

AGENDA
Independence Planning Commission
Independence Board of Zoning Appeals

Tuesday, August 3, 2021

Civic Center Memorial Hall 5:30 p.m.

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

Call to Order

Minutes

- a. Consider approving minutes of the May 4, 2021 meeting.

Planning Commission

- b. Public hearing to receive comments to consider a text amendment to Appendix B-Zoning of the City code to add “Utility substations not elsewhere listed” to Appendix A. “Listing of Permitted and Conditional Uses.”
- c. Public hearing to receive comments on a request for a conditional use permit for “Retail trade not elsewhere listed” in a M-1, light industrial district, at 1001 North 13th Street.
- d. Public hearing to receive comments on a request for a conditional use permit for a “Children’s Home” in a R-3, low-density multifamily dwelling district at 517 S. 4th Street.
- e. Other discussion.

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

- f. None

Adjournment

- a. Consider approving minutes of the May 4, 2021 meeting.

MINUTES

Independence Planning Commission Independence Board of Zoning Appeals Tuesday, May 4, 2021

Veterans Room

Memorial Hall

5:30 p.m.

Call to Order

The Planning Commission meeting was called to order by Kendall Neill.

Planning Commissioners Present

Lisa Richard (in person)
Rachel Lyon (via phone)
Anthony Royse (in person)
Andy McLenon came in at 5:46 p.m.

Kendall Neill (in person)
Mary Jo Meier (in person)
Michelle Anderson (via phone)
Brent Littleton came in at 5:40 p.m.

Planning Commissioners Absent

Barb Emert

Staff Present

Kelly Passauer, City Manager
David Cowan, Assistant City Manager
Lydia Collins, Administrative Aide

Visitors

Doug Stacy, Labette Health (via phone)
Jim Wright, Montgomery County

Minutes

- a. Consider approving minutes of the April 20, 2021 meeting.**

Lisa Richard was asked to sign the minutes in Rachel's absence.

Mary Jo Meier made a motion to approve the minutes of the April 20, 2021, meeting, Tony Royse seconded the motion. The motion carried 8 - 0.

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

- b. To receive comments on a variance request to exceed the number and maximum size of signs allowed in an M-1, Light Industrial District and C-4, Highway Commercial District at the following location: 2700 W. Main Street.**

Kendall Neill opened the hearing.

Doug Stacy, representing Labette Health, stated that Labette Health has grown and is wanting to move into 2700 W. Main Street for rehabilitation services. The signage in question will be 4 x 8 sign on the West Main Street side under the Hugo's sign, a 3 x 6 sign on the Peter Pan side, a sign replacing the Calcor sign and some white lettering on the glass on the door.

The following staff report was provided:

Overview of Variance Requested

The Board of Zoning Appeals has received an application from Labette Health, represented by Doug Stacy, to grant a variance from the sign regulations provided for in the zoning ordinance. M-1 and M-2 districts zoning sign regulations coincide with C-2 and C-4 districts and shall be permitted as provided in district C-2.

Section 802.5 subsection "a" provides for the following:

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 non-illuminated wall or marquee signs, not more than one on a facade, the total area of which signs 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.*

802.7. District M-1 and M-2, light and heavy industrial districts:

- a. [Permitted signs:] Signs shall be permitted as provided in district C-2.*
- b. Projecting, marquee, detached and roof signs: In addition, industrial establishments having one or more permanent buildings may provide illuminated or nonilluminated signs, including projecting, marquee, detached or roof types, in any location on the premises or on the building, providing such signs shall not exceed height or yard requirements as set out herein for buildings in that district.*

- c. *Billboards:* Poster panels and billboards as defined in this ordinance shall be permitted in an industrial district only upon issuance of a conditional use permit.

Review of Request

The applicant's request is to place a 4 x 8 sign underneath the Hugo's sign on West Main Street in front of the property and also to place a 3 x 6 sign underneath the Hugo's sign on Peter Pan Rd. Their request is to increase the number of signs allowed in an M-1 zone at 2700 W. Main. Tyler Henry, Building Inspector for the City of Independence, has stated that the signs meet the size requirements for detached signs but not the number of signs allowed.

Board of Zoning Appeals Considerations

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

- 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;* This business is being located in a former big box store that has been repurposed and broken up into sections. It only has a front façade and a west façade on one side, and it abuts another business on the east.
- b. *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 additional signage will create any adverse effects to adjacent property owners.
- 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;* This signage will provide information to the public regarding services provided by the business.
- d. *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.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* According to section 801.2 of the zoning code, the intent and purpose of the sign code is: "*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.” Since the purpose of this sign is to help the public locate goods, services and facilities within the City of Independence, City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance for a 4 x 8 sign underneath the Hugo’s sign on West Main Street in front of the property and 3 x 6 sign to be placed underneath the Hugo’s sign on Peter Pan Rd. Staff’s recommendation is due to the following factors:

1. The signage will assist the public in finding goods and services which meets the spirit and intent of the sign regulations.
2. Similar type signage has been allowed in the C-4 zone in the past; i.e. Newton’s, Wal-Mart, Hugo’s.

Motion:

Mary Jo Meier moved to approve the variance for a double-sided 4 x 8 sign underneath the Hugo’s sign on West Main Street in front of the property and also to place a double-sided 3 x 6 sign underneath the Hugo’s sign on Peter Pan Road as recommended by staff and considering the relevant factors. Brent Littleton seconded. Motion carried 8 - 0.

- c. Public hearing to receive comments on a request to rezone a tract of land from R-3, low density multifamily district to M-1, light industrial district; and for a conditional use permit for supplementary parking at 117 North Wald Avenue.**

Kendall Neill opened the hearing.

Jim Wright, Montgomery County Public Works, stated the County purchased the property in 2010 and took down a dilapidated structure in 2015. He further stated that they turned the property into a parking area and applied for a conditional use permit at that time. He stated that they have recently had to restart the process.

Tony Royse asked why the County had not complied since the conditional use permit was approved in 2010.

Jim Wright stated that the county had put gravel on the lot and began using it as a parking lot. The county counsellor wrote to the City and received no reply.

Tony Royse asked if the County just ignored what the City asked for.

Jim Wright stated that yes, that was correct.

Kelly Passauer stated that in 2010 it went through the Planning Commission and then in 2016 they asked that the timeframe be extended because at that point the land was not developed. They then asked in 2017 that the modifications be amended. The Planning Commission was looking at that time to modify off-street parking, but the Commission elected not to make those changes. She advised that the City has been working with the County to resolve the issue since then. Section 1013 regarding special conditional uses relating to supplementary parking allows the City Commission to waive certain requirements if they are in the public good. City staff interprets that any waivers should have been requested and considered when the first request was made.

The following staff report was provided:

Summary:

The Planning and Zoning Commission received a request from the City of Independence to initiate a rezoning hearing to consider rezoning a tract of land from R-3, low density multifamily district to M-1, light industrial district at 117 N. Wald Avenue. The Planning and Zoning Commission also received an application from Montgomery County for a conditional use permit for supplementary parking at 117 North Wald Avenue.

Background:

- a. The City Commission on February 4, 2010 approved the attached conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street. The original conditional use permit indicated that all the requirements had to be met within one year of approval, or by February 4, 2011.
- b. On December 8, 2016 the City Commission extended the timeframe to meet the requirements of the conditional use permit originally approved until December 31, 2017.
- c. On April 27, 2017, the County requested certain conditions of the conditional use permit be waived by the City Commission relating to hard surfacing, screening, lighting, service drives, drainage, approved plan, minimum parking space dimensions, etc. The Commission took no action and tabled this item.
- d. On December 28, 2017 the City Commission provided the County an additional extension to meet the conditions of a conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street until December 31, 2018.
- e. On January 24, 2019 the City Commission denied text

amendments recommended by the Planning Commission that would have modified the off-street parking requirements, leaving the ordinances as they currently exist.

- f. On May 15, 2019 City staff contacted the County to ask for an update of their intentions and offered the following options:
 - Ask the Commission to provide another extension.
 - Ask the Commission to waive the requirements (which was previously tabled).
 - Ask the Commission to reconsider modifying the code.
 - Come into compliance with the conditional use permit.
- g. On June 25, 2019 City staff inquired again, as no response was received from the May 15, 2019 email. Jim Wright indicated that the County was “actively researching our options.”
- h. On October 29, 2020 City staff contacted Jim Wright at the County for an update, advising them that the Planning Commission was inquiring on the status. Mr. Wright replied that they did not have any additional information, but they would bring it up at the next County Commission meeting.
- i. On January 5, 2021 City staff contacted Jim Wright at the County for an update for the Planning Commission meeting that evening, and Mr. Wright indicated he did not have anything new to report.
- j. On January 8, 2021 City staff contacted Jim Wright at the County to ask if someone from the County could be present at the next Planning Commission meeting on February 2, 2021 at the board’s request.
- k. On January 11, 2021 Jim Wright replied and stated that he and Commissioner McManus would be present at the February 2, 2021 Planning Commission meeting.
- l. On February 2, 2021 Montgomery County Public Works Director Jim Wright and Montgomery County Commissioner Larry McManus appeared at the Planning Commission and presented a document with the changes previously requested in 2017 that were tabled by the City Commission. The Planning Commission asked for a strike-out version.
- m. On March 18, 2021 the County requested that the City Commission extend the expired conditional use permit, and consider the changes the County requested in 2017.
- n. On March 25, 2021 the City Commission considered the March 18, 2021 request. City staff and the City Attorney reviewed the code, and found section 902.5 that addresses modification to a conditional use permit which states: Action by the governing body: *“Within 30 days of receipt of the report from the planning*

commission, the governing body shall adopt, modify or deny the planning commission recommendation. The action of the governing body shall be final.” This was interpreted to mean that a conditional use permit may only be modified within 30 days of receipt of the initial Planning Commission report. The Governing Body’s action, which would be adopting the resolution issuing the CUP, is final. The City Commission agreed with this analysis and determined the conditional use permit process would need to restart. The City Commission agreed to waive the fees to restart the process.

- o. On April 5, 2021 the County mailed a letter which requested a waiver of the previous requirements and a copy of the December 9, 2009 application for conditional use permit.
- p. On April 8, 2021 the City Commission initiated a public hearing to rezone the tract requested for the parking lot from R-3, low density multifamily district to M-1, light industrial district at 117 North Wald Avenue (Southeast corner of Wald Avenue and Myrtle). Staff’s recommendation indicated rezoning the proposed parking area to the same zone as the County’s other adjoining properties would provide flexibility in pursuing alternate solutions to the County’s parking needs.
- q. On April 9, 2021 City staff requested a copy of the site plan for the parking lot.
- r. On April 15, 2021 the attached drawing and photos were sent by Montgomery County Public Works Director Jim Wright. It should be noted the site plan provided does not provide all the information requested in 1013.3 (Approval process for conditional use permit; application). The site plan does not include striping, screening, drainage, etc.

Legal Address:

E 50’ Lot 1; County Clks Sub to the City of Independence,
Montgomery County, Kansas.

Description of the Tract:

The area requested to be rezoned consists of one 90’ x 50’ lot. The lot lies in the eastern portion of the City and is vacant.

Zoning and Uses of Property Nearby:

The property directly north and east is zoned M-1, light industrial district and is utilized primarily for county purposes with residential development to the west and south.

Character of the Neighborhood:

This area is in the East 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:

The property in question is currently zoned R-3, multifamily district. The property is suitable for the present residential classification.

Length of Time the Property has Remained vacant as Zoned:

The property is vacant and has been for several years.

Extent to which Removal of Restrictions will Detrimentally affect Nearby Property:

No foreseen negative impacts should occur on adjoining residentially zoned properties as long as proper screening is provided.

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:

The property is presently zoned for residential use. It is anticipated that permitting the rezoning as requested would have minimal impact on the public health, safety, and welfare. Denial of the proposed rezoning will impact the proposed owner's use of the property as they would like to use the lot without restrictions included in the R-3 zone, such as parking for their facility across the street.

R-3 504.7. Parking regulations:

Off-street parking: Two spaces for each dwelling unit. (See article VII for additional parking requirements.)

M-1 513.7. Parking and loading regulations: See article VII.

1013.0. - Supplementary parking.

[1013.1. Conditional use of off-street parking:] Off-street parking for buildings and facilities used for public assembly, commercial, industrial or institutional purposes may be permitted in any zone as a conditional use. The purpose of providing such off-street parking may be to comply with Ordinance No. 3525 [this appendix], article VII, or to meet supplemental off-street parking needs.

[1013.2. Minimum standards:] All off-street parking lots permitted under the provisions of this ordinance must meet the following minimum standards, unless the city commission deems it in the public good to waive such requirements:

A. All requests for off-street parking to comply with the provisions of

article VII of the zoning ordinance shall meet all provisions of article VII.

B. All requests for supplemental off-street parking not required by article VII of the city zoning ordinance shall comply with the following minimum design criteria:

1. *Surface material:* Areas used for standing and maneuvering of vehicles shall have concrete, asphalt concrete, or asphalt double-seal surfaces maintained adequately for all-weather use, and so drained as to avoid flow of water across sidewalks.
2. *Screening and buffer setback required:*
 - a. Parking and loading areas adjacent to or within residential districts or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the 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 the conditional use permit.
 - b. No off-street parking will be permitted within less than four feet of the property line under separate ownership.
3. *Lighting:* Artificial lighting which may be provided shall be so deflected as not to shine or create glare in any residential district, on any adjacent dwelling, or create glare for oncoming traffic on city streets.
4. *Service drives:*
 - a. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress, and maximum safety for pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate the traffic to be anticipated. Service drives shall not be more than 30 feet in width, nor less than 25 feet for two-way drives, nor less than 16 feet for one-way drives. In the case of a corner lot, service drives shall be located not closer than 30 feet to the intersecting street line. Service drives shall be located not closer than four feet to a side lot line, except that a common

service drive of two adjacent properties with width not exceeding 30 feet maybe provided at the common lot line.

- b. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right-of-way line, and a straight line joining said lines through points 30 feet from their intersection.
- c. Service drives shall be from the street to the parking and shall have concrete, asphalt concrete, or asphalt double-seal surfaces, maintained adequately for all- weather use, and so drained as to avoid flow of water across sidewalks.

- 5. *[Facilities overlapping zones:]* All off-street parking facilities permitted to be located in a zone other than the zone required for the building or facility it serves shall be immediately adjacent or touching such lots on which such building or facility is located, excluding public rights-of-way.

