Residential District.
STAFF: The applicant has placed the home, which is under construction +/-25 ft. from the rear property line in order to allow for a 5' deck off of the main level patio door, however the applicant desires to build an 8'X10' deck to better accommodate the future tenant placing some patio furniture on the deck. Because the rear yard of the subject property is adjacent to the golf course adequate open space is not a problem. A conflict exists with the existing 20' rear yard drainage and utility easement, but the applicant is working on an agreement with the utility providers to remedy the conflict. Staff supports the application.

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-03

APPLICANT/AGENT: Nies Homes

REQUEST: Nies Homes, Inc., 10333 E. 21st St., Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 3 feet for the construction of a 8'x10' foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property zoned as the R-4 Multiple-Family Residential District.

CASE HISTORY: The subject property is an unusually shaped lot that meets the minimum lot size, width, and depth requirements, but does not lend the remaining building envelope to build a house in the size and character of the rest of the neighborhood.

LOCATION: Legal description: Lot 16, Block 2, Green Valley Greens 10th Addition to the City of Andover, Kansas.

General location: 922 Threewood Ct., Andover, Kansas.

SITE SIZE: . 6707 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

- North: R-4 Multiple-Family Residential single family dwellings Green Valley PUD
- South: R-4 Multiple-Family Residential single family dwellings Green Valley PUD
- East: R-4 Multiple-Family Residential single family dwellings Green Valley PUD
- West: R-2 Green Valley PUD – Cedar Pines Golf Course

*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: This property was platted with the intentions of being a “patio home” development with smaller homes and smaller lot sizes adjacent to the public golf course.

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, because of the open space provided by the public golf course adjacent to the rear yard restricting the use of the rear yard is an unnecessary hardship on the builder.**

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 proposed deck would be permitted if it were 30” or less above the ground,**

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 proposed deck would be permitted if it were 30” or less above the ground.**

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 the unique location of the lot adjacent to the public golf course the restriction of the deck height or size does not easily allow for the most effective use of the required lot depth;

2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**, because the proposed deck would be permitted if it were 30" or less above the ground.;

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 be forced to build a minimal deck or lower the deck height

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**, because the proposed deck would be permitted if it were 30" or less above the ground.

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.

10. BZA-V-2012-04- Public hearing on an application filed by Nies Homes, Inc., requesting a variance of 6 feet for the construction of a 8'x10' foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property located at 926 Threewood Ct. zoned as the R-4 Multiple-Family Residential District. STAFF: The applicant has placed the home, which is under construction +/-25 ft. from the rear property line in order to allow for a 3' deck off of the main level patio door, however the applicant desires to build an 8'X10' deck to better accommodate the future tenant placing some patio furniture on the deck. Because the rear yard of the subject property is adjacent to the golf course adequate open space is not a problem. A conflict exists with the existing 20' rear yard drainage and utility easement, but the applicant is working on an agreement with the utility providers to remedy the conflict. Staff supports the application.

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-04

APPLICANT/AGENT: Nies Homes

REQUEST: Nies Homes, Inc., 10333 E. 21st St., Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 6 feet for the construction of a 8'x10' foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property zoned as the R-4 Multiple-Family Residential District.

CASE HISTORY: The subject property is an unusually shaped lot that meets the minimum lot size, width, and depth requirements, but does not lend the remaining building envelope to build a house in the size and character of the rest of the neighborhood.

LOCATION: Legal description: Lot 15, Block 2, Green Valley Greens 10th Addition to the City of Andover, Kansas.

General location: 926 Threewood Ct., Andover, Kansas.

SITE SIZE: . 6497 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

- North: R-4 Multiple-Family Residential single family dwellings Green Valley PUD
- South: R-4 Multiple-Family Residential single family dwellings Green Valley PUD
- East: R-4 Multiple-Family Residential single family dwellings Green Valley PUD
- West: R-2 Green Valley PUD – Cedar Pines Golf Course

*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: This property was platted with the intentions of being a “patio home” development with smaller homes and smaller lot sizes adjacent to the public golf course.

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**, because of the open space provided by the public golf course adjacent to the rear yard restricting the use of the rear yard is an unnecessary hardship on the builder.
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 proposed deck would be permitted if it were 30” or less above the ground,
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 proposed deck would be permitted if it were 30” or less above the ground.

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 the unique location of the lot adjacent to the public golf course the restriction of the deck height or size does not easily allow for the most effective use of the required lot depth;
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**, because the proposed deck would be permitted if it were 30” or less above the ground;
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 be forced to build a minimal deck or lower the deck height
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.
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.

