



Tuesday, April 5, 2022
Civic Center, Memorial Hall 5:30 PM

Independence Planning Commission/Board of Zoning Appeals

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

- I. CALL TO ORDER
- II. MINUTES
 - a. Consider approving minutes of the March 1, 2022 meeting.
- III. BOARD OF ZONING APPEALS (DOES NOT INCLUDE OUTSIDE CITY APPOINTMENTS)
- IV. PLANNING COMMISSION
 - a. Public Hearing to receive comments regarding a text amendment to the zoning code relating to dwellings in a C-3, Central Business District.
 - b. Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue.
- V. DISCUSSION
- VI. ADJOURNMENT



**PLANNING COMMISSION ACTION / BOARD OF
ZONING APPEALS MINUTES
CITY OF INDEPENDENCE
April 5, 2022**

Department Admin

Prepared By Lydia Collins

AGENDA ITEM Consider approving minutes of the March 1, 2022 meeting.

SUMMARY RECOMMENDATION Approve the minutes.

SUGGESTED MOTION I move to approve the minutes of the March 1, 2022 meeting.

SUPPORTING DOCUMENTS

1. PZ Draft 03012022 Minutes

MINUTES

Call to Order

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

Planning Commissioners Present

Michelle Anderson (by phone)
Anthony Royse (by phone)
Kendall Neill
Mary Jo Meier
Andy McLenon
Rachel Lyon
Lisa Richard
Tim Haynes
Brent Littleton came in at 6:30 PM

Planning Commissioners Absent

None

Staff Present

Kelly Passauer, City Manager
David Cowan, Assistant City Manager
April Nutt, Housing Director
Jeff Chubb, City Attorney
Lydia Collins, Administrative Aide

Visitors Present

John Mautino with Stinson LLP (by phone)

Minutes

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

Motion

Andy McLenon moved to approve the minutes of the February 1, 2022 meeting. Kendall Neill seconded the motion. Motion carried 8-0.

Reorganization

- a. Election of Chair – Andy McLenon nominated Kendall Neill for Chair, Rachel Lyon seconded. Motion carried.

- b. Election of Vice Chair – Lisa Richard nominated Rachel Lyon for Vice Chair, Tim Haynes seconded. Motion carried.
- c. Election of Secretary – Kendall Neill nominated Tim Haynes for Secretary, Rachel Lyon seconded. Motion carried.

Planning Commission

- a. A public hearing to receive comments to consider text amendments to Article B. – Zoning on the subject of tiny houses.

At the February 1, 2022, meeting you set the date of March 1, 2022, for a public hearing to receive comments to consider text amendments to Article B. – Zoning on the subject of tiny houses.

History:

At the December 7, 2021, meeting the Planning Commission provided feedback on what they would like to see regarding a text amendment regarding Tiny Houses. The City requested the assistance of Stinson LLP to assist us with this text amendment. Below and attached is the information they provided:

Attached for review are drafts of the following documents: i) a proposed Ordinance amending provisions of the City's Zoning Code in order to allow for "tiny houses"; and ii) a comparison draft, in Word, showing proposed changes to Section 507.0 of the Zoning Code (Residential Planned Unit Developments). The latter can either be incorporated into the proposed Ordinance as an exhibit or inserted directly into the body of the ordinance, depending upon your preference. The revisions to Section 507 are currently set up as an exhibit for ease of review.

The goal was to follow the apparent consensus from the December Planning and Zoning meeting. Accordingly, the Ordinance provides as follows:

1. Tiny houses must be on permanent foundations (Ordinance, Section 1).
2. A tiny house for use by the property owners' family is a permitted accessory use (Ordinance, Section 2).
3. A tiny house for "short term rentals not elsewhere listed" is a conditional accessory use (Ordinance, Section 3). This seemed like the best way to accommodate an Airbnb type use. If there are special provisions that the City would like to impose for such a use, they can be inserted into Article X of the Zoning Code. There aren't any special provisions listed for Bed and Breakfasts, which is the most similar conditional use.

4. Tiny houses must be constructed and installed in accordance with the then-current version of all applicable codes as adopted by the City (Ordinance, Section 4). If there are any known issues with respect to tiny houses under codes currently adopted by the City, it would be possible to address such issues through an amendment. In addition, the 2018 Edition of the International Residential Code contains an Appendix specific to Tiny Houses. It appears that this Appendix helped resolve issues confronted by cities in applying prior building codes to tiny houses.
5. The revisions to Section 507 allow for a Tiny Houses/PUD. Minimum PUD size is one acre (Section 507.2.d). Permitted dwelling units is determined by doubling the amount of dwelling units that would be calculated if it was a normal residential PUD (Section 507.2.h). Please note that the numbers only reflect a general assessment of what I thought might be appropriate. Adjusting zoning ordinances to accommodate tiny houses appears to be a relatively new concept, and there isn't much in the way of relevant examples.