[1013.3. Approval process for conditional use permit; application:] The approval process for a conditional use permit allowed for under this section will be processed following the procedures enumerated in article II [IX], sections 901.0—901.2, 902.2—902.7. The application for a conditional use permit shall be filed with the zoning administrator at least 20 days prior to the regular city planning and zoning commission meeting. The application shall include but not be limited to the below information:

- a. A diagram of surrounding land uses, including location of buildings or structures.
- b. A plan drawn to scale showing the following:
 - 1. Delineation of individual parking and loading spaces by adequate striping.
 - 2. Circulation area necessary to serve spaces.
 - 3. Access to streets and property to be served.
 - 4. Curb cuts.
 - 5. Dimensions, continuity, and substance of required screening.
 - 6. Grading, drainage, surfacing and subgrading details.
 - 7. Delineation of obstacles to parking and circulation in finished parking area.
 - 8. Specification as to signs and bumper guards.
 - 9. The nature and extent of landscaping and screening on the site.
- c. Name of the landowner, and firm preparing the plan.
- d. Legal description of the tract.
- e. Zone in which the parking will be located. (Ord. No. 3546, §§ 1—3, 6-8-88)

Conformance with the Comprehensive Plan:

Industrial Goal – To provide opportunities for industrial development locations with suitable access, adequate community facilities, and favorable land use and environmental conditions.

Objectives:

1. Target industrial development to locations which maximize efficient usage of public and semi-public facilities and minimize the costs of development.
 - a. Policy 1-11 -- Sufficient areas with public facilities and environmental conditions suitable for industrial use should be reserved for industrial development.
2. Policy 1-12 -- Industrial sites shall have access to arterial streets, preferring those leading directly to major highways. Direct industrial activities to locations offering the least negative impact on surrounding land uses and the environment.
 - a. Policy 1-21 -- New industrial uses shall be separated and buffered from surrounding non-industrial uses. Heavy industrial uses shall be located away from existing or projecting residential growth areas and opposite prevailing winds.

The City's General Development Plan Map the area directly north of the proposed lot as public/semi-public (blue) with the lot in question as residential (yellow).

Staff Recommendation

Rezoning this lot to M-1 would fit the character of this mixed neighborhood as properties on the north and east are already zoned M-1.

The intended continued use of the property by the applicant for parking does not match the intent of the M-1 district. It would also allow for all the property utilized by Montgomery County to be zoned the same, as their other property is already zoned M-1.

Lisa Richard asked if this was to be rezoned and if it affects the supplementary parking requirements.

Kelly Passauer said the rezoning would make the County properties contiguous

with the M-1 zoning. However, it does not automatically waive the supplementary parking requirements.

Tony Royse asked if the property was not rezoned, could they still put the parking lot in with the conditions.

Kelly Passauer said that the conditions in front of you require paving and would have to go to the Commission and if they request to waive that requirement.

Tony Royse asked if they had to have it rezoned to get the conditional use permit. Kelly Passauer said no.

Tony Royse asked if all the conditions would have to be met. Kelly Passauer said that yes, according to what the code says unless the Commission revises it.

Motion:

Brent Littleton moved to recommend approving a request to rezone a tract of land located at 117 N. Wald Avenue R-3, low density multifamily district to M-1, light industrial district; and for a conditional use permit for supplementary parking with the following restrictions which shall be binding on all future owners, assigns or heirs:

- 1) The applicant must be in compliance with all City Codes and continue to be in compliance with all City codes including:
 - a)** Meeting all the requirements set forth in Article VII (Off-Street Parking and Loading Regulations) and Section 1013.0 (Supplementary Parking); unless the City Commission “deems it in the public good to waive such requirements” per Section 1013.2 (Minimum Standards).
 - b)** Obtaining any applicable permits if required; such as a demolition permit, curb cut permit, etc.
- 2) Utility location: The applicant will notify Kansas One-Call and have the utilities located prior to any additional construction.
- 3) Restrictions on use: The lot will be utilized for Montgomery County employee parking only and will not be utilized for storage of materials, equipment or disabled vehicles.
- 4) Sound system: There will be no sound amplification to be placed on the parking lot.
- 5) Landscaping and structures: Any landscaping or structures that are constructed adjoining any other properties will be the responsibility of Montgomery County to maintain and keep in good repair.
- 6) Litter: The applicant shall police the parking lot and adjoining areas to remove any litter.
- 7) Signage: If the applicant wishes to provide signage on this lot, such

signage shall be limited to informational signs, i.e. directional signs and exiting and entrance signs. The size, type and placement of such signage shall be approved by the City.

- 8) If the applicant changes the use of the facilities served by the parking lot to any other use, then the continuation of the conditional use permit will require review and approval by the City.
- 9) If the applicant sells the adjoining facilities and the sale does not include the parking lot or if the parking lot is no longer needed to serve the adjoining facilities, then the lot will be cleared of all improvements and returned to an unimproved tract containing grass.
- 10) The Planning Commission may review continuation of this conditional use permit at its discretion for continuation of the conditional use. Such approval shall not be unreasonably withheld.
- 11) The conditional use permit is not transferable to another location.

Any non-conformance with any of the above conditions may result in revocation of the conditional use permit upon reasonable notice and opportunity to cure by applicant.

Tony Royse seconded. Motion carried 8 – 0.

d. Public hearing to receive comments on a request for a conditional use permit for “Storage and warehousing of nonhazardous goods” in a C-4, highway commercial district at 2400 West Main Street.

Kendall Neill opened the public hearing. The applicant was not present.

The following staff report was provided:

Overview of the Request

The Planning and Zoning Commission received a request from Miguel Mego representing Saiko Independence who is leasing property from KEP Holdings to issue a conditional use permit for the property located at 2400 West Main Street which is currently zoned C-4, highway commercial district.

The applicant intends to warehouse non-hazardous products related to his food truck business in a shipping container where the former Sonic was located before it was demolished. He plans to eventually develop the shipping container into a restaurant.

The property to the north is zoned M-2 heavy industrial. The property northwest, south and east is zoned C-4, highway commercial district.

Conditional Use Permit

The zoning ordinance in section 901.1 (page 87) 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 locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse affects."

Appendix A of the zoning ordinance describes those uses in which a conditional use permit may be considered. Warehousing and storage of nonhazardous products is identified as allowable with a conditional use permit in a C-4 zoned district. In addition, packing and crating services are already allowed as a permitted use in this zone.

Requirement for Review of Conditional Use Permit

Article IX of the Zoning Ordinance addresses the purpose and authority regarding the issuance of conditional use permits. 901.1 sites four points that should be considered when determining any impact the proposed use might have on neighboring properties:

1. *The tendency to generate excessive traffic:* At present the site generates minimal traffic since the previous business closed and the building was demolished. The applicant will have a small number of employees and the customer traffic is anticipated to be less than the amount generated by the previous Sonic, therefore it is not anticipated that this will have any significant effect on traffic.
2. *A potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants:* It is not anticipated that this business will attract more persons to this area than the previous drive-in restaurant. The noise level at this site would be minimal.
3. *A detrimental effect upon the value of or potential development of other properties in the neighborhood:* The property in question is surrounded by commercial and industrial properties. No detrimental impact is anticipated.
4. *An extraordinary potential for accidents or danger to the public health or safety:* It is not anticipated that public health and safety will be impacted.

