



Tuesday, September 6, 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 August 2, 2022 meeting.
- b. Consider approving minutes of the August 9, 2022 Special Board of Zoning Appeals meeting.

III. PLANNING COMMISSION

- a. Public Hearing to receive comments to consider rezoning property recently annexed at the Independence Municipal Airport from County I-1, industrial to City M-2, heavy industrial district.
- b. Public Hearing to receive comments to consider rezoning a tract of land at 2500 W Laurel St from C-4, highway commercial district to M-2, heavy industrial district; and/or a conditional use permit for storage and warehousing of nonhazardous products. NOTE: The northern portion of this tract is currently zoned M-2 while the southern portion is currently zoned C-4.

IV. BOARD OF ZONING APPEALS (DOES NOT INCLUDE OUTSIDE CITY APPOINTMENTS)

- a. Public Hearing to receive comments on a variance request to reduce the setback in an M-2 industrial district, currently a C-4 highway commercial district being considered for rezoning at 2500 West Laurel Street. NOTE: The northern portion of this tract is currently zoned M-2 while the southern portion is currently zoned C-4. The requested variance setback is in the portion that is currently zoned C-4, and the variance will only be needed if the rezoning to M-2 is approved.
- b. Public Hearing to receive comments on a variance request to exceed the number of signs in a C-2, commercial services district at 401 W Main St.

V. DISCUSSION

- a. Report on status of conditional use permit at 401 N. 8th Street.

VI. ADJOURNMENT



**PLANNING COMMISSION ACTION / BOARD OF
ZONING APPEALS MINUTES
CITY OF INDEPENDENCE
September 6, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Consider approving minutes of the August 2, 2022 meeting.

SUMMARY RECOMMENDATION I move to approve the August 2, 2022 minutes.

SUPPORTING DOCUMENTS

1. August 2, 2022 Minutes

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 2, 2022 Meeting

I. Call to Order

Present: Mary Jo Meier, Brent Littleton, Anthony (Tony) Royse, Kendall Neill, Tim Haynes, Michelle Anderson

Absent: Rachel Lyon, Lisa Richard, Andy McLenon

Excused:

Guests: Ruth Bowers, Kaitlyn Casillas, Paul Redel, William Briggs, Joe Cabrera, John Cusumano, Randy Shurtz, Miranda Bruening, Tabatha Snodgrass, Lisa Wilson

II. Minutes

- a. Consider approving minutes of the July 5, 2022 meeting.

Motion:

On the motion of Tim Haynes, seconded by Brent Littleton the Commission Approved the Minutes of the July 5, 2022 Meeting.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: None

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.

Kendall Neill opened the public hearing and the staff report was read.

MRP Capital Group purchased the building at 102-106 S Peter Pan Rd in July after CATO's closed. When that happened, The Shoe Store had the option for a percentage rent and/or to terminate their lease and so the company began searching for new tenants to rectify the situation. John Cusumano, who represents MRP Capital Group, stated that CATO's had to close their store because it was a larger space than they needed and they could no longer afford it. He presented his request to the board to split the area into 3 parts, for a total of 5 tenants in the building.

William Briggs, of US Cellular, explained the importance of the request as it pertains to the businesses going in and the time constraints in getting the building finished. He stated that the company wants to make a significant contribution to Independence. The new store would do that and we have brought in six new employees who have already left their jobs and some

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 2, 2022 Meeting

have relocated.

Tabatha Snodgrass discussed the importance of a strong downtown and having businesses go into the downtown buildings.

John Cusumano stated that his company was willing to work with the City on a new plan to reduce to two tenant spaces rather than three tenant spaces, for a total of four tenant spaces in the building.

Joe Cabrera stated that his company wants to be here and purposely chose to go into the building at 104 S Peter Pan Rd for the opportunity to stay in Independence. The company will usually put their businesses close to Walmart stores. He does not see this as the same situation from 22 years ago because things have changed and their company has an agent office in Coffeyville and a corporate store in Independence. We have been here for 12 years and have been moving employees to Independence.

Anthony (Tony) Royse asked what the difference is between the corporate store and what we had.

Joe Cabrera said that we had an authorized agent before but with corporate you have employees hired by US Cellular that can offer different benefit packages. There is also more support and more capital spent to support the business as well as more inventory.

Kendall Neill asked if the two businesses do not move will they have to shut their doors regardless.

Joe Cabrera replied that the previous location was agent owned and corporate was forced to look for another location.

Anthony (Tony) Royse asked if any of the businesses looked downtown for a building.

John Cusumano stated that MRP always opens next to Walmart.

Ruth Bowers stated that US Cellular had looked into the downtown buildings and found they were not ADA compliant and it would put too much cost on the company to bring it up to compliance.

Kendall Neill closed the public hearing. Acceptance of a variance must be based on the following factors:

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

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 2, 2022 Meeting

or district; and is not created by any action or actions of the property owner or the applicant;

b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;

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;

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations. The chair will entertain a motion at this time.

Anthony (Tony) Royse moved to approve the variance.

Motion:

On the motion of Anthony (Tony) Royse to approve the variance as requested to convert a 6,992 sq ft premise, located at 102-106 South Peter Pan Road, to 3 separate spaces totaling 6,850 sq ft of rentable space, consisting of the following: Space #1, 1,380 sq ft Space #2, 2,024 sq ft Space #3, 3,446 sq ft.

This motion is based on the following: a. The variance requested is for a condition that was created by City staff, not the property owner; b. Granting of the variance would not create an unfair advantage to adjoining property owners as the other two spaces are currently occupied; c. If the variance requested is not granted, it would create unnecessary hardship upon the property owner by causing two new tenants, US Cellular and Verizon, to vacate the market and would experience continued difficulty in marketing the property. d. Granting the variance will not affect public safety, health, morals, etc. e. Granting the variance will not be contrary to the general spirit/intent of the planning and zoning ordinance as the property owner has no desire to move away from large retail sales. Granting the variance simply reflects the current reality that small retail properties are most effectively utilized by featuring a tenant mix of large/small retail uses. The property owner has no desire to convert all the spaces into smaller spaces, but wants to utilize 5 tenant spaces as opposed to 3. In addition, in 2006, a variance was approved at this location allowing a tenant to establish a retail space less than the 7,000 sq ft minimum required in a C-4 zone at that time.

There was discussion about whether the permit should have been issued and if when the property was sold it was known that it was zoned C-4. All district regulations can be found online. The initial permit was issued to get one of the cellular companies situated in a space quickly and it was for one new wall and preliminary work. The company was to then come back with additional

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 2, 2022 Meeting

plans.

Kendall Neill stated that he would like some more time to look over the information and would entertain a motion to adjourn the public hearing.

Mary Jo Meier asked if it would appropriate to consider amending the motion as this gentleman recommended and dividing the space in half rather than having three small entities.

Tim Haynes said it is also his opinion that there is a lot of difference between making two units that are 3,000 or more versus having potentially three units and like Kendall Neill he does not want to lose any business.

Kendall Neill asked if there was a second to the motion made by Anthony (Tony) Royse.

Motion dies for lack of a second.

City Attorney Jeff Chubb said the board could adjourn the hearing but should not wait more than a week for the next meeting to decide. The board was instructed not to speak to anyone about what has been or will be discussed.

Motion:

On the motion of Tim Haynes, seconded by Anthony (Tony) Royse, to Adjourn this Hearing to August 9, 2022 and to request plans for two new spaces instead of three, to be reviewed at that hearing.

Aye:Michelle Avery, Mary Jo Meier, Kendall Neill, Tim Haynes, Anthony (Tony) Royse

Nay: None

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.

Miranda Bruening explained the new plans put into place for this project that would fit what the City requires, and to meet the concerns brought up at the April 5, 2022 meeting.

Motion:

On the motion of Tim Haynes, seconded by Anthony (Tony) Royse to approve the conditional use permit based on staff's recommendation with the

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 2, 2022 Meeting

additional conditions as recommended by City staff.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Kendall Neill, Anthony (Tony) Royse

Nay: Mary Jo Meier

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

City Attorney Jeff Chubb put together wording for the Ordinance for owner/occupied RV's, taking out the time constraints that the Planning Commission/Board of Zoning Appeals wanted removed.

Motion:

On the motion of Tim Haynes, seconded by Brent Littleton, to approve adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles as recommended by the City Attorney.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: None

V. Discussion

Kelly Passauer stated that the September 6 meeting will be on the day after a City holiday but encouraged the board to go ahead and meet as there are items on the Agenda with time constraints.

Kendall Neill asked whether money for the new Comp Plan was still in the proposed budget and Kelly Passauer stated that it is at present.

VI. Adjournment

Motion:

On the motion of Tim Haynes, seconded by Anthony (Tony) Royse to adjourn the meeting.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: None

Chairperson

Secretary



**REQUEST FOR BOARD OF ZONING APPEALS ACTION
APPROVAL OF MINUTES
CITY OF INDEPENDENCE
SEPTEMBER 6, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Consider approving minutes of the August 9, 2022 Special Board of Zoning Appeals meeting.

SUMMARY RECOMMENDATION Approve the minutes of the August 9, 2022 Special Board of Zoning Appeals Meeting.

BACKGROUND The Board of Zoning Appeals adjourned the hearing on August 2, 2022 for the August 9, 2022 Special Meeting.

SUPPORTING DOCUMENTS

1. August 9, 2022 Minutes

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 9, 2022 Meeting

I. Call To Order

Present: Michelle Avery, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse, Lisa Richard, Rachel Lyon, Tim Haynes, Brent Littleton

Absent: Andy McLenon

Guests: Ruth Bowers, John Cusumano, Travis Toliver, William Briggs

II. 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 adjourned from August 2, 2022.

Kelly Passauer stated that the meeting was adjourned so that the company could bring an alternative drawing of two spaces. They still do not meet the code requirements for the C-4 district of 5,000 sq ft, by 21 percent and the City must still recommend to deny the request.

City Attorney Jeff Chubb suggested the chairperson ask the members if they had been approached by third parties, or received any information that would influence their decision at any time between the two meetings, and if so to share it with the board.

Kendall Neill, Chairperson, asked if anyone from the board had any outside contact regarding this case or if any board member had any conflict with the case.

All stated no.

John Cusumano reiterated what he addressed last week and brought a list of cellphone companies and their average sq ft is 1,949. He stated that both Verizon and US Cellular are willing to pay for the extra space to stay in Independence.

Will Briggs, US Cellular, stated that Independence, Kansas, is an important market for them and agreed to pay for the larger space so they can stay in Independence.

Tony Royse asked John Cusumano about how this affects the Shoe Store.

John Cusumano stated that the Shoe Show has a provision in their lease that allows them to leave at any time the adjoining stores are empty and stated

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 9, 2022 Meeting

they would like to prevent this from happening by having the cellphone companies in the neighboring space so that they do not leave.

Mary Jo Meier asked how the proposed square footage compares to where they were situated on West Main.

Will Briggs stated that it would double the size. The former location was not an option for the corporation due to the small size and the rent, which is almost twice the amount to the new location.

John Cusumano stated that it is a customer convenience to be close to a Walmart store to keep to the corporations' standards.