Attachments:

Proposed Ordinance amending provisions of the City's Zoning Code in order to allow for "tiny houses"

A comparison draft, in Word, showing proposed changes to Section 507.0 of the Zoning Code (Residential Planned Unit Developments).)

Hearing Notice

Chair Kendall Neill opened the Public Hearing.

John Mautino explained the proposed ordinance and revisions to be made to allow tiny houses.

Tony Royse verified that the only place other than with a mother-in-law house that would be permitted would be in a PUD.

Lisa Richard asked how density is determined for a PUD.

John Mautino said there is a formula for each district for a residential area. There is a minimum land area for each district. The residential area is divided by the average land area per dwelling unit.

Lisa Richard said they should be single-family and the motion should be changed accordingly.

Kelly Passauer said R3, R4, and R5 districts on the district regulations in the code designate single-family as 7,200 square feet per family. It is in the district code but not in the PUD table. The table needs to be amended to add the 7,200 square feet on those so that it equals the district regulations.

Kelly Passauer asked John Mautino if a mother-in-law house is allowed for one property owner and then the lot is sold, would that tiny house become a non-conforming use.

John Mautino said it would become a conditional accessory use. I do not know if the conditional use would transfer.

Kelly Passauer asked if it would be a permitted accessory use if it was used for the property owner's family.

John Mautino said it could only be used for the current property owner's family, transferred for the same use when sold. It could not be used as a rental without a conditional use permit.

Kendall Neill said they could use it as an Air B & B, but they would have to apply for a conditional use permit.

April Nutt asked if a conditional use is used for an Air B & B can I later turn it into a traditional rental property and get a conditional use for that, for long-term use.

John Mautino said no, they cannot use it long-term, only short-term.

Lisa Richard moved to recommend the Governing Body adopt an ordinance implementing the text amendments to Article B. – Zoning on the subject of tiny houses as prepared by Anna Krstulic, Stinson LLP and to add 7,200 square feet in the table for minimum average land area by unit type in PUD districts in the R3, R4 and R5 zones. Tim Haynes seconded. Motion carried.

b. Introduction of members

Each member introduced themselves.

c. Orientation by City Attorney Jeff Chubb

City Attorney Jeff Chubb led an orientation session with the Planning Commission.

d. Consider initiating a public hearing on April 5, 2022 to consider a text amendment to the zoning code relating to dwellings in a C-3, Central Business District.

Background:

Currently the permitted and conditional use table (shown below) does not allow any type of dwelling in the C-3, Central Business District that is not already grandfathered in without a conditional use permit.

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	M-2
Dwelling, elderly	1100				P	P					C			
Dwelling, in nonresidential structure	1190							C	C		C			
Dwelling, mobile home not on permanent foundation	1151					C	C							
Dwelling, mobile home on permanent foundation	1152					C	C							
Dwelling, multifamily	1130				P	P	P	P			C			
Dwelling, single-family attached	1113				P	P	P	P			C			
Dwelling, single-family detached	1111	C	P	P	P	P	P				C			
Dwelling, two-family	1120				P	P	P				C			

The lack of quality housing is a major deterrent to growing the population of Independence. The Historic Downtown District located in the C-3, Central Business District Zone is the heart and soul of Independence. A mixed-use concept with an integral upper story housing component is vital to the future sustainability of the downtown.

*"Downtown housing appeals to different age groups, young, middle-aged, and seniors, as well as different income levels. The individuals renting or buying these upper story units appreciate the ambiance, arts and cultural opportunities, shopping venues, restaurants, and service businesses that exist in revitalized downtown districts."-- **Five Projects with Unique Challenges and Creative Solutions***

(https://www.iowaeda.com/UserDocs/Summary_UpperStoryHousingCaseStudies.pdf)

*"During a time when communities of all sizes are facing a workforce housing shortage, these spaces can provide high-quality, affordable options, meaning that fewer new subdivisions or expensive new roads or utilities need to be developed. And given the proximity to downtown pharmacies, groceries and parks, many empty-nesters and retirees are choosing to live downtown as well. These spaces are often perfect for single professionals who aren't ready or don't have the time to own or maintain a single-family home on a large lot." -- **Upper-floor***

housing on Main Street (<https://wedc.org/blog/upper-floor-housing-on-main-street/>)

One of the top three challenges to revitalizing upper story residential in a downtown area includes architectural and code compliance which consists of a "...complex mix of local, state and federal zoning, land use, ADA and building codes..." -- **Addressing the Top 3 Challenges to Revitalizing Upper Story Residential** (<https://www.vierbicher.com/addressing-the-top-3-challenges-to-revitalizing-upper-story-residential/>)

To encourage redevelopment of the downtown area, the City previously established a neighborhood revitalization zone that provides a rebate of increased property taxes after the improvements are made over a specified period of time. In addition, the Housing Authority has implemented a grant program to specifically encourage upper story housing. Most recently, on February 24, 2022 the City Commission adopted a resolution establishing Rural Housing Incentive Districts to encourage housing development within

the community. The Downtown Historic District was included as one of the Rural Housing Incentive Districts for the development of upper-story housing units. To further support these efforts, it is recommended that a text amendment be considered that would allow upper story housing in the C-3, Central Business District as a permitted use, which would not require a conditional use permit.

