

MINUTES

Independence Planning Commission Independence Board of Zoning Appeals

Tuesday, August 3, 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 (in person)

Anthony Royse (in person)

Andy McLenon (in person)

Barb Emert (in person)

Kendall Neill (in person)

Mary Jo Meier (in person)

Michelle Anderson (via phone)

Brent Littleton (in person)

Planning Commissioners Absent

None

Staff Present

Kelly Passauer, City Manager

David Cowan, Assistant City Manager

Lydia Collins, Administrative Aide

Visitors

Dr. Breanne Ford

Tonda Lawrence

Jason and Erika Elmore

Minutes

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

Andy McLenon made a motion to approve the minutes of the May 4, 2021, meeting, Mary Jo Meier seconded the motion. The motion carried 9 - 0.

**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.

Kelly Passauer stated that a request was made by a company that handles broadband and the current code only addresses electricity regulating substations. In order to allow something that we are probably going to be dealing with more in the future, we are recommending that the conditional use be modified and it will be the exact use as allowed for electrical regulating substations which would be a conditional use in A-1, R-1, R-2, R-3, R-4, R-5 and C-1 and a permitted use in C-2, C-3, C-4, M-1 and M-2.

Kendall Neill asked if this would be permitted in a residential area.

Kelly Passauer said only if a conditional use permit is approved, which means they would have to come before you if it is any residential zone, a neighborhood commercial zone or an agricultural zone. If they are in an industrial zone or a commercial zone other than a neighborhood commercial zone, then no they would not have to come before you.

Kendall Neill said he did not see any red flags with that at all.

Kendall Neill opened the public hearing.

Lisa Richard asked if this substation is anything like a tower, and if there were any sort of height issues.

Kelly Passauer said no, the communication towers are already addressed in the code so this would be similar utility substations like addressed in the picture shown. We only have a code to address electric substations, so we are recommending modifying the code to address other utility substations.

Lisa Richard said she was assuming in the picture that it was just a light pole sticking up.

Kelly Passauer said yes, she thought it was an electric pole standing behind it.

Lisa Richard just wanted to make sure it was not something that fell between the two categories.

Kelly Passauer stated that it would be a concrete pad with the infrastructure inside it, surrounded by a fence.

Lisa Richard said very much like a utility substation.

Kelly Passauer said you probably would not know the difference.

Tony Royse asked if it would be going into someone's yard or close to it if we approve this in all residential zones.

Kelly Passauer said no, it is not approved in residential zones as a right, each case would come before the board for a conditional use permit. The board would have to approve it and all property owners within 200 feet would be notified and you would have a hearing and determine whether or not that would be appropriate.

Tony Royse said we could determine now whether this could be in a residential area.

Kelly Passauer said currently you have electrical substations in residential areas and depending on how you expand broadband it may be necessary to locate a substation in a residential area depending on how the infrastructure is developed to serve the community.

Tony Royse said his concern is if we make a motion or recommend, we do not think that contraption should be in a residential area, not to amend the table period if that was our recommendation. We cannot go on with what the City Commission does, if the City Commission goes along with us, it would not be allowed in a residential area.

Kelly Passauer said that is true but depending on the situation you could have a school in a residential zone that needs broadband access but if they did not have the infrastructure they may not have the capacity to serve them. By having the conditional use permit you would have the opportunity to review each on a case-by-case basis.

Tony Royse said they have that now.

Kelly Passauer said yes, but you do not know what they will have or require in the future, years from now.

Tony Royse said he was thinking that some yards have Southwestern Bell meters and wonder if now that will be going into someone's yard or a form of it. I just want to think about it before making a recommendation.

Kelly Passauer said the board will have the opportunity to hear from any property owner who is affected because they will be notified of the hearing.

Tony Royse stated he knows how it works, but he was just saying why not "nip it in the bud" now. I do not think it should be allowed in a residential area. We might have AT&T and Sparklight substations all over the area. Some folks might not want that, I know I would not.

Kelly Passauer said based on the size of this utility substation they will need to obtain a lot; it is not being located in the right-of-way.

Tony Royse said they will need to buy a piece of property to use then.

Kelly Passauer said yes, the size of the one that I am working with this company on, they would have to purchase a lot.

