The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.

The following agenda identifies and describes each proposal to be considered by the Board.

Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.

Individuals wishing to address the Board are requested to state their name and address for the official hearing record.

Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.

Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.
Board of Zoning Appeals
Agenda Items for Monday, October 8, 2018

A. Call to Order

B. Approval of Minutes from March 12, 2018

C. Public Hearings

1. **BZA18A/02 by Autumn Home Plus, Inc.** appealing as provided for by Section 2.45.050 of the Topeka Municipal Code (TMC) a decision by the Planning Director to classify two or more Home Care Type I facilities in the R-1 Single Family Residential District on parcels adjacent to one another as a single use facility and thus restricted to a maximum of 8 residents per Home Care Type I facility and 12 residents for Home Care Type II facility with a Conditional Use Permit.

D. Adjournment
CITY OF TOPEKA
BOARD OF ZONING APPEALS

M I N U T E S

Monday, March 12, 2018

5:30PM - Holliday Building 1st Floor Holliday Conference Room

Members present: Tim Carkhuff, Mike Morse, Walter Schoemaker, Carole Jordan, Helen Crow (7)

Members Absent: Marty Hazen, Toni Beck (2)

Staff Present: Bill Fiander, Planning Director; Mike Hall, Current Planning Mgr; Dan Warner, Comp Planning Mgr; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Mike Morse, Chair. Roll was taken with 5 members present for a quorum. Also present were the applicant, Scott Gales, and his attorney Tom Lemon.

Approval of Minutes from June 12, 2017

Motion by Mr. Carkhuff to approve, second by Ms. Jordan. APPROVAL 5-0-0

Declaration of Ex Parte Communications

Mary Feighny explained ex parte communications and asked each BZA member to disclose any that may have taken place.

Schoemaker – None
Carkhuff – None
Jordan – None
Morse – Received phone calls from 2 individuals whom he told he couldn’t discuss the case. Mr. Gales (the applicant) told him that he had a case coming before the BZA but they did not discuss further.
Crow – Reported that she had spoken with BZA member Toni Beck about whether Ms. Beck should recuse herself and she spoke with Mr. Morse over the phone regarding the same. She stated that several neighbors had spoken with her casually but she simply encouraged them to attend the BZA meeting and didn’t discuss the cases with them.

Ms. Crow related that a number of years ago she had heard that Mr. Gales might be unhappy with the NCD and she phoned him, leaving a message to call her back to discuss his concerns. He never returned her call so there was no conversation.

Ms. Feighny asked if Ms. Crow felt she could make an impartial judgment based solely on information she would hear and review this evening and Ms. Crow stated that she could.
BZA18A/01 by Scott Gales, appealing, pursuant to Topeka Municipal Code (TMC) Section 2.45.070, a decision by the Planning Director that the proposed construction of a building to be located at 1605 SW Lakeside Drive, does not meet the Design Standards adopted in the Westboro Neighborhood Conservation District. (Ordinance No. 19887)

Mike Hall, Staff Planner, presented the staff report, referring to PowerPoint slides that are attached as part of the record. He noted that all the information staff would be reviewing this evening is available on the City of Topeka’s website.

Mr. Hall noted that he had received four comments in writing opposing granting the appeal (included in the agenda packet) and received one phone call from a person who is generally opposed to the project. He explained that the finding the BZA’s members are required to make is whether the Planning Director erred in determining that the proposed residential structure does not comply with the design standards.

Mr. Hall provided and reviewed a PowerPoint presentation that included Exhibit E3 & E4 showing exterior elevations and Applicant’s Exhibit E7 & E8, which are 3 dimensional drawings giving an idea of the architectural style. He pointed to the roof with different planes and showed a rendering/simulation placing the proposed building in its context, showing other buildings, the street, and other features.

Mr. Hall reviewed the Westboro Neighborhood Conservation (NCD) Building Architectural Styles and Details, including: “New residences shall be constructed in one of the architectural styles identified in the “Representative Samples.”

Mr. Hall showed photos (PowerPoint) of existing homes on Lakeside Drive and Westover Road, pointing out that they are representative of home styles allowed by the NCD standards.

Mr. Hall presented the Appeal Evaluation and then staff’s Analysis and Findings, quoting from the Westboro NCD: “A neighborhood Conservation Designation will protect the historic character and atmosphere in our neighborhood. While many of the existing houses reflect the architectural styles that complement the other residences, we want to make sure that any new or reconstructed structures also reflect these styles.”

In regard to the architectural style (#3), Mr. Hall reiterated that within the Westboro NCD the term “Mid-Century American” incorporates both Mid-Century and American styles of architectural design that are deemed consistent with the character-defining features established within the Westboro neighborhood. While the applicant may disagree with the NCD standards, the decision at hand is whether the NCD standards, as adopted, were erroneously applied or enforced by staff.

Mr. Hall reviewed staff’s conclusion and recommendation as provided in the Appeal Evaluation and asked that the Board affirm the decision of the Planning Director.

Mr. Schoemaker asked whether the proposed building is considered new construction, remodel or reconstructed structure. Mr. Hall stated that part of the existing home is being retained but the proposed building is large enough to be considered reconstructing. In large part it’s considered a new
structure. He explained that staff recognizes there are non-conforming setbacks and explained that the zoning code specifically provides for that.

The applicant, Scott Gales, was given an opportunity to present information. Mr. Gales gave some background on his family, how they came to live in their current home, and the progression of the family plans to remodel the home. He explained that he was serving as a member of the Topeka Planning Commission when the neighborhood proposed the NCD and stated that he had spoken with City Attorney Mary Feighny at the time about whether his living in the neighborhood would be a conflict of interest. Mr. Gales stated he believed fundamentally the NCD was a great idea to help protect some of the very unique homes in Westboro, most of which he stated tend to exist predominantly down Lakeside and 1-2 blocks on either side. He pointed out he had publicly noted that all the due diligence was done on the NCD, that the project had been spearheaded by the community and that he had no reason to vote against it, adding that he didn’t let personal issues interfere with his decision to vote in favor of the standards.