Travis Toliver from US Cellular stated that the difference between corporate and agent locations is that corporate locations are a big deal and this would be the 34th location if it is approved. There is more invested in the store and a corporate store can offer more than an agent store.

Lisa Richard asked when the company became aware of being in the C-4 zone and if the company assumed any size of occupancy would be permitted and what was used to determine that. When the title search had been done, did that not indicate it was in a C-4 zone and the company had the opportunity to check what that entailed. The company should be held accountable as well as the City to check the zoning code to find out what is allowed as the planned use. Since the requested variance does not fit City code, maybe rezoning the property or initiating a text amendment to include telecommunications companies as catering to the motoring public should be considered.

John Cusumano said that, as stated in the previous meeting, the company could have caught it sooner. A temporary occupancy was granted and in the final walk-through we were told of the restrictions of being in a C-4 zone versus a C-2 zone. The company looks at the Walmart restrictions and the restrictions of the other tenants. The company then looks at any other encumbrances. There was no malintent intended, the building is 20 years old and the map with the title was not clear. The company has never come across this type of issue where square footage is restricted, which comes up more in a ground-up situation. At the time the purchase of the building was made, the spaces were filled and it was not an issue.

Kendall Neill, Chairperson, closed the Public Hearing.

The Staff report remained the same, with the addition of the new structuring

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 9, 2022 Meeting

of the two spaces, versus the three spaces.

Tim Haynes asked David Cowan if it was in good faith that it was a temporary arrangement and would they then move into a larger space.

David Cowan said he granted the building permit based on a remodel and did not catch that it was in a C-4, 5,000 sq ft requirement. The plans were temporary as they planned what they were going to do. The temporary permit was issued because US Cellular needed a space right away. When Kelly Passauer, Zoning Administrator, realized what was going on, we immediately contacted the City Attorney and the company doing the work.

Motion:

On the motion of Mary Jo Meier, seconded by Rachel Lyon the Commission moved to approve the variance with the revisions submitted by John Cusumano in the letter that states 1. The second paragraph of Section 6 of our application should be deleted and replaced with the following: "Property Owner has determined that the best, most marketable use of this space is to convert the 6,992-square foot premises into 2 separate premises totaling 6,850 square feet of rentable space, consisting of two 3,425-square foot premises." and 2. The final sentence of Section 11 of our application should be deleted and replaced with the following: 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 4 tenant spaces at the Property as opposed to 3." I am basing my motion to approve on these revisions suggested by John but basically because I feel it was an honest oversight by both parties that were working together to keep US Cellular from not staying in Independence. I think that that is a very important issue. I do not want to redo the C-4, I agree with the C-4 planning but I just think this is an exception and that we should consider approving based on that.

Kendall Neill asked City Attorney Jeff Chubb if this is a unanimous vote or a simple majority vote.

Jeff Chubb replied that it is a simple majority vote.

Aye: Michelle Avery, Rachel Lyon, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: Tim Haynes, Lisa Richard

**Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 9, 2022
Meeting**

III. Adjournment

Motion:

On the motion of Kendall Neill, seconded by Mary Jo Meier, the Commission moved to adjourn the meeting.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Rachel Lyon, Mary Jo Meier, Kendall Neill, Lisa Richard, Anthony (Tony) Royse

Nay: None

Chairperson

Secretary



**REQUEST FOR PLANNING COMMISSION ACTION
REZONING
CITY OF INDEPENDENCE
SEPTEMBER 6, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public Hearing to receive comments to consider rezoning property recently annexed at the Independence Municipal Airport from County I-1, industrial to City M-2, heavy industrial district.

SUMMARY RECOMMENDATION To rezone property recently annexed at the Independence Municipal Airport from County I-1, industrial to City M-2, heavy industrial district.

BACKGROUND At the July 28, 2022 Commission Meeting the City Commission initiated a rezoning hearing before the Planning Commission to rezone this property from County I-1, Industrial to City M-2, heavy industrial. The reason for this rezoning is that the City has been working with an industrial company on potential future economic development projects at the Independence Municipal Airport. To qualify for certain incentives now or in the future, the property was annexed into the City.

The City Commission is requesting the Planning Commission to consider rezoning the recently annexed property at the Independence Municipal Airport from County I-1, industrial to City M-2, heavy industrial district.

POLICY EXPLANATION For Rezoning: 601.1. Authority: The governing body of Independence may, by ordinance, amend, supplement, change, modify or repeal these regulations and the district boundaries. No such amendment or change shall be adopted by the governing body until the planning commission has held a public hearing and submitted its recommendation.

LEGAL ADDRESS

TRACT 1: A tract of land located in a portion of the Southeast Quarter of Section 21, Township 33 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as written by William A. Booe, LS 1046, 5-5-2022: Commencing at the Southeast corner of the Southeast Quarter; thence S 88°15'13" W, along the South line of the Southeast Quarter a distance of 1655.78 feet; thence N 01°24'44" W, a distance of 1005.10 feet; thence S 88°35'16" W, a distance of 321.77 feet; thence S 89°35'39" W, a distance of 80.00 feet; thence S 88°47'00" W, a distance of 158.02 feet to the Point of Beginning; thence S 88°47'00" W, a distance of 128.21 feet; thence S 01°20'36" E, a distance of 128.32 feet; thence N 88°47'00" E, a distance of 128.53 feet; thence N 01°29'10" W, a distance of 128.32 feet to the Point of Beginning. Containing 0.378 acres.

TRACT 2: A tract of land located in a portion of the Southeast Quarter of Section 21, Township 33 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as written by William A. Booe, LS 1046, 5-5-2022: Commencing at the Southeast corner of the Southeast Quarter; thence S 88°15'13" W, along the South line of the

Southeast Quarter a distance of 1655.78 feet; thence N 01°24'44" W, a distance of 1005.10 feet; thence S 88°35'16" W, a distance of 321.77 feet; thence S 89°35'39" W, a distance of 80.00 feet to the point of beginning; thence S 88°47'00" W, a distance of 158.02 feet; thence S 01°29'10" E a distance of 128.32 feet; thence S 88°47'00" W a distance of 128.53 feet; thence S 01°20'36" E a distance of 380.38 feet; thence N 88°51'48" E a distance of 287.45 feet; thence N 01°28'49" W a distance of 509.10 feet to the point of beginning. Containing 2.973 acres.

DESCRIPTION OF TRACT(S) All that property not yet annexed into the City of Independence, located in the Independence Municipal Airport, being part of the SE/4 of Section 21, Township 33 South, Range 15 East, Montgomery County, Kansas, and located South of Freedom Drive and between First Avenue on the East and the taxi-way area on the West.

ZONING AND USES OF PROPERTY NEARBY M-2, heavy industrial district

CHARACTER OF THE NEIGHBORHOOD Heavy Industrial

SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED Subject property has recently been annexed into the City and needs to be rezoned from County to City zoning.

LENGTH OF TIME THE PROPERTY HAS REMAINED VACANT AS ZONED The property is currently zoned County I-1. The property has remained undeveloped since the closure of the Army Airbase in the 1940's.

EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY Removing the restrictions will not detrimentally affect nearby property as the subject property is recommended to be rezoned to the same classification as nearby property. In addition, the property was already zoned Industrial by the County.

RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS There is no hardship to individual landowners as property is owned by the City of Independence and the facilities are owned by the companies operating as heavy industrial.

CONFORMANCE WITH THE COMPREHENSIVE PLAN Industrial goal is to provide sufficient opportunities for industrial development at locations with suitable access, adequate community facilities and favorable land use and environmental conditions. Objective I1. Target industrial development to locations which maximize efficient usage of the public and semi-public facilities necessary and minimize the costs of development. Policy I11. Sufficient areas with public facilities and environmental conditions suitable for industrial use should be reserved for industrial development. Policy I12. Industrial sites shall have access to arterial streets; preferably those leading directly to major highways.

STAFF RECOMMENDATION Staff recommends rezoning the recently annexed property at the Independence Municipal Airport from County I-1, industrial to City M-2, heavy industrial district.

SUGGESTED MOTION I move to recommend the City Commission rezone the recently annexed property at the Independence Municipal Airport from County I-1, industrial to City

M-2, heavy industrial district.

SUPPORTING DOCUMENTS

1. Public Hearing Notice Airport County I-1 to City M-2
2. Airport Notification Aerial
3. 4397 - Annexing Land - Airport
4. 4398 - Amend 4397 - Annexing Land - Airport

City of Independence, Kansas

NOTICE TO THE PUBLIC

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, September 6, 2022, at 5:30 p.m.

To receive comments to consider rezoning property recently annexed at the Independence Municipal Airport from County I-1, industrial to City M-2, heavy industrial district.

All that property not yet annexed into the City of Independence, located in the Independence Municipal Airport, being part of the SE/4 of Section 21, Township 33 South, Range 15 East, Montgomery County, Kansas, and located South of Freedom Drive and between First Avenue on the East and the taxi-way area on the West;

Also described as:

TRACT 1:

A tract of land located in a portion of the Southeast Quarter of Section 21, Township 33 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as written by William A. Booe, LS 1046, 5-5-2022:

Commencing at the Southeast corner of the Southeast Quarter; thence S 88°15'13" W, along the South line of the Southeast Quarter a distance of 1655.78 feet; thence N 01°24'44" W, a distance of 1005.10 feet; thence S 88°35'16" W, a distance of 321.77 feet; thence S 89°35'39" W, a distance of 80.00 feet; thence S 88°47'00" W, a distance of 158.02 feet to the Point of Beginning; thence S 88°47'00" W, a distance of 128.21 feet; thence S 01°20'36" E, a distance of 128.32 feet; thence N 88°47'00" E, a distance of 128.53 feet; thence N 01°29'10" W, a distance of 128.32 feet to the Point of Beginning. Containing 0.378 acres.

TRACT 2:

A tract of land located in a portion of the Southeast Quarter of Section 21, Township 33 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as written by William A. Booe, LS 1046, 5-5-2022:

Commencing at the Southeast corner of the Southeast Quarter; thence S 88°15'13" W, along the South line of the Southeast Quarter a distance of 1655.78 feet; thence N 01°24'44" W, a distance of 1005.10 feet; thence S 88°35'16" W, a distance of 321.77 feet; thence S 89°35'39" W, a distance of 80.00 feet to the point of beginning; thence S 88°47'00" W, a distance of 158.02 feet; thence S 01°29'10" E a distance of 128.32 feet; thence S

88°47'00" W a distance of 128.53 feet; thence S 01°20'36" E a distance of 380.38 feet; thence N 88°51'48" E a distance of 287.45 feet; thence N 01°28'49" W a distance of 509.10 feet to the point of beginning. Containing 2.973 acres.

Case Number:

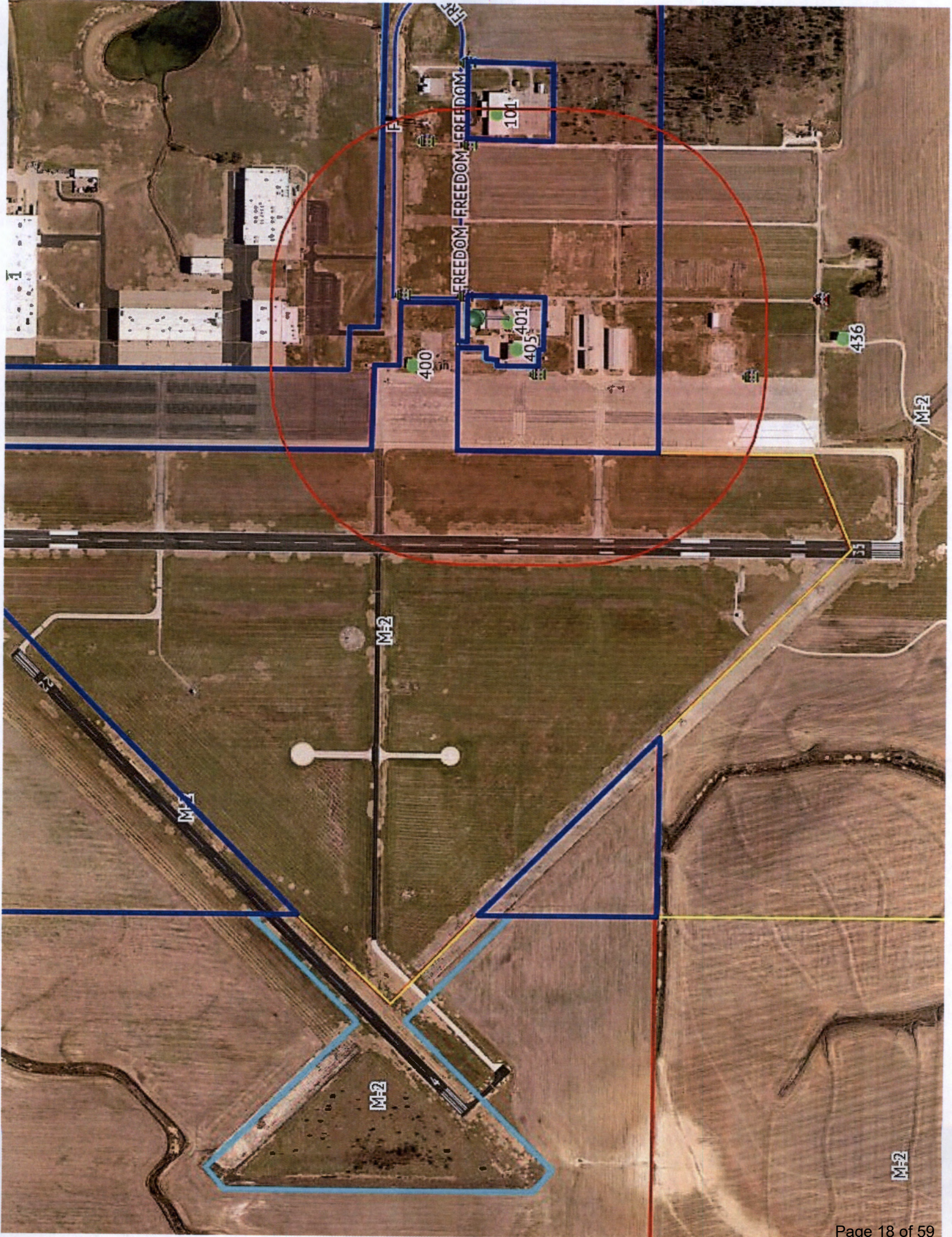
2022/ZA/06

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:+1785-289-4727) 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





State of Kansas, Montgomery County
This instrument was filed for
Record on July 29, 2022 10:28 AM
Recorded in Book 717 Page 1235- 1235
Fee: \$0.00 202202895



Marilyn Calhoun
Marilyn Calhoun, Register of Deeds

ORDINANCE NO. 4397

**An Ordinance Annexing Land Located at the
Independence Municipal Airport to the City of Independence, Kansas**

BE IT ORDAINED by the Governing Body of the City of Independence, Kansas:

Section 1. Pursuant to the authority granted under K.S.A. 12-520(a)(2), the City hereby unilaterally annexes the following described real estate which is currently titled to the City of Independence, Kansas:

All that property not yet annexed into the City of Independence, but owned by the City of Independence, located in the Independence Municipal Airport, being part of the SE/4 of Section 21, Township 33 South, Range 15 East, Montgomery County, Kansas, and located South of Freedom Drive and between First Avenue on the East and the taxi-way area on the West.

Section 2. This Ordinance shall take effect upon its publication in the official City newspaper.

Adopted by the Governing Body of the City of Independence, Kansas, on the 28th day of July, 2022.



ATTEST:

Dean A. Hayse
DEAN A. HAYSE, Mayor

David W. Schwenker
DAVID W. SCHWENKER, City Clerk



State of Kansas, Montgomery County
This instrument was filed for
Record on August 15, 2022 1:58 PM
Recorded in Book 718 Page 711 - 712
Fee: \$0.00 202203169



Marilyn Calhoun
Marilyn Calhoun, Register of Deeds

ORDINANCE NO. 4398

An Ordinance Amending Ordinance No. 4397 Annexing Land Located at the Independence Municipal Airport into the City of Independence, Kansas

BE IT ORDAINED by the Governing Body of the City of Independence, Kansas:

Section 1. Ordinance No. 4397 adopted by the governing body on July 28, 2022, is amended to read as follows in its entirety:

Section 1. The following described land is owned by the City of Independence, Kansas; the governing body finds it advisable to annex the same; and it is hereby annexed and made part of the City of Independence, Kansas:

All that property not yet annexed into the City of Independence, located in the Independence Municipal Airport, being part of the SE/4 of Section 21, Township 33 South, Range 15 East, Montgomery County, Kansas, and located South of Freedom Drive and between First Avenue on the East and the taxi-way area on the West;

Also described as:

TRACT 1:

A tract of land located in a portion of the Southeast Quarter of Section 21, Township 33 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as written by William A. Booe, LS 1046, 5-5-2022:/

Commencing at the Southeast corner of the Southeast Quarter; thence S 88°15'13" W, along the South line of the Southeast Quarter a distance of 1655.78 feet; thence N 01°24'44" W, a distance of 1005.10 feet; thence S 88°35'16" W, a distance of 321.77 feet; thence S 89°35'39" W, a distance of 80.00 feet; thence S 88°47'00" W, a distance of 158.02 feet to the Point of Beginning; thence S 88°47'00" W, a distance of 128.21 feet; thence S 01°20'36" E, a distance of 128.32 feet; thence N 88°47'00" E, a distance of 128.53 feet; thence N 01°29'10" W, a distance of 128.32 feet to the Point of Beginning. Containing 0.378 acres.

TRACT 2:

A tract of land located in a portion of the Southeast Quarter of Section 21, Township 33 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as written by William A. Booe, LS 1046, 5-5-2022:

Commencing at the Southeast corner of the Southeast Quarter; thence S 88°15'13" W, along the South line of the Southeast Quarter a distance of 1655.78 feet; thence N 01°24'44" W, a distance of 1005.10 feet; thence S 88°35'16" W, a distance of 321.77 feet; thence S 89°35'39" W, a distance of 80.00 feet to the point of beginning; thence S 88°47'00" W, a distance of 158.02 feet; thence S 01°29'10" E a distance of 128.32 feet; thence S 88°47'00" W a distance of 128.53 feet; thence S 01°20'36" E a distance of 380.38 feet; thence N 88°51'48" E a distance of 287.45 feet; thence N 01°28'49" W a distance of 509.10 feet to the point of beginning. Containing 2.973 acres.

Section 2. This Ordinance shall take effect upon its publication in the official City newspaper.

Adopted by the Governing Body of the City of Independence, Kansas, on the 10th day of August, 2022.


DEAN A. HAYSE, Mayor

ATTEST:


DAVID W. SCHWENKER, City Clerk





REQUEST FOR PLANNING COMMISSION ACTION REZONING AND/OR CONDITIONAL USE PERMIT

CITY OF INDEPENDENCE
SEPTEMBER 6, 2022

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public Hearing to receive comments to consider rezoning a tract of land at 2500 W Laurel St from C-4, highway commercial district to M-2, heavy industrial district; and/or a conditional use permit for storage and warehousing of nonhazardous products. NOTE: The northern portion of this tract is currently zoned M-2 while the southern portion is currently zoned C-4.

SUMMARY RECOMMENDATION To rezone a tract of land at 2500 W Laurel Street from C-4, highway commercial district to M-2, heavy industrial district at 2500 W Laurel St, or to approve a conditional use permit for storage and warehousing of nonhazardous products in a C-4 , highway commercial district at 2500 W Laurel St.

BACKGROUND JAG Investments is requesting a tract of land at 2500 West Laurel Street to be rezoned to allow a new warehouse to be built. The address has two different zones, C-4 and M-2. If the south half of the property at 2500 West Laurel Street is rezoned to match the north half of the property which is zoned M-2, no conditional use permit is needed as storage and warehousing of nonhazardous products is permitted. If it is not rezoned, it will need a conditional use permit in its present C-4 zone.

REZONING REQUEST

POLICY EXPLANATION For Rezoning: 601.1. Authority: The governing body of Independence may, by ordinance, amend, supplement, change, modify or repeal these regulations and the district boundaries. No such amendment or change shall be adopted by the governing body until the planning commission has held a public hearing and submitted its recommendation.

LEGAL ADDRESS BEG 33' E SE COR SW4 N 509.9' W 323' N TO S LI NE4 SE 4 SW4 N 50' W 40' N 280' W 330' E 330' S 264' E 219' S 7.35 Acres , Independence City Unplatte City of Independence, Montgomery County, Kansas.

DESCRIPTION OF TRACT(S) The northern portion of this tract is currently zoned M-2, while the southern portion is currently zoned C-4. Previously, these were two separate parcels with different zones that were later joined by the County after they were both acquired by the same property owner.

ZONING AND USES OF PROPERTY NEARBY The property to the north is zoned M-2, heavy industrial district. The property to the south is zoned C-4, highway commercial district. The property to the east is zoned M-2, heavy industrial district. The property to the west is zoned C-4, highway commercial district; M-1, light industrial district and R-4, medium density

multifamily dwelling district.

CHARACTER OF THE NEIGHBORHOOD This area is in the West Main Street corridor and consists of a mix of industrial, commercial, and residential uses.

SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED If the property is left in the C-4 highway commercial district zoning, the owner would need a conditional use permit.

LENGTH OF TIME THE PROPERTY HAS REMAINED VACANT AS ZONED N/A

EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY Nearby property is a mixture of industrial, commercial, and residential uses. It would not detrimentally affect the nearby property.

RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS Petitioner is renting storage space in Tulsa, OK, and wants to build a storage space here in Independence on the property they already own. Allowing the petitioner to keep their operations in Independence would be an asset.

CONFORMANCE WITH THE COMPREHENSIVE PLAN Industrial goal is to provide sufficient opportunities for industrial development at locations with suitable access, adequate community facilities, and favorable land use and environmental conditions. Objective I1. Target industrial development to locations which maximize efficient usage of the public and semi-public facilities necessary and minimize the costs of development. Policy I11. Sufficient areas with public facilities and environmental conditions suitable for industrial use should be reserved for industrial development. Policy I12. Industrial sites shall have access to arterial streets; preferably those leading directly to major highways.

STAFF RECOMMENDATION Staff recommends rezoning the tract of land at 2500 W Laurel St from C-4, highway commercial district to M-2, heavy industrial district since the north portion of the tract is already zoned M-2. If this action is taken, there will be no need for a conditional use permit as storage and warehousing of nonhazardous products is permitted in M-2, heavy industrial districts.

SUGGESTED MOTION I move to rezone the C-4, highway commercial district portion of the tract to M-2, heavy industrial district to match the north portion of the tract already zoned as M-2, heavy industrial district.

CONDITIONAL USE PERMIT REQUEST

PURPOSE AND AUTHORITY

901.1. Purpose: Conditional uses are those types of uses which are considered by the city to be essentially desirable, necessary, or convenient to the community but which by their nature or operation have (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety.

Such conditional uses cannot be allowed to locate as a "right" on any parcel of land within certain districts without consideration of existing conditions at the proposed location and of properties neighboring upon the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse factors.

901.2. Authority to grant permits: The governing body shall have the authority to grant conditional use permits, subject to such conditions of design and operation safeguards and time limitations as it may determine for all conditional uses specified in appendix "A" of this ordinance and for all permitted uses for which the planning and zoning commission has found that by their nature or in their operation have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article, provided, however, that said conditional use permits for permitted uses shall not establish standards or conditions that are less restrictive than those set out in the district regulations for the district in which said use is located.

Action by the Planning Commission For a Conditional Use Permit: 902.2. Action by the planning commission: Upon receiving the application for conditional use permit from the zoning administrator, the planning commission shall publish notice and hold public hearing on the proposal. Procedures for public hearings shall be handled the same as a zoning amendment as described in section 1603.0 of the zoning code. If the planning commission determines that additional information should be provided to it before making a decision, the planning commission may adjourn the public hearing to a new date and require the applicant to provide such additional information. The decision of the planning commission to recommend approval or denial of the proposed conditional use shall be based on any or all of the following criteria which the planning commission determines to be relevant:

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation.
- b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public.
- c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
- d. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
 1. The location, nature and height of buildings, structures, walls and fences on the site, and
 2. The nature and extent of landscaping and screening on the site.
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

902.3. Additional requirements: In consideration of requests for any conditional use permits the planning commission shall recommend to the governing body such conditions of use as it deems necessary to protect the best interests of the city, and the surrounding property and to achieve the objectives of this ordinance. These additional requirements shall include, but not be limited to, those special provisions applying the miscellaneous conditional uses, specified in article X.

A violation of a requirement, condition, or safeguard shall be considered a violation of this ordinance, and grounds for the zoning administrator to terminate and cancel such conditional use permit.

STAFF RECOMMENDATION If the Planning Commission denies the rezoning request, then the conditional use will need to be considered. If the rezoning is approved, the conditional use request is not necessary. However, the Planning Commission can determine that a conditional use permit is needed even for a permitted use if they believe the proposed use is essentially desirable, necessary, or convenient to the community but which by its nature or operation has (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety. Based on the use proposed by the applicant, City staff does not recommend requiring a conditional use permit unless the rezoning is not approved.

SUGGESTED MOTION (ONLY REQUIRED IF THE REZONING IS NOT APPROVED) I move to approve the conditional use permit for storage and warehousing of nonhazardous products in a C-4, highway commercial district at 2500 W Laurel St.

SUPPORTING DOCUMENTS

1. 2500 W Laurel Rezoning App
2. Public Hearing Notice Rezoning 2500 W Laurel

INDEPENDENCE
PLANNING & ZONING
COMMISSION

APPLICATION
FOR
REZONING

1. Case #: _____
2. Date Filed: _____
3. Fee Paid: _____
4. Hearing: _____
5. Published: _____

To be filled out by applicant

1. Applicant's name: JAG INVESTMENTS
2. Applicant's address: 2500 W LAUREL ST. Phone: 620-331-8247
3. Address of property proposed for rezoning: 2500 W LAUREL ST.
4. Present owner's name: JAG INVESTMENTS
5. Present zoning: C-4 Proposed zoning: M1/M2
6. Legal description of property proposed for rezoning (if more space is required, use back of form):
SEE DEED BOOK 577 PAGE 609
7. Present use of property (check one of the following): _____
(a) Vacant ☐ (b) Residential ☐ (c) Commercial ☐ (d) Industrial ☒
8. Desired use of property: WAREHOUSE - Non-Hazardous
9. Use and zoning of adjacent property:
- | | |
|------------------|----------------------------|
| North: Use _____ | Zoning <u>M-2</u> |
| South: Use _____ | Zoning <u>M-2</u> |
| East: Use _____ | Zoning <u>M-2</u> |
| West: Use _____ | Zoning <u>M-2 - M-1-C4</u> |
10. List reasons for this request:
NEW BUILDING IS REQUIRED FOR ADDED STORAGE

Date: 8/2/22 Signature: [Signature]

Planning Commission Action – do not write in this space

1. Facts found: _____
2. Determination: _____

CITY OF INDEPENDENCE

REC#: 01195805 8/08/2022 1:11 PM
OPER: JESS TERM: 001
REF#:

TRAN: 1.9000 VARIANCE
2500 W LAUREL
MISC FEES 200.00CR

TENDERED: 200.00 CHECK
APPLIED: 200.00-

CHANGE: 0.00

City of Independence, Kansas

NOTICE TO THE PUBLIC

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, September 6, 2022, at 5:30 p.m.

To receive comments to consider rezoning a tract of land at 2500 W Laurel St from C-4, highway commercial district to M-2, heavy industrial district; and/or a conditional use permit for storage and warehousing of nonhazardous products. NOTE: The northern portion of this tract is currently zoned M-2 while the southern portion is currently zoned C-4.

Legal Description:

Beg 33' E SE Cor SW4 N 509.9' W 323' N To S LI NE4 SE4 SW4 N 50' W 40' N 280' W 330' S 330' E 330' S 264' E 219' Acres 7.35, Indep City Unplatted to the City of Independence, Montgomery County, Kansas.

Common Address:

2500 West Laurel Street

Applicant/Owners:

JAG Investments Inc

Case Number:

2022/ZA/05

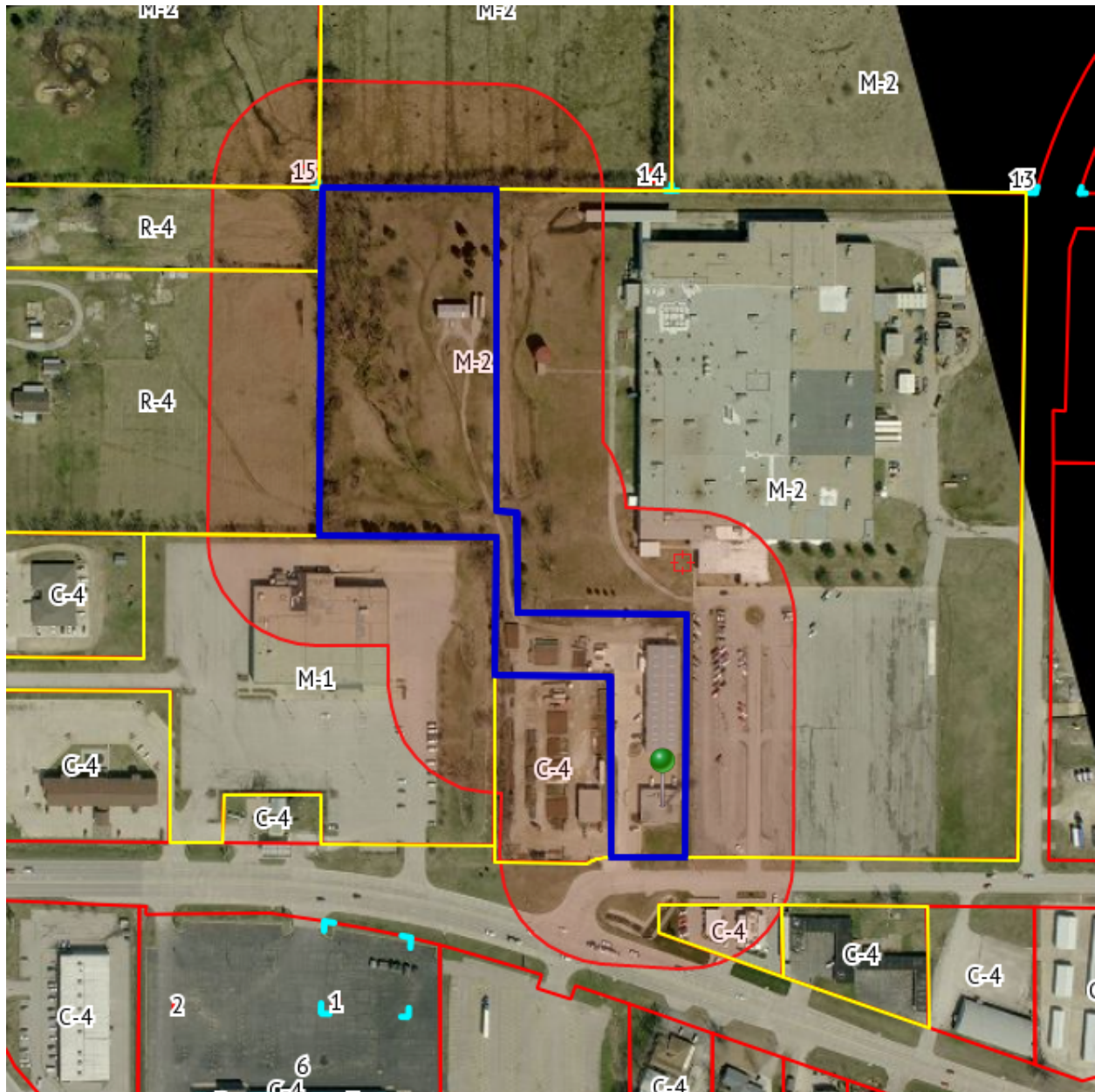
The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: [+1 785-289-4727](tel:+1785-289-4727) Conference ID: 652 632 373# 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

200 foot





**REQUEST FOR BOARD OF ZONING APPEALS ACTION
VARIANCE
CITY OF INDEPENDENCE
SEPTEMBER 6, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public Hearing to receive comments on a variance request to reduce the setback in an M-2 industrial district, currently a C-4 highway commercial district being considered for rezoning at 2500 West Laurel Street. NOTE: The northern portion of this tract is currently zoned M-2 while the southern portion is currently zoned C-4. The requested variance setback is in the portion that is currently zoned C-4, and the variance will only be needed if the rezoning to M-2 is approved.

SUMMARY RECOMMENDATION To approve a variance request to reduce the side yard setback from 30 feet to 15 feet in an M-2 industrial district, currently a C-4 highway commercial district being considered for rezoning at 2500 West Laurel Street, pending the final approval of the rezoning request to M-2.

