



Tuesday, August 2, 2022
Civic Center, Memorial Hall 5:30 PM

Independence Planning Commission/Board of Zoning Appeals

To join by Conference Call dial:1-785-289-4727 Conference ID: 652-632-373#

- I. CALL TO ORDER
- II. MINUTES
 - a. Consider approving minutes of the July 5, 2022 meeting.
- III. BOARD OF ZONING APPEALS (DOES NOT INCLUDE OUTSIDE CITY APPOINTMENTS)
 - a. Public Hearing to receive comments on a request for a variance to reduce the minimum tenant space square footage requirement for three tenants in a C-4 highway commercial district at 102-106 South Peter Pan Road.
- IV. PLANNING COMMISSION
 - a. Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue, adjourned from the June 7, 2022 meeting.
 - b. Public hearing to consider adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles.
- V. DISCUSSION
- VI. ADJOURNMENT



**PLANNING COMMISSION ACTION / BOARD OF
ZONING APPEALS MINUTES
CITY OF INDEPENDENCE
August 2, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Consider approving minutes of the July 5, 2022 meeting.

SUMMARY RECOMMENDATION I move to approve the July 5, 2022 minutes.

SUPPORTING DOCUMENTS

1. 07/05/22 PZ Unapproved Minutes

**Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's July 5, 2022
Meeting**

I. Call to Order

Present: Brent Littleton, Kendall Neill, Andy McLenon, Lisa Richard, Tim Haynes, Anthony Royse, Mary Jo Meier, Rachel Lyon

Absent: Michelle Anderson

Excused:

II. Minutes

- a. Consider approving minutes of the June 7, 2022 meeting.

Motion:

**On the motion of Tim Haynes, seconded by Lisa Richard the Commission
Approved the June 7, 2022 Minutes.**

**Aye: Brent Littleton, Andy McLenon, Mary Jo Meier, Kendall Neill, Anthony
Royse, Rachel Lyon**

Nay: None

III. Board of Zoning Appeals (Does not include outside City appointments)

IV. Planning Commission

- a. Public hearing to receive comments to consider a conditional use permit for a daycare at 436 Pearl Ave in an R-1, large lot single-family dwelling district.

Motion:

**On the motion of Anthony Royse, seconded by Brent Littleton the
Commission approved the conditional use permit for a daycare at 436 Pearl.**

**Aye: Tim Haynes, Andy McLenon, Mary Jo Meier, Kendall Neill, Lisa Richard,
Rachel Lyon**

Nay: None

- b. Public hearing to consider adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles.

**These are suggested modifications. Currently the code for recreational
vehicles is concerned with storage. This would add descriptions for
recreational vehicles parked in a mobile home park and connected to utilities.**

Tim Haynes and Rachel Lyon suggested there not be a time limit.

Motion:

On the motion of Kendall Neill, seconded by Anthony Royse the Commission

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's July 5, 2022 Meeting

adjourned the public hearing until August 2, 2022.

Aye: Michelle Anderson, Tim Haynes, Brent Littleton, Rachel Lyon, Andy McLenon, Mary Jo Meier, Lisa Richard

Nay: None

- c. Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue, adjourned from the April 5, 2022 meeting.

Motion:

On the motion of Kendall Neill, seconded by Tim Haynes the Commission adjourned the public hearing until August 2, 2022.

Aye: Brent Littleton, Rachel Lyon, Andy McLenon, Mary Jo Meier, Lisa Richard, Anthony Royse

Nay: None

V. Discussion

VI. Adjournment

Motion:

On the motion of Kendall Neill, seconded by Andy McLenon the Commission Adjourned the July 5, 2022 Meeting.

Aye: Tim Haynes, Brent Littleton, Rachel Lyon, Mary Jo Meier, Lisa Richard, Anthony Royse

Nay: None

Kendall Neill, Chairperson

Tim Haynes, Secretary



**REQUEST FOR BOARD OF ZONING APPEALS ACTION
VARIANCE
CITY OF INDEPENDENCE
AUGUST 2, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public Hearing to receive comments on a request for a variance to reduce the minimum tenant space square footage requirement for three tenants in a C-4 highway commercial district at 102-106 South Peter Pan Road.

SUMMARY RECOMMENDATION Deny the request for a variance.

BACKGROUND Below is the timeline regarding the establishment of the Minimum Tenant Space Requirements and any subsequent amendments:

- May 13, 2000 – The City Commission adopted Ordinance No. 3824 establishing a minimum tenant space requirement of 7,000 square feet in the existing C-2 zone, with businesses catering to the motoring public being exempt.
- August 31, 2000 – The City Commission adopted Ordinance No. 3838 creating the C-4 zone with the minimum tenant space requirement of 7,000 square feet.
- November 27, 2000 – The City Commission adopted Ordinance No. 3845 removing the minimum tenant space requirement from the C-2 District (because the new C-4 district had been created that included it).
- June 3, 2003 -- The Planning commission denied a request from the developers to rezone 102 - 106 South Peter Pan Road to C-2, commercial services district.
- June 19, 2003 -- The Governing Body also denied the request to rezone this parcel.
- May 2, 2006 – The Board of Zoning Appeals conducted a public hearing to consider a variance request to establish a retail space less than the 7,000 square foot minimum required in a C-4 zone at an existing commercial structure at 102 – 106 South Peter Pan Road.
- June 6, 2006 – The Board of Zoning Appeals continued the public hearing from May 2, 2006. The Board of Zoning Appeals approved the variance on a 3-2 vote.
- July 11, 2006 – The Board of Zoning Appeals amended the June 6, 2006 minutes, and were advised of a letter from the developer regarding a lawsuit filed by the City Commission regarding the Board of Zoning Appeal's decision to grant the variance.
- January 25, 2007 – The City Commission adopted Ordinance No. 3981 reducing the minimum tenant space requirement from 7,000 square feet to 5,000 square feet.
- May 12, 2011 – The City Commission adopted Ordinance No. 4091 to modify the minimum tenant space requirement in the C-4, highway commercial district to allow such space to be non-contiguous.

Below is the timeline regarding current events:

- June 1, 2022 – The Assistant City Manager/Building Official issued Building permit 2022-032 for 104 S. Peter Pan to perform interior demolition and construct a demising wall within a 6,850 square foot space with a project valuation of \$32,000. The

demising wall created approximately a 1,380 square foot tenant space with a plan to remodel the remaining space for two additional tenants.

- June 28, 2022 – The City Manager/Zoning Administrator became aware that the tenant space was being subdivided into portions that were less than the minimum tenant space requirement of 5,000 square feet. The Assistant City Manager/Building Official was immediately contacted, and the contractor and subsequently the owner were notified. The business identified as US Cellular had indicated that they were required to relocate from their current location and asked for a temporary occupancy permit until the variance request could be considered.
- June 29, 2022 – After consulting with the City Attorney, a temporary occupancy permit was issued for 90 days for 106 S. Peter Pan, which expires on September 30, 2022, and a Stop Work Order was issued and posted at the job site at 104 - 106 S. Peter Pan.
- July 8, 2022 – A variance application was filed, and the \$100 fee was paid to alter one 6,992 square foot tenant space into three tenant spaces that do not meet the minimum 5,000 square foot requirement. The application information states; “Property Owner has determined that the best, most marketable use of this space is to convert the 6,992-square foot premises into three separate premises totaling 6,850 square feet of rentable space and consisting of a 1,380-square foot premises, a 2,024-square foot premises, and a 3,446-square foot premises.”
- August 2, 2022 – A public hearing is scheduled before the Board of Zoning Appeals to consider the variance. The outcome of the variance decision can only be contested in District Court.

Currently, Section 511A.4.b of the Zoning Code relating to the C-4, highway commercial district Intensity of use regulations states:

Minimum tenant space: 5,000 square feet, which may be non-contiguous as long as it is within the same building. Each commercial space intended to be occupied by a single commercial user or each commercial space which has separate doorway access from the exterior of the building or from an interior corridor of an enclosed mall shall be considered to be a tenant space. Exception: Businesses catering to the motoring public shall be exempt from the minimum tenant space requirement. Automobile service stations, convenience stores, restaurants, and financial institutions with drive-up or drive-through facilities shall be deemed to be "businesses catering to the motoring public." The determination whether any business constitutes a "business catering to the motoring public" shall be made by the city planner, whose determination shall be appealable to the board of zoning appeals.