Mr. Gales explained that he had spoken with Mr. Fiander regarding recourse for someone like him who might want to remodel their own property, and Mr. Fiander explained that it could be reviewed by the Board of Zoning Appeals. Mr. Gales noted his concern was that as a professional licensed architect with credentials and experience (as he himself is), he would be unable to design and build the home they’d like to live in the rest of their life, one of high architectural design. He stated that he shouldn’t be required to make it look like something other than what he wants and felt at the time that the BZA wouldn’t hold someone like him who wants to build a home like his to a standard they might hold someone to who wanted to tear down one of the larger, nicer homes in the neighborhood. He pointed out that his current home is “a one story home with clad in vinyl and fake shutters” and stated that he believes we should be careful regarding what we give significance to; the NCD is a great idea that should be enforced, but carefully – not with a sledgehammer. He stated that there is no recourse for him except to come to the BZA to tell them what he thinks about it. Prior to the NCD he could do what he wanted with his property as long as there wasn’t another zoning issue and nobody could say a word – “I’m the king and it’s my castle.” That is gone not because he was a planning commissioner who had a duty to vote for or against it because it was done right, but because as a citizen of Westboro he didn’t have a vote in it. He stated that no citizen of Westboro had a vote. He stated that the Neighborhood Association influenced the Planning Commission and did all the right things to get the NCD passed; he commends them for following the rules but pointed out that with that comes lots of responsibility to make sure the NCD isn’t enforced with an iron fist but rather adequately, appropriately, where it should be enforced, and with a lot of flexibility. He stated that it shouldn’t freeze the neighborhood in time and it shouldn’t say that people should look at a ranch home is a contributing element to a Conservation District. He noted 1-3 ranch style homes in the neighborhood that were designed by architects, but stated that 20% of the other 200 homes use the same set of plans.

Mr. Carkhuff asked the Chairperson to ask Mr. Gales to get to the point of the appeal that is before the board. He stated that the applicant was relaying why he doesn’t like the standards that have been adopted but since they are adopted, they are the law of the land.
Mr. Gales stated he was setting the groundwork. He pointed to magazines he brought that had home designs in them, including what Mr. Gales called many of the “estate” homes that can be found in Westboro and other neighborhoods.

Mr. Gales stated that the NCD is a city ordinance and he would dispute that it is “the law of the land.” It is rather a city ordinance that’s been applied to where he lives after he bought his home. He stated that he bought his home thinking he would do with it what he wanted, taking into account already set property rules and set-back lines, and he should still have the right to do that. He stated that without him voting as a citizen, that right was taken away. He noted attendance at the Neighborhood Association meetings where the NCD was written and voted on was only 7-25 people. He added that while everyone in the neighborhood did get invitations to attend the meetings, many were too busy and so relied on others to see what was going on. He stated that before anyone knew what was happening, the NCD was before the city and as a Planning Commissioner, he had concerns. He stated that the NCD is about conformity.

Mr. Gales spoke to problems his house has with flooding, cracks in the garage, etc. and spoke to the fact that with older homes so often owners have to invest in hidden improvements that can’t be seen and don’t necessarily improve the value of the home. He stated that in the 15 years he’s owned his home, the value has only increased by $4k.

Mr. Gales gave an overview of the proposed building, showing overheads and giving information about issues with the current structure that need change, repair or replacement. He noted that the height of the proposed building is only 7’ taller than the existing structure and pointed to the small pitch of the roof to help accomplish this.

In closing, Mr. Gales stated that as an architect, he believes he has the opportunity and luxury of being a person who bought the home under the rules in place to be able to submit for approval the design of the home that he and his family have chosen. He does not with intentional disrespect turn his back on the Westboro NCD; he commends it for being in place to protect the homes that do have character, but he believes it should be judiciously applied with much discretion to homes that do not necessarily belong in it, and we have to be careful being the arbiters of what is good design and what isn’t because in the end, design is a personal preference. Flexibility should be given to staff and the BZA must weigh heavily someone’s personal rights as an individual who bought property under a set of rules.

Mr. Carkhuff asked Mr. Gales if he would address the pertinent part of the appeal, specifically section 18.270-050 (c)(5) of the Westboro NCD states: “New residences shall be constructed in one of the architectural styles identified in the ‘Representative Sample.’” He stated that the operative word is shall, rather than “may”. Mr. Carkhuff added that he really likes the design proposed, but in his reading and evaluation of the documents provided by Mr. Gales, the NCD document, and staff reports, the applicant hasn’t presented anything except his disagreement with the standards.

Mr. Gales stated that he believes the answer is the word “shall.”
Mr. Carkhuff pointed out that staff has determined that the house is not in one of the architectural styles that the NCD says it “shall” be. He stated that the “shall” does not give the BZA the flexibility to say it should be applied to some and not others.

Mr. Gales stated that he disagrees and he believes the BZA has jury nullification right at their fingertips. He stated that most in the room think there’s nothing wrong with the design of his proposed home. Mr. Gales talked about setbacks and how if he conformed to the current zoning restrictions he could build a 1,000 sq foot, vinyl clad 3/12 pitch roof starter Ranch style home on his lot, which is across the street from a home currently for sale for more than $2m. He stated that wasn’t why the NCD was written; it was to protect the nicer unique homes in the neighborhood. Mr. Gales agreed that “shall” is there but stated the BZA has the right of jury nullification.

Mr. Morse asked staff how the City of Topeka defines “new construction”. Mr. Fiander and Mr. Hall discussed and Mr. Fiander stated that it is considered new construction or reconstruction. Mr. Gales noted that he is keeping more than 50% of the livable space.

Mr. Carkhuff pointed to P. 15 of the NCD under NCD Design Standard and read: New residences shall be constructed in one of the architectural styles identified in the “representative sample.”

Architectural features that define the overall character of the existing residence… shall be utilized for substantial additions.

Mr. Fiander then pointed to the NCD, top of page 14, which reads: These design standards … shall address both new construction and substantial additions to existing residential properties. Substantial Additions shall mean any project visible from the public right-of-way whose square footage equals or exceeds 10% of the primary structure’s square footage.

Mr. Morse declared that the public hearing open and invited those who wish to speak to do so.

Pat Doran of 1298 Lakeside Drive spoke in support of the applicant’s appeal.

Mr. Doran stated he moved to the neighborhood in 2004 and renovated a Tudor style home. He stated that the NCD was adopted to ensure the Westboro neighborhood remains desirable for future generations. It also indicates it was adopted to protect the property values, not to help them go down but to remain stable and go up. Mr. Doran stated that he’s Vice Chair of Heartland Visioning, whose goal is to convene people in town to talk about how to improve the quality of life and of place in the community to have a vibrant community and encourage economic development. He stated he served on the steering and implementation committees for Momentum 2022, and he chairs the Downtown NOTO Workgroup associated with Momentum 2022 that works to revitalize downtown mainly because of the work started by the applicant Mr. Gales and also Mike Morse. Mr. Doran expressed concern about placing restrictions on neighborhoods so they won’t be viewed as open, diverse and inclusive; he is concerned they will be perceived as closing ourselves in and trying to suppress property values rather than maintain them.