- 11. BZA-V-2012-05- Public hearing on an application filed by Nies Homes, Inc., requesting a variance of 6 feet for the construction of a 8’x10’ foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property located at 930 Threewood Ct. zoned as the R-4 Multiple-Family Residential District.
STAFF: The applicant has placed the home, which is under construction +/-25 ft. from the rear property line in order to allow for a 3’ deck off of the main level patio door, however the applicant desires to build an 8’X10’ deck to better accommodate the future tenant placing some patio furniture on the deck. Because the rear yard of the subject property is adjacent to the golf course adequate open space is not a problem. A conflict exists with the existing 20’ rear yard drainage and utility easement, but the applicant is working on an agreement with the utility providers to remedy the conflict. Staff supports the application.

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-05

APPLICANT/AGENT: Nies Homes

REQUEST: Nies Homes, Inc., 10333 E. 21st St., Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 6 feet for the construction of a 8’x10’ foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property zoned as the R-4 Multiple-Family Residential District.

CASE HISTORY: The subject property is an unusually shaped lot that meets the minimum lot size, width, and depth requirements, but does not lend the remaining building envelope to build a house in the size and character of the rest of the neighborhood.

LOCATION: Legal description: Lot 14, Block 2, Green Valley Greens 10th Addition to the City of Andover, Kansas.

General location: 930 Threewood Ct., Andover, Kansas.

SITE SIZE: . 6497 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

South: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

East: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

West: R-2 Green Valley PUD – Cedar Pines Golf Course

*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:

This property was platted with the intentions of being a “patio home” development with smaller homes and smaller lot sizes adjacent to the public golf course.

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**, because of the open space provided by the public golf course adjacent to the rear yard restricting the use of the rear yard is an unnecessary hardship on the builder.
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 proposed deck would be permitted if it were 30” or less above the ground.
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 proposed deck would be permitted if it were 30” or less above the ground.

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 the unique location of the lot adjacent to the public golf course the restriction of the deck height or size does not easily allow for the most effective use of the required lot depth;
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.;
 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 be forced to build a minimal deck or lower the deck height
 4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.
 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.
12. BZA-V-2012-06- Public hearing on an application filed by Nies Homes, Inc., requesting a variance of 6 feet for the construction of a 8’x10’ foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property located at 942 Threewood Ct. zoned as the R-4 Multiple-Family Residential District.
STAFF: The applicant has placed the home, which is under construction +/-25 ft. from the rear property line in order to allow for a 3’ deck off of the main level patio door, however the applicant desires to build an 8’X10’ deck to better accommodate the future tenant placing some patio furniture on the deck. Because the rear yard of the subject property is adjacent to the golf course adequate open space is not a problem. A conflict exists with the existing 20’ rear yard drainage and utility easement, but the applicant is working on an agreement with the utility providers to remedy the conflict. Staff supports the application.

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-06

APPLICANT/AGENT: Nies Homes

REQUEST: Nies Homes, Inc., 10333 E. 21st St., Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 6 feet for the construction of a

8'x10' foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property zoned as the R-4 Multiple-Family Residential District.

CASE HISTORY: The subject property is an unusually shaped lot that meets the minimum lot size, width, and depth requirements, but does not lend the remaining building envelope to build a house in the size and character of the rest of the neighborhood.

LOCATION: Legal description: Lot 11, Block 2, Green Valley Greens 10th Addition to the City of Andover, Kansas.

General location: 942 Threewood Ct., Andover, Kansas.

SITE SIZE: . 7877 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

South: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

East: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

West: R-2 Green Valley PUD – Cedar Pines Golf Course

***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:

This property was platted with the intentions of being a “patio home” development with smaller homes and smaller lot sizes adjacent to the public golf course.

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**, because of the open space provided by the public golf course adjacent to the rear yard restricting the use of the rear yard is an unnecessary hardship on the builder.
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 proposed deck would be permitted if it were 30” or less above the ground,
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 proposed deck would be permitted if it were 30” or less above the ground.

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 the unique location of the lot adjacent to the public golf course the restriction of the deck height or size does not easily allow for the most effective use of the required lot depth;
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.;
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 be forced to build a minimal deck or lower the deck height

- 4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.
- 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.

- 13. BZA-V-2012-07- Public hearing on an application filed by Nies Homes, Inc., requesting a variance of 8 feet for the construction of a 8’x10’ foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property located at 946 Threewood Ct. zoned as the R-4 Multiple-Family Residential District. STAFF: The applicant intends to place the home 20 ft. from the rear property line, at the minimum rear yard setback line, in order to build an 8’X10’ deck to better accommodate the future tenant placing some patio furniture on the deck. Because the rear yard of the subject property is adjacent to the golf course adequate open space is not a problem. Staff supports the application.

VARIANCE REPORT *

CASE NUMBER: BZA-V-2012-07

APPLICANT/AGENT: Nies Homes

REQUEST: Nies Homes, Inc., 10333 E. 21st St., Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of 8 feet for the construction of a 8’x10’ foot deck, in excess of 30 inches above grade which encroaches into the required 20 foot rear yard on property zoned as the R-4 Multiple-Family Residential District.