The zoning ordinance in section 902.2 (page 89) provides that in considering a conditional use permit the Planning Commission shall base its recommendation on the following criteria:

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use

limitation. *The site is currently vacant. The proposed shipping container will be placed at the same location as the former Sonic and will meet all regulations.*

- b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public. *The food truck at its current location has been successful and is utilized by the public. The current site has been sold and the owner had to find another location.*
- 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. *City staff does not feel qualified to determine any negative impacts the change in use might have on the adjacent commercial and industrial property.*
- 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. *There are no structures on this tract currently, and the proposed structure will not dominate the immediate neighborhood. There is no 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). *This property was originally developed to meet the off-street parking and loading areas required for a drive-in restaurant, and the concrete is still in place. Therefore, there is adequate parking available to accommodate the applicant's use.*
- f. Adequate drainage, and other such necessary facilities will be provided. *Drainage was addressed when the property was originally developed.*
- g. Adequate 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. *This was addressed when the property was originally developed and the entrance and exit drives are still intact.*

Comprehensive Plan

In reviewing this conditional use request to utilize an existing structure for nonhazardous storage use in an area zoned for commercial purposes City staff believes that it is appropriate to consider the objectives and policies included in the comprehensive plan.

Conformance with the Comprehensive Plan:

Commercial Goal – To provide sufficient neighborhood and community-wide shopping facilities efficiently distributed throughout the community and adequate opportunity for commercial expansion.

Objective C4 – Limit strip commercial development along the major streets to business directly serving the motoring public.

Policy C41 -- Strip commercial development, single commercial uses stringing out along a street, shall be limited to those uses directly serving the motoring public such as motels, service stations and fast-food restaurants.

Policy C42 -- Strip commercial development shall be limited to major highway entrances to the City and shall be permitted only limited access to Major streets via frontage roads.

Generally, commercial use shall be confined to the west side of Pennsylvania between Oak and Mulberry, west on U. S. 75 as far as 1/2 mile west of Peter Pan Road.

Staff Recommendation

In reviewing the policies included in the comprehensive plan and provisions of Section 901 of the zoning ordinance, the Planning Commission must consider whether the intended use of this facility will be compatible with other adjoining uses and code requirements. Furthermore, you should consider if there are any potential negative impacts on environmental concerns; i.e. noise, dust, odors, solid waste. In reviewing environmental impacts the type of activities as described by the applicant should not create any environmental issues.

As part of your deliberations, it is included in the staff report that this property has remained vacant since August 21, 2019, when Sonic moved locations. Finding new retail businesses to purchase large properties appears to be an issue in many communities throughout the country.

If you find that the best use of this property following the guidelines of the comprehensive plan and the impact allowing the conditional use will have on the community then you should approve a conditional use permit. If you determine that the requested use would create a negative impact, then you may wish to deny the conditional use permit.

A final factor could be the continuation of a successful business that could be relocated to this space.

Staff's recommendation is to approve the conditional use permit with the suggested conditions.

Tony Royse asked if they were proposing to have four shipping containers like what is shown in the picture. Kelly Passauer said no, it is one shipping container.

Lisa Richard asked if they were going to fix up the surroundings of the container like the picture.

Kelly Passauer asked David Cowan if he could explain.

David Cowan said he eventually wants to make the container into a restaurant and the City will evaluate it at that time.

Tony Royse asked if he wanted just one container and if they could add others or if they would have to come before the Planning Commission again.

Lisa Richard asked if they would paint or beautify it in any way.

David Cowan said right now he just wants to use it for storage.

Lisa Richard asked if he would have his food truck there.

Kelly Passauer said yes, he is already licensed for his food truck.

Brent Littleton said that there is a lot activity going on around the country with this type of construction. The containers are cut into and windows put in and are fixed up nice. This is a trend that's coming and is cheaper than a building. It will look really nice and the traffic flow will be smooth. His goal at this point is to have the building to supplement his storage. It is good for the community and good to keep these little restaurants going, bringing in tax dollars.

Lisa Richard said she thinks it is appropriate for the location and there has already been a restaurant there so their long-range projections would fit. She also asked about the food truck and if there are requirements for it in case there is a problem, like blocking traffic.

Kelly Passauer said that it has to be on private property and cannot be on public right-of-way.

Motion:

Tony Royse move to recommend approving a conditional use permit for "Storage and warehousing of nonhazardous goods" in a C-4, highway commercial district at 2400 West Main Street with the restrictions recommended by City staff:

1. The conditional use permit is not transferable to another location.
2. The conditional use permit shall be reviewed for compliance every five years.
3. The primary use of the proposed shipping container will be warehousing and storage of non-hazardous goods related to the food truck business. All such goods will be stored inside the shipping container or food truck.
4. The access road from West Main Street and West Laurel Street will remain accessible to employees and patrons of the business, unless required to be modified by KDOT.
5. The location of solid waste equipment shall be designated by the company and will

need to be approved by City staff. All solid waste containers shall be screened from adjoining properties.

6. The parking lot shall be maintained in appearance and shall not be used for overnight storage of vehicles not directly related to the business.

7. Any additional exterior lighting on site will need to be approved by City staff.

Lisa Richard seconded. Motion carries 8 - 0.

e. Other discussion.

Kelly Passauer said that April Nutt is hosting a discussion with realtors on May 5, 2021 and one of the topics will be Tiny Houses. She plans to present the results to the Planning Commission at their June 1, 2021 meeting.

Lisa Richard asked that a time be set aside to discuss the City Comprehensive Plan.

Kelly Passauer stated she could put it on the June 1st agenda and Lacey Lies could be there to explain.

Lisa Richard said the lady who ran the training had some ideas.

Kelly Passauer said that yes, there was a process done where we received proposals but there was no money in the budget for it at that time.

Tony Royse said a letter concerning this had been sent out last year and wanted to know if it had been discussed.

Kelly Passauer said that yes, it had been discussed and they are still in the budget process. All the Commissioners were in the training today and that is something we can work on.

Tony Royse said in the training that the City's Comprehensive Plan should complement the Planning and Zoning Regulations.

Kelly Passauer said that yes, they are to work together.

Adjournment

Kendall Neill moved to adjourn the meeting, with Lisa Richard seconding the motion, which passed 8 - 0.

Kendall Neill, Chair

Rachel Lyon, Secretary

- b. Public hearing to receive comments to consider a text amendment to Appendix B-Zoning of the City code to add “Utility substations not elsewhere listed” to Appendix A. “Listing of Permitted and Conditional Uses.”

City staff has been working with an internet company who needs to construct a utility substation as part of their infrastructure. Currently, the code addresses electricity regulating substations, communication antennas and communication towers. However, we do not have a catch all for supporting utility infrastructure facilities that do not fit into these categories.

If approved by the Planning Commission and City Commission as recommended by staff, the text amendment would allow “Utility substations not elsewhere listed” with the same permitted and conditional uses that are allowed for “Electricity regulating substations.”

City code 1604. 2 provides the following regarding text amendments:

1604. 1. Recommendations: Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

1604. 2. Amendments to text: When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

In order to allow their request a text amendment must be approved to modify the permitted and conditional use table to more accurately reflect the use requested. If a text amendment is ultimately approved by the Commission to require a conditional use for “Utility substations not elsewhere listed” to Appendix A. “Listing of Permitted and Conditional Uses,” it would still require the applicant to go through the conditional use permit process, which is similar to the rezoning process. The conditional use permit could address any additional concerns.

Suggested Motion:

I move to recommend the City Commission approve a text amendment to Appendix B-Zoning of the City code to add “Utility substations not elsewhere listed” to Appendix A. “Listing of Permitted and Conditional Uses.”

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, August 3, 2021, at 5:30 p.m.

To receive comments to consider a text amendment to Appendix B-Zoning of the City code to add “Utility substations not elsewhere listed” to Appendix A. “Listing of Permitted and Conditional Uses.”