Mr. Doran stated he thinks an error was in fact committed in staff’s determination. The desire is for property value to go up and young families will not purchase homes if there are standards imposed
that will prevent them from improving the values of the homes. He believes Mr. Gales is proposing something that is going to improve the value of his home.

**Cliff Davis of 3521 SW York Way spoke in support of staff’s recommendations for denial of the appeal.**

Mr. Davis stated he and his wife have owned their home in Westboro since late 2003 and he served on the Westboro Homeowners Association subcommittee that compiled the first draft of the Westboro NCD. He stated that the NCD has had tremendous support from the very beginning and that approval of the final document was voted for by an overwhelming majority of those homeowners present at the meeting. The Topeka Planning Commission then voted in favor of it, and it was approved by the Topeka City Council with a unanimous vote. He stated that it's an important set of standards. They are very clear and the proposed building does not meet those standards, as outlined in Planning Department staff’s report to the BZA. Consequently he respectfully requests that the BZA affirm the findings of the City Planning Department.

**Mike Powell of 3510 SW York Way spoke in support of staff’s recommendations for denial of the appeal.**

Mr. Powell stated that he and his wife fully support the findings of the City Planning staff. He stated that as to whether there was an error in their finding, he is a layman but what he knows is that the institutional knowledge of the NCD document is wide and deep within City Planning. Mr. Fiander was instrumental in shepherding the document through its creation and he believes an error on their part is very unlikely, given that they know what is contained within and, more critically, they know why it is contained within the document. He stated that people in the neighborhood were invited to attend. He stated he realizes everyone has lives and all are busy, but he saw people attend the meetings who were working 40-60 hours/week and still put in their time to work with the City Planning Commission to see the document come to fruition. He added that he finds it somewhat offensive to have someone try to front the concept that the NCD applies to “homes of character” – some subset which he can’t identify. Mr. Powell stated he never heard that idea purported by anyone during the development of the document – it applies to each and every home within Westboro Neighborhood.

Mr. Powell stated he believes that the NCD and any other zoning authority can only work effectively if the people who are subject to them believe they are applied equitably to all. He pointed to a fence that had to be moved or removed by a homeowner because it violated NCD rules; the case was ultimately settled in circuit court. He stated even though the offset of the fence was relatively minor, he agreed with decision of the Planning Department and the court because he believes rules that are not enforced are not rules at all. He stated that in the grand scheme of things, the fence was “a molehill” but the rule was enforced, the fence was moved back, and the NCD was preserved. He stated that Mr. Gales is asking that the design standards not apply to the design that he has created, but that is “a mountain” compared to a molehill of a fence and if it would be found that it could be built, he believes the NCD “has more than one foot in the grave.”

Mr. Powell thanked the BZA for their work and stated that they will affect the quality of his life.
Dave Labb of 3526 SW York Way spoke in support of staff’s recommendations for denial of the appeal.

Mr. Labb stated he wished to speak to property rights and Mr. Gales’s statement that he has a right to build whatever he wants. He stated that the precursor to the NCD was another individual with this same sense of absolute right to property constructing what amounted to a “quonset hut.” He was taken to court because of the covenants of Westboro because he didn't have an absolute right to do whatever he wants – it’s a neighborhood and people are there for the quality, style, trees, etc; “it is a neighborhood, not an individual.”

Andrea Chaffee of 1612 SW Lakeside spoke in support of the applicant’s appeal.

Ms. Chaffee stated she lives directly across from Mr. Gales and she fully supports Mr. Gales and the earlier comments of Mr. Doran. She stated that the neighborhood should be open, not closed to what can and can’t be done; new generations should be welcomed to look at different styles and it’s wrong to be putting these borders what people can and can’t do with their property.

Doyle Comfort of 3410 SW Avalon Lane spoke in support of staff’s recommendations for denial of the appeal.

Mr. Comfort stated he and his wife have lived in the neighborhood 22 years. Theirs is a Cape Cod style home that they’ve put quite a bit of money into without necessarily thinking about the return they’ll get on it, but rather the enjoyment of their home.

Mr. Comfort stated he wanted to talk about the positive effects of the NCD since its approval. He stated that a lot of the original features of the neighborhood were in really bad shape (i.e. the gazebo, the fountain, stone pillar entryways, etc.) and would be expensive to repair. He explained that in 2012 neighbors got with Topeka Community Foundation to establish a campaign fund where people could make tax deductible contributions. Information was published in the 3x/year newsletter and the efforts were general knowledge. Donations were slow until the NCD was accepted and it was “a defining moment”; donations started coming in and as a result, in about 3 years approximately $70k in private donations was received. Mr. Comfort stated he is convinced this wouldn’t have happened without the NCD because people were beginning to believe in the neighborhood again.

Mr. Comfort stated that a number of young families have moved into the neighborhood, several remodeling jobs have been completed, and the neighborhood is an exception in that it’s “holding the line” rather than deteriorating.

Referring to Mr. Gales’s statement that he “didn’t have a vote”, Mr. Comfort stated that Mr. Gales is a member of the Neighborhood Association and could have come to any of the meetings that were advertised and held over the course of a year; he would have had a vote there. He stated that the meeting where the final NCD was approved was in June 2013 and they had one of the largest turnouts of any of their NA meetings. He stated he didn’t remember any dissenting votes or comments. He encouraged those who feel like “outsiders” to join in the neighborhood activities.
Tom Woltkamp of 1522 SW Stratford Road spoke in support of the applicant’s appeal.

Mr. Woltkamp stated he is a commercial contractor and spoke of working with Mr. Gales and his firm for many years. Mr. Woltkamp stated he has served on the City of Topeka’s Board of Building and Fire Appeals (BBFA) for 22 years and that they treat their board as “the intent” of the codes (building or file). They grant variances and try to come up with compromises that work for the appellant and still maintain the intent of the codes. He believes the intent of the NCD was to preserve the neighborhood, not necessarily the character because there’s not a common theme; there are 13-15 themes listed in the NCD and it doesn’t include all the homes. He thinks that what Mr. Gales has proposed is a good looking house that would help to preserve the value of the neighborhood. He added that if anyone wants to invest $300-$400k in a major remodel, he doesn’t see how that could damage the neighborhood. He stated there are many properties in Westboro that have serious deferred maintenance and people who purchase spend as much to rehab as they do to purchase. He commends the Gales for their willingness to invest in their home so they can stay in the neighborhood; they are a credit to the neighborhood and their intent meets the intent of the NCD.

Mark Lahr did not provide address but stated he has lived in Westboro since 1978 and couldn’t imagine living in a neighborhood he loves as much as Westboro. He spoke in support of staff’s recommendations for denial of the appeal.