Kelly Passauer explained that the code for a C-3 central business district requires a conditional use permit for any type of downtown dwelling. The City and the Housing Authority are encouraging an upper housing initiative in the downtown area. The hearing would be to modify the language to allow upper story housing in the central business district as a permitted use.

Questions and concerns were brought up about boarding houses being permitted, other stories (such as the first floor and basement), being permitted, fire codes and parking. Boarding houses, while permitted, have other codes associated that have to be followed as well as fire codes being followed. Staff recommended all upper stories be permitted and reminded the board that there are no off-street parking requirements in a C-3 district.

Attachments:

Hearing Notice

Motion:

Kendall Neill moved to set the date of April 5, 2022 for a public hearing to consider initiating a text amendment to the zoning code relating to dwellings in the C-3, Central Business District. Rachel Lyon seconded.

Andy McLenan moved that we invite downtown building owners to the meeting through a letter. Kendall Neill seconded. Motion carried.

e. Other discussion.

There was no other discussion.

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

There were no items before the Board of Zoning Appeals.

Adjournment

Motion

Brent Littleton moved to adjourn, Tim Haynes seconded. Motion carried 9-0.

Kendall Neill, Chairperson

Rachel Lyon, Secretary



**REQUEST FOR PLANNING COMMISSION ACTION
TEXT AMENDMENT
CITY OF INDEPENDENCE
APRIL 5, 2022**

Department Admin

Prepared By Lydia Collins

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

SUMMARY RECOMMENDATION Recommend the City Commission adopt the text amendment to the zoning code.

BACKGROUND The lack of quality housing is a major deterrent to growing the population of Independence. The Historic Downtown District located in the C-3, Central Business District Zone is the heart and soul of Independence. A mixed-use concept with an integral upper story housing component is vital to the future sustainability of the downtown.

POLICY EXPLANATION Currently the permitted and conditional use table does not allow any type of dwelling in the C-3, Central Business District that is not already grandfathered in without a conditional use permit.

STAFF RECOMMENDATION City Staff recommends approving the text amendment.

SUGGESTED MOTION I move to recommend the City Commission adopt a text amendment adding "Upper Story Dwellings for Single-family and Multi-family" to the permitted and conditional use table as a permitted use in a C-3, Central Business District; and also add a definition of "Upper Story Dwelling" as applying to the 2nd-floor story and above, and not including the ground floor or basement.

SUPPORTING DOCUMENTS

1. 2022-ZA-03 Dwelling
2. C-3 Dwelling Policy Explanation

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, April 5, 2022, at 5:30 p.m.

To receive comments to consider initiating a text amendment to the zoning code relating to dwellings in a C-3 district.

Case Number:

2022/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:+1785-289-4727) Conference ID: 652 632 373# Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

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

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

Kelly Passauer, Zoning Administrator

1604.0. - Action by the planning commission.

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.

1605.0. - Action by the governing body.

1605.1. Adoption of amendments: When the planning commission submits a recommendation of approval or disapproval of such amendment, the governing body, if it approves such recommendation may either adopt such recommendation by ordinance or take no further action thereon, as appropriate. In the event the planning commission submits a "failure to recommend" to the governing body, the governing body may take such action as it deems appropriate. Upon receipt of a recommendation of the planning commission which the governing body disapproves, the governing body shall return such recommendation to the planning commission with a statement specifying the basis for disapproval and such recommendation shall be considered in like manner as that required for the original zoning recommendations returned to the planning commission. If such amendment shall affect the boundaries of any zone or district, the ordinance shall describe the boundaries as amended, or if the city has made provision for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment and shall amend the section of the ordinance incorporating the same and reincorporate such map as amended.

1605.2. Protest: Regardless of whether or not the planning commission approves or disapproves a proposed zoning amendment or "fails to recommend," if a protest against such amendment be filed in the office of the city clerk within 14 days after the date of the conclusion of the public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of 20 percent of the total area, excepting public streets

and ways, located within or without the corporate limits of the city and located within 200 feet of the boundaries of the property proposed to be rezoned the ordinance adopting such amendment shall not be passed except by at least three-fourths vote of all members of the governing body.



**REQUEST FOR PLANNING COMMISSION ACTION
CONDITIONAL USE PERMIT
CITY OF INDEPENDENCE
APRIL 5, 2022**

Department Admin

Prepared By Lydia Collins

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

SUMMARY RECOMMENDATION Approve the Conditional Use Permit

BACKGROUND This historic building has been a book/jewelry store, a drugstore/pharmacy and photography studio. It had offices on the second floor. Mr. Moreau wants to use the downstairs front area (20x33 sq ft) as a fine art gallery and design consultation firm; the downstairs rear area as a “living showroom” and residence for a gallery curator/director with the back area by the alley used as a gallery workshop. The upstairs (2nd floor) area of the property he wants to use as single-family residence for rental.