The following staff review and recommendation are consistent with what was provided when this issue was before the Board of Zoning Appeals in 2006. Except in that case, the variance request was to reduce the 7,000 square foot minimum tenant space requirement to allow a 5,088 square foot tenant space. As stated in the timeline, the variance was approved on a 3 - 2 vote, and the City Commission filed suit regarding this decision in district court. In 2007 the Governing Body approved a text amendment that reduced the 7,000 square foot minimum tenant space to 5,000 and ultimately allowed the 5,088 square foot tenant space to be utilized. The matter that is coming before you today is to alter a 6,992 tenant space that previously met the 5,000 minimum tenant space square footage requirement into three tenant spaces that do not meet this requirement, consisting of a 1,380-square foot tenant space, a 2,024-square foot tenant space, and a 3,446-square foot tenant space. This variance request represents a reduction of the 5,000 minimum tenant space square footage requirement by 72.4%, 59.5%, and 31.1%, respectively.

The criteria that must be used when considering any variance is as follows:

- a. *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 zone or district; and is not created by any action or actions of the property owner or the applicant;* The conditions causing the applicant to seek the variance is not unique to the property and is a condition created by the actions of the developer.
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;* City staff believes that this may create an unfair advantage to adjoining property owners who would have to meet C-4 zoning restrictions in their use of their property and future developments.
- c. *That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;* If the variance is not granted, any hardship upon the applicant will be due to the failure of the developer to follow the requirements established for the C-4 zone, where the structure was constructed.
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;* The granting of the variance will not affect public safety, health, morals, etc.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* The granting of the variance does oppose the general spirit and intent of the C-4 zoning regulations. The establishment of the C-4 district was based on the City's Comprehensive Plan. More specifically:
 1. Objective C1 -- Encourage the development of businesses downtown.'
 2. Policy C11 -- The Central Business District (CBD) shall be the primary regional retail center in the City.
 3. Objective C2 -- Provide areas away from downtown for clustered and coordinated commercial development to serve businesses with acreage requirements that cannot be accommodated in downtown.
 4. Policy C21 -- Planned Commercial areas shall be provided for large lot users (i.e., lumber yards, auto and farm implement dealers). These uses shall be clustered along U.S. 75 west of the Missouri-Pacific right-of-way but no further than 1/2 mile west of Peter Pan Road to minimize their impact on surrounding uses and traffic patterns rather than being allowed to form a long commercial strip and be limited to properties having direct vehicular access to the highway.
 5. Objective C4 -- Limit strip commercial development along the major streets to businesses directly serving the motoring public.
 6. Policy C41 -- Strip commercial development, single commercial uses stringing out along a street, shall be limited to those uses directly serving the motoring public, such as motels, service stations and fast-food restaurants.
 7. Policy C43 -- The Zoning Ordinance should be updated to limit the types of businesses located on the highway outside of the Central Business District.

Staff Recommendation

At the time of the passage of the C-4 classification, the Planning Commission attempted to establish a retail district on West Main Street that would create an economic balance that benefits the community between the central business district and the West Main Street area. This decision was based on conformance with the Comprehensive Plan. Although the minimum tenant space square footage requirement was reduced from 7,000 to 5,000 in 2007, the justification and reasoning behind that decision are still valid today.

The Comprehensive Plan indicates the importance of maintaining a strong central business district, and strip commercial development has a long-term effect of weakening the downtown commercial area. It further states that all businesses cannot be accommodated in the central business district and indicates that on West Main Street, only certain types of retail development should occur, which in staff's opinion are compatible with the C-4 zoning. City staff recommends denial of the variance request for the following reasons:

1. The granting of the variance goes against the intent of C-4 regulations.
2. The granting of the variance goes against the intent of the Comprehensive Plan.
3. The applicant's request meets only one of the five criteria for allowing the consideration of a variance.
4. Approving the request would set a precedent for consideration of other variance requests for any other strip mall that chooses not to comply with the C-4 regulations.
5. It is not the purpose of the Board of Zoning Appeals to consider the validity of the adopted zoning ordinance in making variance requests.

Suggested Motion

I move to deny the variance request based on staff's recommendation that it does not comply with the Comprehensive Plan and would set a precedent.

SUPPORTING DOCUMENTS

1. Public Hearing Notice VAR 102 Peter Pan Road
2. Aerial
3. Independence - Variance Application
4. Site Plan

City of Independence, Kansas

NOTICE TO THE PUBLIC

The Independence, Kansas, Board of Zoning Appeals will conduct a public hearing on:

Tuesday, August 2, 2022 at 5:30 p.m.

To receive comments on a variance request to reduce the minimum tenant space square footage requirement for three tenants in a C-4 highway commercial district.

Common Address:

102 - 106 South Peter Pan Road

Legal Description:

Lot 1 E of Peter Pan Rd, Christina Comm Sub Addition to the City of Independence, Montgomery County, Kansas.

Applicant/Owners:

Pool 6 Properties, LLC

Case Number:

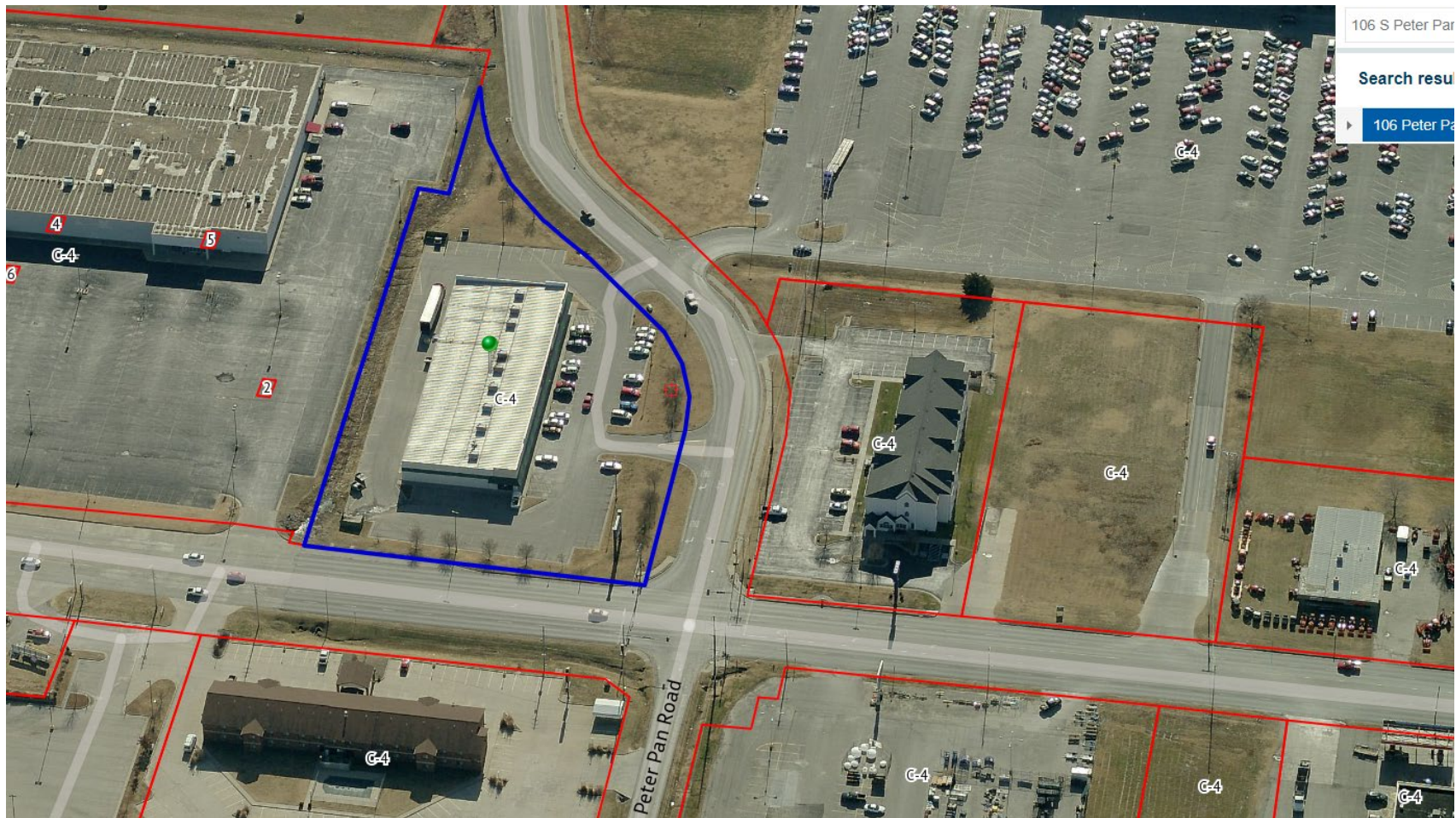
2022/VAR/03

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373# Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer
Zoning Administrator
811 W Laurel Street
Independence, KS 67301
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator



APPLICATION TO BOARD OF ZONING APPEALS

CITY OF INDEPENDENCE, KANSAS

1. Date: July 5, 2022

2. Name, Address and Telephone Number of Property Owner:

Pool 6 Properties, LLC c/o MRP Capital Group, LLC
7777 Bonhomme Avenue, Suite 1700
St. Louis, MO 63105

3. I appoint the following person as my agent during consideration of my request:

Name: John Cusumano, Director of Leasing
Address: 7777 Bonhomme Avenue, Suite 1700, St. Louis, MO 63105
Telephone: 314.628.8499

4. Common Address of Land Involved:

102-106 Peter Pan Road
Independence, KS

5. Legal Description of Land Involved:

Lot 1 of the Christina Commercial Subdivision in the City of Independence, Montgomery County, Kansas

6. Describe what you wish to do which the zoning code prohibits:

Please see attached Supplement

7. The following condition(s), which were not created by the owner's actions, are unique to the property in question and are not commonly found in the same zone or district:

Please see attached Supplement

8. The proposed development would not adversely affect the rights of the adjacent property owners or residents because:

Please see attached Supplement

9. The literal enforcement of the zoning regulations will result in the following unnecessary hardships:

Please see attached Supplement

10: The proposed development will not be contrary to the public health, safety, morals, or general welfare because:

As mentioned, the Property will remain commercial and retail in nature, with national credit tenants. The variance, if granted, will actually enhance the Property and the benefit to the community by offering new retail establishments and filling a long-term vacancy.

11: The proposed development will not be contrary to the general spirit and intent of the zoning ordinance because:

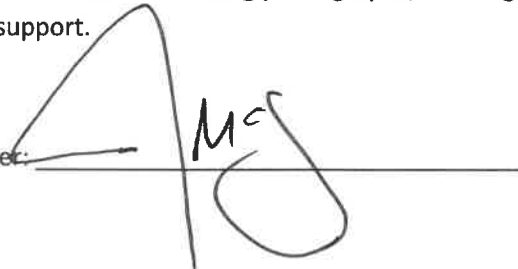
Please see attached Supplement

12: Please attach a site plan showing the dimensions of the lot, the location of building (both existing and proposed), and the location of existing buildings on adjacent property.

Please see attached

If the space provided is not sufficient, the applicant may attach additional pages. The applicant also may submit any other pertinent information including photographs, drawings, maps, statistics, legal documents, and letters of support.

Signature of Property Owner:



Case Number: _____

Date Filed: _____

Fee Received: _____

Present Zoning: _____

Supplement to Application to Board of Zoning Appeals – City of Independence, Kansas

6. Describe what you wish to do which the zoning code prohibits:

The commercial retail building located on the Property is 22,080 rentable square feet, currently consisting of 3 separate premises totaling approximately 10,000, 5,088, and 6,992 square feet, respectively. The 6,992-square foot premises has been vacant since December of 2021.

Property Owner has determined that the best, most marketable use of this space is to convert the 6,992-square foot premises into 3 separate premises totaling 6,850 square feet of rentable space and consisting of a 1,380-square foot premises, a 2,024-square foot premises, and a 3,446-square foot premises.

The C-4 zoning district regulations prohibit tenant spaces below 5,000 square feet. Property Owner seeks a variance from this minimum tenant space requirement to allow Property Owner to demise and lease the 3 tenant spaces outlined above at the Property.

7. The following condition(s), which were not created by the owner's actions, are unique to the property in question and are not commonly found in the same zone or district:

The Property is significantly smaller by square footage than the few surrounding commercial properties in the C-4 district. This makes the Property less conducive to tenant spaces exceeding 5,000 square feet.

Additionally, the Property is the only attractive or realistic option in the surrounding area for non-big box retail uses. The Property's size and proximity to Wal-Mart makes it a desirable destination for smaller retail uses below 5,000 square feet.

Property Owner owns over 100 properties near Wal-Marts across the country and can confirm from its experience that properties similar to the Property primarily attract smaller retail tenants, particularly in a post-Covid environment where all retail tenants need less square footage. Property Owner also invests in its local markets and believes that tenant mixes like the one proposed here are an enhancement to the community.

8. The proposed development would not adversely affect the rights of the adjacent property owners or residents because:

As mentioned, there is not a high volume of commercial, retail properties in the area surrounding the Property, and those that do exist are significantly larger and therefore conducive to having larger tenant spaces. This variance should have no adverse impact on those properties.

Similarly, this variance would not materially or adversely affect the nature or character of the tenant mix and use of the Property - the tenants will still be national, retail tenants, just like they are now. Property Owner knows from extensive experience that Wal-Mart, one of the adjacent property owners, welcomes the type of tenants that Property Owner will be able to place at the Property in the event the variance is granted.

Property Owner plans to fill two of the newly-created tenant spaces with US Cellular and Verizon, respectively, with the third space to be occupied by another to-be-determined national retail tenant. Letters of support from US Cellular and Verizon are attached to this application.

9. The literal enforcement of the zoning regulations will result in the following unnecessary hardships:

Unfortunately, Property Owner only became aware of the 5,000 square foot minimum limitation after leases had already been fully negotiated with both US Cellular and Verizon and these tenants were ready to relocate into the Property. As outlined in the attached letters, both of these tenants will likely have to vacate the market in the event this variance is not granted.

Additionally, if this variance is not granted, Property Owner will experience continued difficulty in marketing the Property and identifying tenants. Due to the size and location of the Property and the post-Covid retail environment, it is going to be very difficult for Property Owner to find a tenant willing to lease close to 7,000 square feet. This reality is confirmed by the vacancy at the Property for the last 6 months. A long-term vacancy in this space also increases the risk of further vacancies at the Property in the future.

11. The proposed development will not be contrary to the general spirit and intent of the zoning ordinance because:

The proposed variance is not contrary to the general spirit and intent of the C-4 district regulations because Property Owner has no desire for the Property to move away from large retail uses generally. Instead, the variance request simply reflects the current reality in 2022 that small retail properties like this one are best and most effectively utilized by featuring a tenant mix of large and small retail uses. This is a demand that we have seen coming from the retailers themselves.

In recognition of the C-4 district's general spirit and intent, Property Owner's variance request is intentionally appropriately limited in scope. Property Owner has no need or desire to convert all or even the majority of the large retail spaces at the Property into smaller spaces; instead, we just want the flexibility, in recognition of the unique features of the Property and the general retail environment, to utilize 5 tenant spaces at the Property as opposed to 3.



30 June 2022

Board of Zoning Appeals
City of Independence, KS

Dear Recipient,

Today, we learned of the C-4 Zoning at 106 Peter Pan Road that may affect our business. We have entered in to a fully executed lease agreement for a new corporate store location with our Landlord, MRP Capital Group. This is our first corporate owned and staffed store in Independence. This site was chosen based upon our need for a smaller, more economical location than that of our, then authorized agent. It will also serve us best with its ample parking and the regional draw of Walmart.

Should our plans be interrupted, and we are not able to open at 106 Peter Pan Road we will have no representation in the City of Independence. Our former agent will no longer be representing UScellular as of today, 30 June 2022.

We request you allow us to continue our work and give us the ability to open and service our customers in the Independence trade area. We plan a large investment in the community with our commitment to the new store that will help to bring the latest state-of-art UScellular 5G experience to the City of Independence and the surrounding area.

I believe it's important to mention that our hiring efforts have gone well. We have hired and trained 6 local associates for positions at this location. These are well paying, high benefit positions filled by individuals who likely have left other positions for a new career with UScellular.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "William J. Briggs", written in a cursive style.