Mr. Lahr spoke of the platted setbacks on Lakeside Drive and 15th Street, which were established in, he thought, 1924. He stated he didn’t care if Mr. Gales had planned to build 20 years ago, he’d still have had a setback problem and he doesn’t want to see everything blamed on the NCD. He added that the setbacks were put in place because the developer of Westboro desired to have a parkway-like streets leading into the development.

Mr. Lahr stated that his problem with the proposed additions were not so much the style but the mass; it’s a large structure on an area that cannot hold a lot.

Ted Chaffee of 1612 SW Lakeside Drive spoke in support of the applicant’s appeal.

Mr. Chaffee stated that he and his wife live directly across from the Gales and are in favor allowing the Gales to build. He and his wife appreciate the passion of the people of Westboro for maintaining such a nice area and that’s why they moved there. Mr. Chaffee pointed out that the design proposed by Mr. Gales reminds him of a Frank Lloyd Wright style of architecture, which dates to around 1934, the same timeframe of when the Westboro homes were being built. He believes it fits within the great American theme of building during that time. He stated that whether you’re for or against the case at hand the neighborhood’s desire is to see their neighborhood expand and revitalize.

Ernie Bodet of 3513 SW Alameda in Shadywood West spoke in support of the applicant’s appeal.

Mr. Bodet stated that he is president and CEO of Heritage Bank on Wanamaker. He provided a handout, an aerial of 1298 SW Pembroke, explain that the bank received this property in foreclosure. He spoke to issues he had because of a fence that was not allowed. He stated that this was an issue of “judicious vs. a sledgehammer” style of enforcement and things like this will turn him off as a
lender. He stated that he has turned down loans for renovations in Westboro because appraised values will not support the needed renovations for some of the homes. He warned Westboro homeowners about disqualifying people for what he sees as a lovely home and an overall improvement to the district; he stated that the long range effort will “go south” on them and gave examples of Denver, Hutchinson, and Hyde Park/Broadview area in Wichita.

**Ron Ferrell of 1454 Lakeside spoke in support of staff’s recommendations for denial of the appeal.**

Mr. Ferrell stated he’s lived in Westboro 11 years. He explained that he’s been treasurer of the Homeowners Association for 6 years so knows that there are 361 homes in Westboro; 66% of the people who live in Westboro are members of the Homeowners Association, which would be about 222 homes.

Mr. Ferrell stated that he was one of the people who worked with City staff helping to write the NCD document and notes that the final version is much less restrictive than the original document. He stated that he has spoken with a number of young people who have purchased homes and want to make improvements/repairs following the guidelines of the NCD document, giving three specific examples.

Mr. Ferrell expressed concern about what would happen if the NCD isn’t supported, wondering if there would be another “quonset hut” situation which was the impetus for establishing the NCD.

**Cheryl Gales of 1605 SW Lakeside Drive** spoke, explaining that the home in question is hers and her husband’s (Scott).

Ms. Gales explained she and her husband chose the Westboro neighborhood largely because of the diversity of the homes in the neighborhood. She stated that her husband has worked on several historic preservation projects and both she and her husband respect and enjoy good historical homes. She stated that there is nothing unique or historical about their current home. She stated that the NCD speaks to making your home more modern and questioned how to define what is more modern for her particular home. She stated that as an architect, her husband’s current proposed design is his what he believes is a modernization. She stated that there are other elements of the proposed design for their home can be found in other homes in the neighborhood.

Mrs. Gales explained that they enjoy the neighborhood and their current neighbors and that’s why they’d like to remain there and invest a substantial amount in improving their home. She expressed concern about what would happen to other homes in the neighborhood if, as Mr. Bodet warned, neighbors are not allowed to modernize their homes as they wish.

Mrs. Gales stated that their home has only gone up $5k in value in the past 15 years and spoke to setbacks and the footprint of the proposed building not being much larger than the current structure as they’re going upward. She stated they have spoken with the neighbors to the side that it really impacts as to size. She asked the BZA to take into consideration that it’s a case by case issue because not every home is the same and what is modernizing one home could be totally different
than what is modernizing another home in the same neighborhood. She also feels that their proposed
design is “eclectic” as spoken of in the NCD document.

With nobody else coming forward to speak, Mr. Morse declared the public hearing closed.

Mr. Morse spoke to the difficulty of taking into account only the design and not the setbacks. He
asked what would happen if the design were not approved. Mr. Fiander explained that the appeal has
only to do with architectural compliance. He noted that while setbacks are somewhat interwoven,
they’re not something that should be considered with this appeal. Justification for a decision should
not have anything to do with a setback variance as that is a separate issue not germane to this first
item.

Motion by Mr. Carkhuff to affirm staff’s findings that the proposed building does not meet the
NCD design standards. Second by Mrs. Jordan.

Discussion:

Mr. Carkhuff stated that the BZA is not here to debate the wisdom or merits of the Westboro NCD.
The question is whether the standards are being applied properly to this case, specifically the
statement in the NCD that “new residences shall be constructed in one of the architectural styles
identified in the representative samples.” Mr. Carkhuff stated he has listened to all the comments and
evidence presented, examined the staff report, the applicant’s document(s), and the NCD document
and he agrees with the staff report. He added that he appreciates what the applicant is trying to do,
and in a different setting it would be no problem for him to have the home he’s proposed. There are
neighborhoods in all four directions from Mr. Gales’s current home that have not chosen to adopt any
sort of NCD plan and if Mr. Gales had property in any of the surrounding neighborhoods, assuming
he complied with setbacks, it would be approved without question. The property owners of Westboro,
through their actions and the actions of the Planning Commission and City Council, have chosen to
be subject to these regulations. If some come out of this meeting unsatisfied with the decision that’s
made, they can seek to change the regulations they’re governed under by adding, amending
language, etc to the NCD. The BZA’s responsibility is to consider the language contained in the local ordinances and “shall” means “shall”. Staff identified certain characteristics of the proposed house
that make it different than all the others and Mr. Carkhuff agrees that it does not conform to the other
houses identified in the architectural styles.

Mrs. Crow stated her understanding is that the role of the BZA members is very finite. They are not a
legislative body and have no creative latitude. The Neighborhood Association, Planning Commission,
and Governing Body all had opportunities to make changes to the NCD; the Board of Zoning Appeals
does not have that authority and can only work within their purview. Mrs. Crow stated that in his own
words, Mr. Gales admitted that his design does not fit the NCD. She pointed to other neighborhoods
(i.e. Potwin) where restrictions are placed on what homeowners can do and the fact that homeowners
must yield to those restrictions.