CASE HISTORY: The subject property is an unusually shaped lot that meets the minimum lot size, width, and depth requirements, but does not lend the remaining building envelope to build a house in the size and character of the rest of the neighborhood.

LOCATION: Legal description: Lot 10, Block 2, Green Valley Greens 10th Addition to the City of Andover, Kansas.

General location: 946 Threewood Ct., Andover, Kansas.

SITE SIZE: . 8143 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

South: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

East: R-4 Multiple-Family Residential single family dwellings Green Valley PUD

West: R-2 Green Valley PUD – Cedar Pines Golf Course

*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:

This property was platted with the intentions of being a “patio home” development with smaller homes and smaller lot sizes adjacent to the public golf course.

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**, because of the open space provided by the public golf course adjacent to the rear yard restricting the use of the rear yard is an unnecessary hardship on the builder.
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 proposed deck would be permitted if it were 30” or less above the ground,
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 proposed deck would be permitted if it were 30” or less above the ground.

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 the unique location of the lot adjacent to the public golf course the restriction of the deck height or size does not easily allow for the most effective use of the required lot depth;
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.;
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 be forced to build a minimal deck or lower the deck height
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **True**, because the proposed deck would be permitted if it were 30” or less above the ground.
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.

Clifford Nies, Nies Homes was present to represent the application.

Mr. Nies explained that after owning the property for 10 years they have found a market and design that is workable. However, there is not enough room to construct a decent size deck for these homes.

A motion was made by Lynn Heath, seconded by John Cromwell to approve Having considered the evidence at the hearing and determined that the findings of fac in the Variance Report (as amended) have been found to exist that support all of the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the stae statues which are necessary for granting of a variance, I Lynn Heath move that the Chairperson b e authorized to sibgn a resolution granting the variance for Case No.(s) BZA-V-2012-02, BZA-V-2012-03, BZA-V-2012-04, BZA-V-2012-05, BZA-V-2012-06 and BZA-V-2012-07 as requested. 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 adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 5/0.

14. VA-2012-01- Public hearing on a petition for a vacation of the 3 feet of the East portion of the 20 foot easement along West property line of Lot 16, Block 2 Green Valley Greens 10th Addition.
STAFF: The subject property is zoned R-4 Multiple Family Residential, which provides for a 20 ft. minimum rear yard, which in this case is platted as a 20 ft. drainage and utility easement. The builder desires to build a deck on the rear of the house, which would overhang the platted easement with existing underground utilities. The builder is working with the utility providers to come to some sort of partial release of the easement. Staff supports the vacation of a portion of the easement as long as an agreement can be reached with the affected utility providers.

15. VA-2012-02- Public hearing on a petition for a vacation of the 6 feet of the East portion of the 20 foot easement along West property line of Lot 15, Block 2 Green Valley Greens 10th Addition.
STAFF: The subject property is zoned R-4 Multiple Family Residential, which provides for a 20 ft. minimum rear yard, which in this case is platted as a 20 ft. drainage and utility easement. The builder desires to build a deck on the rear of the house, which would overhang the platted easement with existing underground utilities. The builder is working with the utility providers to come to some sort of partial release of the easement. Staff supports the vacation of a portion of the easement as long as an agreement can be reached with the affected utility providers.

16. VA-2012-03- Public hearing on a petition for a vacation of the 6 feet of the East portion of the 20 foot easement along West property line of Lot 14, Block 2 Green Valley Greens 10th Addition.
STAFF: The subject property is zoned R-4 Multiple Family Residential, which provides for a 20 ft. minimum rear yard, which in this case is platted as a 20 ft. drainage and utility easement. The builder desires to build a deck on the rear of the house, which would overhang the platted easement with existing underground utilities. The builder is working with the utility providers to come to some sort of partial release of the easement. Staff supports the vacation of a portion of the easement as long as an agreement can be reached with the affected utility providers.

17. VA-2012-04- Public hearing on a petition for a vacation of the 6 feet of the East portion of the 20 foot easement along West property line of Lot 11, Block 2 Green Valley

Greens 10th Addition.

STAFF: The subject property is zoned R-4 Multiple Family Residential, which provides for a 20 ft. minimum rear yard, which in this case is platted as a 20 ft. drainage and utility easement. The builder desires to build a deck on the rear of the house, which would overhang the platted easement with existing underground utilities. The builder is working with the utility providers to come to some sort of partial release of the easement. Staff supports the vacation of a portion of the easement as long as an agreement can be reached with the affected utility providers.

A motion was made by John Cromwell, seconded by William Schnauber to approve a vacation(s) as requested for each of the following petitions, VA-2012-01, VA-2012-02, VA-2012-03 and VA-2012-04, contingent upon the agreement with the affected utility providers. Motion carried 5/0.

18. Member items.

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

Respectfully Submitted by

Dayna DuFriend
Administrative Secretary

Approved this 21st of August, 2012 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover