

MINUTES

Independence Planning Commission

Independence Board of Zoning Appeals

Monday July 2, 2018

Veterans Room

Memorial Hall

5:30 p.m.

Call to Order

Planning Commissioner Present

Andy McLenon, Jim Hardy, Steve McBride, Mary Jo Meier and Brian Beecham.

Planning Commissioners Absent

John Koschin, Barb Emert, Philipp Umlauf and Nick McCollam

Staff Present

Kelly Passauer, Assistant City Manager

Abbey Hebbert, Planning Intern

Visitors

Lisa Richard

Amber Rodriguez

Minutes

- a. **Consider approving minutes from the June 5, 2018 meeting.**

Andy McLenon made a motion to approve the minutes of the June 5, 2018 meeting, Steve McBride seconded the motion. The motion carried 5-0.

Board of Zoning Appeals

- b. **Consider approval for a variance to reduce the side yard setback in an R-2 zoned district at 600 N. 13th Street.**

The following staff report was provided for the board members:

Overview of the Variance Requested

The Board of Zoning Appeals has received an application from Harvey Rice to grant a variance from the setback regulations as provided for in the zoning ordinance.

Review of Request

His request is to adapt the fence line setback to construct a 17'9" X 9' 8" carport. The applicant is requesting to reduce the required fence line setback from 8' to 1'.

Board of Zoning Appeals Considerations

In considering the providing of a variance we wish to provide the following information:

- a. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;* It is not believed that this encroachment will create any adverse effects to adjacent property owners. There is a written agreement giving permission to the applicant allowing him to encroach upon the south side of the adjacent property.
- b. *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 applicants feel that meeting the 8' fence line setback would not allow for enough space to build his carport for his disabled wife and daughter, but that he can accomplish it with a 1' setback.
- c. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;* It does not appear that the variance will affect public health, safety or general welfare.
- d. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance as follows: reduce the fence line setback from 8' to 1'.

Abbey reviewed the report for the board. There was nobody present on behalf of the applicant. Lisa Richard, audience member, gave comment on the property ownership. Jim Hardy made the motion to approve the variance request for 600 N. 13th Street. Steve McBride seconded the vote to approve the variance as recommended. The motion carried 4-0.

Planning Commission

- c. **Consider a conditional use permit for a daycare in an R-2 zoned district at 1601 Halsey Avenue.**

The following staff report was provided for the board members:

Appendix "A" of the Zoning Ordinances allows daycare centers with four or more children permitted use in C-1 and C-2 districts. These facilities are allowed conditional use in A-1, R-1, R-2, R-3, R-4, R-5, O/P, and C-3 districts. Daycare centers with four or more children are not permitted in M-1 and M-2 districts.

Land Use Category	Code	Permitted Zoning District											
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	M-1	M-2
Day care centers—more than four children	6811	C	C	C	C	C	C	C	P	P	C		

Conditional Use Permit

The zoning ordinance in section 901.1 describes the purpose of a conditional use as:

"... 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 in their 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 on the value of 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 site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects."

Staff Report

The Planning Commission has the authority to place additional conditions on the site that they deem necessary to protect the best interests of the City, surrounding property and to achieve the objectives of the ordinance. In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1.

Additionally, the decision of the Planning Commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria (902.2):

- 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 and 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 regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:*
 - i. The location, nature and height of buildings, structures, walls and fences on the site, and*
 - ii. The nature and context 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 hazards and to minimize traffic congestion in public streets and alleys.*

Special Provisions

In Article X Section 1003.0, it describes special provisions required for daycare facilities for more than four children. They are described as followed:

Daycare facilities for more than four children shall meet the following provisions when authorized in any residential district:

- a. ***City, county and state standards:*** *All daycare facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*
- b. ***Loading zone:*** *A loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide easy pickup and discharge of passengers.*
- c. ***Operation:*** *Any daycare facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*
- d. ***Screening required:*** *Any daycare facility located in a building other than a residential dwelling used for a daycare facility or seven or more children shall provide a visual screen along all property lines abutting any residential use.*

Staff Recommendation

Day care centers with four or more children are subject to conditional use permits when located in R-2 districts, such as this property.

City staff recommends granting the conditional use permit with the following conditions:

- 1) The conditional use permit is not transferable to another location.
- 2) The applicant must follow all City codes.
- 3) The applicant must follow the requirements in Article X Section 1003.0.

If any of the above conditions are not met, the conditional use permit will no longer be valid. The basis of the staff's recommendation is that granting the conditional use permit is consistent within the criteria of "a through g" of Section 902.2 of the zoning code.

Abbey reviewed the report for the board. The applicant, Amber Rodriguez, was present to answer questions. Steve McBride asked the applicant about how the neighbors have accepted the idea of a daycare facility next door to them. The applicant said that the neighbors have accepted it and that there are no conflicts of opening the daycare facility. Andy McLennon asked the

applicant what her hours of operation would be and how many children she would be taking care of. She responded stating 7-5:30 would be her hours and that at the moment there were two infants, two toddlers and three of her own children. Steve McBride made the motion to accept the conditional use permit as recommended by staff, Andy McLenon seconded. The motion carried 5-0.

d. Consider a text amendment to Appendix B- Zoning Code relating to:

a. Food trucks; and

b. Off-street parking requirements

The following staff report was provided for the board members:

Sub-item a. Food trucks

Food truck vendors currently fall under the Transient Vendors License in Article XI Section 62-330-337.

A transient vendor is defined as:

“... any person who does not have an established place of business within the corporate limits of the city, who sells or offers to sell to the general public, goods, wares, merchandise or personal property of any nature whatsoever from any conveyance, stand, table or other means set up or located on the streets and sidewalks within the city or on the property within the city owned by another.”

Issues with the licensing portion of the transient vendors license have made food trucks unfit to apply to this category. The following is a proposal for ordinance and licensing amendments for food trucks in the City of Independence:

Ordinance

Definitions:

For this ordinance the following words shall mean:

Food truck vendor: A food truck vendor is anyone who does not have an established place of business within the corporate limits of the city, who sells or offers to sell food and/ or beverages from any vehicular truck, enclosed trailer, or other mobile unit approved by the Planning Commission, within city limits along streets or in parking lots.

- 1) A vehicular truck is any automobile equipped to sell food and/ or beverages from.
- 2) An enclosed trailer is any trailer with an outer shell protecting it from environmental elements that can be hitched to a truck and capable of being a free-standing structure while selling the business's food and/ or beverages.

Zoning of the food trucks: Food trucks will be allowed in O&P, C-1, C-2, C-3, M-1 and M-2 zoned districts. The food truck must be parked or placed in such a manner that is not blocking any street or alley and maintains a three-foot passageway for pedestrians.

Food truck vendor license application:

Applications for food truck licenses shall be submitted to the City Clerk in writing on forms provided by the City Clerk and signed by the applicant and property owner.

- Name, date of birth, and applicant's permanent street address
- Business mailing address
- Name of business, business owner, and driver's license number of owner/operator
- Vehicle information: owner of vehicle, type of vehicle, model, VIN number, and insurance ID
- Kansas sales tax number
- Description of the nature of the business to be conducted and goods to be sold
- Length of stay at that location

Other forms needed:

- 1) Written permission from property owner to use their land for the food truck business
- 2) Copy of health permit from the Kansas Department of Health and Environment
- 3) Copy of fire safety permit from the Fire Department

Abbey reviewed the report for the board. The board members expressed concern over the wording of the proposed ordinance and the definition of a food truck. There were questions regarding produce, consuming the product on the premises and how the business should be set-up. Mary Jo opened the conversation to the public. Lisa Richard made comment on the wording of the ordinance, suggesting we add "parked" to the portion with "...or other mobile unit approved by the Planning Commission, within city limits along streets or in parking lots." Mary Jo closed the comments from the public. Andy McLenon motioned to approve the zones recommended by City staff, Brian Beecham seconded the motion. The motion carried 5-0.

The following staff report was provided:

Sub-item b. Off-street parking

Current design requirements for all off-street parking:

Article VII Section 705.0 Design Requirements:

705.1 Surface material: Areas used for standing or maneuvering of vehicles shall have concrete, asphalt concrete, or asphalt double-sealed surfaces, maintained adequately for all weather use, and so drained as to avoid flow of water across sidewalks.

Exception: Vehicle storage lots for the overnight storage or long-term warehousing of vehicles under one ownership.

Proposed amendment:

Definitions:

Gravel: Any use of the term gravel shall be defined as crushed stone, AB3, or any other rock that is ADA compliant for the use of off-street parking materials compacted enough to be compliant with ADA guidelines for levelness, materials, and accessibility.

Accessibility of parking and paths: All off-street parking shall have a minimum of two ADA accessible parking stalls, one van accessible and one car accessible, and must have an accessible path leading from the parking stall to the entryway of the facility. The ADA parking stalls must be the closest stalls to the facility.

Add exception:

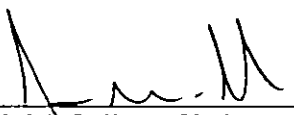
Exception: Off-street parking in M-1 or M-2 districts are allowed to utilize different gravel materials for surfacing materials. The gravel must be compliant with ADA guidelines regarding levelness, materials, and accessibility.

Exception: An accessible path must be accompanied from the parking stalls to the entry and are allowed to utilize gravel for surfacing materials.

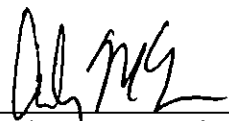
Abbey reviewed the report for the board members. Steve McBride stated that he did not want to stifle business. Andy McLenon suggested including the commercial zones of C-1, C-2 and C-3. Kelly Passauer stated that she wanted the board to understand that would mean that commercial businesses such as restaurants and retail establishments could have gravel parking lots. Andy McLenon stated that he didn't think that would be an issue, as there are other restaurants in the area that have gravel parking lots, such as in Thayer, Kansas, and it doesn't seem to hinder their business. Brian Beecham expressed concern that this amendment might hinder the progress made by the young entrepreneurs in the City. Steve McBride agreed with Brian Beecham on this concern. Some board members expressed concerns that this amendment could bring about backlash with the road troubles at Peter Pan Road. Andy McLenon expressed concern regarding existing driveways in residential zones that are not required to be hard surfaced, while new driveways in residential zones are required to be hard surfaced. Kelly Passauer stated that some of those gravel driveways were grandfathered in. Andy McLenon stated that he felt this created a perception issue. Steve McBride moved to adjourn the public hearing regarding a text amendment relating to off-street parking until October 2, 2018 at 5:30 PM, seconded by Brian Beecham. The motion carried 5-0.

Adjournment

The meeting was adjourned with a motion by Andy McLenon, seconded by Brian Beecham. The motion carried 5-0



Nick McCollam, Chair



Andy McLenon, Secretary