Case Number:

2021/ZA/03

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

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

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

Kelly Passauer, Zoning Administrator



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
June 10, 2021

Department Administration

Director Approval Kelly Passauer

AGENDA ITEM Consider initiating a public hearing to consider a text amendment to the zoning code to add “Utility substations not elsewhere listed” to the permitted and conditional use table.

SUMMARY RECOMMENDATION Initiate a public hearing for a text amendment to the zoning code.

BACKGROUND City staff has been working with an internet company who needs to construct a utility substation as part of their infrastructure. Currently, the code addresses electricity regulating substations, communication antennas and communication towers. However, we do not have a catch all for supporting utility infrastructure facilities that do not fit into these categories.

If approved by the Planning Commission and City Commission as recommended by staff, the text amendment would allow “Utility substations not elsewhere listed” with the same permitted and conditional uses that are allowed for “Electricity regulating substations.” If the Commission would like to consider this change, then we would recommend initiating a text amendment. If approved it is anticipated a public hearing could be held before the Planning Commission as soon as July 6, 2021; in which case it would go back before the City Commission for final approval and adoption of an ordinance at your July 22, 2021 meeting.

SUGGESTED MOTION I move to initiate a public hearing before the Planning Commission to consider a text amendment to the zoning code to add “Utility substations not elsewhere listed” to the permitted and conditional use table.

SUPPORTING DOCUMENTS Permitted and Conditional Uses for “Electricity regulating substations” shown below:

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	C-4	M-1
Electricity regulating substations	4813	C	C	C	C	C	C		C	P	P	P	P

- c. Public hearing to receive comments on a request for a conditional use permit for “Retail trade not elsewhere listed” in a M-1, light industrial district, at 1001 North 13th Street.

The City has received an application from Jason and Erika Elmore for a conditional use permit to sell retail products other than the coffee beans and honey which are already allowed because they currently manufacture and/or process them onsite. They would like to sell other unrelated products at the facility.

On September 10, 2020, the City Commission initiated a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.”

This was in response to a new business that is located in an industrial zone that would like to sell the products they produce, plus additional unrelated products. Retail sales of related products is allowed in an industrial zone, however, the sale of unrelated products is not.

On October 6, 2020, the Planning Commission held a public hearing and unanimously recommended that the permitted and conditional use table be modified to allow “Retail trade not elsewhere listed” in an industrial zone with a conditional use permit. On October 22, 2020, the City Commission accepted this recommendation and adopted an ordinance making this change.

Conditional Use Permit

The zoning ordinance in section 901. 1 (page 87) 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 locations and of properties neighboring the specific 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, the 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 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.

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject properties shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the requests. If the requests are approved the applicants must be required to meet the conditions the Planning Commission wishes to require to operate the facility. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

Staff Recommendation

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.

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.

Suggested Motion:

I move to recommend the City Commission approve a conditional use permit for "Retail trade not elsewhere listed" in a M-1, light industrial district, at 1001 North 13th Street with the conditions as recommended by City staff.

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, August 3, 2021 at 5:30 p.m.

To receive comments on a request for a conditional use permit for “Retail trade not elsewhere listed” in a M-1, light industrial district, at 1001 North 13th Street.

Legal Description:

Lot 15 except the West 100’, County Clerk’s Subdivision, City of Independence, Montgomery County, Kansas.

Common Addresses:

1001 North 13th Street

Applicant/Owners:

Jason and Erika Elmore, Owner/Applicant

Case Number:

2021/CUP/04

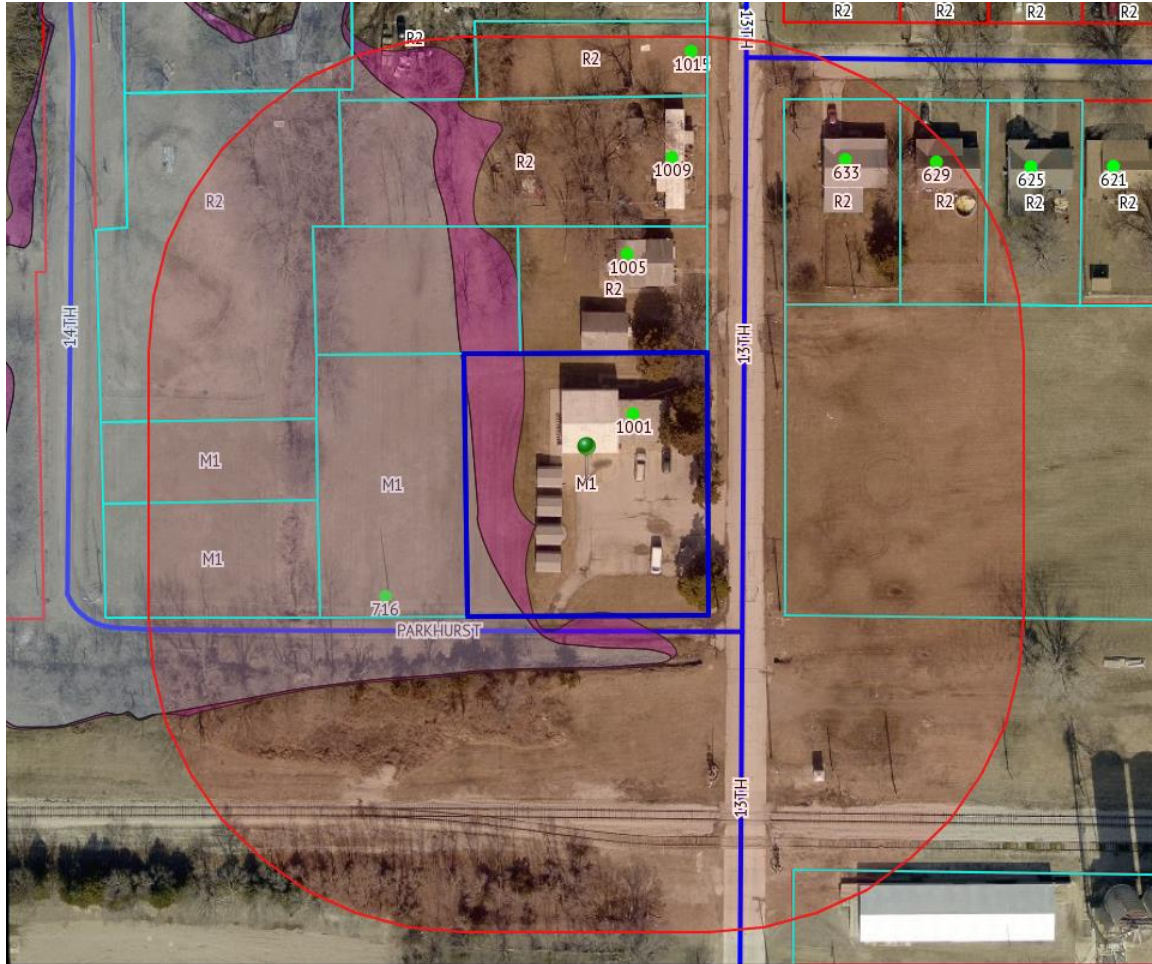
The hearing will be conducted in the Civic Center, Memorial Hall, 410 N. Penn, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: +1 785-289-4727 Conference ID: 652 632 373# Persons wishing to comment, 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' Notification Area:



APPLICATION FOR CONDITIONAL USE PERMIT
PLANNING AND ZONING COMMISSIONDATE FILED _____
\$200 FEE PAID _____

NAME AND ADDRESS OF PERSON MAKING APPLICATION:

Jason and Erika Elmore

700 W Beech St. Independence, KS 67301

LEGAL DESCRIPTION OF LAND INVOLVED:

Lt 15, ex. W.100', Co. Clks Sub of SW NE of 25-32-15, Independence, Montgomery, Kansas

COMMON ADDRESS OF SAID LAND:

1001 N 13th St

Independence, KS 67301

PRESENT ZONING CLASSIFICATION: M-1

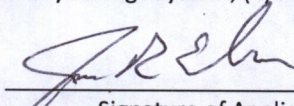
STATEMENT OF INTENDED USE OF PROPERTY:

The property will be used as a food manufacturing facility for both roasting coffee beans and honey extraction.

