



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**March 26, 2020**

**Department** Administration

**Director Approval** Kelly Passauer

**AGENDA ITEM** Consider a conditional use permit for a daycare at 609 Mulberry Street.

**SUMMARY RECOMMENDATION** The Planning Commission recommends approval.

**BACKGROUND** The Planning Commission held a public hearing on March 3, 2020 to consider a request for a conditional use permit for a daycare at 609 Mulberry Street. The Planning Commission recommended approval.

**BUDGET IMPACT** There is no anticipated budget impact.

**SUGGESTED MOTION** I move to authorize the Mayor to sign the attached resolution to grant a conditional use permit for a daycare at 609 Mulberry Street.

**SUPPORTING DOCUMENTS**

1. Staff report to Planning Commission
2. Resolution

## **Planning Commission**

### **b. Public hearing to consider a request for a conditional use permit for a daycare in an R-1, large lot single-family dwelling district at 609 Mulberry Street.**

#### ***Summary***

The Planning and Zoning Commission has received a request for a conditional use permit from Aubrey Carpenter for a daycare at 609 Mulberry Street.

City Zoning Code Section 403. 0 defines a day care facility as follows:

*Day care facility. Anyplace, home or institution which receives four or more children under the age of 18 years for any part of the 24- hour day for compensation; provided, however, this definition shall not include public and private schools organized, operated or approved under the laws of the state, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage, to the day care provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.*

Appendix "A" of the Zoning Ordinance allows a day care facility as a permitted use in the C- 1 and C- 2 districts. Day care facilities are allowed as a conditional use in the A- 1, R- 1, R-2, R-3, R-4, R- 5, O/ P and C- 3 zones. Day care facilities are not permitted in the M- 1 and M-2 zones.

#### ***Conditional Use Permit***

The zoning ordinance in section 901. 1 describes the purpose of a conditional use as:

*"..those types of uses which are considered by the City to be essentially, desirable, necessary or convenient to the community but which by their nature or in their operation have:*

- 1) a tendency to generate excessive traffic,*
- 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants,*
- 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or*
- 4) an extraordinary potential for accidents or danger to the public health or safety.*

*Such conditional uses cannot be allowed to locate as a `right' on any parcel of land within certain districts without consideration of existing conditions at the proposed 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***

Article X of the Zoning Ordinance addresses special provisions applying to miscellaneous conditional uses:

##### ***1001. 0. Purpose.***

*1001.1. Purpose: In granting a conditional use, the city may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be*

*necessary to reduce or minimize any potentially injurious effect of such conditional uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Any lessening or subverting of those limitations and requirements constitutes a variance and must be treated accordingly. The following additional conditions shall be a requirement for the approval of the following conditional uses.*

**1003. 0. Day care facilities for more than four children.**

*1003. 1. Special conditions: Day care facilities for more than four children shall meet the following provisions when authorized as a conditional use in any residential district:*

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

Section 610 and 1003 address the minimum provisions the Planning Commission should consider when authorizing a day-care facility in a residential district:

*610.0. Family day care homes.*

*610.1. Definition: A "family day care home" shall be defined as any facility for the care of four or more children, but no more than ten children, including the homeowner's or resident's children, on a professional basis, and subject to state licensing, which is operated out of the residence in which the owner resides.*

*610.2. [Home occupation license.] Each family day care home must obtain a home occupation license and comply with the restrictions, limitations and requirements contained in 605.0 except as modified herein:*

- a. Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.*
- b. Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the day care operation.*
- c. The primary resident of the dwelling must operate the facility, who need not be an owner of the dwelling.*
- d. Said facility shall be exempt from all off-street parking requirements included in 701.0*

- e. *Children at play on the exterior of the house shall not be considered visible evidence of the business as provided by section 605.1.*

610.3. *Special conditions*

- a. *No day care home may operate in an apartment or duplex*
- b. *Each applicant for a home occupation license under this section shall be licensed or registered by the State of Kansas prior to receiving such home occupation license.*
- c. *Any family day care home or facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*

In addition to the above special conditions required by the zoning code, 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.