POLICY EXPLANATION *Conditional use:* A use that is permitted, but only by application to the building inspector as designated in each specific instance, and after a determination by the planning commission and city commission that all regulations and standards of this ordinance applying to the specific use in the particular location will be met, along with such additional conditions or safeguards as the city commission may prescribe in the specific case and circumstances, in order to prevent harm or injury to adjacent uses, the neighborhood, and/or in order to improve the public health.

ARTICLE IX. - PROCESSING PROCEDURES FOR CONDITIONAL USES

901.0. - Purpose and authority.

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

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

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

(Ord. No. 3863, § 1, 12-20-01)

902.0. - Processing procedure.

902.1. Application of conditional use permit: Application for conditional uses, as designated in appendix "A" of this ordinance shall be on forms obtained from the city clerk's office. The application shall be filed with the zoning administrator at least 30 days prior to the regular city planning and zoning commission meeting at which the proposed conditional use will be considered. As determined by the zoning administrator, the application shall include any or all of the following items deemed relevant by the zoning administrator, plus any other information or materials not listed below which the zoning administrator deems relevant:

- a. Statement of intended use of the property.
- b. Site plan, drawn at appropriate scale, showing existing and proposed building location, parking areas, interior drives, and location and type of outdoor lighting.
- c. Existing and proposed topography, drawn at appropriate contour intervals as specified by the zoning administrator.
- d. Location of, and proposed connections to, existing water supply and sanitary sewer systems.
- e. Description of architecture and exterior materials to be utilized.
- f. Names of the landowner, developer and firm preparing the plan.
- g. Legal description of the tract.
- h. North point, scale and date.

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

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

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

special provisions applying the miscellaneous conditional uses, specified in article X. A violation of a requirement, condition, or safeguard shall be considered a violation of this ordinance, and grounds for the zoning administrator to terminate and cancel such conditional use permit.

902.4. Time limit: The planning commission may recommend to the governing body a time limitation on the conditional uses specified in appendix "A" of this ordinance. Said conditional use permit shall be renewable at the discretion of the governing body.

902.5. Action by the governing body: Upon hearing and consideration of the proposed conditional use, the planning commission shall at the earliest date possible, submit its recommendation to the governing body for final action along with the reasoning for its recommendation plus all materials considered by it in reaching its recommendation. Within 30 days of receipt of the recommendation 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.

902.6. Remand: In lieu of making a final decision, the governing body may elect to remand the matter to the planning commission for further consideration. In doing so, the governing body shall provide its reason for remand to the planning commission. The planning commission shall then reconsider the application at its first available meeting and follow the procedures outlined in section 902.2. The planning commission shall adopt a recommendation which shall be again submitted to the governing body which shall follow the procedures outlined in section 902.5.

902.7. Final approval: The applicant's compliance with all terms and conditions of the conditional use permit shall be the responsibility of the zoning administrator. The zoning administrator shall communicate with the building inspector for the city regarding compliance prior to issuance of a building permit to the applicant.

(Ord. No. 3613, §§ 1, 2, 5-20-92; [Ord. No. 4378](#), § 1, 12-23-21)

511.0. - C-3, central business district.

511.1. Intent: District C-3 is intended primarily for major business services and retail business activity related to the core of the central business district serving the metropolitan trade area. Because this district is a major employment and shopping area within the community, relatively large building volumes and high residential density is permitted for transient and apartment accommodations. The high volume of pedestrian movement generated within this district will be facilitated as much as possible by the separation of pedestrian and vehicular traffic.

511.2. Permitted uses: The listing of permitted uses is set out in appendix "A" of these regulations.

511.3. Conditional uses: The listing of conditional uses is set out in appendix "A" of these regulations.

511.4. Intensity of use regulations:

a. *Minimum lot area:*

1. *Minimum lot area for each dwelling unit:*

(a) Low-rise apartments—2,000 SF/DU (walkup buildings with maximum height of 2½ stories).

(b) High-rise apartments—900 SF/DU (elevator buildings more than 2½ stories).

2. *Minimum lot area for other uses:* No limit.

b. *Maximum lot coverage:* 100 percent.

511.5. Height regulations:

a. *Maximum structure height:* No limit.

511.6. Yard regulations:

a. *Minimum front yard*: None.

b. *Minimum side yard*: None.

Exceptions: 25 feet or 50 percent of height (whichever is greater) where abutting a residential zone; 15 feet when abutting C-1 or O&P zone.

c. *Minimum rear yard*: None.

Exception: 25 feet where abutting a residential zone; ten feet where abutting C-1 and office and professional zone.

511.7. Parking and loading regulations: See article VII.

511.8. Use regulations:

a. All business establishments shall be retail or service establishments dealing directly with consumers.

b. No business establishment shall offer or sell food or beverages for consumption on the premises in parked motor vehicles.

c. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any residential property and so that no glare is visible to any traffic on any public street.

d. Marquees and awnings may project over public right-of-way as provided by these regulations.

