

**ANDOVER CITY PLANNING COMMISSION/
BOARD OF ZONING APPEALS
Tuesday, March 19, 2013
Minutes**

1. Call to order.

Chairman Coon called the meeting to order at 7:00 p.m.

2. Roll call.

Planning Commission members present were Chairman Coon, Brian Lindebak, Lynn Heath, William Schnauber and Lee Butler. Others in attendance were director of Public Works and Community Development Les Mangus, Assistant Director of Public Works Steve Anderson, city Administrator Sasha Stiles, and Administrative Secretary Dayna DuFriend. Members not in attendance were Aaron Masterson and Ken Boone.

3. Approval of the minutes of the February 19, 2013 meeting.

A motion was made by Lynn Heath, seconded by Lee Butler to approve minutes of the February 19, 2013 meeting. Motion carried 3/0/2. Chairman Quentin Coon and Brian Lindebak abstained from the vote.

4. Communications:

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

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

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

5. [BZA-V-2013-01- Public hearing on an application filed by Nies Homes, requesting a variance of 5 feet for the construction of a new dwelling with attached garage, which encroaches into the required 25 foot front yard setback for the garage opening on property zoned as the R-4 Multiple-Family Residential District.](#)

Les Mangus explained that this case involves a new house. Several homes were built in the neighborhood that did not comply with the note in the Planned Unit Development that requires the face of the garage to be set back 25 feet versus the 20 foot building setback for the zoning district.

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

Mr. Nies explained that the lots were developed small for patio homes. As there does not seem to be a market for patio homes they have developed a functional plan for single family homes.

Chairman Coon asked if Lot 1 would also be at 20 feet also.

Mr. Nies replied that it would be 25 feet as this lot is 128 feet deep, there will be plenty of room. This is a vacant lot.

ANDOVER BOARD OF ZONING APPEALS

Agenda Item No. 5

For March 19, 2013

VARIANCE REPORT *

CASE NUMBER: BZA-V-2013-1

APPLICANT/AGENT: Nies Homes, Inc.

REQUEST: Nies Homes, Inc., 10333 E. 21st, Suite 303, Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance of a reduction in the front yard setback to 20 feet from the required 25 feet on property zoned as the R-4 Multiple Family Residential District.

CASE HISTORY: The subject property is a Planned Unit Development parcel that is zoned R-4 Multiple Family Residential District, which allows a 20 minimum front yard setback, however the Parcel Description requires a minimum 25 foot setback to the opening of a garage. There has been an error in the application of the zoning regulations on the existing homes on the cul-de-sac, which all have garages at only a 20 foot setback.

LOCATION: Legal description: Lot 2, Block 1, Green Valley 10th Addition, City of Andover, Kansas.

General location: 909 Onewood Ct., Andover, Kansas.

SITE SIZE: . 10,360 sq. ft.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-4 Multiple Family Residential District
South: R-4 Multiple Family Residential District
East: R-4 Multiple Family Residential District
West: R-4 Multiple Family Residential District

*NOTE: This report 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:

The applicant desires to place the new home in line with the existing homes in the neighborhood, which were built in error with only a 20 foot setback to the face of the garage.

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, **because the subject lot is unusually shaped in that one of the side lot lines in only 76 feet. True.**
2. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property, **because the request is merely to place the new home in line with others in the neighborhood. True.**
3. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, **because most of the houses in neighborhood have a similar setback. True.**
4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood, **because an adequate driveway length**

is maintained for the short cul-de-sac design. **True.**

SPECIFIED CONDITIONS TO BE MET:

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

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant, **because the R-4 zoning district typically allows a 20' building setback without further restriction of the garage opening. True.**
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, **because the proposed location will be similar to other houses in the neighborhood. True.**
3. That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application, **because it will cause the subject house to be out of alignment with adjacent houses. True.**
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, **because an adequate setback will be maintained. True.**
5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, **because the requested 20' building setback is allowed in the underlying zoning district. True.**

Having considered the evidence at the hearing and determined that the findings of fact in the Variance Report (as amended) have been found to exist that support all the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759€ of the States statutes which are necessary for granting of a variance, I, Lynn Heath, move that the Chairperson be authorized to sign a Resolution granting the Variance for Case No. BZA-V-2013-01 as requested. Motion was seconded by William Schnauber. Motion carried 5/0.

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

A motion was made by Lynn Heath, seconded by William Schnauber to adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 5/0.

6. Review and approve the Preliminary Plat for the Andover Farm Estates.

Les Mangus explained that this plat is for large acreage lots. The owner/developer is asking for a private street. Due to the size of the lots this is allowable.

Kris Rose, Baughman Company, agent for the applicant was present to represent the application.

A motion was made by Lynn Heath, seconded by William Schnauber to approve the Preliminary Plat for the Andover Farm Estates as presented. Motion carried 5/0.

7. Review and approve the Final Plat for the Andover Farm Estates.

Les Mangus explained that all of the issues have been taken care of with the staff.

Kris Rose, Baughman Company, was in attendance.

Brian Lindebak asked if the houses would be set on the lots at the 25 foot setback.

Mr. Rose replied that the owner will have his own setback that requires the house to be setback further.

A motion was made by Lynn Heath, seconded by William Schnauber to approve the Final Plat for the Andover Farm Estates as presented. Motion carried 5/0.

8. Review of the Final Plat for Andover Farm at Cedar Park-Sixth Phase.

Les Mangus explained that this is the next phase in the original 80 acres. The developer has modified the lot configuration and removed several short cul-de-sacs.

Kris Rose, Baughman Company, was in attendance.

Chairman Coon asked if large lots were that popular.

Mr. Rose stated that they seem to be in Andover.

A motion was made by Lynn Heath, seconded by William Schnauber to approve the Final Plat for Andover Farm at Cedar Park-Sixth Phase as presented. Motion carried 5/0.

9. Review of the Final Plat for Marketplace Commercial Third Addition.

Les Mangus explained that this is the remainder of the Marketplace property.

Jason Gish, MKEC Engineering, was in attendance.

Lynn Heath asked if the yellow arrows were for the water flow.

William Schnauber asked what the yellow dotted lines were for.

Les Mangus replied that the natural lay of the land is for the majority of the water to flow to the southwest. The drainage areas are indicated with the yellow dotted lines. He also said that this plan does not reflect the latest revision to the storm sewer plan. Along the south border there is an outlet that has been rearranged to go west into the other system.

A motion was made by Lynn Heath, seconded by William Schnauber to approve the Final Plat for Marketplace Commercial Third Addition as presented. Motion carried 4/0/1. Brian Lindebak abstained from the vote.

10. Member items.

Lynn Heath stated that there is now an open position on the Subdivision Committee and requested nomination of a Planning Commission member for this position.

Chairman Coon nominated Brian Lindebak for this appointment.

A motion was made by Lynn Heath, seconded by William Schnauber to appoint Brian Lindebak to the Subdivision Committee. Motion carried 4/0/1. Brian Lindebak abstained from the vote.

Les Mangus noted that there is a need for committee volunteers from outside of the city limits.

11. Adjourn.

A motion was made by Lynn Heath, seconded by William Schnauber to adjourn at 7:39p.m. Motion carried 5/0.

Respectfully Submitted by

Dayna DuFriend
Administrative Secretary

Approved this 16th of April, 2013 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.