William J. Briggs
Real Estate Services
United States Cellular Corporation

CC:

Travis Toliver
Jose Cabrera
Gerry O'Brien
John Stevenson
Ruth Bowers



4125 Wilson Creek Marketplace Rd. – Battlefield, MO 65619

Office: 417-886-7542 Fax: 417-888-5011

www.russellcellular.com

To Whom It May Concern:

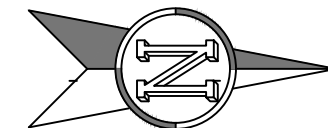
Russell Cellular has been in business in the city of Independence since July 2011. While we have appreciated and performed well in our location downtown, the space is small and the condition of the building does not have an appearance that meet the brand standards of Verizon and Russell Cellular.

Additionally, our business model generally performs better in a more retail-oriented area of town, particular those near a Walmart or other large retailer. In order to ensure the success of Verizon and Russell Cellular in Independence for many years to come, we wish to relocate to the Independence Shopping Center at 104 Peter Pan Rd.

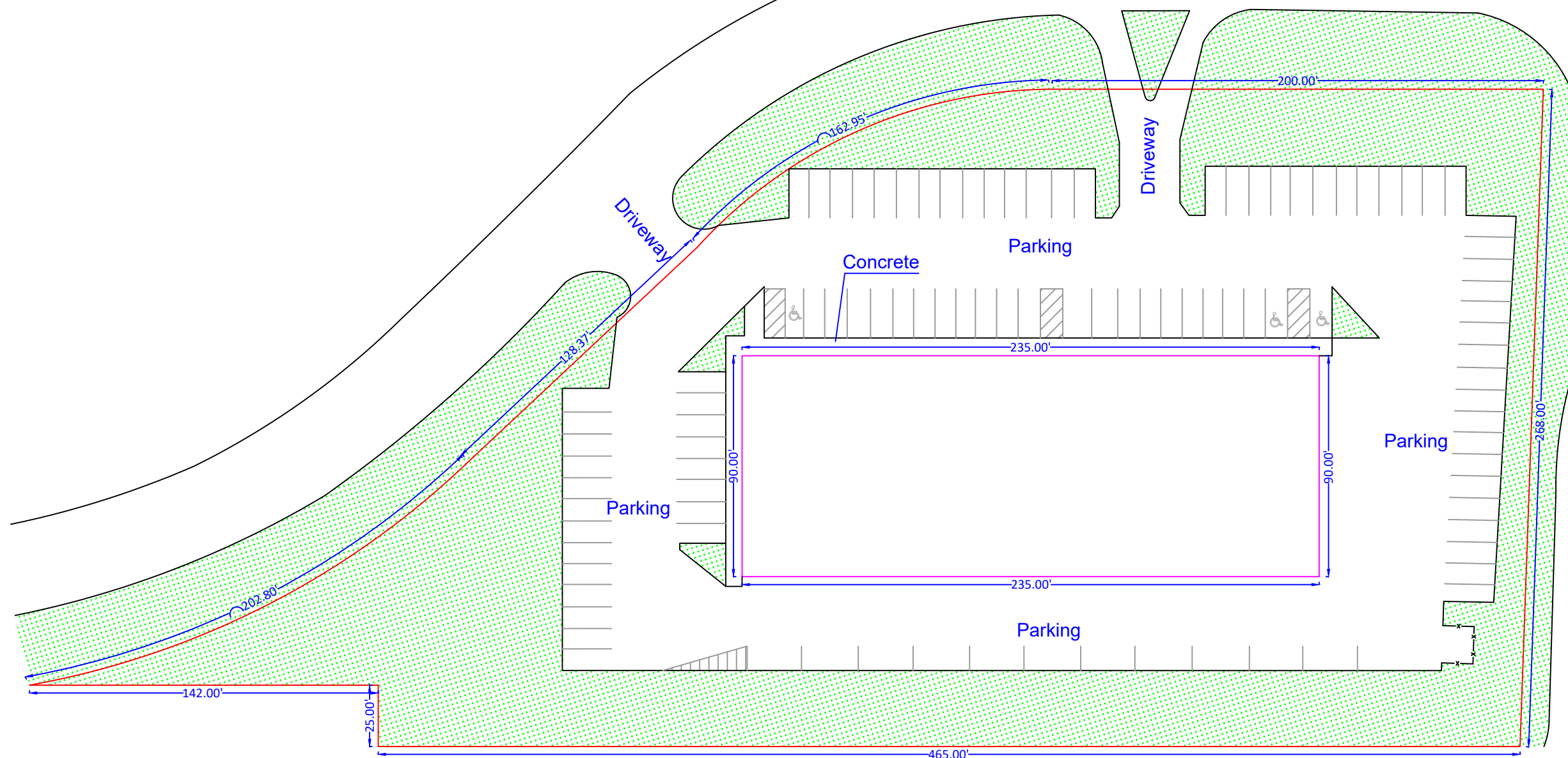
Thank you,

A handwritten signature in blue ink, appearing to read "JR", is written over a horizontal line.

Jeff Russell
Russell Cellular | President and CEO



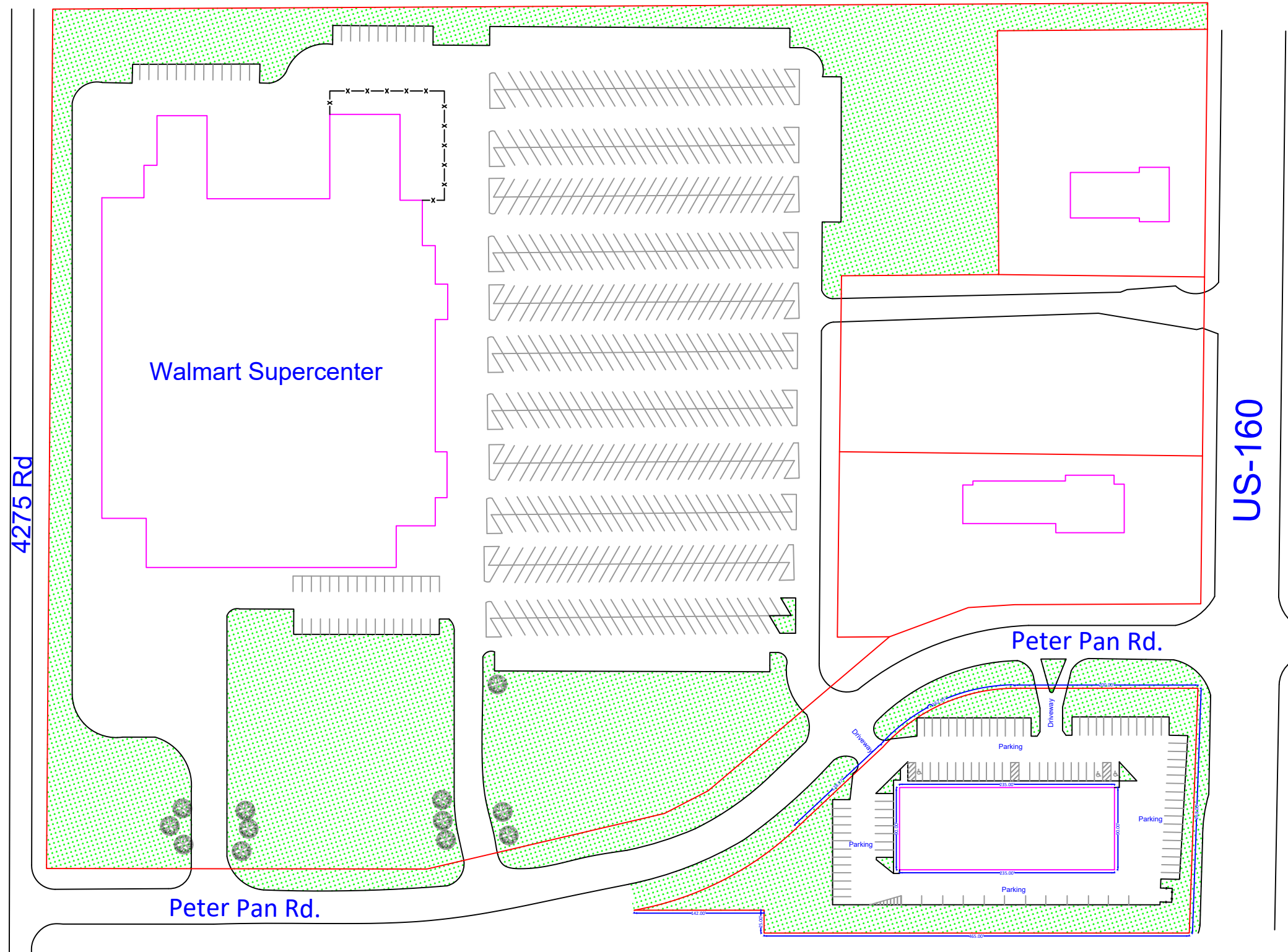
Peter Pan Rd.