Comprehensive Plan

In reviewing this conditional use request City staff believes that it is appropriate to consider the objectives and policies included in the comprehensive plan. Those objectives and policies are as follows:

General Development Goal -- To provide ample opportunity for continued community development within an orderly, efficient and environmentally safe planning framework.

♦ Objective G3-- Encourage site design and urban design practices which preserve or enhance the character of the community.

Housing Goal -- To provide decent and affordable housing for present and future populations of Independence while preserving and improving existing residential areas.

♦ Objective H2-- Encourage the development of a wide range of housing choices.

♦ Policy H23 -- Rehabilitation programs for housing in older areas, particularly in the central, north central, east central, west central and southwest neighborhoods shall be supported by City administrative assistance, as discussed in the short-range housing assistance program, and Federal or State financial assistance when possible, to increase the amount of standard housing available to low and moderate income families.

♦ Objective H3 -- Provide adequate amount of multiple-family housing in suitable locations.

♦ Policy H31 -- To avoid large amounts of traffic traversing single-family areas, medium to high density multiple-family projects should be located on a major street specifically designated as a collector or arterial. High density multiple-family projects shall be encouraged to be in the area immediately surround the CBD (Central Business District), but not limited to this area.

♦ Policy H34 -- All projects should be within one mile of convenience type shopping facilities, within one and one-half miles of a fire station, and, except projects for the elderly, within one mile of an elementary school.

♦ Policy H37 -- All medium to high density multiple-family developments shall be located within the City.

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

♦ Objective C1 -- Encourage the development of business downtown.

♦ Policy C15 -- The character of the downtown should be preserved by maintaining some degree of conformity of design and scale. Structures of local historic or architectural significance should be preserved, whenever practicable.

Art galleries are permitted in a C-3 zone.

		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	
Art galleries	7113	C						P	P	P	P	P			
Artists—painters, sculptors, composers and authors	6594	P						P	P	P	P	P			

ACTION BY THE PLANNING COMMISSION Consider approving the conditional use permit.

STAFF RECOMMENDATION This is an existing structure in the Downtown Historic District. The property owner wants to use 20 x 33 sq. ft. in the storefront to serve as retail as a fine art gallery and design consultation firm. He wants to use the first-floor rear area as a “living showroom” and residence for a gallery curator/director with the alley area, 20 x 27 sq. ft, used as a gallery workshop. The upstairs will be used as a single-family residence for rental.

In reviewing the policies included in the comprehensive plan and provisions of Section 901 of the zoning ordinance, the Planning Commission must consider whether the intended use of this tract will be compatible with other adjoining uses and code requirements.

In reviewing the building codes and life safety, the apartment/residence area will have to be at the rear of the building, not in the middle where Mr. Moreau is requesting, and the apartment must not exceed more than 25% of the total 1st floor square footage.

The store front of this structure must be retained for commercial purposes in order to maintain the character of the downtown as included in Policy C15 of the Comprehensive Plan. This would include a retail or service type business that must occupy 75% or more of the 1st floor space.

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

1. The conditional use permit shall be issued solely to the applicant and/or property owner and is not transferable to another location.
2. With this conditional use permit, the storefront shall strictly be used for retail or service establishments dealing directly with consumers defined for this conditional use permit as a fine art gallery and design consultation. 75% of the first floor store front will be used for the gallery and workshop with the remaining 25% to be used as residential at the rear of the building which must meet life safety and building code requirements.
3. The upper story apartment must meet life safety and building code requirements.
4. Any additional exterior lighting on site will need to be approved by City staff.

SUGGESTED MOTION

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

SUPPORTING DOCUMENTS

1. 103 N Penn Ave
2. 103 N Penn Application and Receipt
3. Public Hearing Notice CUP 01 103 N Penn Ave
4. 103 N Penn Policy Explanation



West Main Street (US 160)

Pennsylvania Avenue

North Pennsylvania Ave

APPLICATION FOR CONDITIONAL USE PERMIT
PLANNING AND ZONING COMMISSION

DATE FILED 01/31/2022
\$200 FEE PAID _____

NAME AND ADDRESS OF PERSON MAKING APPLICATION:

Robert Daniel Moreau, Jr.
4301 CR 3650

Independence, KS 67301

LEGAL DESCRIPTION OF LAND INVOLVED:

ORIG PLAT. S31. T32. R16. LOT 12 EX E 20.6' S 21.5' OF SAID LOT: Lot Width: 023.0 Lot Depth: 140.0 Plat Book/Page 1 /6&7
Deed Book/Page 682 /1353 462 /241 408 /247 408 /246 408 /245 408 /205 408 /204 350 /213

COMMON ADDRESS OF SAID LAND:

103 North Pennsylvania Ave. Independence, KS 67301

PRESENT ZONING CLASSIFICATION: C3

STATEMENT OF INTENDED USE OF PROPERTY:

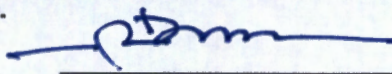
The downstairs front area (20x33 sq. feet) of property will be used as fine art gallery and design consultation firm. The downstairs rear area will be used as 'living showroom' and residence for gallery curator/director with the alley most area (20x27 sq. feet) used as gallery workshop. The upstairs area of property will be used as single-family residence for rental.