BACKGROUND JAG is requesting a variance for a 15 foot setback to the side yard. The C-4 requirement is zero and the M-2 requirement is 30 feet when abutting any commercial zone. The new warehouse building will be abutting a C-4, highway commercial district property. If the property is rezoned to an M-2 the variance will need to be approved.

C-4, highway commercial district

511A.6. Yard regulations:

- a. Minimum front yard: 35 feet measured from the property line.
- b. Minimum side yard: None.

Exception: Ten feet where abutting a side street; 15 feet where abutting a C-1 or O&P zone; 25 feet where abutting a residential zone.

- c. Minimum rear yard: 10 feet.

Exception: Twenty-five feet where abutting a residential zone.

M-2, heavy industrial district

514.6. Yard regulations:

- a. Minimum front yard: 30 feet measured from property line.
- b. Minimum side yard: 20 feet.

Exceptions: 30 feet when abutting a street or any commercial zone; 50 feet when abutting any "R" district.

- c. Minimum rear yard: 30 feet.

Exceptions: 80 feet when abutting any C-1 or O&P district; 100 feet when abutting any "R" district.

Sec. 2-116. - Variances, exceptions.

When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the following manner:

- (1) To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal

enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all the following conditions have been met:

- 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 business has grown and needs a new warehouse for storage.*
- b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; *Granting the variance will not adversely affect the rights of the adjacent property owners as it is at the rear of the property.*
- 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; *The property owner will not be able to build a new warehouse to grow their business in Independence.*
- d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; *The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*
- e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations; *The general spirit and intent of the zoning regulations will not be opposed.*

(2) To grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation.

In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the board of commissioners, are not found to be present.

SUGGESTED MOTION I move to approve a variance request to reduce the side yard setback from 30 feet to 15 feet in an M-2 industrial district, currently a C-4 highway commercial district being considered for rezoning at 2500 West Laurel Street, pending the final approval of the rezoning request.

SUPPORTING DOCUMENTS

1. Public Hearing Notice VAR 2500 W Laurel
2. 2500 W Laurel Variance App
3. 2500 W Laurel Variance Pmt

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, September 6, 2022 at 5:30 p.m.

To receive comments on a variance request to reduce the setback in an M-2 industrial district, currently a C-4 highway commercial district being considered for rezoning. NOTE: The northern portion of this tract is currently zoned M-2 while the southern portion is currently zoned C-4. The requested variance setback is in the portion that is currently zoned C-4.

Common Address:

2500 West Laurel Street

Legal Description:

Beg 33' E SE Cor SW4 N 509.9' W 323' N To S LI NE4 SE4 SW4 N 50' W 40' N 280' W 330' S 330' E 330' S 264' E 219' Acres 7.35, Indep City Unplatted to the City of Independence, Montgomery County, Kansas.

Applicant/Owners:

JAG Investments Inc

Case Number:

2022/VAR/05

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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

Variance
15' Setback
vs
30'

APPLICATION TO BOARD OF ZONING APPEALS

CITY OF INDEPENDENCE, KANSAS

1. Date: 8-2-22

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

JAG INVESTMENTS
2500 W. LAUREL ST.
INDEPENDENCE, KS 67301

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

Name: LARRY GREEN / JEFF GREEN / MARK BOYLE
Address: 2500 W. LAUREL ST. INDEPENDENCE, KS 67301
Telephone: 620-331-8247

4. Common Address of Land Involved:

2500 W LAUREL ST
INDEPENDENCE, KS 67301

5. Legal Description of Land Involved:

SEE DEED BOOK 577 PAGE 609

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

REQUEST ZONE CHANGE FROM C-4 TO M-2 FOR
NEW WAREHOUSE
Request Setback of 15' in a M-2 adjoining
C-4 Zone

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:

ALL PROPERTY UNDER 2500 W LAUREL IS ZONED M-2
EXCEPT FOR SMALL STRIP RUNNING E/W ON ROAD
BELONGING TO JAG.

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

WE CURRENTLY HAVE A WAREHOUSE ADJACENT TO EXISTING
PROPERTY

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

NONE

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

THE CURRENT PROPERTY HAS AN OFFICE & WAREHOUSE

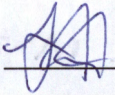
11: The proposed development will not be contrary to the general spirit and intent of the zoning ordinance because:

SEE ABOVE

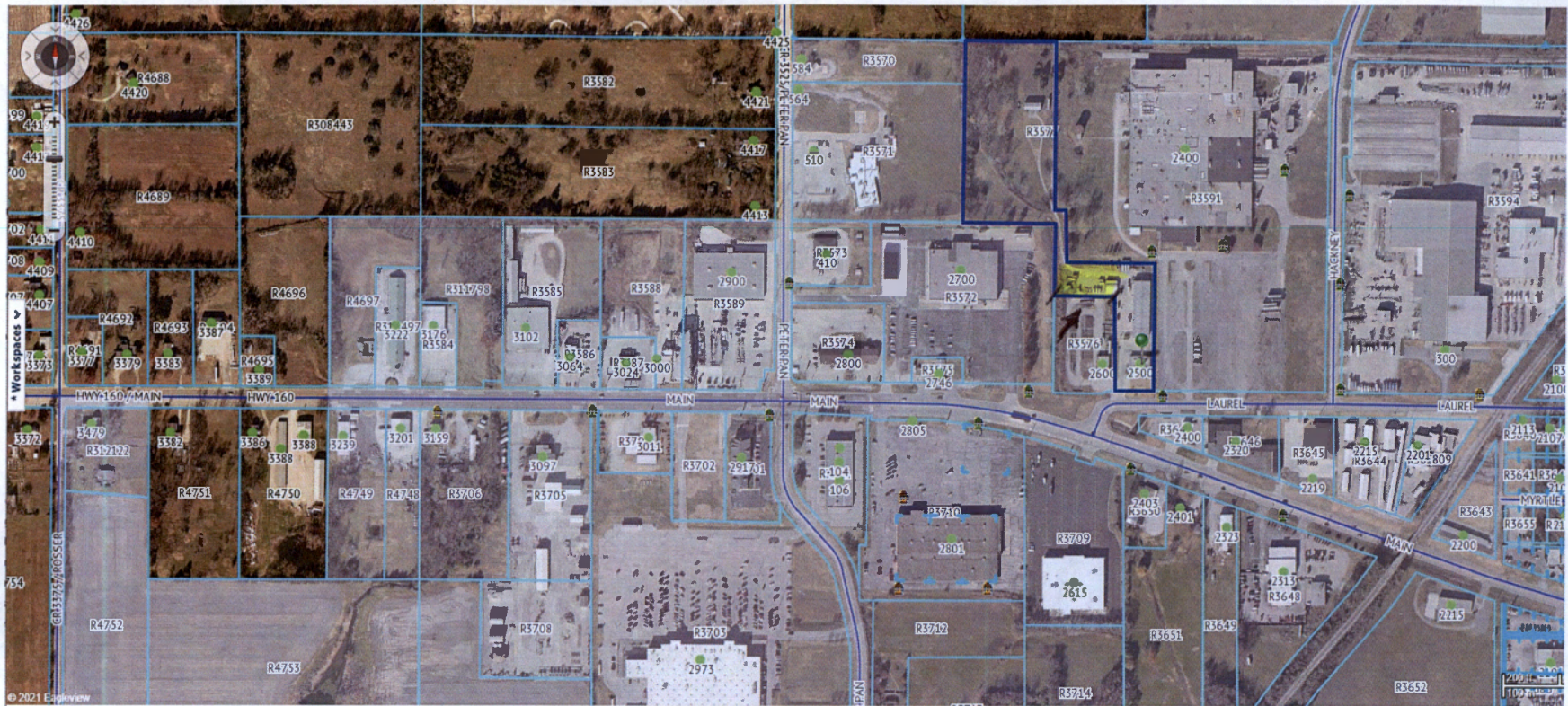
12: Please attach a site plan showing the dimensions of the lot, the location of building (both existing and proposed), and the location of existing buildings on adjacent property.

ATTACHED

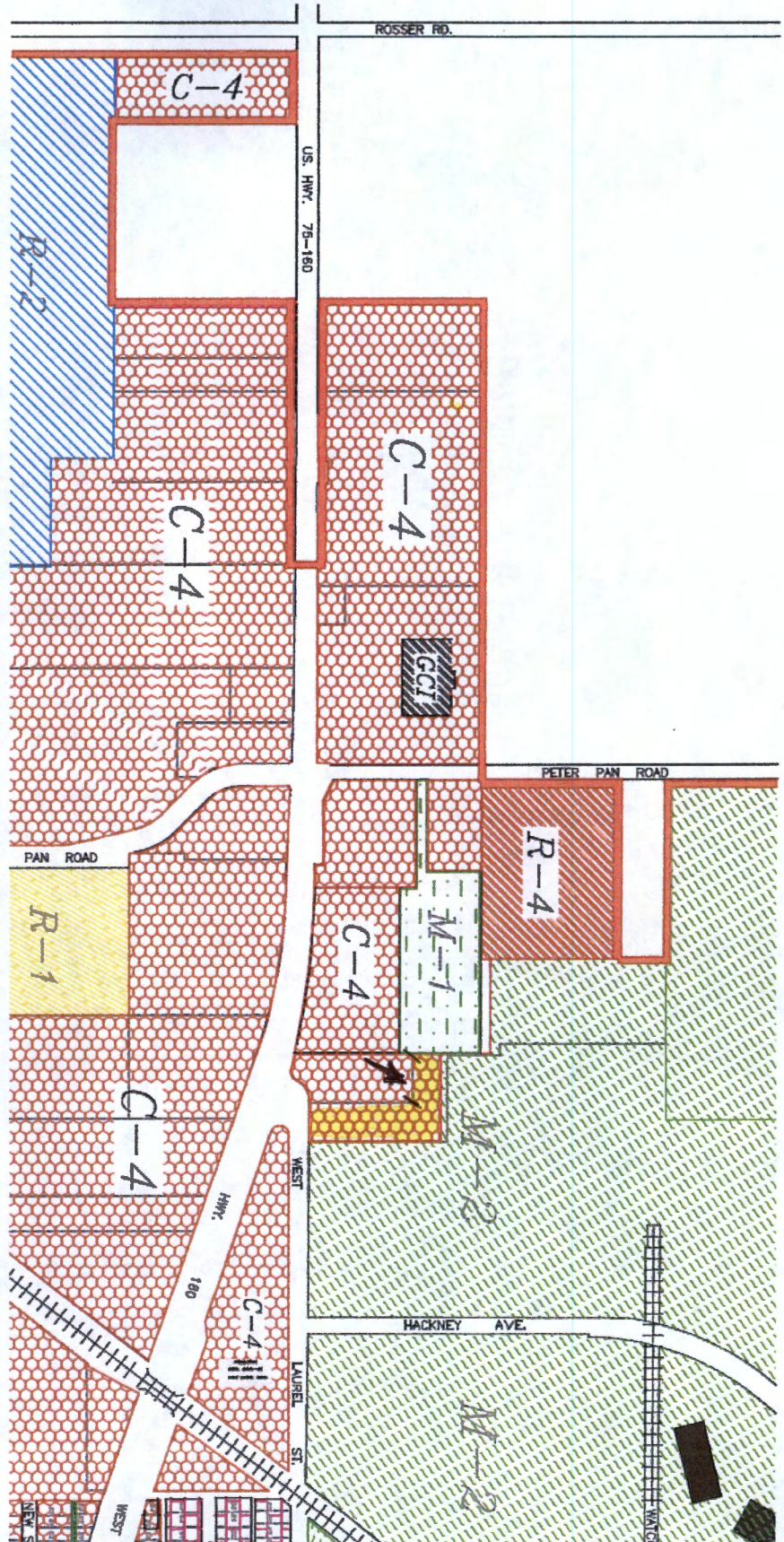
If the space provided is not sufficient, the applicant may attach additional pages. The applicant also may submit any other pertinent information including photographs, drawings, maps, statistics, legal documents, and letters of support.