Impervious Surface Table

BUILDING -	21150.00	sqft	+/-
ASPHALT -	49584.04	sqft	+/-
CONCRETE -	2559.81	sqft	+/-
TOTAL -	73293.75	sqft	@ 66.58%

104 Peter Pan Rd.
Independence KS 67301
Scale: 1"=50'



CITY OF INDEPENDENCE

REC#: 01191733 7/08/2022 11:31 AM
OPER: JESS TERM: 001
REF#:

ACCT #: XXXX-XXXX-XXXX-3518
AUTH #: 01202G
TRAN #: 000000037640
TYPE: PURCHASE
ENTRY MODE: MANUAL

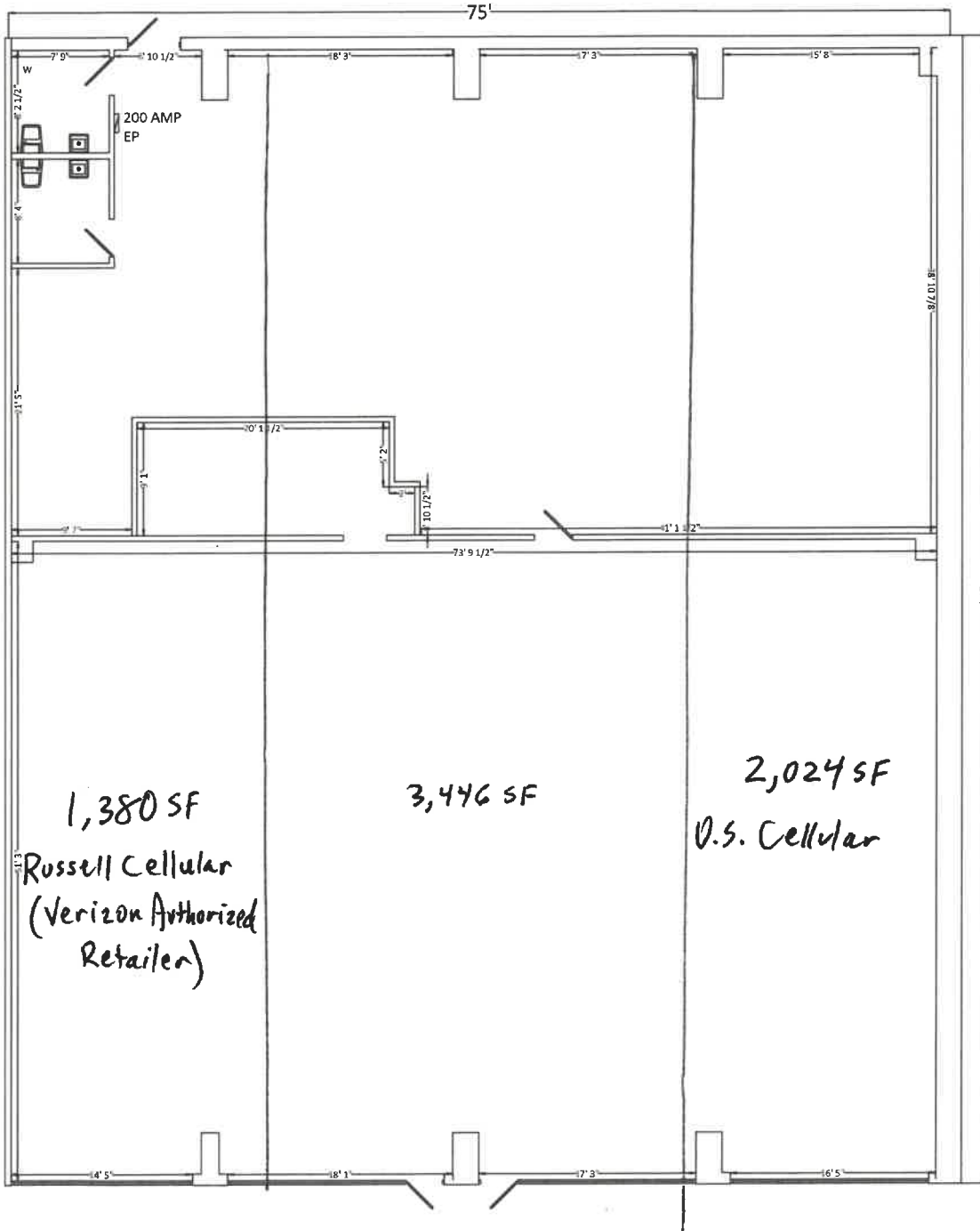
TRAN: 1.9000 VARIANCE
102-106 PETER PAN VARIANCE
MISC FEES 100.00CR

TENDERED: 100.00 CREDIT CARD
APPLIED: 100.00-

CHANGE: 0.00

FRONT GRID HEIGHT 11'
 REAR GRID HEIGHT NO GRID
 FRONT BEAM HEIGHT 11' 2"
 BACK JOIST HEIGHT 15'
 BACK DECK HEIGHT 15' 8 1/2"

WATER SHUTOFF IN RESTROOM WALL.



INDEPENDENCE SHOPPING CENTER
 104 PETERPAN ROAD
 INDEPENDENCE, KS 67301

6,850 SQUARE FEET



MRP CAPITAL GROUP

DRAWING DATE:
 4-8-22



**REQUEST FOR PLANNING COMMISSION ACTION
CONDITIONAL USE PERMIT
CITY OF INDEPENDENCE
AUGUST 2, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue, adjourned from the June 7, 2022 meeting.

SUMMARY RECOMMENDATION Approve the conditional use permit based on staff's recommendation with the additional conditions as recommended by City staff.

BACKGROUND This item has been tabled from the April 5, 2022 meeting, from the July 5, 2022 meeting, and again to the August 2, 2022 meeting.

STAFF RECOMMENDATION This is an existing structure in the Downtown Historic District. The property owner wants to use 691 sq. ft. in the storefront to serve as retail as a fine art gallery and design consultation firm. He wants to use the first-floor rear area as a "living showroom" and residence for a gallery curator/director with the alley area, 387 sq. ft, used as a gallery workshop. The upstairs will be used as a single-family residence for rental. In reviewing the policies included in the comprehensive plan and provisions of Section 901 of the zoning ordinance, the Planning Commission must consider whether the intended use of this tract will be compatible with other adjoining uses and code requirements. In reviewing the building codes and life safety, the apartment/sleeping area will have to be at the rear of the building, not in the middle where Mr. Moreau previously requested, and the apartment must not exceed more than 50% of the total 1st floor square footage. The store front of this structure must be retained for commercial purposes in order to maintain the character of the downtown as included in Policy C15 of the Comprehensive Plan. This would include a retail or service type business that must occupy 691 sq.ft or more of the 1st floor space.

Staff's recommendation is to approve the conditional use permit with the following conditions:

1. The conditional use permit shall be issued solely to the applicant and/or property owner and is not transferable to another location.
2. With this conditional use permit, the storefront shall strictly be used for retail or service establishments dealing directly with consumers defined for this conditional use permit as a fine art gallery and design consultation, with 691 sq. ft of the first-floor storefront to be used for the gallery and workshop with the remaining 387 sq. ft to be used as a studio/living room.
3. The residential area of 702 sq. ft at the rear of the building must meet life safety and building code requirements.
4. The upper-story apartment must meet life safety and building code requirements.
5. Any additional exterior lighting on site will need to be approved by City staff.
6. IHPRC approval and a City Building Permit are required before work can begin.

SUGGESTED MOTION

I move to approve the conditional use permit based on staff's recommendation with the additional conditions as recommended by City staff.