Mr. Schoemaker stated he agrees that the purpose of the BZA is not to discuss the merits of the NCD
but rather to determine whether Planning staff were correct in saying the proposal violates it.
Mrs. Jordan stated that if action needs to be taken, it should be to change the NCD.

Mr. Morse asked regarding the use of the word “eclectic” in the NCD. Mr. Fiander pointed to page 8 of the NCD document where it gives a description blending various architectural styles in the neighborhood that serves for the purpose of the document.

Mr. Morse stated that he is a big believer of redevelopment and reinvesting in inner cities. He stated that he is a proponent of working with people to reinvest in our core. He agrees that the rules are clear regarding what the BZA is allowed to do but feels that not allowing people to reinvest is a mistake.

Mr. Carkhuff stated that he is fully supportive of everything going on downtown and investing in the core, but that doesn’t take away from the rules that Westboro has adopted.

Upon roll call, the motion to uphold the findings of the staff and support their recommendation was APPROVED (5-0-0)

A 5 minute break was called prior to considering the next case.

**BZA18V/1 by Scott Gales**, requesting variances with regard to the construction of a residence at 1605 SW Lakeside Drive. The variances requested include: 1) TMC 18.60.020(8) regarding required minimum building setbacks from the rear property line and front property line along SW Westover Drive; 2) required minimum building setbacks along SW Lakeside Drive and SW Westover Road pursuant to the Westboro Subdivision plat; 3) the requirement per the Westboro Neighborhood Conservation District that the front setback for new residences be within 10% of the average front setback on the block Mr. Gales withdrew his request for a fence variance.

Mr. Hall introduced the case and presented the staff report. He pointed out that the existing home encroaches on the rear setback, the front setback along Westover, and the front platted setback along Lakeside. He pointed out that the proposed building encroaches even further along SW Westover and the rear yard and spoke to the mass of the proposed building compared to the mass of the existing building.

Mr. Hall reviewed staff findings as given in the staff report. Mr. Morse pointed out that the variance is not dealing with the size and scope of the building because the proposed design has been turned down by the previous vote of the BZA. Mr. Hall held that these remain a relevant factor. He explained that in theory, Mr. Gales could take the same dimensions of the previously proposed building, change the architectural style, and he’d still have a building of a certain size. He stated that while some sort of variance might be justified, it shouldn’t be granted without additional information provided.

Mr. Fiander pointed out that there is some overlap between the variance request and the design; for example, a 2-story building would have a different impact than a 1 story building with more mass. Mr. Fiander pointed out that the BZA could condition a setback variance predicated on the building being a 1-story protrusion into the setback. Mr. Morse stated that’s not what’s being requested right now, rather it’s simply a request for a variance to the setbacks.
Mr. Hall pointed out that a 1-story building would likely have less of a negative impact than a 2 or more story building. Mr. Morse asked the basis of staff’s recommendation of disapproval and Mr. Hall stated that it was based on the design presented in the appeal.

Mr. Morse stated that he’d like to give specific information to the property owner as to what the BZA approves or does not approve. Mr. Hall stated that if there is a desire to grant some lesser variance, staff would recommend that not be done at this meeting. They recommend revised plans come back to be reviewed.

Mr. Carkhuff stated he agrees with those comments because it’s difficult to make a decision in a vacuum. He believes it’s irresponsible to grant a variance when it’s unclear what’s being proposed.

Mr. Schoemaker stated according to the Topeka Municipal Code (Title 18), the BZA cannot approve any variance unless there’s unnecessary hardship proven.

Mr. Morse stated it is a teardrop lot which makes it unique and it is a hardship to have two front yards. He stated that we need to incentivize people to work with difficult lots so that they can be developed.

Mrs. Crow pointed out that there is already a house on the lot. Mr. Morse stated that it is a small house.

Mr. Carkhuff stated that he would encourage the applicant to continue the application and resubmit plans that show the board what he intends to build. Giving a blank check for a variance of this magnitude is irresponsible.

Mr. Morse stated that the buildable area for the lot is very small and that is the hardship.

Following continued discussion, Mr. Fiander stated the current building violates the setbacks but it is considered legal non-conforming that is a grandfathered situation.

Mr. Lemon asked questions and there was discussion about setbacks and what the applicant would be able to do without needing to return to the BZA for approval of a variance. Mr. Carkhuff asked if the applicant would need to return to the BZA if he tore down his existing garage and wanted to rebuild in the same footprint. Since the current garage is legal non-conforming Mr. Fiander stated that the applicant would need to request a variance.

Mr. Lemon provided a handout which was labeled Exhibit R and includes aerial photographs of properties near the applicant’s. He reviewed net buildable areas / percentages of the lots; his point was that the houses built on those lots are, by footprint, larger than what Mr. Gales is proposing. He stated that 9% of Mr. Gales’s lot is buildable under existing codes and other neighborhood lots have minimum of 2.5x the buildable lot.

Mr. Lemon was asked whether Mr. Gales was requesting that a footprint be approved so that he can design a house that will comply with NCD design standards. He stated that the question becomes, does granting a variance harm anybody if the violation of the setback on the north side is only a matter of a few more feet. Mr. Gales stated that he needs about 13’ 8” feet on the north to build in the
footprint that he’s proposed, but it’s only the corner of the building. He explained that in architectural terms, this is what you do when you want to minimize the profile of a building – you put the corner on the face so people never see the face of the building flat on. Mr. Gales stated that he garage has to be rebuilt and it has to be bigger because he requires 3 bays.

Mr. Carkhuff stated that Mr. Gales is not entitled to a 3 car garage. Mr. Morse stated the question is not a 3 car garage but rather the setbacks.

**Motion by Mr. Carkhuff to affirm the findings of the staff and disapprove the requested setback variance. Second by Mrs. Crow.**

**Discussion**

Mr. Morse stated he finds it’s a hardship to not allow someone to build on a corner lot and there are examples throughout the neighborhood where others were allowed to do what Mr. Gales is asking.

Mrs. Crow responded to Mr. Lemon’s question regarding who would be harmed by allowing the requested variance by stating that for the most part, the houses are not overwhelming the other houses next to them. She pointed to the house next to the Gales on Westover and noted that it would “sit in a visual well” because the structures on both sides would be sitting so much further forward. She also stated that in the examples included in Exhibit R, the homes line up with their neighbors and do not stick out in front of them.

Mr. Morse pointed out that the lot across the street lines up because it increases in size from front to back while Gales lot decreases in size from front to back. This is the reason the lot deserves a hardship because it keeps getting smaller as it goes back along Westover.

Mrs. Crow stated she has trouble thinking of it as a hardship because Mr. Gales was a very sophisticated buyer and purchased that house on that lot. He wasn’t a naive buyer and he’s lived there for a long time. He bought it and it is what it is.