Lisa Richard said the process for this is in the packet and it is recommending a text amendment to the Commission.

Kelly Passauer said yes, and if they approved it they would adopt an ordinance codifying it.

Lisa Richard said, so when we do that, 1604.2 provides the following and 1604.1 recommendation requires that they get a record of the hearing, so that is one point that I want to make. I would assume they are going to get that record you are recording

Kelly Passauer said we are taking minutes.

Lisa Richard said and at the same time they get their recommendation from us.

Kelly Passauer said we generally do a summary of what occurred at the Planning Commission and include that in the Staff Report they receive.

Lisa Richard said she remember this from before when she was on the Planning Commission, as there is an issue that came up because the approved minutes lag a little bit behind, that the record was not actually available to the Commissioners. The actual record the recording or minutes and that gives them the opportunity to hear verbatim what people say which is more detailed like what Tony Royse just talked about. So, I think you should provide the recording if the minutes are not ready and that that should be a consistent practice. So, on the second part that we are to provide them with the information that will help them make their decision and that information must include whether the change, 1604.2 a. whether the change is consistent with the rest of the City code, the rest of the planning code, and b. the areas most likely to be affected and c. whether the amendment is made necessary because of changing social values, changes in society. So that is something you are going to put in your report I'm sure but it is something that we're supposed to consider here and if we did that really quickly I think we could cover Tony's concern. There may not be anyone here that really agrees with him on that, I do not know, but if you could tell us why you think it is consistent with the intent and purpose and we can say yes that sounds good or if we do not. I think if we make the point

to Commission that internet development is absolutely a change in circumstance, both a social circumstance and a physical circumstance that we are trying to accommodate I think that would be important. So, can we just do those things real quick? I know it is in your report, but I think we are supposed to do that.

Kelly Passauer said yes, absolutely if you would like my response to each one of those I would be happy to.

Lisa Richard said that would be great.

Kelly Passauer stated that as far as being consistent we already have in the permitted conditional use table a section on substations. Of course, when this code was developed there really was not an internet. To me it is consistent and just another type of substation and just the way it was worded previously it only talked about electricity substations and did not address other utilities. So that would be my response to that one. The areas affected would be the zones that the substation could potentially be located in, which I stated earlier which ones would be permitted in, either with or without a conditional use permit. The only zone that it is not permitted in that it would not affect at all is the O & P district. As Lisa stated, the internet has become more advanced, and cable will eventually be replaced by the internet as well as telephones. This is a change of the times, and I cannot predict what we are going to have in ten years, none of us heard of 5G five years ago, in ten years will we have 15G? I do not know. We may attend these meetings through a hologram, you just do not know what is going to happen.

Tony Royse asked if this substation could be accessed by other companies or would each company have to have their own.

Kelly Passauer said it would be up to them to work that out if they needed a substation.

Tony Royse said he was talking about the one that is proposed. If this company is not one of the three we spoke about earlier at the economic development meeting, then suddenly Sparklight needs a substation and then you have two substations and the other one decides they need one and there is three or four substations in a residential area.

Kelly Passauer said that would have to be a private agreement between the companies if they agreed to do that. Some of the communication towers do that now with multiple providers and so it would be to their advantage to work together on something like that.

Tony Royse said if Kansas Fiber says they need a substation and Sparklight says they cannot use theirs now they will be putting more up and there will be too many substations all over town. I do not think that will happen but the probability, you need to think about it.

Kelly Passauer said that the way technology goes it could be that in ten years they may not need something this large.

Tony Royse said he keeps thinking about the big, on the corner of Oak and Park, there on that corner house on the SE corner they have that big monstrosity of an electric pole. It was allowed, I understand it is electricity.

Kelly Passauer stated that electric poles are allowed in the right-of-way which would be different from substations.

Kendall Neill said his personal thought is that the conditional use requirement for residential areas

requires that to come through this board and to your concerns we can say no, or we can say yes, that is why we are here, right? What I am thinking of is towns similar to our size have great internet all over town, but they started doing this stuff years ago. You can see it, but they are not in anybody's yard, and they are not going to be able to put one of these in somebody's yard.

Tony Royse said his concern is that you have a big yard on a corner lot and the house sits way back they could put that there.

Kelly Passauer said there would have to be setbacks.