Signature of Property Owner: 

Case Number: _____
Date Filed: _____
Fee Received: _____
Present Zoning: _____



JAG INVESTMENTS
 VARIANCE FOR 15'-0
 SET BACK FOR AREA
 IDENTIFIED @
 2500 W. LAUREL ST



CITY OF INDEPENDENCE

REC#: 01195809 8/08/2022 1:12 PM
OPER: JESS TERM: 001
REF#:

TRAN: 1.9000 VARIANCE
2500 W LAUREL
MISC FEES 100.00CR

TENDERED: 100.00 CHECK
APPLIED: 100.00-

CHANGE: 0.00



**REQUEST FOR BOARD OF ZONING APPEALS ACTION
VARIANCE
CITY OF INDEPENDENCE
SEPTEMBER 6, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Public Hearing to receive comments on a variance request to exceed the number of signs in a C-2, commercial services district at 401 W Main St.

SUMMARY RECOMMENDATION To approve a variance request to exceed the number of signs, in a C-2, commercial services district at 401 W Main St.

BACKGROUND Pete's of Erie Inc., is asking to add two 3'9" x 3'9" P66 Shield signs to the canopy facade, one on the northwest corner facing west and one on the northeast corner facing north. The size of the signs is in compliance, not exceeding five feet above the average roof level. The City is considering the building and canopy at 401 West Main Street to be one structure in regards to compliance with the number of signs.

801.2. Intent and purpose: Regulation of the location, size, placement, and certain features of signs is necessary to enable the public to locate goods, services, and facilities in the City of Independence without difficulty and confusion, to encourage the general attractiveness of the community, and to protect property values therein. Accordingly, it is the intention of this ordinance to establish regulations governing the display of signs which will:

- a. Promote and protect the public health, safety, comfort, morals and convenience;
- b. Enhance the economy and the business and industry of the city by promoting the reasonable, orderly, and effective display of signs, and thereby encourage increased communication with the public;
- c. Restrict signs and lights which overload the public's capacity to receive information or which increase the probability of traffic congestion and accidents by distracting attention or obstructing vision;
- d. Reduce conflict among signs and light between public and private information systems; and
- e. Promote signs which are compatible with their surroundings, are appropriate to the type of activity to which they pertain, and are expressive of the identity of proprietors and other persons displaying signs.

802.5. District C-2, general business district and District C-4, highway commercial district:

- a. Wall and marquee sign: Each business or commercial establishment shall be permitted not more than three illuminated or nonilluminated wall or marquee signs, not more than one on a facade, the total area of which sign shall not exceed 20 percent of the total area of the facade upon which it is placed. Such signs shall not extend above the average roof level of a one-story building more than five feet, and shall not extend above the average level of a two or more story building. Any signs painted directly upon wall surfaces shall not exceed 20 square feet in area.

There is one wall sign on the main building of this structure and eight numbered signs under the canopy over the fueling station. The request is to add two 3'9" x 3'9" P66 Shield signs to the canopy facade, one on the northwest corner facing west and one on the northeast corner

facing north. There is only one wall sign allowed on a facade. The signs are in compliance and meet the codes for size and type.

Sec. 2-116. - Variances, exceptions.

When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the following manner:

(1) To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all the following conditions have been met:

- 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 signs are standard Phillips 66 signs seen at other convenience stores that sell Phillips 66 gas.*
- b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; The signs will be on the canopy and will not adversely affect the rights of the adjacent property owners or residents. *The Scooter's business across from this address that recently opened was allowed a variance for the extra signs for their standard building model.*
- 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; *The signs are to advertise Phillips 66 gasoline and follow the guidelines for the stores that sell their gasoline.*
- d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; *The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*
- e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations; *Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations as the surrounding businesses are in commercial zones.*

(2) To grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation.

In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the board of commissioners, are not found to be present.

Staff Recommendation Staff recommends approving the variance for two 3'9" x 3'9" Phillips 66 canopy signs to be placed on the northeast corner, facing north, and the northwest corner, facing west, of the canopy. Staff's recommendation is due to the following factors:

1. The signage will assist the public in finding goods and services that meet the sign regulations' spirit and intent.
2. A similar type of signage has been allowed for services dealing with the motoring public for fuel.

Suggested Motion I move to approve the variance to exceed the number of signs by

allowing for two single-sided 3'9" x 3'9" signs to be placed on the canopy's northeast corner, facing north, and the northwest corner facing west at 401 W Main Street.

SUPPORTING DOCUMENTS

1. 401 W Main Variance and Pmt
2. Public Hearing Notice VAR 401 W Main Sign
3. Photo 20220901_154009
4. Photo 20220901_154012
5. Photo 20220901_154036
6. Photo 20220901_154025

APPLICATION TO BOARD OF ZONING APPEALS

CITY OF INDEPENDENCE, KANSAS

1. Date: 08/10/22

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

Pete's of Erie Inc.
 1712 Broadway Ave.
 Parsons, KS 67357 620-778-6575

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

Name:

Address:

Telephone:

Brock Electric
 1251 125th Redfield, KS 66769
 620-215-2110

4. Common Address of Land Involved:

401 W. Main St.
 Independence, KS 67301

5. Legal Description of Land Involved:

Jumpstart - Now Pete's Corporation

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

Adding P66 shield logo on canopy fascia & extend
 above fascia on NW corner & one on NE corner
 facing West facing North

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:

N/A

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

N/A

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

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

NONE

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

It only sets off the canopy & does not interfere with structure or view

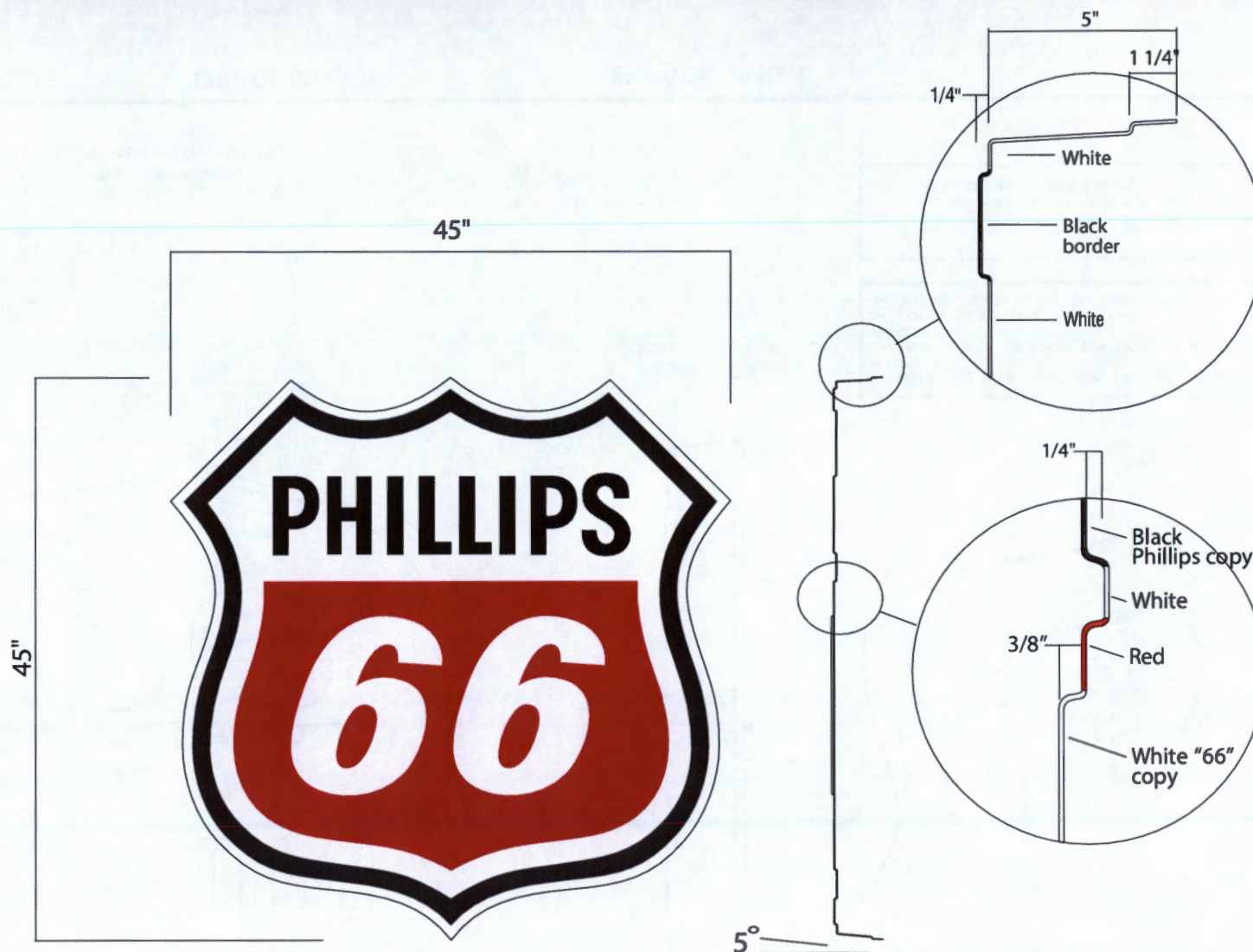
12: Please attach a site plan showing the dimensions of the lot, the location of building (both existing and proposed), and the location of existing buildings on adjacent property.