Mr. Morse stated that the hardship is unique because the lot is unique. He stated the people won’t want lots like this because they can’t develop them. Mrs. Crow stated the home was, is, and will be livable.

**Upon roll call, the motion to affirm staff’s finding and support their recommendation was APPROVED (3-2-0 with Mr. Morse and Mrs. Jordan voting no)**

**Election of Officers**

Mr. Carkhuff nominated Walter Schoemaker as 2018 Chairperson; Mr. Schoemaker accepted the nomination and nominated Mr. Hazen as Vice-Chair. It was noted that Mr. Hazen has served as Vice Chair for 2 consecutive years so in accordance with the BZA bylaws was ineligible to serve a 3rd term as such. Mr. Schoemaker nominated Mr. Carkhuff to serve as 2018 Vice Chairperson.

**Vote of acclamation – Nominations passed**

Adjournment at 9:00PM
Date: October 8, 2018  
Case No.: BZA18A/02

Applicant Name: Jason & Melanie Creollo (Autumn Home Plus Inc.)
Address: 747 NW Walnut Lane

Property Data:
Address of Subject Property: 747 and 750 NW Walnut Lane
Zone for Property: "R-1" Single-Family Dwelling District
Property Size: 0.48 acre

Decision Being Appealed
The decision of the City of Topeka Planning Director to classify two or more Home Care Type I facilities in the R-1 Single-Family Residential District on parcels adjacent to one another as a single use facility and thus restricted to a maximum of 8 residents per Home Care Type I facility and 12 residents for Home Care Type II facility with a Conditional Use Permit.

Authority of Board of Zoning Appeals
Pursuant to TMC 2.45.050, the Board of Zoning Appeals (BZA) exercises the “power to determine appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations.”

Notice of Hearing
Notice of the public hearing was published in the Topeka Metro News on September 17, 2018 in compliance with TMC 18.45.090.

Notice of the public hearing was mailed to adjoining and adjacent property owners on September 18, 2018 in compliance with TMC 18.45.090.
Actions Leading to the Appeal Application

Autumn Home Plus Inc. owns the properties at 720 and 747 NW Walnut Lane. Each property contains a residential building (each originally a single family residence) containing a home care use. The decision being appealed came about when the applicant spoke with the owner of 750 NW Walnut Lane about the possibility of buying the property and converting the existing residence to a home care type I use at 750 NW Walnut Lane, which is north of, and across the street from, 747 NW Walnut Lane. One of the other residents on the block learned of these intentions, and aware of the existing facilities, contacted the Planning Department for more information, expressed their concern about the growing presence of commercial uses on this residential block. The resident also contacted the City Council member for this district. The questions posed to the City resulted in an inspection by city staff and the July 10, 2018 letter to the applicant by Zoning Inspector Becky Esopi.

Issues

At issue is whether two adjacent properties - 747 and 750 NW Walnut Lane - each containing a home care use, can be aggregated for the purpose of classifying as either home care type I or home care type II based on the cumulative number of residents. Home care type I is defined as having a maximum of 8 residents and is permitted by right in all of Topeka’s residential districts, including R-1 Single Family Dwelling District. Home care type II has all the same characteristics as type I except type II is defined as having 9 to 12 residents and requires a conditional use permit in all residential districts except the multiple family residential district M-2 and M-3, in which home care type II is permitted by right.

A different but related issue concerns how the State of Kansas defines and licenses home care uses, which the State refers to as “home plus” facilities. The State defines home plus as any residence or facility caring for not more than 12 unrelated individuals, and who, due to functional impairment needs personal care and/or supervised nursing care. (See attached: Kansas Statutes regarding Group Homes, Adult Care Home, and Home Plus)

The Kansas Department for Aging and Disability Services (KDADS) performs enforcement and licensing of home plus facilities. KDADS does not require licensees to obtain zoning approval for the local jurisdiction prior to issuing the license, although the licensee must comply with both the laws of State and the local jurisdiction. At this time 720 NW Walnut Lane is licensed by KDADS for six (6) residents, and 747 NW Walnut Lane is licensed for ten (10) residents. Therefore, the license for 747 NW Walnut is not consistent with what Topeka’s zoning regulations permit as home care type I because the facility is licensed for up to 10 residents. It is the Planning Director’s position that residents permitted by a State license for any home plus facility shall not exceed the maximum residents permitted for home care by Topeka’s zoning regulations (maximum of 8 residents for type I and maximum 12 for type II).

Pertinent and Related Zoning Regulations, Topeka Municipal Code

18.55 Definitions

18.55.010 “A” definitions.

“Assisted living facility” means a facility caring for six or more individuals unrelated to the administrator, operator or owner who, by choice or due to functional impairment, may need personal care and/or supervised nursing care to compensate for activities of daily living limitations. The facility includes individual living units or apartments for residents and provides or coordinates a range of

BZA18A/02 by Autumn Home Plus, Inc. Page 2
services including personal care or supervised nursing care on a 24-hour-a-day basis for the support of resident independence. Skilled nursing services are typically provided on an intermittent or limited term basis, or if limited in scope, on a regular basis.

18.55.060 “F” definitions.

“Family” means an individual or two or more persons related by blood, marriage, or legal adoption, or a group of not more than five persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit with common kitchen facilities in a dwelling unit.

18.55.080 “H” definitions.

“Home care, type I” means a dwelling or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements, where caring is provided on a 24-hour-a-day basis for up to eight individuals unrelated to the operator/owner and who, due to functional impairment, need personal care and may need supervised nursing care to compensate for activities of daily living limitations.

“Home care, type II” means a dwelling or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements, where caring is provided on a 24-hour-a-day basis for up to 12 individuals unrelated to the operator/owner and who, due to functional impairment, need personal care and may need supervised nursing care to compensate for activities of daily living limitations.

18.55.260 “Z” definitions.

“Zoning lot” means a parcel of land under single ownership that is of sufficient size to meet minimum zoning requirements for area, cover, and use, and that can provide such yards and other open spaces as required by this division.