Tony Royse said up north you have big lots, and they could ask if they could lease the lot, put these up, and come back to us for conditional use and we need to think about that.

Kelly Passauer said if the company needs to serve that area the neighbors may not mind it if it is providing them great service. We have sewer lift stations in the north part as well. It is not ideal, but it is necessary to provide the utility infrastructure.

Kendall Neill said he has an electric substation, not a huge substation, but I have one in my backyard. There is a big green box and a utility pole right there and transformers up on top and it is all covered up. We put pampas grass and bushes up and you cannot see it until it is winter and uncovered and it services the whole neighborhood. Where the utility line runs, fiber, they have that on our property anyway.

Kelly Passauer said yes, they can put them in the easement already, utility infrastructure. On some of them, we work with them on a right-of-way or franchise agreement. This would be larger to support.

Rachel Lyon said that even if it is on somebody's private property and they decided to lease it out to a utility company they will still have to come through the board to be approved and the neighbors would still have to be notified.

Kelly Passauer said yes unless it was in one of the zones that are permitted. However, it would still have to meet setbacks and if it were in a residential zone it would have to go back to the board for approval.

Lisa Richard proposed that our justifications be in line with what Kelly articulated and that she put in her report that they are our view for the criteria stated in "a," "b," and "c."

Kendall Neill said it has been moved to, say that again Lisa, I will try to keep up.

Motion:

Lisa Richard moved 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," which is consistent with 1604.2 a, b, and c as described by City staff and as included in the staff report. Tony Royse seconded. The motion carried 9 - 0.

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

**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.

Jason Elmore has purchased a building to roast coffee and sell honey and hopes to be able to sell other non-related items.

Kendall Neill opened the public hearing.

Lisa Richard said she had a question for the applicant. Do you have a sense of how much traffic you might generate and where they would be parking in the vicinity?

Jason Elmore said it has a sizable parking lot there. At least a dozen spaces. The retail space is very small.

Lisa Richard asked if the 10 to 15 spaces serve just their business or other businesses as well.

Jason Elmore said yes, just their business, they do not have any other tenants in the building.

Brent Littleton asked if they would be selling their roasted coffee through grocery stores.

Jason Elmore said yes, we have had a lot of interest from establishments like G & W, shops, other grocery stores, and everybody is waiting on us. You will be able to buy our coffee at restaurants and stores. That is one of the reasons for the retail side.

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.

Motion:

Kendall Neill moved 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. Tony Royse seconded.

Lisa Richard said wait and asked if they were going to discuss.

Kendall Neill said he thought they just did.

Lisa Richard said so there are only two conditions, is that right?

Kelly Passauer said yes.

Lisa Richard said I would like to suggest that we add a condition that the permit is for the size of use that we have described today because otherwise, it is very open ended. It actually says on the prior page that they are supposed to submit a site plan and provide more details about what they are planning to do.

Brent Littleton stated so how do we make this simple and get out of here before ten o'clock tonight?

Lisa Richard said, let me just finish what I was going to say. We can just simply add a condition that says that the conditional use permit that we are granting pertains to the small retail space at, it would not pertain to a new structure or an expansion, if they made any of that kind of changes, we would need to hear from them again.

Kelly Passauer suggested it should fit within the existing structure then if they wish to modify it a little bit larger, they do not have to come back to us.

Lisa Richard said she liked that. So, condition number 1 would be the new condition and then two and three would be the next two. So, number 1 the conditional use permit is limited to . . .

Kendall Neill said it is to be used within the existing.

Kelly Passauer said it is to be contained within the existing structure.

Lisa Richard said yes, I like that. And do you want to say anything about the use? What is it we are permitting?

Kelly Passauer said that currently they can already sell their coffee and the honey they produce because those products are related to their manufacturing operation. However, they also wanted to sell mugs and T-shirts and things like that.

Lisa Richard said so, limited to sales of items that are sold within the building.

Kelly Passauer said, so the retail store is contained within the building.

Lisa Richard said, exactly. So that covers all retail products basically, but it would not cover if they decided to start selling used cars. It just seems really open to me. So, number 1 is what he said and then adding that it is limited to the sale of retail products.

Rachel Lyon said within the structure.

Lisa Richard said yes, but what if they want to have a sidewalk sale, we do not want to be, I am not trying to be trivial about it.