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: Jerry B Davidson 8/10/22

Pete's of Erie, Inc

Case Number: _____
Date Filed: _____
Fee Received: _____
Present Zoning: _____



REVISION #

DATE

TYPE OF CHANGE

SHIP TO#: 861634

ORIGINAL

07.14.2021

R1

07.15.2021

Canopy Revisions

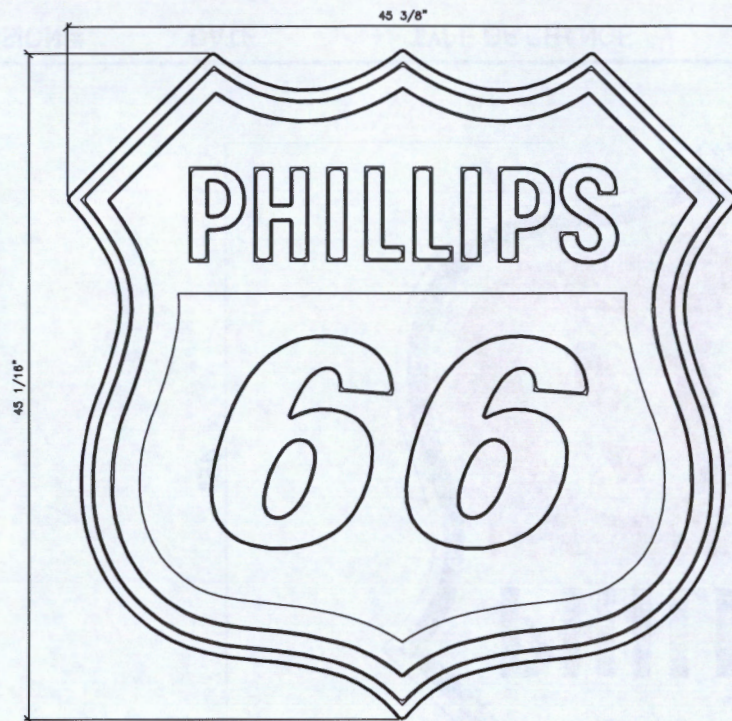
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BIG RED ROOSTER FLOW

2 Northfield Plaza, Ste 250, Northfield, IL 60093

P: (847) 441-1818 F: (847) 592-9564



ELEVATION VIEW

SCALE: 1 1/2"=1'-0"

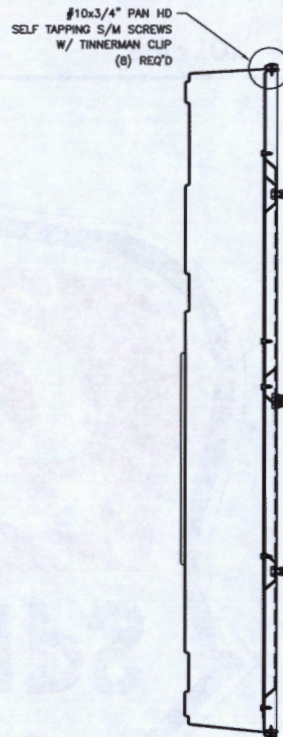
SIGN SPECIFICATIONS:

SIGN SIZE:

ACTUAL SIZE ... 45-1/16" H x 45-3/8" L
 AREA ... SQ. 14.3 SQ.FT. ACTUAL 11.1 SQ.FT
 APPROXIMATE WEIGHT ... T.B.D. LBS
 DESIGNED WINDLOAD ... 110 MPH (3 SEC. GUST EXPOSURE C)
 COMPLIANT w/ NATIONAL BUILDING CODES & STANDARDS
 (IBC, UBC, BOCA, AISC, ASCE7, ACI, & ALUM. DSGN. MANUAL)

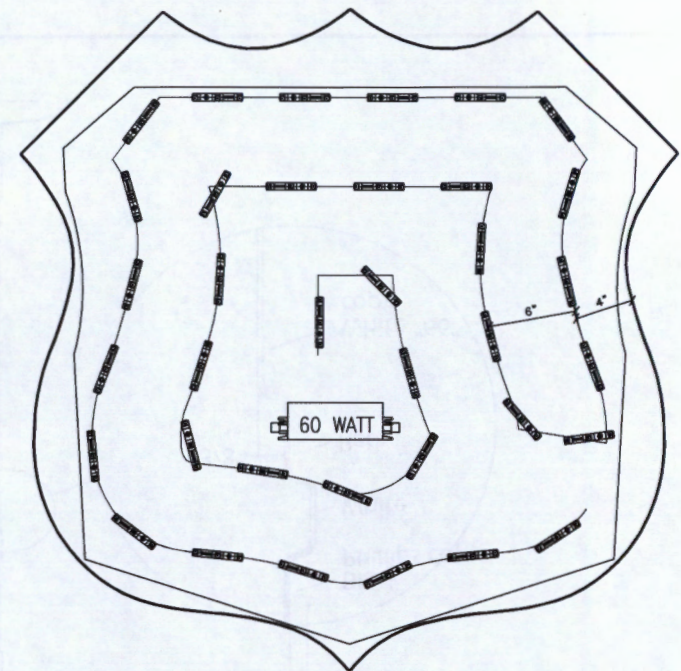
ELECTRICAL:

LED's ... SLOAN VL PLUS WHITE LONG
 AMPS ... 1.0 TOTAL AMPS
 CIRCUITS ... (1) 20
 VOLTS ... 120v



SIDE VIEW

SCALE: 1 1/2"=1'-0"



36 MODULES

- 1- VALUE LINE PLUS WHITE LONG LAID OUT (2) MODULES PER FOOT, 6" ON CENTER
- 2- EACH MODULE 60 POWER SUPPLY CAN RUN UP TO 130 WHITE LONG MODULES
- 3- LAYOUT BASED ON 6" CAN DEPTH
- 4- DIMENSIONS ARE IN INCHES UNLESS STATED OTHERWISE

ESTIMATED PRODUCT B.O.M. PER SIGN:

- 36 VALUE LINE PLUS WHITE LONG MODULES - 18'
- 1 MOD. 60 POWER SUPPLIES 120VDC (1.0 AMPS 60WATTS ea.)
- 1 100FT ROLL OF JACKETED CABLE

ELECTRICAL DETAIL

REVISION

DATE

TYPE OF CHANGE

SHIP TO#: 861634

ORIGINAL

07.14.2021

R1

07.15.2021

Canopy Revisions



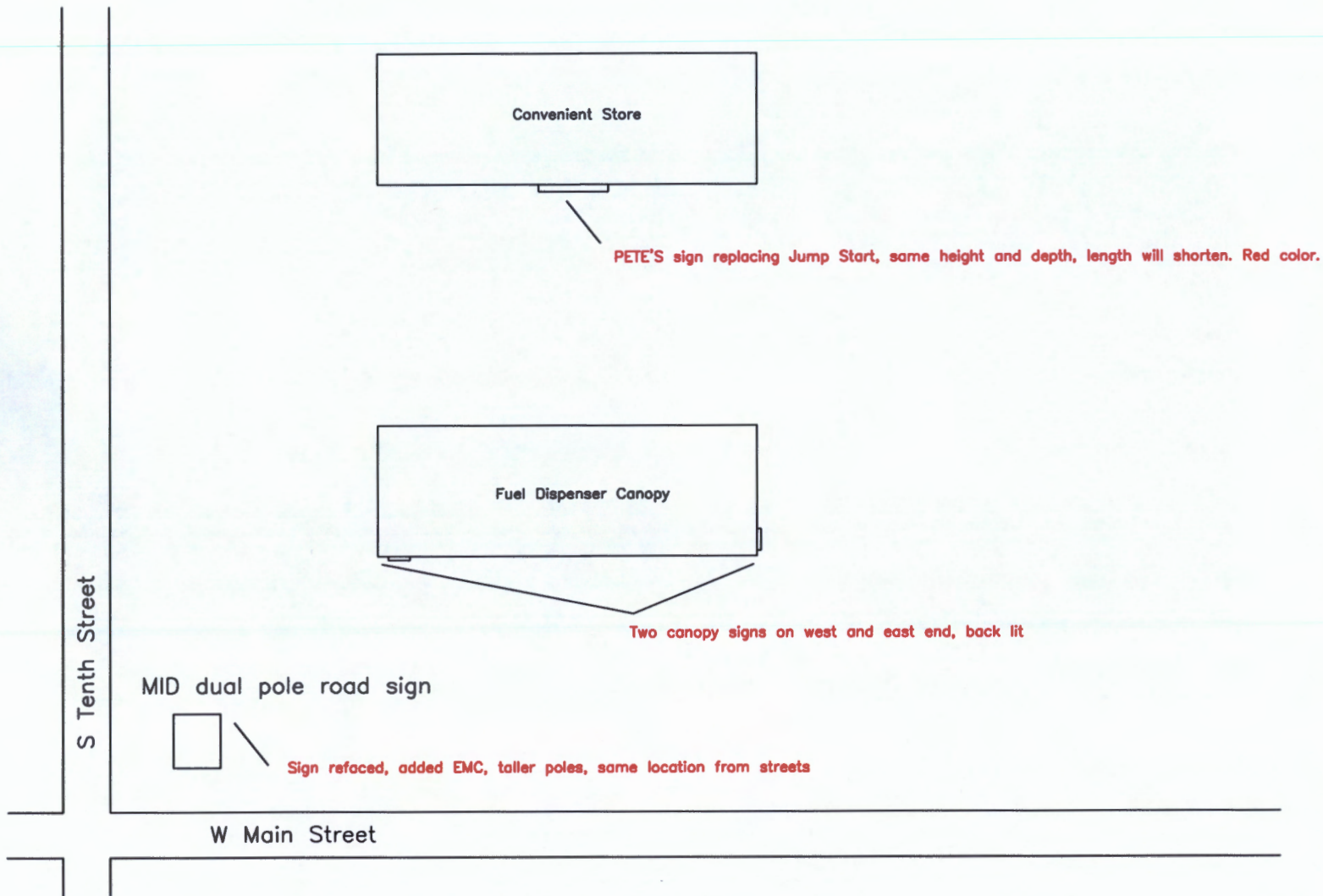
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Site Plans



General Notes

No.	Revision/Issue	Date

Owner Name and Address
 Brock Electric
 1251 125th Street
 Redfield, Ks 66769
 620-215-2110

Project Name and Address
 Pete's Corporation
 401 W Main Street
 Independence, KS

Project	Pete's 57	Sheet	1
Date	08/11/22		
Scale	As Noted		

Lydia Collins

From: David Cowan
Sent: Thursday, August 11, 2022 3:56 AM
To: Kelly Passauer; Lydia Collins
Subject: Pete's Signs

Kelly,

Pete's is asking if they can put one of these on the North, East and West side of the canopy.

I will need to get the size from him.

David



David J. Cowan
Assistant City Manager-Director of Safety
davidc@independences.gov

CITY OF INDEPENDENCE

REC#: 01196048 8/11/2022 3:04 PM
OPER: JESS TERM: 001
REF#:

ACCT #: XXXX-XXXX-XXXX-3703
AUTH #: 424857
TRAN #: 000009542515
TYPE: PURCHASE
ENTRY MODE: MANUAL

TRAN: 1.9000 VARIANCE
401 W MAIN
MISC FEES 100.00CR

TENDERED: 100.00 CREDIT CARD
APPLIED: 100.00-

CHANGE: 0.00

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, September 6, 2022 at 5:30 p.m.

To receive comments on a variance request to exceed the size and number of signs, in a C-2 zone at the following location:

Common Address:

401 West Main Street

Legal Description:

Block 58, Lot 1-11, Orig Plat to the City of Independence, Montgomery County, Kansas.

Applicant/Owners:

Pete's of Erie, Inc

Case Number:

2022/VAR/06

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:+1785-289-4727) 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











OTHER DISCUSSION
CITY OF INDEPENDENCE
September 6, 2022

Department Admin

Prepared By Kelly Passauer

AGENDA ITEM Report on status of conditional use permit at 401 N. 8th Street.