18.60.010 Use Tables

<table>
<thead>
<tr>
<th>Use</th>
<th>Description</th>
<th>Allowed / Conditional / Prohibited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assisted Living</td>
<td>Individual living units where at least 6 persons receive personal/nursing care</td>
<td>Conditional use permit required in R-1, R-2, R-3, R-4, M-1, M-1a districts; allowed in residential districts M-2, and M-3</td>
</tr>
<tr>
<td>Facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group Home</td>
<td>Licensed dwelling for up to 8 with disability &amp; 1 or 2 staff</td>
<td>Allowed in residential districts R-1, R-2, R-3, R-4, M-1, M-1a, M-2, and M-3</td>
</tr>
<tr>
<td>Home Care Type I</td>
<td>Nonsecure dwelling with residential/nursing care for up to 8 care receivers</td>
<td>Allowed in residential districts R-1, R-2, R-3, R-4, M-1, M-1a, M-2, and M-3</td>
</tr>
<tr>
<td>Home Care Type II</td>
<td>Nonsecure dwelling with residential/nursing care for up to 12 care receivers</td>
<td>Conditional use permit required in R-1, R-2, R-3, R-4, M-1, M-1a districts; allowed in residential districts M-2, and M-3</td>
</tr>
</tbody>
</table>

In 2012 the City of Topeka amended its zoning regulations by adding home care type I and II uses to its use standards. An appeal by Barry and Betty Carswell, previous owners of Autumn Home Plus, Inc., regarding the home care facility at 747 NW Walnut was the impetus for the zoning code amendment.
The BZA denied that appeal. Plaintiff Betty Carswell appealed the case to the district court and, at the request of the plaintiff the case was dismissed.

18.70 R-1 Single-Family Dwelling District

18.70.010 Purpose – Intent
This district is established to provide for the use of detached single-family dwellings together with specified accessory uses and other uses as may be approved. It is intended that the character and use of this district be for housing and living purposes free from the encroachment of incompatible uses.

18.240 Off-Street Parking Requirements

The off-street parking requirements do not identify the required quantity of parking spaces specifically for home care uses. The most similar use listed in Chapter 18.240 is either “congregate living” or “developmentally disabled group home.”

Analysis and Findings:

Based on the BZA’s authority according to TMC 2.45.050, the BZA is advised to consider whether the interpretation in question conforms to the the regulations or whether there is ambiguity such that the regulations should be clarified, by amendment or otherwise.

The applicant asserts that the decision by the Planning Director is delaying the applicant’s purchase of 750 NW Walnut Lane for use as a single Home Care Type I facility. The applicant further asserts that the determination is in conflict with State of Kansas requirements regarding permitted number of residents within a group home categorized as a “Home Plus” facility as licensed by the Kansas Department for Aging and Disability Services (KDADS). (Home Plus facilities may be licensed by KDADS for up to 12 residents, although most local jurisdictions including the City of Topeka do cap the number of residents in such facilities at eight residents.)

Of primary concern to Planning Department staff is the operation of multiple, adjacent home care I facilities having, in the aggregate, the effect of a home care type II use or more intense commercial or institutional use such as an assisted living facility. Home care type I facilities by themselves retain a single family residential character. From the street the entrances are the same as the entrances to single family residences. Parking needs for home care type I uses are similar to the parking needs for most single family residences, although they might exceed the parking needs of some single family residences. More specifically, it is staff’s understanding that there are typically two or more staff at a single home care type I facility at any one time. People do visit the residents, creating the need for additional parking. Although not typical, the applicant advises that some residents may drive. Parts of the interiors of buildings are typically modified to accommodate generally two residents per sleeping room, spacious and comfortable living and dining areas. These modification are not typically visible from outside the building.¹

Home care type I uses appear to be a good fit in a single family residential district. Multiple home care type I facilities clustered on a block, and when managed and operated by the same owner, have the same or similar effects of a home care type II use and do affect the perception of the neighborhood, based on the current concerns of neighborhood residents, and, have the potential to change the character of the neighborhood based on traffic patterns that include the comings and goings of staff and visitors throughout the day.

Staff considers a property with a home plus license for over 8 residents, even if the operator intends to only have 8 residents, to be a home care type II use. The applicant has advised that KDADS has issued a license
for up to 10 residents for 747 NW Walnut. As such, it is the opinion of staff that 747 NW Walnut Lane requires a conditional use permit.

The Federal Fair Housing Act protects certain individuals from being discriminated against regarding housing. Disabled persons are a protected class, and Kansas Statutes (KSA 12-736) reflects and implements the Fair Housing Act with regard to “group homes.” Deputy City Attorney Mary Feighny has concluded that the residents of Home Care Type I facilities are a protected class under the Fair Housing Act, meaning the City may not prohibit home care where single family residential uses are also permitted.

Staff Recommendation

Staff recommends the Board of Zoning Appeals:

1. Affirm the Planning Director’s finding that 747 NW Walnut Lane, as a facility licensed for 10 residents, does not comply with the zoning regulations, and that the use be discontinued until, upon the required application, the owner obtain a conditional use permit from the City of Topeka for a home care type II facility.
2. Affirm the decision of the Planning Director to consider two adjacent properties, specifically 747 NW Walnut Lane and 750 NW Walnut Lane (if 750 NW Walnut Lane is to be converted to a home care use), that both properties constitute a single home care use and are thus subject to the maximum number of residents as defined by the Topeka zoning regulations.

Exhibits

1. Application and Statement of Grounds for Appeal
2. Letter from Zoning Inspector dated July 10, 2018
3. Aerial Map indicating locations of two existing Home Care facilities and proposed new facility, along with photos of related residences.
4. Zoning Map
5. Kansas Statutes regarding Group Homes, Adult Care Home, and Home Plus
6. Home Plus Licenses, 720 and 747 NW Walnut Lane

Staff: Michael Hall, AICP
Current Planning Manager and Acting Secretary of Board of Zoning Appeals

1 On September 25th staff met owner and operator Jason Creollo on site and spent over one hour looking at the inside and outside of both existing home care facilities. Staff’s observations on this visit support these findings.
APPEAL OF ADMINISTRATIVE DECISION TO THE BOARD OF ZONING APPEALS

Planning Office Use Only

Case No. B2A18A102 Hearing Date: 10-8-2018
Filing Fee $ 130.00 paid

Make checks payable to “City of Topeka”.

Applicant: Jason and Melani Creollo (Autumn Home Plus Inc.)
Phone: 785-845-6538

Address: 1710 Ne 35th St. Topeka Ks 66617

Location of Property: 750 Nw Walnut Ln Topeka Ks. 66617
Legal Description Property: Residential Home

The home is currently being purchased by Jason and Melani Creollo with Autumn Home Plus Inc. and was planning on turning it to a Home Plus very soon, until we received a letter from the city saying it may not be approved due to a complaint or concern from a neighbor and it being located on the same block as our other 2 homes.

Current Use of Property: Residential Home

Proposed Use of Property: Type 1 Home plus facility

Decision Being Appealed: Interpretation of Planning Director of clustered type 1 Home Pluses on same block adjacent, sharing property line or sharing a right of way would be a type 2 and number of residents would be cumulative added up as one.