Kendall Neill said we had this discussion prior; I remember this last year.

Lisa Richard asked what the solution was.

Kendall Neill said it was something along the lines of, I do not know if it was for this particular one or not, retail trade not elsewhere listed.

Rachel Lyon said we defined selling the products that they make and related products, like herbal maintenance items even if they are not selling the T-shirts.

Brent Littleton said herbal tea.

Lisa Richard said as long as that is brought up. We can allow them to sell the T-shirts and things, I think those are related products.

Kelly Passauer said they are already allowed to sell any related products. They are asking to sell other things that are not actually related.

Tony Royse asked if we have any other industrial areas with the same thing they are wanting to do.

Kendall Neill said I want to preface all this by saying, one of the things that I see coming that we have all spoken about is the cannabis industry.

Kelly Passauer stated that there is already a moratorium on that.

Kendall Neill said right. So, when we do this let us all think about what is going to happen in the future and talk about that a little bit too because they are going to have a product, right, and then all their little ancillary pots and whatever else they have, I do not know what they do, but all that is going to be directly the same as this. It is going to be a product they are not manufacturing but that they will get shipped in from somewhere else, right, so it is going to fall under retail not listed. So, I think my personal opinion on this, if we dig too deep down into the roots then all we are doing is hamstringing and constraining whereas we know, realistically, we know that they are not going to go open a car lot on this property and we know that they are not going to go start having cattle auctions. I think if we go too far down to the roots then we have, it is not meant to be a complicated one and if they want to expand their building and they want to go twenty foot to the west then they would have to come back here just for that, it would be a capacity issue.

Lisa Richard asked why they would have to come back under this.

Kendall Neill said if we constrained it to the size.

Lisa Richard said right, exactly, so that is good, and then the products within the building would work great. You could just simply say that if they wanted to sell products outside the building they would be fine if they notified staff or had permission from the staff.

Barb Emert asked if they made the downtown businesses do that.

Kelly Passauer said no, nor any other.

Lisa Richard said you do if somebody is going to have a sidewalk sale.

Kelly Passauer said that is only because downtown sidewalks are located on City right-of-way. In this case, it is on private property.

Lisa Richard said as long as we say within the building, I'm good.

Kendall Neill said, or you could just say that the conditional use permit is not transferable to another location or property.

Lisa Richard said that is different.

Kendall Neill asked if it was okay.

Lisa Richard said absolutely. So how you said it earlier that works for me.

Kendall Neill said you will have to remind me how I said it.

Rachel Lyon said within the existing structure.

Tony Royse asked about the outside sale in front of the building.

Lisa Richard said she dropped that.

Kendall Neill asked if we could say within the onsite building so we do not say existing where if they make a change like I was just describing adding on to the building technically somebody could come back and say well it is not within the existing structure it is different now so if we say it is onsite within that M-1 zoning designation.

Lisa Richard stated she believes it should say the existing building because if they expanded the retail space to accommodate a much greater amount of trade then that would be a change of use that could affect the neighborhood and could require reconsideration.

Tony Royse said if they want to expand that is a good deal. What if we restrict them, it is their property?

Brent Littleton said they cannot put an 8 x 16 storage building that they bought prefabricated and put on there without getting a permit from the City. I know for a fact because I have done it.

Kelly Passauer said anything over 120 square feet requires a building permit.

Lisa Richard said that is different from a conditional use permit. I think it should say existing building. That is my opinion. You are permitting something that you know what you are looking at. You are looking at that building and the use that we have described to it and that is what we are permitting. If they wanted to change their use, expand their use then they could come back and we would say fine, but at least, it is really more how it works than to leave something. Unless you guys want to say that they can use the entire lot for retail.

Rachel Lyon said they purchased it, it is personal property and there is plenty of traffic there already going to and from just the high school in the morning but there is already just across the tracks other businesses.

Lisa Richard said none of what I said contradicts anything that you just said. I am for approving this but limiting it to the existing building.

Rachel Lyon said she does not have a problem with them using their property and expanding if they need to. We know that they are not going to open up a car lot.

Lisa Richard said it might be useful if we had standard conditions that apply in all situations. Somebody was talking about if we had cannabis businesses producing or packing in industrial areas and they also want to sell related products that things might be different so they might be coming back to us, and we would be adding all these conditions. We should have standards that apply to each.