BACKGROUND A conditional use permit was approved on May 25, 2017 for a Drive-In Restaurant at 401-415 N. 8th Street. The conditional use permit listed several conditions, all of which have been met except for #4 which requires: *Areas adjacent to residential districts shall be designed to minimize disturbance of residents by the erection between the commercial and residential uses of a sight-obscuring fence of not less than five feet nor more than six feet in height, except where vision clearance is required, in lieu of such sight-obscuring fence, shrubs, trees or hedges may be substituted as approved by City staff.*

As I recall, the property owner was initially going to plant shrubs, which is allowed, and due to the ideal planting time, it did not mesh with the planned opening of the business. The business was issued a temporary occupancy permit so the business could open pending compliance with the conditional use permit, at which time a permanent occupancy permit would be issued. Since the business has opened, City staff has contacted the property owner several times over the years regarding this requirement and has been advised this issue was in process of being resolved, either with plans to plant shrubs or to install a fence. City staff sent the attached correspondence to the property owner on August 26, 2022 asking about the status and was advised he was in the process of getting quotes for a fence. At this time, staff recommends revisiting this at the next Planning Commission meeting to determine if any progress has been made, and, if not, discuss the next steps.

From: [Kelly Passauer](#)
To: [Jeff Ports](#)
Cc: jchubb@sehc-law.com; [David Cowan](#)
Subject: RE: Conditional Use Permit for 401 N. 8th Street
Date: Monday, August 29, 2022 12:29:00 PM
Attachments: [image001.png](#)

Jeff,

Thank you for the update. Please note the conditional use permit also allows you to use shrubs, trees or hedges if you prefer.

I will report to the Planning Commission. If you get any new information before their September 6, 2022 meeting please let me know.

Kelly

From: Jeff Ports
Sent: Monday, August 29, 2022 12:18 PM
To: Kelly Passauer
Cc: Jeff Chubb; David Cowan
Subject: Re: Conditional Use Permit for 401 N. 8th Street

Well shoot, I was wondering when you would be contacting me.

The only outstanding item is the fence. I solicited proposals/bids for it again a few months ago. It was when building materials were so high and contractors were so busy. I only had one contractor submit a proposal. I wanted to do a nice heavy-duty vinyl fence, but the price was almost three times as high as wood. Let me circle back with him and get updated prices and see where things are at now. He is the only one that I have ever been able to get a quote from.

Jeff

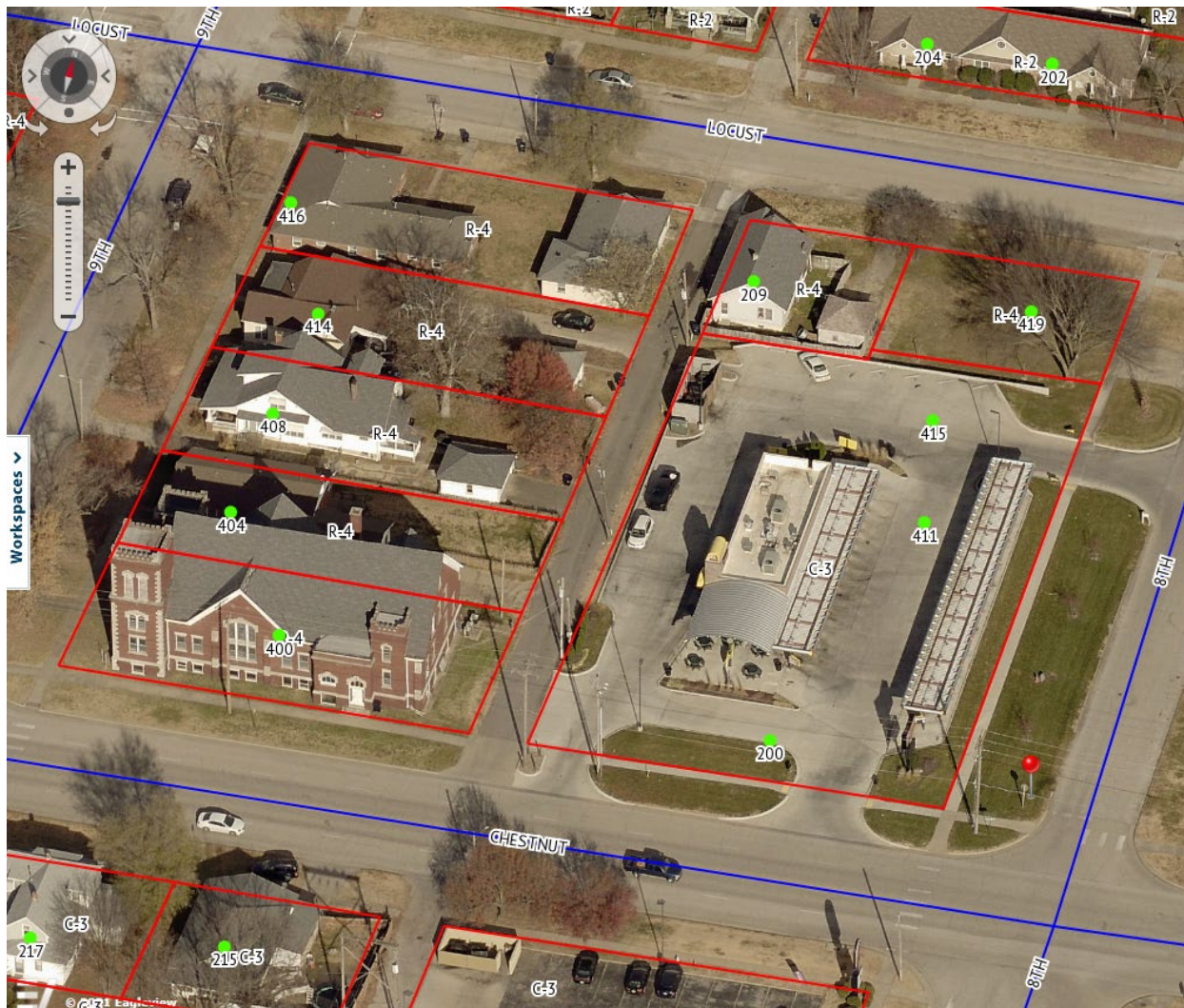
On Friday, August 26, 2022 at 10:23:31 AM CDT, Kelly Passauer wrote:

Jeff,

I hope this email finds you well. As you are aware your business was issued a temporary occupancy permit until you met the requirements of the attached conditional use permit approved on May 25, 2017. To date you have not met condition number 4. Please note that the conditional use permit states that "If any of the above conditions are not met, the conditional use permit will no longer be valid." If the conditional use permit is not valid, then the temporary occupancy permit may be revoked. Of course none of us want that to occur, however, it has been over five years and you have not complied. I would like to provide an update to the Planning Commission at their September 6, 2022 meeting. Can you please advise what the status is for complying with item 4 on the attached conditional use permit so that I can provide them with an accurate update.

Thanks!

Kelly





Kelly Passauer
City of Independence, Kansas
City Manager/Zoning Admin.

(620) 332-2506 Work
kellyp@independenceks.gov

811 W. Laurel Street
Independence, KS 67301

Important: This communication, including attachments, is for the exclusive use of the addressee and may contain proprietary, confidential or privileged information. If this email and any files were sent to you in error, be advised that any use, dissemination, forwarding, printing or copying of this email and/or any files are strictly prohibited. Please immediately delete it from your computer and any servers or other locations where it might be stored and email kellyp@independenceks.gov or call Kelly Passauer, City Manager, at 620-332-2506 advising you have done so. The City of Independence appreciates your cooperation.

RESOLUTION NO. 2017-039

A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT FOR DRIVE-IN RESTAURANT AT 401-415 N 8TH

WHEREAS, at a public hearing conducted on May 2, 2017, the Independence Planning and Zoning Commission voted to approve a request for a conditional use permit for a drive-in restaurant at 401-415 N 8th.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the City of Independence, Kansas:

The recommendation of the Independence Planning & Zoning Commission to issue a conditional use permit for a request for a conditional use permit for a drive-in restaurant at 401-415 N 8th, Independence, Kansas, is approved as hereinafter modified.

The properties in question have the following legal descriptions:

Legal Description

✓
✓
Lots 4 & 5, Block 8, Original Plat, City of Independence, Montgomery County, Kansas;

Lot 3, Block 8, Original Plat, City of Independence, Montgomery County, Kansas;

Lot 2 except N 5' W 60', Block 8, Original Plat, City of Independence, Montgomery County, Kansas

Common Address

401-415 N 8th

State of Kansas, Montgomery County

This instrument was filed for

Record on August 1, 2017 10:06 AM

Recorded in Book 661 Page 1413- 1414

Fee: \$0.00 201702547

Marilyn Calhoun

Marilyn Calhoun, Register of Deeds

The applicant must meet the following requirements:

1. The conditional use permit is not transferable to another location and will be binding on all future owners, assigns or heirs.
2. The applicant will obtain all necessary City of Independence and State of Kansas permits to lawfully operate the uses proposed.
3. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
4. Areas adjacent to residential districts shall be designed to minimize disturbance of residents by the erection between the commercial and residential uses of a sight-obscuring fence of not less than five feet nor more than six feet in height, except where vision clearance is required, in lieu of such sight-obscuring fence, shrubs, trees or hedges may be substituted as approved by City staff.



RESOLUTION NO. 2017-039

5. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
6. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining residential dwellings.
7. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
8. Any off-street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees. Such parking area may not be used for storage of vehicles, equipment or other items.
9. A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.
10. All property lines must be established by a surveyor licensed in the State of Kansas.
11. A detailed site plan and landscaping plan shall be submitted to and approved by City staff prior to any such work commencing.
12. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.
13. The adjoining alley will be resurfaced and improved by the applicant as part of the project. Such resurfacing will need to meet specifications provided by the City, and such work will need to be approved by the Zoning Administrator.

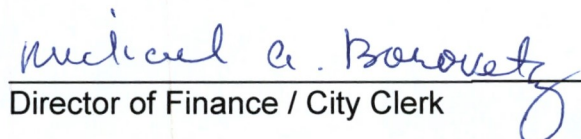
If any of the above conditions are not met, the conditional use permit will no longer be valid.

Adopted and approved by the Governing Body of the City of Independence, Kansas, on the 25th day of May, 2017.



Mayor

ATTEST:



Director of Finance / City Clerk



RESOLUTION NO. 2017-039

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Lot 3, Block 8, Original Plat, City of Independence, Montgomery County, Kansas;
Lot 2 except N 5' W 60', Block 8, Original Plat, City of Independence, Montgomery County, Kansas

Common Address

401-415 N 8th

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RESOLUTION NO. 2017-039

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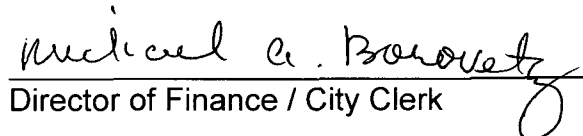
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Adopted and approved by the Governing Body of the City of Independence, Kansas, on the 25th day of May, 2017.



Mayor

ATTEST:



Director of Finance / City Clerk