City staff has reviewed the sites regarding the above special conditions and wishes to provide the following:

- a. *City, county and state standards: The applicant would be required to meet all City, county and state standards which includes receiving a State daycare license and a City occupation license.*
- b. *Loading zone: One off-street loading zone for every ten children is required by code. However, if the daycare facility is only licensed for nine children or less an off-street loading zone is not required.*
- c. *Operation: City staff is not aware of any issues in the operation of this day care that would adversely affect adjoining property owners.*
- d. *Screening required: Screening is only required for seven or more children, if this facility is licensed for six children or less then no screening is required.*

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 special conditions required for a day care facility within a specified period of time in addition to any other conditions the Planning Commission wishes to require. 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 applicant must meet all the "special conditions" set forth in Section 1003. 1 a, b, c, and d of the Zoning Code as follows:*
  - a. City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*
  - b. Loading zone: A "hard surfaced" loading zone capable of accommodating one car for every ten children shall be provided within one year in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*
  - c. Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*
  - d. Screening required: Any day care facility located to a building other than a residential dwelling or any residential dwelling used for a day care facility for*

*seven or more children shall provide a visual screen along all property lines abutting any residential use. The applicant will have one year to meet this requirement.*

2. The conditional use permit is not transferable to another property owner or to another location.
3. The applicant 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. The basis of staff's recommendation is that granting the conditional use permit is consistent with the criteria "a through g" of Section 902.2 of the zoning code.

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

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

Tuesday, March 3, 2020 at 5:30 p.m.

To receive comments on a request for a conditional use permit for a daycare in an R-1, large lot single-family dwelling district at 609 Mulberry Street.

**Legal Description:**

Beginning 35' west of the northeast corner of Lot 2, west 131.2', south 110', east 131.2', north 110' to the point of beginning; Block 3, Highland Park Addition to the City of Independence, Montgomery County, Kansas.