We are applying for the conditional use permit in hopes of having a retail space to sell other related products and equipment at the facility.

DESCRIPTION OF ARCHITECTURE & EXTERIOR MATERIAL TO BE USED:

On the reverse side, please provide the following information: (1) Site Plan, drawn at appropriate scale, showing existing and proposed building location, parking areas, interior drives, and location and type of outdoor lighting; (2) Existing and proposed topography, drawn at appropriate contour intervals as specified by the Zoning Administrator; (3) Location of, and proposed connections to, existing water supply and sanitary sewage system; (4) North point, scale and date; (5) Names of landowner, developer and firm preparing the plan.

June 25, 2021
Date
Signature of Applicant

I hereby certify that I have personally verified the dimensions as shown on the attached drawing and find them to be a correct representation of the conditions.

Date_____
Signature of Building Inspector

Action of Planning and Zoning Commission:

(Approved, Denied --- Date)Comments:

Chairman_____
Vice Chairman_____
Secretary

CITY OF INDEPENDENCE

REC#: 01142546 6/25/2021 1:47 PM
OPER: JESS TERM: 001
REF#:

TRAN: 1.9000 VARIANCE
JASON ERIKA ELMORE
700 W BEECH
MISC FEES 200.00CR

TENDERED: 200.00 CHECK
APPLIED: 200.00-

CHANGE: 0.00



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
October 22, 2020

Department Administration

Director Approval Kelly Passauer

AGENDA ITEM Consider recommendation of the Planning Commission to adopt an ordinance amending Zoning Code Sections Appendix A. “Listing of Permitted and Conditional Uses” to allow “Retail trade not elsewhere listed” as a conditional use in an M-1 or M-2 zone.

SUMMARY RECOMMENDATION City Staff recommends adopting an ordinance.

BACKGROUND On September 10, 2020 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.” This was in response to a new business that is located in an industrial zone that would like to sell their products they manufacture, plus additional unrelated products. Retail sales of related products is allowed in an industrial zone, however, the sale of unrelated products is not. City staff recommends that the permitted and conditional use table be modified to allow “Retail trade not elsewhere listed” in an industrial zone with a conditional use permit. This will allow this business to apply for a conditional use permit for this purpose. On October 6, 2020 the Planning Commission held a public hearing regarding the text amendment and unanimously recommended approval.

BUDGET IMPACT There would be no budget impact.

SUGGESTED MOTION I move to adopt an ordinance amending Zoning Code Sections Appendix A. “Listing of Permitted and Conditional Uses” to allow “Retail trade not elsewhere listed” as a conditional use in an M-1 or M-2 zone.

SUPPORTING DOCUMENTS

1. Staff Report to the Planning Commission
2. Proposed Ordinance

- c. Public hearing to consider text amendments to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.”

On September 10, 2020 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.”

City code 1604.2 provides the following regarding text amendments:

1604.1. Recommendations: Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

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

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

City staff has been approached by a new business located in an industrial district who is manufacturing honey and coffee products who would also like to conduct retail sales both related and unrelated to their operations. 607.2.n. allows “Retail sales for permitted industrial uses when located on the same site as the industrial use.” However, since some of the retail sales are not related to their industrial use it would require modifying the “Listing of Permitted and Conditional Uses” to allow “Retail trade not elsewhere listed” as a conditional use in the M-1 and M-2 industrial districts. Currently, “Retail trade not elsewhere listed” is currently allowed as follows:

		Permitted Zoning District												
Land Use Category	Code	A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Retail trade not elsewhere listed	5990	C							C	P	P	P		

It should be noted that if this text amendment is ultimately approved by the Commission, it would still require the business to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.

If the Planning Commission wishes to approve modifying “Retail trade not elsewhere listed” to allow such use as a conditional use in the M-1 and M-2 districts, then it is recommended that the following determinations be included in the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the M-1 and M-2 districts which will allow “Retail trade not elsewhere listed” with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;
- c. The proposed amendment is not made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

Included for your reference are the following documents:

1. Request for Commission Action (RCA) to the City Commission for their September 10, 2020 meeting
2. Public Hearing Notice



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
September 10, 2020

Department Administration

Director Approval Kelly Passauer

AGENDA ITEM Consider initiating a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

SUMMARY RECOMMENDATION City Staff recommends initiating a public hearing before the Planning Commission.

BACKGROUND The City has been approached by a new business that is located in an industrial zone that would like to sell their products they manufacture, plus additional unrelated products. Retail sales of related products is allowed in an industrial zone, however, the sale of unrelated products is not. City staff recommends that the permitted and conditional use table be modified to allow "Retail trade not elsewhere listed" in an industrial zone with a conditional use permit. This will allow this business to apply for a conditional use permit for this purpose.

BUDGET IMPACT There would be no budget impact.

SUGGESTED MOTION I move the City initiate a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

SUPPORTING DOCUMENTS Public Hearing Notice

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, October 6, 2020, at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

Case Number:

2020/ZA/04

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. However, due the social distancing participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373#

All interested persons should participate in the meeting and they will be heard. 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

ORDINANCE NO. 4337

**An Ordinance Setting Forth Text Amendments to the Zoning Code
on the Subject of Retail Trade not elsewhere listed**

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

Section 1. Appendix B. -- Zoning - Appendix A. - List of Permitted and Conditional Uses is amended as follows:

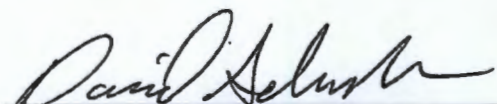
- a. "Retail trade not elsewhere listed" shall be modified to be allowed as a permitted use in the C-2, C-3 and C-4 districts, and as a conditional use in the A-1, C-1, M-1 and M-2 districts.

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 22nd day of October, 2020.


LEONHARD CAFLISCH, Mayor

ATTEST:


DAVID W. SCHWENKER, City Clerk



State of Kansas, Montgomery County
This instrument was filed for
Record on November 5, 2020 9:17 AM
Recorded in Book 696 Page 413 - 413
Fee: \$0.00 202003960




Marilyn Calhoun, Register of Deeds

ORDINANCE NO. ____

**An Ordinance Setting Forth Text Amendments to the Zoning Code
on the Subject of Retail Trade not elsewhere listed**

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

Section 1. Appendix B. – Zoning - Appendix A. - List of Permitted and Conditional Uses is amended as follows:

- a. “Retail trade not elsewhere listed” shall be modified to be allowed as a permitted use in the C-2, C-3 and C-4 districts, and as a conditional use in the A-1, C-1, M-1 and M-2 districts.

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 22nd day of October, 2020.

LEONHARD CAFLISCH, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk

- d. Public hearing to receive comments on a request for a conditional use permit for a “Children’s Home” in a R-3, low-density multifamily dwelling district at 517 S. 4th Street.