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.

01/31/2022

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

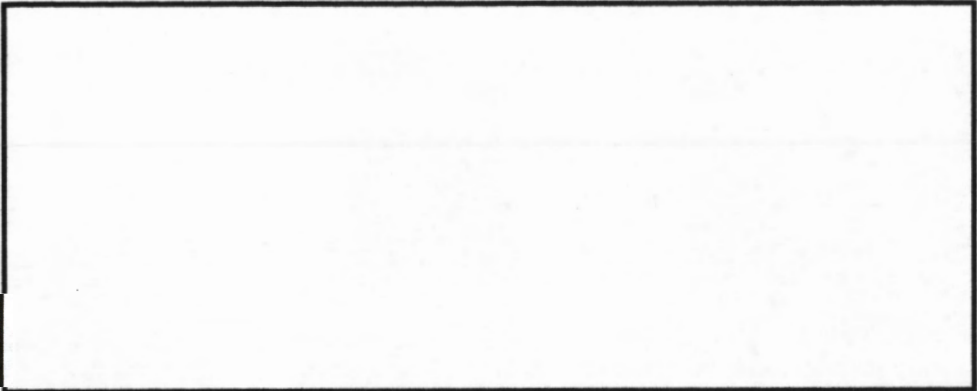
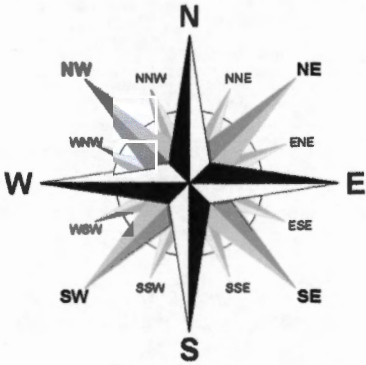
Secretary

CONDITIONAL USE PERMIT: Attachment 1

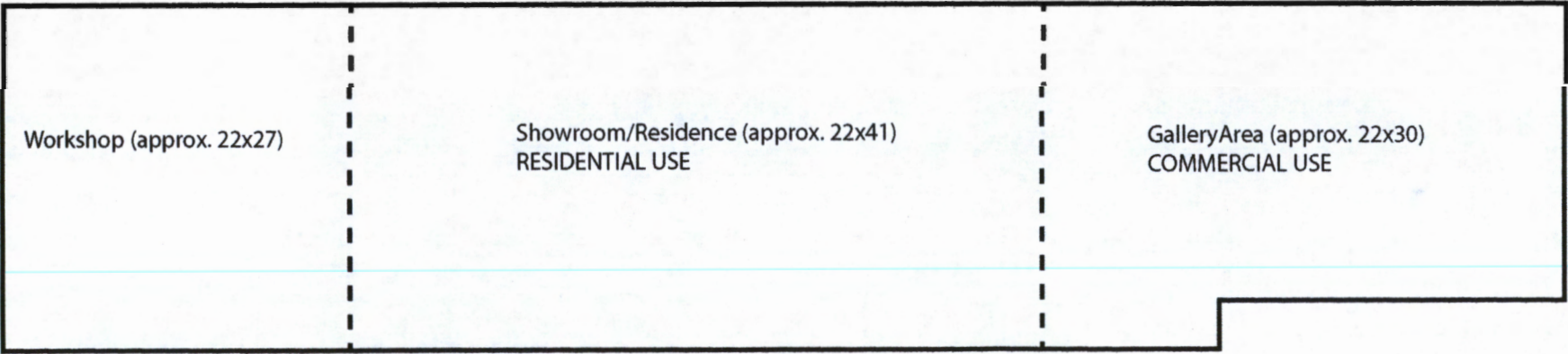
ROBERT DANIEL MOREAU, JR.