SUPPORTING DOCUMENTS

1. 103 N PENN CODE FOOTPRINT
2. July 5, 2022 Minutes
3. 04052022 PZ Minutes - Signed

CODE FOOTPRINT LEGEND

Name

ROOM NAME

0

RM OCCUPANCY TOTAL

0

OF OCCUPANTS EXITING

0

EXIT WIDTH (INCHES)

0

REQ'D EXIT WIDTH (INCHES)

0

OF OCCUPANTS/EXIT

EMERGENCY EGRESS DOOR TAG

EXIT SIGN W/ ARROWS

EMERGENCY LIGHT

FIRE EXTINGUISHER

SMOKE DETECTOR

FIRE ALARM CONTROL PANEL

FIRE ALARM PULL STATION

FIRE ALARM STROBE

FIRE ALARM HORN/STROBE

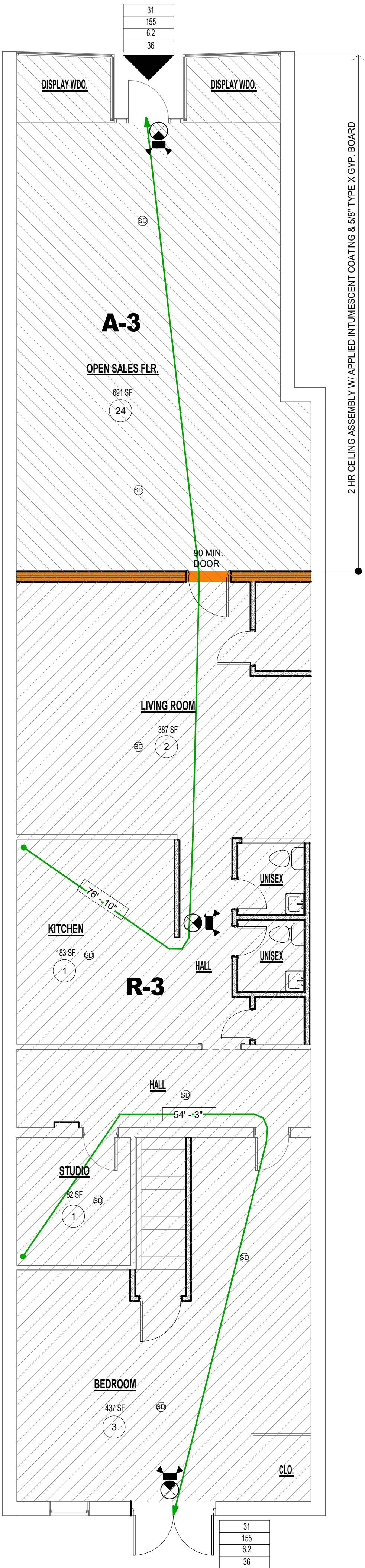
FIRE ALARM HORN

2 HR FIRE WALL

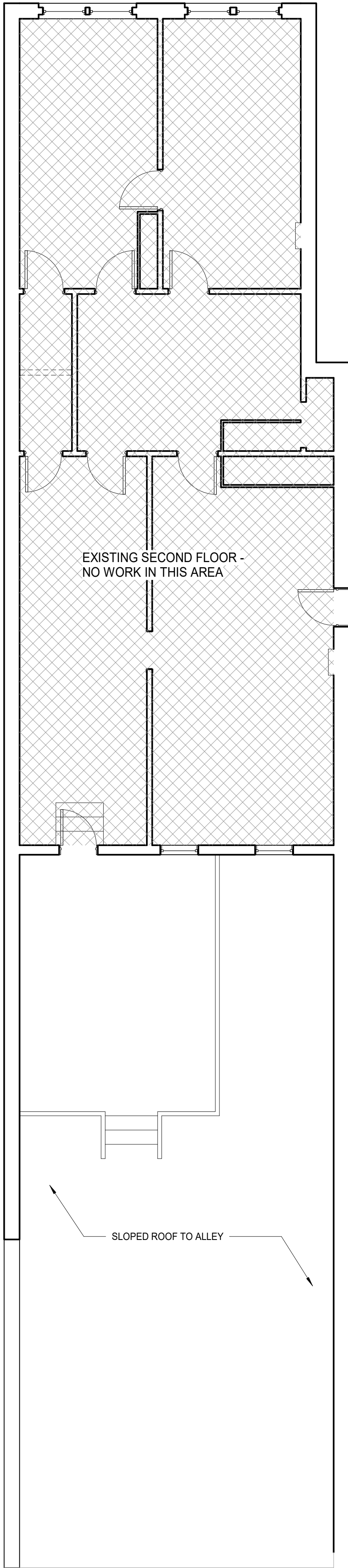
00' - 0"

TRAVEL DISTANCE

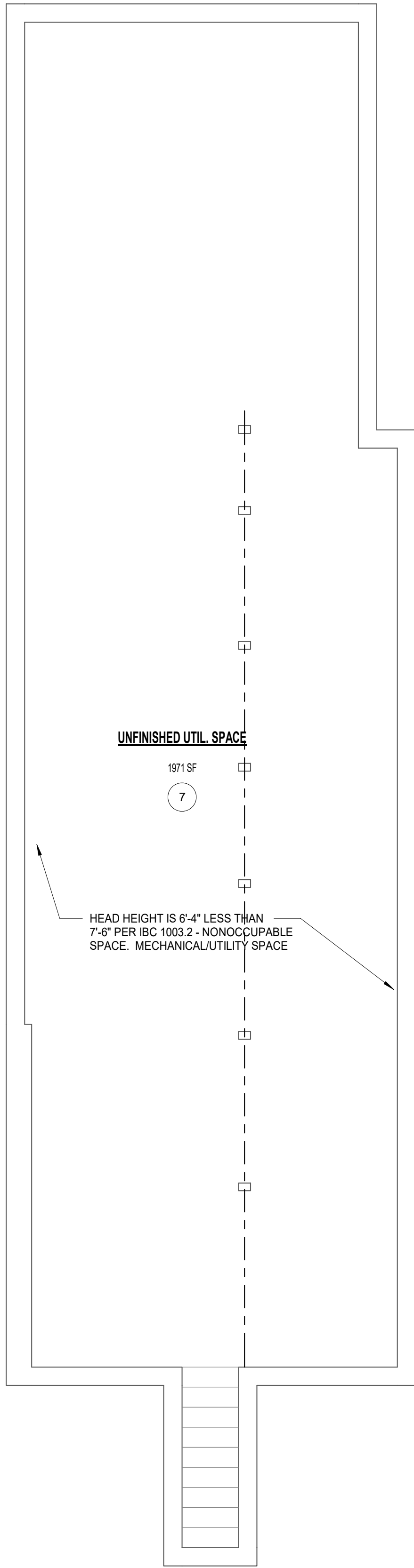
PATH OF TRAVEL



1 GRADE LEVEL - CODE FOOTPRINT 3/16" = 1'-0"



2 SECOND FLOOR - CODE FOOTPRINT 3/16" = 1'-0"



3 BELOW GRADE - CODE FOOTPRINT 3/16" = 1'-0"

CODE REVIEW

APPLICABLE CURRENT CODES

2012 IBC
2012 IBC
2008 NFPA 101 LIFE SAFETY
ADA
2007 NFPA 13
2012 NEC

FACILITY NAME/ADDRESS

103 N. PENN. AVE
INDEPENDENCE, KS 67301

ARCHITECT

JOHN E. HECKMAN, AIA
HECKMAN & ASSOCIATES, P.A. ARCHITECTS
P.O. BOX 1314
INDEPENDENCE, KS. 67301

COUNTY

MONTGOMERY

WATER SUPPLY

CITY OF INDEPENDENCE

BUILDING DEPARTMENT

CITY OF INDEPENDENCE

RESPONDING FIRE SERVICE

CITY OF INDEPENDENCE

OCCUPANCY LOAD

A-3 OCCUPANT LOAD (GRADE LEVEL) = 24
R-3 OCCUPANT LOAD (GRADE LEVEL) = 8
U OCCUPANT LOAD (BELOW GRADE) = 7

IBC Chapter 5 - General Building Heights & Areas:

Basement: Group U (IEBC classification: NO CHANGE)
Allowable Stories: 2
Allowable Area: 13,500 sq.ft.
Actual Stories: 1 = Compliant
Actual Area: 1,971 = Compliant

Grade Level: Group A (IEBC classification: Level 2 Alteration, no change of use)
Allowable Stories: 1
Allowable Area: 6,000 sq.ft.
Actual Stories: 1 = Compliant
Actual Area: 874 sq.ft. = Compliant

Grade Level: Group R-3 (IEBC classification: Level 2 Alterations)
Allowable Stories: 3
Allowable Area: Unlimited
Actual Stories: 1 = Compliant, see below
Actual Area: 1,709 sq.ft. = Compliant

- Superseded by IBC Section 1012.5.2, which deems the change in occupancy in basement and grade level being an equal and/or lesser hazard, therefore heights and areas remain acceptable without modification. Additionally, a 2 hour horizontal barrier is provided per IBC & IBC requirements between grade level and second floor.