Kelly Passauer said we do have standard conditions, that is what the permitted and conditional use table is, and it gives the specific use that is allowed in the specific zone. So, the question would be are auto sales allowed in an industrial zone, and if not, additional conditions would not be needed to prohibit that, correct?

Lisa Richard said you have specific conditions for a lot of different uses for example towers have a lot of conditions and you have other uses that have conditions for example having a home for children that are in the care of the state we have a lot of conditions. Here we have two conditions it is very open and somewhere in the codes you have standard conditions, right?

Kelly Passauer said automobile and other motor vehicle retail is not allowed in an industrial zone so they cannot do that.

Lisa Richard said that was just an example.

Kelly Passauer said yes, there are several different other things that are related to retail that may already not be allowed in that zone because it is not a regular commercial zone, it is an industrial zone.

Lisa Richard said she believes that the conditional use permit should have conditions and they should be specific so I am probably going to vote against this because it only says that it cannot transfer to another location, and they have to follow the code. I do not consider that a complete detailed conditional use permit and so I will vote accordingly, and you guys can vote accordingly as well. In the future, I think it would be nice to see that list of standard conditions that I think you said applies in our code when there is no specific set of conditions for that use. But we do not have them here that would be brought up for each use. There should be specific conditions that apply to every similar conditional use. Every time you have the same conditional use you have these generalized conditions.

Kelly Passauer said you will have different things depending on the use like some of the things we have in the children's zone will be related to that type of use.

Lisa Richard said exactly.

Kelly Passauer said some of the conditions are added to address concerns of the property owners within the 200' notification area. However, we have received no such concerns. Because they are already allowed to have retail sales related to their operations, allowing them to sell T-shirts and cups in addition to honey and coffee, we do not believe any additional conditions would be needed to further regulate that. But if you have some you would like to suggest.

Lisa Richard said your condition is to limit it to that. I was just looking for language that would say we are permitting what we have heard. But you guys want to have it be broader so that it would encompass building onto the building, increasing your retail trade, and normally you would not do that in a conditional use permit, you know what you are permitting.

Kelly Passauer said if you wanted to you could make a restriction that the retail portion of the business would not exceed 50 percent of the building. That would not stop them from building on to the building. We have done things like that downtown, such as if they wish to have a dwelling in a commercial business, it could be limited so that it cannot be in the storefront and can only encompass so much percent of the first floor of the structure. We could do something like that, that way it would always be at least 50 percent manufacturing.

Lisa Richard said that is good.

Brent Littleton said if they got in there and were successful and needed more space, that will be a great opportunity and they are going to have to get a building permit and get that done and come to the Planning and Zoning Commission. They may say they want to do this to this building; we are talking about tearing the thing down and starting all over. They would never get that approved.

Lisa Richard said they would not have to come to us for a conditional use permit with only these two conditions. So, I know you guys think I talk too much sometimes and maybe I do and I apologize for that, but I am going on about this because I think it is important. I think you need your conditions to describe what it is you are permitting and if they do this that and the other it is going to be on that. And I personally was not comfortable with these two as originally proposed.

Brent Littleton asked Lisa if she liked coffee.

Lisa Richard asked Brent if he thought she was against their business.

Brent Littleton said it is much ado about coffee.

Lisa Richard said I am not against their business. I bought some coffee from them and I think it is wonderful actually and if they expanded their business that would be wonderful too. And it might fit into this neighborhood as a retail site within an industrial site. That is all great but this is planning and it is not, okay we like it and do whatever you want only if it is on the same site, and you do not break any food codes. And I do not mean, I am sorry if I sound, I am just getting a little frustrated because I am not getting my point across so I would propose that we add as number 1 that this conditional use is for retail sales within the building and that retail space shall be limited to 50 percent of the existing building.

Kelly Passauer said she wanted to ask a clarifying question, if they did want to put some products outside according to that modification, they would not be able to.

Lisa Richard said that is why she was trying to loosen it up earlier and it got too complicated.

Kelly Passauer said I would suggest you just maybe leave the part in about not exceeding 50 percent of the building. The concern about auto sales is already addressed, as that is not allowed in an industrial zone, and that way if they want to have an outside sale or something that would allow them to do so.