103 N. Penn Ave.

Independence, KS 67301

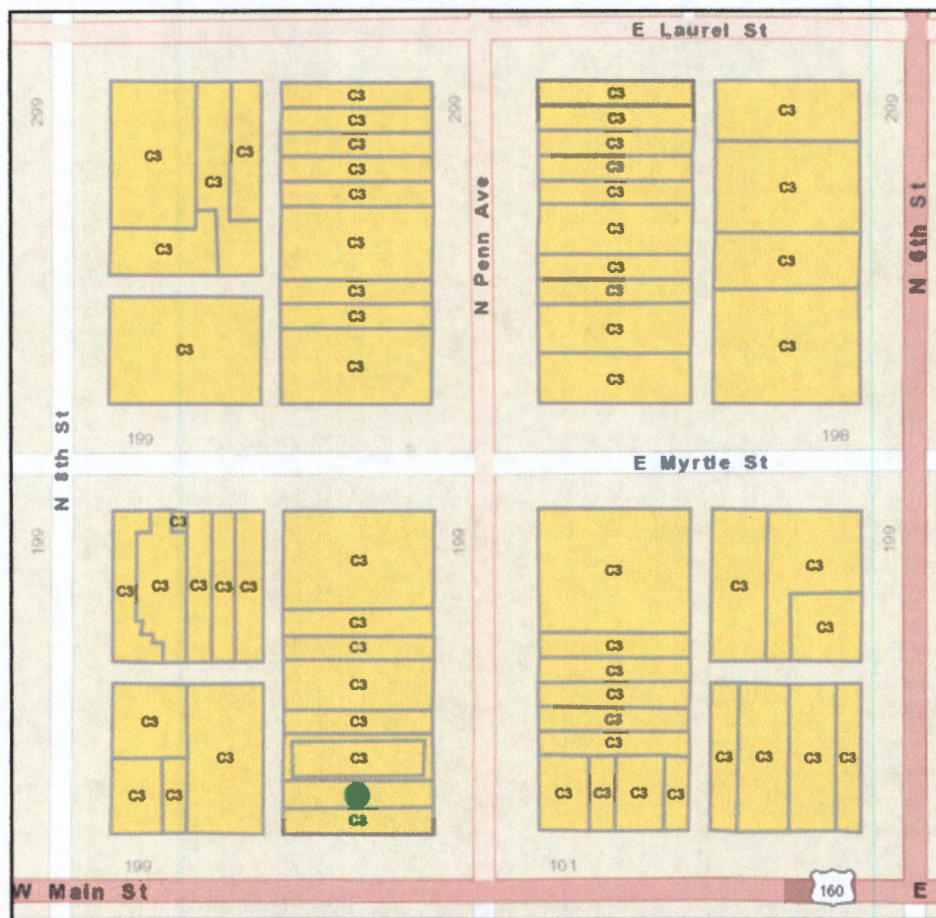


USPSTAIRS (approx. 22x50 sq. feet)
To be restored and used for single-family residential rental



DOWNSTAIRS (approx. 22x90 sq. feet)
To be used for commercial/residential as proposed in drawing

PENNSYLVANIA AVENUE



● INDICATES 103 NORTH PENNSYLVANIA AVENUE

CONDITIONAL USE PERMIT: Attachment 2

ROBERT DANIEL MOREAU, JR.

103 N. Penn Ave.

Independence, KS 67301

CITY OF INDEPENDENCE

REC#: 01171953 2/07/2022 11:56 AM
OPER: JESS TERM: 001
REF#:

TRAN: 1.9000 VARIANCE
103 N PENN
MISC FEES 200.00CR

TENDERED: 200.00 CASH
APPLIED: 200.00-

CHANGE: 0.00

City of Independence, Kansas

NOTICE TO THE PUBLIC

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

Tuesday, April 5, 2022, at 5:30 p.m.

To receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District.

Common Address:

103 N. Pennsylvania Avenue

Legal Description:

Lot 12 EX E 20.6' S 21.5" of Said Lot Orig Plat, to the City of Independence, Montgomery County, Kansas.

Applicant/Owners:

Robert Daniel Moreau, Jr.

Case Number:

2022/CUP/01

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

Conditional use: A use that is permitted, but only by application to the building inspector as designated in each specific instance, and after a determination by the planning commission and city commission that all regulations and standards of this ordinance applying to the specific use in the particular location will be met, along with such additional conditions or safeguards as the city commission may prescribe in the specific case and circumstances, in order to prevent harm or injury to adjacent uses, the neighborhood, and/or in order to improve the public health.

ARTICLE IX. - PROCESSING PROCEDURES FOR CONDITIONAL USES

901.0. - Purpose and authority.

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

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

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

(Ord. No. 3863, § 1, 12-20-01)

902.0. - Processing procedure.

902.1. Application of conditional use permit: Application for conditional uses, as designated in appendix "A" of this ordinance shall be on forms obtained from the city clerk's office. The application shall be filed with the zoning administrator at least 30 days prior to the regular city planning and zoning commission meeting at which the proposed conditional use will be considered. As determined by the zoning administrator, the application shall include any or all of the following items deemed relevant by the zoning

administrator, plus any other information or materials not listed below which the zoning administrator deems relevant:

- a. Statement of intended use of the property.
- b. Site plan, drawn at appropriate scale, showing existing and proposed building location, parking areas, interior drives, and location and type of outdoor lighting.
- c. Existing and proposed topography, drawn at appropriate contour intervals as specified by the zoning administrator.
- d. Location of, and proposed connections to, existing water supply and sanitary sewer systems.
- e. Description of architecture and exterior materials to be utilized.
- f. Names of the landowner, developer and firm preparing the plan.
- g. Legal description of the tract.
- h. North point, scale and date.

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

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

g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

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

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

902.4. Time limit: The planning commission may recommend to the governing body a time limitation on the conditional uses specified in appendix "A" of this ordinance. Said conditional use permit shall be renewable at the discretion of the governing body.