IBC Chapter 6 - Types of Construction:

Construction Classification: Type VB (0,0,0)
Required exterior wall fire resistance rating: 1 hour (X<5', IBC Table 602)
- Superseded by IBC section 1012.6.2 - change in occupancy category to an equal/lesser hazard. Existing openings and exterior wall can remain without modification. Opening protectives required

IBC Chapter 7 - Fire & Smoke Protection Features:

Allowable exterior wall opening area, separation 0-3 feet: Not Permitted
- Superseded by IBC section 1012.6.2 - change in occupancy category to an equal/lesser hazard. Existing openings and exterior wall can remain without modification.

Fire barriers, Section 707: Table 707.3.10, 2 hour fire separation between Group A and R is required

Horizontal assemblies, Section 711: 711.3 refers to 508.4 where separation between mixed occupancies is required, a 2 hour separation is required for a non-sprinklered building

Shaft enclosures, section 713.4: stair must be 2 hour rated where protecting four stories
- Superseded by IBC section 803.2.1 as referenced by section 1012.4.1 and 903.1, 1 hour rating will suffice
- Superseded by IBC section 1012.5.3, grade level and basement level change to equal/lesser hazard and non-separated per IBC, no fire barrier necessary between mixed occupancies on same level

IBC Chapter 9 - Fire Protection

Fire Sprinkler System is not required to be installed per IBC/IFC due to Level 2 alteration and no change of Use.
Group A-3: no fire sprinkler required, area < 12,000 sq.ft., occupant load < 300, grade level discharge

Group R-3: 2012 IBC requires; however, city of Independence excluded single family residences from fire sprinkler systems when adopting IBC.

Fire extinguishers to be supplied in accordance with section 906.

Fire alarm system not required for Group A per IBC 907.2.1: occupant load < 300. Interconnected smoke detection system will be installed throughout the space.

Single/multiple station smoke alarms will be installed per section 907 for Group R areas.

IBC Chapter 10 - Means of Egress

Door swing and door width to be per IBC requirements, based on occupant load factors for new construction.

Emergency lights to be installed throughout the egress routes and above all exits in accordance with IBC Chapter 10 requirements for new construction.

Number of Exits: 2 exits minimum from each occupancy type based on Section 1015 for occupant load. One exit provided from Group R areas via enclosed smokeproof stair shaft.
- Superseded by IBC section 805.3.1.1(9) for Group R with maximum 20' travel from no more than four dwelling units per floor to smokeproof exit access.
Two exits provided from Group A-2/F-2/S-2 spaces.

IBC Chapter 12 - Interior Environment

Ground floor sleeping unit in the residential area complies with Section 1205, natural lighting requirements.

Design & Engineering Requirements:

Architectural & Engineering drawings provided for grade level modification per KS state statutes.

Sealed code footprint provided for utility space, grade level & second floor per City.

Second floor no requirements for sealed drawings per KS state statutes. **74-7301 Architecture; exemptions from requirements for licensure or certification; definitions.** Item (b) persons designing or erecting or preparing plans, drawings or specifications for buildings housing no more than two dwelling units in one contiguous structure or for agricultural buildings. **74-7033 Engineering; exemptions from requirements for licensure or certification** Item (b) persons designing or erecting or preparing plans, drawings, or specifications for buildings housing no more than two dwelling units in one contiguous structure or for agricultural buildings.

103 N. PENN. AVE.
SUITE 2F
INDEPENDENCE, KANSAS 67301

620-331-6171
www.EchelonAD.com

CERTIFIED BY

JAMES M. KING

1329

1/9/2020

KANSAS

ARCHITECT

103 N. PENN RENOVATION
103 N. PENN AVE, INDEPENDENCE, KS

DRAWING

CODE FOOTPRINT

MANAGER

JEH

DRAWN BY

SAC

REVISIONS

PROJECT NUMBER

Project Number

DATE

1/9/2020

SHEET NUMBER

A0

**Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's July 5, 2022
Meeting**

I. Call to Order

Present: Brent Littleton, Kendall Neill, Andy McLenon, Lisa Richard, Tim Haynes, Anthony Royse, Mary Jo Meier, Rachel Lyon

Absent: Michelle Anderson

Excused:

II. Minutes

- a. Consider approving minutes of the June 7, 2022 meeting.

Motion:

**On the motion of Tim Haynes, seconded by Lisa Richard the Commission
Approved the June 7, 2022 Minutes.**

**Aye: Brent Littleton, Andy McLenon, Mary Jo Meier, Kendall Neill, Anthony
Royse, Rachel Lyon**

Nay: None

III. Board of Zoning Appeals (Does not include outside City appointments)

IV. Planning Commission

- a. Public hearing to receive comments to consider a conditional use permit for a daycare at 436 Pearl Ave in an R-1, large lot single-family dwelling district.

Motion:

**On the motion of Anthony Royse, seconded by Brent Littleton the
Commission approved the conditional use permit for a daycare at 436 Pearl.**

**Aye: Tim Haynes, Andy McLenon, Mary Jo Meier, Kendall Neill, Lisa Richard,
Rachel Lyon**

Nay: None

- b. Public hearing to consider adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles.

**These are suggested modifications. Currently the code for recreational
vehicles is concerned with storage. This would add descriptions for
recreational vehicles parked in a mobile home park and connected to utilities.**

Tim Haynes and Rachel Lyon suggested there not be a time limit.

Motion:

On the motion of Kendall Neill, seconded by Anthony Royse the Commission

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's July 5, 2022 Meeting

adjourned the public hearing until August 2, 2022.

Aye: Michelle Anderson, Tim Haynes, Brent Littleton, Rachel Lyon, Andy McLenon, Mary Jo Meier, Lisa Richard

Nay: None

- c. Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue, adjourned from the April 5, 2022 meeting.

Motion:

On the motion of Kendall Neill, seconded by Tim Haynes the Commission adjourned the public hearing until August 2, 2022.

Aye: Brent Littleton, Rachel Lyon, Andy McLenon, Mary Jo Meier, Lisa Richard, Anthony Royse

Nay: None

V. Discussion

VI. Adjournment

Motion:

On the motion of Kendall Neill, seconded by Andy McLenon the Commission Adjourned the July 5, 2022 Meeting.

Aye: Tim Haynes, Brent Littleton, Rachel Lyon, Mary Jo Meier, Lisa Richard, Anthony Royse

Nay: None

Kendall Neill, Chairperson

Tim Haynes, Secretary

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's April 5, 2022 Meeting

I. Call to Order

Present: Rachel Lyon, Andy McLenon, Mary Jo Meier, Kendall Neill, ANTHONY Royse, Michelle Anderson, Lisa Richard, Tim Haynes

Absent: Brent Littleton was present and then left at 6:00 p.m.

Excused:

Guests:

Susan Schumaker
Daniel Moreau
Bob Moreau
Ned Stichman

II. Minutes

- a. Consider approving minutes of the March 1, 2022 meeting.

Motion:

On the motion of Andy McLenon, seconded by Mary Jo Meier the Commission Minutes were approved as written.

Aye: Michelle Anderson, Tim Haynes, Brent Littleton, Rachel Lyon, Andy McLenon, Mary Jo Meier, Kendall Neill, Lisa Richard, Tony Royse
Nay: None

III. Board of Zoning Appeals (Does not include outside City appointments)

IV. Planning Commission

- a. Public Hearing to receive comments regarding a text amendment to the zoning code relating to dwellings in a C-3, Central Business District.