Explanation of Administrative Error:

Mr Bill Flander City of Topeka Planning Director has interpreted Home Plus type 1 homes, that share a property line, right of way, or adjacent to one another should be considered a type 2 facility and require a Conditional Use Permit before being approved. Also the city code does not align with the state code on number of residents. State bill 2147 allows home pluses to have up to 12 residents if they meet state requirements and the city considers that a type 2 and are prohibited in a R-1 residential single family district and can only have up to 8 residents.

Applicant’s Signature

[Signature]

Date

9/4/18

EXHIBIT 1
July 10, 2018

Jason & Melani Creollo
750 NW Walnut Lane
Topeka, KS 66617

Re: Home Plus Care:

Dear Property Owner:

It has been brought to my attention that a third facility may be in the application process within a city block of the already existing two Home Plus Care facilities. This has created some valid concerns. We have received several concerns already regarding the concentration of the existing facilities. A few of the concerns are that there is already more than normal traffic in this residential neighborhood along with parking issues on the street.

We are supportive of these facilities in a single family dwelling district, however when they are clustered together, they begin to take on a business or commercial development not intended by the zoning regulations for a single family area. Adding a third facility would need to be reviewed for conformity with the City’s zoning regulations which may impact the approval of another home in this area.

If you have any questions or need further assistance, please do not hesitate to contact this office at 785)368-3012.

Sincerely,

Becky Esopi
Zoning Inspector III
City of Topeka
BZA18A-02 (Aerial Map)
12-736. Group homes, exclusion of, prohibited; conditions; definitions.

(a) It is hereby declared to be the policy of the state of Kansas that persons with a disability shall not be excluded from the benefits of single family residential surroundings by any municipal zoning ordinance, resolution or regulation.

(b) For the purpose of this act:

(1) "Group home" means any dwelling occupied by not more than 10 persons, including eight or fewer persons with a disability who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the residents of the home, which dwelling is licensed by a regulatory agency of this state;

(2) "municipality" means any township, city or county located in Kansas;

(3) "disability" means, with respect to a person:

(A) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(B) a record of having such an impairment; or

(C) being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the controlled substance act (21 U.S.C. § 802);

(4) "licensed provider" means a person or agency who provides mental health services and is licensed by:

(A) The Kansas department for aging and disability services pursuant to K.S.A. 75-3307b or 65-425 et seq., and amendments thereto; or

(B) the behavioral sciences regulatory board pursuant to K.S.A. 75-5346 et seq. or 74-5301 et seq., and amendments thereto; or

(C) the state board of healing arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto.

(c) 1) No mentally ill person shall be eligible for placement in a group home unless such person has been evaluated by a licensed provider and such provider determines that the mentally ill person is not dangerous to others and is suitable for group-home placement. A group home shall not be a licensed provider for the purposes of evaluating or approving for placement a mentally ill person in a group home.

(2) No person shall be eligible for placement in a group home if such person is: (A) Assigned to a community corrections program or a diversion program; (B) on parole from a correctional institution or on probation for a felony offense; or (C) in a state mental institution
following a finding of mental disease or defect excluding criminal responsibility, pursuant to K.S.A. 22-3220 and 22-3221, and amendments thereto.

(d) No person shall be placed in a group home under this act unless such dwelling is licensed as a group home by the department for aging and disability services or the department of health and environment.

(e) No municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation which prohibits the location of a group home in such zone or area or which subjects group homes to regulations not applicable to other single family dwellings in the same zone or area is invalid. Notwithstanding the provisions of this act, group homes shall be subject to all other regulations applicable to other property and buildings located in the zone or area that are imposed by any municipality through zoning ordinance, resolution or regulation, its building regulatory codes, subdivision regulations or other nondiscriminatory regulations.

(f) No person or entity shall contract or enter into a contract, restrictive covenant, equitable servitude or such similar restriction, which would restrict group homes or their location in a manner inconsistent with the provisions of subsection (e).

39-923. Definitions. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary for aging and disability services.

(7) "Home plus" means any residence or facility caring for not more than 12 individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary for children and families, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided to residents shall be determined by preparation of the staff and rules and regulations developed by the Kansas department for aging and disability services. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than 12-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous. Any home plus that provides care for more than eight individuals after the effective date of this act shall adjust staffing personnel and resources as necessary to meet residents' needs in order to maintain the current level of nursing care standards. Personnel of any home plus who provide services for residents with dementia shall be required to take annual dementia care training.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or
marriage and who, due to functional impairment, need supervision of or assistance with activities of daily living.

- gap -

(13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.
THE KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES

Certifies that:

The following facility is hereby licensed as an adult care home subject to the provisions of K.S.A. 39-923 through 39-963 and regulations promulgated thereunder.

AUTUMN HOME PLUS 2
720 NW WALNUT LANE
TOPEKA, KS  66617

is awarded an

ADULT CARE HOME LICENSE

Building Owner:
JASON AND MELANI CREOLLO
720 NW WALNUT LANE
TOPEKA, KS  66617

Classification:  Home Plus

Lessee:
AUTUMN HOME PLUS, INC
720 NW WALNUT LANE
TOPEKA, KS  66617

Resident Capacity:  6

Assisted Living
Home Plus  6
Boarding Care
Adult Day Care

Limited To:
Nursing Facility
Nursing Facility Mental Health
ICF / IID
Residential Health Care

State ID:  8089087
Effective:  01/01/2014

State Fire Marshal
Approved for Fire Safety

Secretary
Kansas Department for Aging
and Disability Services

EXHIBIT 6
Page 1
THE KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES

Certifies that:

The following facility is hereby licensed as an adult care home subject to the provisions of K.S.A. 39-923 through 39-963 and regulations promulgated thereunder

AUTUMN HOME PLUS INC

747 NW WALNUT LANE
TOPEKA, KS  66617

is awarded an

ADULT CARE HOME LICENSE

Building Owner:
JASON AND MELANI CREOLLO
747 NW WALNUT LANE
TOPEKA, KS  66617

Classification:  Home Plus

Limited To:
- Nursing Facility
- Nursing Facility Mental Health
- ICF / IID
- Residential Health Care

State ID:  B089068
Effective:  09/01/2007

Secretary
Kansas Department for Aging
and Disability Services

Lessee:
AUTUMN HOME PLUS, INC
747 NW WALNUT ALNE
TOPEKA, KS  66617

Resident Capacity:
- Assisted Living
- Home Plus 10
- Boarding Care
- Adult Day Care

Approved for Fire Safety

Exhibit 6
Page 2