902.5. Action by the governing body: Upon hearing and consideration of the proposed conditional use, the planning commission shall at the earliest date possible, submit its recommendation to the governing body for final action along with the reasoning for its recommendation plus all materials considered by it in reaching its recommendation. Within 30 days of receipt of the recommendation 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.

902.6. Remand: In lieu of making a final decision, the governing body may elect to remand the matter to the planning commission for further consideration. In doing so, the governing body shall provide its reason for remand to the planning commission. The planning commission shall then reconsider the application at its first available meeting and follow the procedures outlined in section 902.2. The planning commission shall adopt a recommendation which shall be again submitted to the governing body which shall follow the procedures outlined in section 902.5.

902.7. Final approval: The applicant's compliance with all terms and conditions of the conditional use permit shall be the responsibility of the zoning administrator. The zoning administrator shall communicate with the building inspector for the city regarding compliance prior to issuance of a building permit to the applicant.

(Ord. No. 3613, §§ 1, 2, 5-20-92; [Ord. No. 4378](#), § 1, 12-23-21)

511.0. - C-3, central business district.

511.1. Intent: District C-3 is intended primarily for major business services and retail business activity related to the core of the central business district serving the metropolitan trade area. Because this district is a major employment and shopping area within the

community, relatively large building volumes and high residential density is permitted for transient and apartment accommodations. The high volume of pedestrian movement generated within this district will be facilitated as much as possible by the separation of pedestrian and vehicular traffic.

511.2. Permitted uses: The listing of permitted uses is set out in appendix "A" of these regulations.

511.3. Conditional uses: The listing of conditional uses is set out in appendix "A" of these regulations.

511.4. Intensity of use regulations:

a. *Minimum lot area:*

1. *Minimum lot area for each dwelling unit:*

(a) Low-rise apartments—2,000 SF/DU (walkup buildings with maximum height of 2½ stories).

(b) High-rise apartments—900 SF/DU (elevator buildings more than 2½ stories).

2. *Minimum lot area for other uses:* No limit.

b. *Maximum lot coverage:* 100 percent.

511.5. Height regulations:

a. *Maximum structure height:* No limit.

511.6. Yard regulations:

a. *Minimum front yard:* None.

b. *Minimum side yard:* None.

Exceptions: 25 feet or 50 percent of height (whichever is greater) where abutting a residential zone; 15 feet when abutting C-1 or O&P zone.

c. *Minimum rear yard:* None.

Exception: 25 feet where abutting a residential zone; ten feet where abutting C-1 and office and professional zone.

511.7. Parking and loading regulations: See article VII.

511.8. Use regulations:

a. All business establishments shall be retail or service establishments dealing directly with consumers.

b. No business establishment shall offer or sell food or beverages for consumption on the premises in parked motor vehicles.

c. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any residential property and so that no glare is visible to any traffic on any public street.

d. Marquees and awnings may project over public right-of-way as provided by these regulations.

Comprehensive Plan

In reviewing this conditional use request City staff believes that it is appropriate to consider the objectives and policies included in the comprehensive plan. Those objectives and policies are as follows:

- **General Development Goal** -- To provide ample opportunity for continued community development within an orderly, efficient and environmentally safe planning framework.
 - ◆ Objective G3-- Encourage site design and urban design practices which preserve or enhance the character of the community.

- **Housing Goal** -- To provide decent and affordable housing for present and future populations of Independence while preserving and improving existing residential areas.
 - ◆ Objective H2-- Encourage the development of a wide range of housing choices.
 - ◆ Policy H23 -- Rehabilitation programs for housing in older areas, particularly in the central, north central, east central, west central and southwest neighborhoods shall be supported by City administrative assistance, as discussed in the short-range housing assistance program, and Federal or State financial assistance when possible, to increase the amount of standard housing available to low and moderate income families.
 - ◆ Objective H3 -- Provide adequate amount of multiple-family housing in suitable locations.
 - ◆ Policy H31 -- To avoid large amounts of traffic traversing single-family areas, medium to high density multiple-family projects should be located on a major street specifically designated as a collector or arterial. High density multiple-family projects shall be encouraged to be in the area immediately surround the CBD (Central Business District), but not limited to this area.
 - ◆ Policy H34 -- All projects should be within one mile of convenience type shopping facilities, within one and one-half miles of a fire station, and, except projects for the elderly, within one mile of an elementary school.
 - ◆ Policy H37 -- All medium to high density multiple-family developments shall be located within the City.
- **Commercial Goal** -- To provide sufficient neighborhood and community wide shopping facilities efficiently distributed throughout the community and adequate opportunity for commercial expansion.
 - ◆ Objective C1 -- Encourage the development of business downtown.
 - ◆ Policy C15 -- The character of the downtown should be preserved by maintaining some degree of conformity of design and scale. Structures of local historic or architectural significance should be preserved, whenever practicable.

Art galleries are permitted in a C-3 zone.

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	M-2
Art galleries	7113	C						P	P	P	P	P		
Artists—painters, sculptors, composers and authors	6594	P						P	P	P	P	P		