Ned Stichman wanted to know when the code changed to where a conditional use permit was needed. David Cowan said anything that was not grandfathered in has to have a conditional use permit. Rachel Lyon stated and also unless it is empty for a period of time.

Lisa Richard discussed the conditional use process and how it should stay in place rather than be permitted so that the neighbors and citizens know what is going on there.

Problems with downtown parking were discussed.

Andy McLenon questioned whether there is an actual demand for downtown upper story housing.

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's April 5, 2022 Meeting

April Nutt explained how many people are on waiting lists and how all of the entities are working together to streamline the process of getting housing up and going because of the urgent need.

Andy McLenon suggested a 24 month moratorium to answer questions of whether it is necessary to keep the conditional use permit and what kind of issues come to the forefront that should be addressed.

Motion:

On the motion of Tim Haynes, seconded by Andy McLenon the Commission recommends the City Commission adopt a Moratorium to the enforcement of the Upper Story Conditional Use policy, that the "Upper Story Dwellings for Single-family and Multi-family" in the permitted and conditional use table be a permitted use in a C-3, Central Business District for 24 months following the date of adoption by the City Commission

Aye: Rachel Lyon, Mary Jo Meier, Kendall Neill, Tony Royse, Michelle Anderson, Tim Haynes, Andy McLenon, Lisa Richard

Nay: None

- b. Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue.**

Susan Schumaker, who owns the building behind 103 North Pennsylvania Avenue, was concerned about parking in her lot by Mr. Moreau's tenants and customers. Mr. Moreau assured her that he would not allow parking there.

David Cowan reminded Mr. Moreau that the City has not received a building permit application nor any plans or specifications on any work being done at 103 North Pennsylvania Avenue and that the Historic Preservation Board will need the same plans and specifications before they issue a Certificate of Appropriateness with their approval. No work is allowed until these measures have been taken.

Mary Jo Meier recommended that Mr. Moreau be sent a letter that gives him thirty (30) days to reach out to David Cowan concerning these issues with a time-line and a check-list.

Motion:

On the motion of Kendall Neill, seconded by Rachel Lyon the Commission adjourned this hearing due to lack of information until the July 5, 2022 meeting.

**Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's April 5, 2022
Meeting**

Aye: Michelle Anderson, Tim Haynes, Rachel Lyon, Andy McLenon, Mary Jo Meier, Kendall Neill, Lisa Richard, Tony Royse
Nay: None

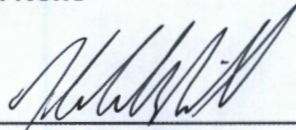
V. Discussion

VI. Adjournment

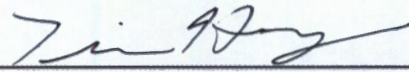
Motion:

On the motion of Kendall Neill, seconded by Anthony Royse the Commission adjourned this meeting.

Aye: Michelle Anderson, Tim Haynes, Rachel Lyon, Andy McLenon, Mary Jo Meier, Kendall Neill, Lisa Richard, ANTHONY Royse
Nay: None



Chair



Secretary



**REQUEST FOR PLANNING COMMISSION ACTION
TEXT AMENDMENT
CITY OF INDEPENDENCE
AUGUST 2, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public hearing to consider adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles.

SUMMARY RECOMMENDATION Approve the Staff Report written by Jeff Chubb as the code for recreational vehicles.

BACKGROUND This item was tabled at the July 5, 2022 meeting for the August 2, 2022 meeting.

POLICY EXPLANATION *1601.2. Proposal of amendments:* Amendments may be initiated by the governing body, the planning commission, or upon application by the owners of the property affected.

1602.3. Disposition of amendment proposals: Upon receipt of proposed amendment from the zoning administrator, the planning commission shall hold a public hearing on the proposed amendment, and forward to the governing body its findings and recommendations with respect to the proposed amendment.

1604.2. Amendments to text: When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
The change is consistent with the intent and purpose of these regulations. Recreational Vehicles will be hooked up to utilities the same as for mobile homes except in the flood zone where they have further requirements.
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
The existing mobile home parks are already established, so the area surrounding the neighborhood will not be affected.
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

More people are buying recreational vehicles and traveling in them, thus needing a place to temporarily park and reside where they can access utilities when visiting Independence.

STAFF RECOMMENDATION

606.2 Location of Occupied Recreational Vehicles: *Owner* occupied recreational vehicles with electric, water, and sanitary sewer hookups that consist of a vehicular-type unit built on, or for use on, a chassis and designated as living quarters, both permanent and temporary, for recreational, camping or travel use, and which have their own motive power or are mounted on, or which can be drawn by, another vehicle such as motor homes, travel trailers, camper trailers, house trailers, pickup truck campers, hauling trailers, and camper buses shall be

permitted in a licensed mobile home park. Such mobile home parks shall have appropriate hookups for water, sewer and electric which must be connected to the recreational vehicle. For any recreational vehicle location within a mobile home park which is located in a flood zone, the utility hookups must meet FEMA requirements. In addition, such recreational vehicles and their locations within a mobile home park shall be in compliance with Section 1009.4 which sets forth the minimum standards for recreational vehicles located within a mobile home park.

1009.4 Minimum Standards for Recreational Vehicles Located Within a Mobile Home

Park: Recreational vehicles located within a mobile home park shall comply with the following standards.

a. **Recreational Vehicles Allowed:** Any owner occupied vehicular-type unit built on, or for use on, a chassis and designed as living quarters, both permanent and temporary, for recreational, camping or travel use, and which has its own motive power, or is mounted on, or which can be drawn by, another vehicle such as motor homes, travel trailers, camper trailers, house trailers, pickup truck campers, hauling trailers and camper buses which shall have and use sanitary facilities contained wholly within the recreational vehicle.

b. **Location:** Must be located on a space meeting the space requirements for mobile homes set forth in Section 1009.3.

c. **Utility Hookups:** Each space shall have hookup facilities for water, sewer and electricity and each recreational vehicle shall be hooked up to all such utilities. All recreational vehicles shall have and use sanitary facilities contained wholly within the recreational vehicle. All spaces located within a flood zone shall have hookups that comply with FEMA requirements.

d. **Prohibited Uses:** Nothing contained herein shall be construed to permit the owner or operator of a mobile home park to use or place recreational vehicles as rental units in a mobile home park. The provisions of the zoning code allowing recreational vehicles to be used, placed or located within a mobile home park shall apply only to owner occupied recreational vehicles.

SUGGESTED MOTION I move that we approve the text amendments to Appendix B- Zoning of the City Code relating to recreational vehicles as recommended by the City Attorney.

SUPPORTING DOCUMENTS

1. 2022.07-06 Memo - Recreational Vehicles-zoning

MEMO

To: Kelly Passauer
From: Jeff Chubb
Date: July 6, 2022
Re: Recreational Vehicles/Mobile Home Parks

Kelly:

I still cannot access Civic Clerk or Civic Plus. Every time I click on the link, it says I'm not granted access.

I've dictated some proposed changes that were discussed at the planning commission meeting on July 5. I'm basically using your language but then adding my changes to it. Below are my changes/comments:

606.2 Location of Occupied Recreational Vehicles: Owner occupied recreational vehicles with electric, water, and sanitary sewer hookups that consist of a vehicular-type unit built on, or for use on, a chassis and designated as living quarters, both permanent and temporary, for recreational, camping or travel use, and which have their own motive power or are mounted on, or which can be drawn by, another vehicle such as motor homes, travel trailers, camper trailers, house trailers, pickup truck campers, hauling trailers, and camper buses shall be permitted in a licensed mobile home park. Such mobile home parks shall have appropriate hookups for water, sewer and electric which must be connected to the recreational vehicle. For any recreational vehicle location within a mobile home park which is located in a flood zone, the utility hookups must meet FEMA requirements. In addition, such recreational vehicles and their locations within a mobile home park shall be in compliance with Section 1009.4 which sets forth the minimum standards for recreational vehicles located within a mobile home park.

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b. Location: Must be located on a space meeting the space requirements for mobile homes set forth in Section 1009.3.

c. Utility Hookups: Each space shall have hookup facilities for water, sewer and electricity and each recreational vehicle shall be hooked up to all such utilities. All recreational vehicles shall have and use sanitary facilities contained wholly within the recreational vehicle. All spaces located within a flood zone shall have hookups that comply with FEMA requirements.

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Jeff