Tony Royse asked Kelly Passauer if he understood her to say she had not had calls, letters, or emails of concern about this.

Kelly Passauer stated that was accurate.

Tony Royse asked, "None at all?"

Kelly Passauer said none.

Kendall Neill asked what the significance of 50 percent is.

Kelly Passauer said it just ensures that the retail portion is not going to be any larger than the manufacturing since it is an industrial zone. So, I believe that is reasonable.

Rachel Lyon said if they wanted to tear the building down and build a bigger one then they would have to come back.

Kelly Passauer said not as long as the manufacturing took up 50 percent. You might ask the applicant if that would work for their goal.

Kendall Neill asked the applicants if they planned on having more than 50 percent of their building dedicated to retail.

Jason Elmore said no.

Motion:

Kendall Neill amended his motion 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, in addition to a requirement that the retail space shall not exceed more than 50 percent of the building. Andy McLenon seconded. Motion carried 9-0

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

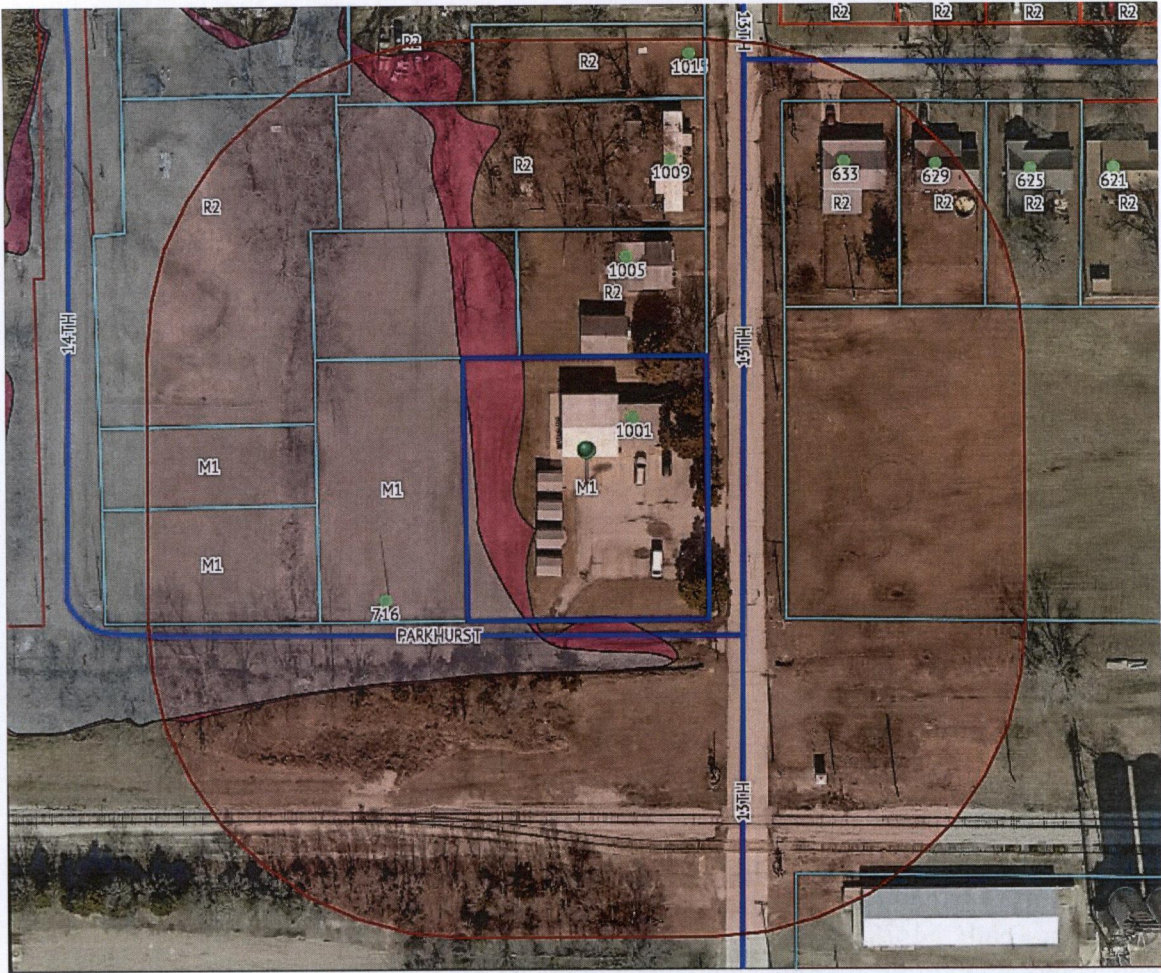
The hearing will be conducted in the Civic Center, Memorial Hall, 410 N. Penn, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: +1 785-289-4727 Conference ID: 652 632 373# Persons wishing to comment,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