Delores Homes, LLC, has approached the City for a conditional use permit to increase their capacity from 5 children to 8 children, increase the maximum age from 13 to 18, and to accept children from any county contracted with the Kansas Department of Children and Families.

On February 4, 2020, it was recommended to approve a text amendment adding "Children's Home" into the permitted and conditional use table as a permitted use in an R- 5 zone, and a conditional use in the R- 3 and R-4 zones based on the determinations included in the staff report; and adding definitions for " Children' s Home" and "Family Foster Home" as prepared by staff.

On February 4, 2020, it was recommended to deny a request to rezone a tract of land located at 517 S 4th Street from R-3, low density multifamily dwelling district to R-5, high density multifamily district.

On February 4, 2020, it was recommended to approve a conditional use permit for a Children’s Home at 517 S. 4th Street with the conditions as recommended by staff and amended by the Planning Commission as follows:

- Condition #5 – The total number of residents cannot exceed five.”
- Condition #10 – “The facility shall provide a visual screen along all property lines abutting any residential use, such screening shall be a 6’ privacy fence on the north property line.”
- Condition #15 – “Video surveillance would be required outside and in common areas and made available to law enforcement upon request if there is no law that prohibits it.”

On February 27, 2020, the City Commission adopted a resolution for a conditional use permit with the following conditions:

1. The facility shall be licensed by the state and shall meet all city, county and state requirements pertaining to operation, facilities, equipment and other features.
2. Off-street hard surfaced parking spaces shall be provided to accommodate one vehicle for each six beds. Any fraction shall be rounded up. Such parking shall meet the requirements of the Off-Street Parking and Loading Regulations.
3. A "hard surfaced" loading zone capable of accommodating one car for every ten occupants shall be provided in addition to the required parking spaces in order to provide for easy pickup and discharge of passengers.
4. Any visitors of the facility shall not block the alley or private drives.
5. The total number of residents cannot exceed five (5).
6. The residents shall be from the local region serving Independence and classified as a child in need of care by the Kansas Department of Children and Family Services.
7. No occupants may be criminal offenders, juvenile delinquents and/or going through law enforcement proceedings.

8. The facility shall be operated in a manner that will not adversely affect other properties and uses in the area.
9. The facility shall provide a visual screen along all property lines abutting any residential use, such screening shall be a 6' privacy fence on the north property line.
10. Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.
11. Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the facility operation.
12. The conditional use permit is not transferable to another property owner or to another location.
13. The applicants must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

Conditional Use Permit

The zoning ordinance in section 901.1 (page 87) 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 locations and of properties neighboring the specific 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, the 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 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.

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject properties shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the requests. If the requests are approved the applicants must be required to meet the conditions the Planning Commission wishes to require to operate the facility.

Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

Staff Recommendation

The following conditions reflect the modifications requested by the applicant as compared to the Resolution previously approved by the City Commission:

1. The facility shall be licensed by the state and shall meet all city, county and state requirements pertaining to operation, facilities, equipment and other features.
2. Off-street hard surfaced parking spaces shall be provided to accommodate one vehicle for each six beds. Any fraction shall be rounded up. Such parking shall meet the requirements of the Off-Street Parking and Loading Regulations.
3. A "hard surfaced" loading zone capable of accommodating one car for every ten occupants shall be provided in addition to the required parking spaces in order to provide for easy pickup and discharge of passengers.
4. Any visitors of the facility shall not block the alley or private drives.
5. The total number of residents cannot exceed ~~five (5)~~ **eight (8)**.
6. The residents shall be from ~~the local region serving Independence and classified as a child in need of care by~~ **any county contracted with** the Kansas Department of Children and Family Services.
7. No occupants may be criminal offenders, juvenile delinquents and/or going through law enforcement proceedings.
8. The facility shall be operated in a manner that will not adversely affect other properties and uses in the area.
9. The facility shall provide a visual screen along all property lines abutting any residential use, such screening shall be a 6' privacy fence on the north property line.
10. Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.
11. Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the facility operation.
12. The conditional use permit is not transferable to another property owner or to another location.
13. The applicants must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

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

Granting the conditional use permit is consistent with criteria" a through g" of Section 902. 2 of the zoning code.

Suggested Motion:

I move to recommend the City Commission approve a conditional use permit for a "Children's Home" at 517 S. 4th Street with the modified conditions as requested by the applicant.

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, August 3, 2021 at 5:30 p.m.

To receive comments on a request for a conditional use permit for a “Children’s Home” in a R-3, low density multifamily dwelling district at 517 South 4th Street.

Legal Description:

Lot 3, Out Lot 26, Wood Brothers Subdivision to the City of Independence, Montgomery County, Kansas. To see the full legal, contact the Zoning Administrator.

Common Addresses:

517 South 4th Street

Applicant/Owners:

Delores Homes, LLC, Applicant

Brianne & Trenton Ford, Owner

Case Number:

2021/CUP/05

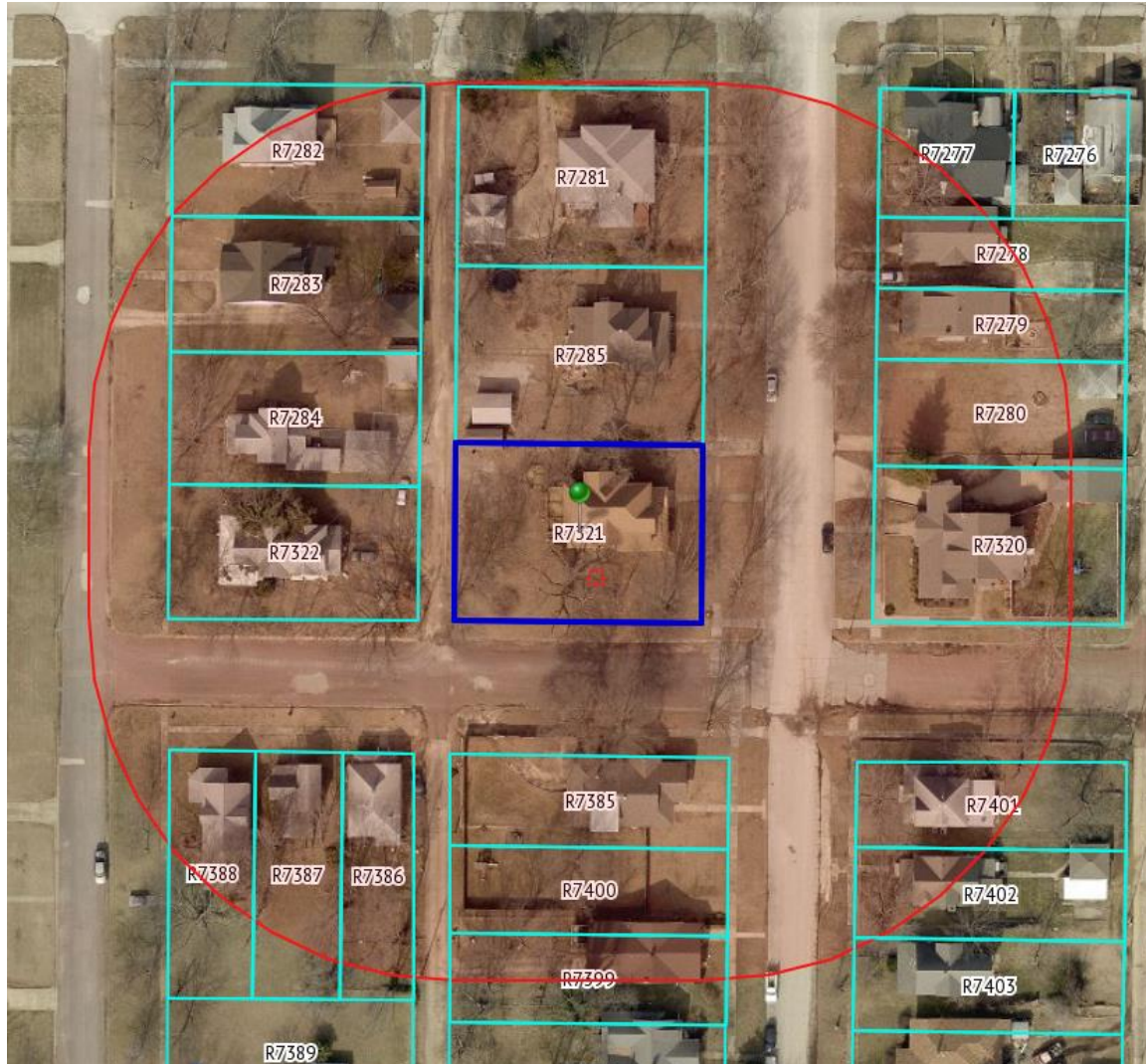
The hearing will be conducted in the Civic Center, Memorial Hall, 410 N. Penn, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: +1 785-289-4727 Conference ID: 652 632 373# Persons wishing to comment, 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' Notification Area:



APPLICATION FOR CONDITIONAL USE PERMIT
PLANNING AND ZONING COMMISSION

DATE FILED _____
\$200 FEE PAID _____

NAME AND ADDRESS OF PERSON MAKING APPLICATION:

Delores Homes, LLC

517 South 4th Street, Independence, Kansas 67301

LEGAL DESCRIPTION OF LAND INVOLVED:

Lot 3, Out lot 26, Wood Brother's Subdivision to the City of Independence, Montgomery County, Kansas

COMMON ADDRESS OF SAID LAND:

PRESENT ZONING CLASSIFICATION: R-3

STATEMENT OF INTENDED USE OF PROPERTY:

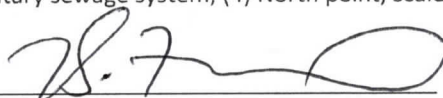
We are currently operating as a Youth Residential Center for 5 youth ages 8-18. We would like to make adjustments to our permit, which would allow us to increase our capacity from 5 children to 8 children, ages 13 to 18. Also, we would like to accept children from any county contracted with the Kansas Department of Children and Families.

DESCRIPTION OF ARCHITECTURE & EXTERIOR MATERIAL TO BE USED:

On the reverse side, please provide the following information: (1) Site Plan, drawn at appropriate scale, showing existing and proposed building location, parking areas, interior drives, and location and type of outdoor lighting; (2) Existing and proposed topography, drawn at appropriate contour intervals as specified by the Zoning Administrator; (3) Location of, and proposed connections to, existing water supply and sanitary sewage system; (4) North point, scale and date; (5) Names of landowner, developer and firm preparing the plan.

7/8/2021

Date



Signature of Applicant

I hereby certify that I have personally verified the dimensions as shown on the attached drawing and find them to be a correct representation of the conditions.

Date_____
Signature of Building Inspector

Action of Planning and Zoning Commission:

(Approved, Denied --- Date)

Comments:

Chairman_____
Vice Chairman_____
Secretary

ORDINANCE NO. 4321

**An Ordinance Setting Forth Text Amendments to the Zoning Code
on the Subject of Children's Homes**

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

Section 1. Appendix B. – Zoning - Appendix A. - List of Permitted and Conditional Uses is amended as follows:

- a. "Children's Homes" shall be added as a permitted use in the R-5 district, and a conditional use in the R-3 and R-4 districts.

Section 2. Appendix B. – Zoning – 403.0 – Definitions shall be amended to add the following definitions:

"Children's Home -- means any place, home or institution providing twenty-four hour nonsecure care licensed by the state for five or more children under the age of 18 years for compensation in which such children are under the custody of a state agency; provided, however, this definition shall not include children placed in family care in a family foster home, public and private schools organized, operated or approved under the laws of the state, children related by blood or marriage to the provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities."

"Family Foster Home – means a childcare facility that is a private residence, including any adjacent grounds, in which the resident(s) provide family care for 24 hours a day for one or more children in foster care and for which a license is required by the State of Kansas."

Section 3. 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 27th day of February,
2020.


LEONHARD CAFLISCH, Mayor

ATTEST:


DAVID W. SCHWENKER, City Clerk

State of Kansas, Montgomery County
This Instrument was filed for
Record on March 9, 2020 10:08 AM
Recorded in Book 688 Page 1153- 1154
Fee: \$0.00 202000748




Marilyn Calhoun, Register of Deeds

RESOLUTION NO. 2020-009

A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT FOR A CHILDREN'S HOME AT 517 SOUTH 4TH STREET.

WHEREAS, at a public hearing conducted on February 4, 2020, the Independence Planning and Zoning Commission voted to approve a request for a conditional use permit for a children's home in an R-3 zoned district at 517 South 4th Street.

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 children's home in an R-3 zoned district at 517 South 4th Street, is approved as hereinafter modified.

The property in question has the following legal description:

Lot 3, Out lot 26, Wood Brothers Subdivision to the City of Independence, Montgomery County, Kansas.

The applicant must meet the following requirements:

1. The facility shall be licensed by the state and shall meet all city, county and state requirements pertaining to operation, facilities, equipment and other features.
2. Off-street hard surfaced parking spaces shall be provided to accommodate one vehicle for each six beds. Any fraction shall be rounded up. Such parking shall meet the requirements of the Off-Street Parking and Loading Regulations.
3. A "hard surfaced" loading zone capable of accommodating one car for every ten occupants shall be provided in addition to the required parking spaces in order to provide for easy pickup and discharge of passengers.
4. Any visitors of the facility shall not block the alley or private drives.
5. The total number of residents cannot exceed five (5).
6. The residents shall be from the local region serving Independence and classified as a child in need of care by the Kansas Department of Children and Family Services.
7. No occupants may be criminal offenders, juvenile delinquents and/or going through law enforcement proceedings.
8. The facility shall be operated in a manner that will not adversely affect other properties and uses in the area.

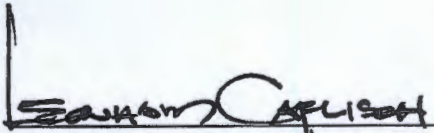
RESOLUTION NO. 2020-009

9. The facility shall provide a visual screen along all property lines abutting any residential use, such screening shall be a 6' privacy fence on the north property line.
10. Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.
11. Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the facility operation.
12. The conditional use permit is not transferable to another property owner or to another location.
13. The applicants must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

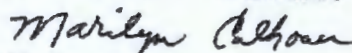
If any of the above conditions are not met the conditional use permit will no longer be valid.

Adopted and approved by the Governing Body of the City of Independence, Kansas, on this 27th day of February 2020.

(Attest)


Leonhard Caflisch, Mayor


City Clerk/City Treasurer

State of Kansas, Montgomery County
This instrument was filed for
Record on March 9, 2020 10:11 AM
Recorded in Book 688 Page 1158-1159
Fee: \$0.00 202000751

Marilyn Calhoun, Register of Deeds



e. Other discussion.