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 five children to eight 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.

Kendall Neill opened the hearing.

Dr. Breanne Ford, owner, said they are governed by DCF, and they choose the gender, age and number of children. We have had a total of seven kids, staying 160 days. We currently have five kids and 24-hour supervision. Most of the kids are middle school age.

We work with Tri-County kids with mental health issues. We do not have a licensed therapist in the home, so we work with Tri-County. These kids are getting to engage with the community for the first time in a long time. Since we take small numbers at a time, the kids get to participate more in the community. We are Covid conscious. The kids are active in the youth group of the church the group attends. We take the kids to community events. We support small businesses like local barbers, local electricians. We take them out to eat, go to the movies. We are adding another shower and have recruited locally to do the work. The neighbors have left things on the porch for us and have adopted the kids. The neighbors were very generous at Christmas. We take either boys or girls, not both genders at the same time. We are 24-hour supervision. There is always someone on-site with them. The staff has at least 18 hours of training before they come to the house. We have had to call the police to the home three times. It was not an emergency. After the staff has handled the situation, the police are called to file a report. The things we expect are usual with kids that have experienced trauma. We had an incident in the yard that was witnessed by a neighbor. We try to bring things indoors and stay to the back of the house as the kids at the daycare close to us stay in the front of their house.

We are asking today to accept children from anywhere DCF serves and to increase our capacity from 5 to a max of 8 children as our placement agencies are asking us to take more. We are turning down kids that we could serve, and they deserve a chance.

Brent Littleton asked the age range.

Dr. Ford said we are approved from 8 to 18. If DCF makes the changes they are currently looking at, we will not go under 13. They would like to pull the younger than 13 age out of the group homes.

Barb Emert asked the ratio of kids to caregivers.

Dr. Ford said it is 1:7, which is recommended by the State, and also to increase the number of adult caregivers during peak hours.

Kendall Neill asked if anyone from the public wished to speak.

Tonda Lawrence said when they were first permitted, they were only allowed to have kids only up to the age of 16. Ages 8 to 18 is too much.

Kelly Passauer said some modifications were made at the Commission level.

Tonda Lawrence asked if at that point the neighbors are not notified.

Kelly Passauer said there is no additional notification required at the Commission level.

Tonda Lawrence said she thought they were not taking boys.

Dr. Ford said they are licensed for boys or girls, and that they were getting a lot of girls and no boys, so they went back to DCF to change to boys.

Tonda Lawrence said she was not aware of the change.

Dr. Ford said that DCF is changing the minimum age to 13 because they feel 8-year-olds are too young to be in a group home situation and they have other options for care. The 18-year olds are released after their birthday or if they have not graduated yet, after graduation.

Motion:

Mary Jo Meier moved 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. Barb Emert seconded. Motion carried 9-0.

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:



e. Other discussion.

Kelly Passauer told the board that through the American Rescue Funds we could request the Comprehensive Plan be funded on the City and County level. She further advised that April Nutt planned to be here in September to talk about tiny houses and the shipping containers. Kelly also said she received two applications, one for a variance and one for a conditional use permit, to be presented in September relating to a storage building someone wants to construct in a commercial zone.

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

f. None

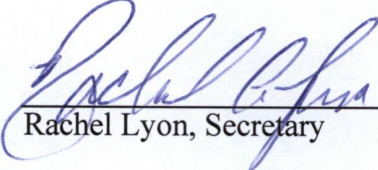
Adjournment

Motion:

Andy McLenon moved to adjourn the meeting, with Kendall Neill seconding the motion, which passed 9 - 0.



Kendall Neill, Chair



Rachel Lyon, Secretary