**Common Addresses:**

609 Mulberry Street

**Applicant/Owners:**

Aubrey Carpenter, Applicant

Ryan W. and Tammy D. Carpenter, Owners

**Case Number:**

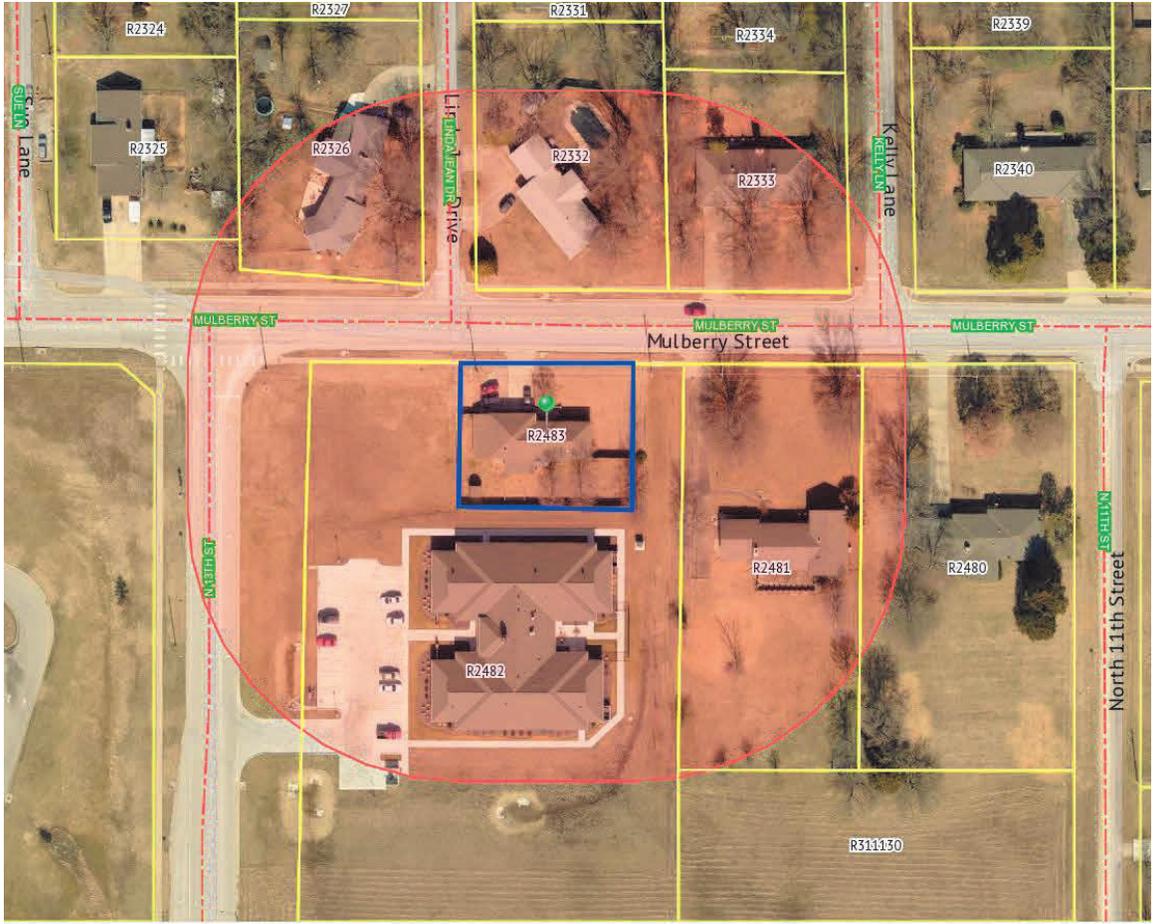
2020/CUP/03

The hearing will be conducted in the Veterans Room, 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. 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*



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**The Parcel Number for this Property is 063-086-24-0-40-02-004.00-0**  
**Quick Ref ID: 2483**

**Owner Information**

<b>Owner Name</b>	CARPENTER, RYAN W & TAMMY D
<b>Address</b>	609 MULBERRY ST INDEPENDENCE, KS 67301

**Property Situs Address**

<b>Address</b>	609 MULBERRY ST, Independence, KS 67301
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**Land Based Classification System**

<b>Function</b>	Single family residence (detached)
<b>Activity</b>	Household activities
<b>Ownership</b>	Private-fee simple
<b>Site</b>	Developed site - with buildings

**General Property Information**

<b>Prop Class</b>	Residential - R
<b>Living Units</b>	1
<b>Zoning</b>	
<b>Neighborhood</b>	108.A
<b>Tax Unit Group</b>	108

**Property Factors**

<b>Topography</b>	Level - 1
<b>Utilities</b>	All Public - 1
<b>Access</b>	Paved Road - 1
<b>Fronting</b>	Residential Street - 4
<b>Location</b>	Neighborhood or Spot - 6
<b>Parking Type</b>	On and Off Street - 3
<b>Parking Quantity</b>	Adequate - 2
<b>Parking Proximity</b>	On Site - 3
<b>Parking Covered</b>	
<b>Parking Uncovered</b>	

**2019 Appraised Value**

Class	Land	Building	Total
Residential - R	8,770	94,130	102,900
<b>Total</b>	<b>8,770</b>	<b>94,130</b>	<b>102,900</b>

**Tract Description**

HIGHLAND PARK ADD, S24, T32, R15, BEG 35' W NE COR LT 2 BLK 3 W 131.2' S 110' E 131.2' N 110' TO POB; LOT WIDTH: 131.2 LOT DEPTH: 110.0 Plat Book/Page 6 /25 Deed Book/Page 630 /437 621 /630 580/113 559 /140 550 /164 527 /288 522 /095 381 /140 359 /174

**Deed Information**

Book1	Page1	Book2	Page2	Book3	Page3	Book4	Page4
630	437	621	630	580	113		

**Market Land Information**

Method	Type	AC/SF	Eff FF	Depth	D-Fact	Inf1	Fact1	Inf2	Fact2	Ovrd	Class	Value Est
Sqft	Primary Site - 1	14410										8,770

**Dwelling Information**

Dwelling Information	
<b>Res Type</b>	Single-family Residence
<b>Quality</b>	AV
<b>Year Built</b>	1980
<b>Eff Year</b>	
<b>MS Style</b>	One Story
<b>LBCSStruct</b>	Detached SFR unit
<b>No. of Units</b>	
<b>Total Living Area</b>	
<b>Calculated Area</b>	1,520
<b>Main Floor Living Area</b>	1,520
<b>Upper Floor Living Area Pct.</b>	
<b>CDU</b>	AV
<b>Phys/Func/Econ</b>	AV/ /
<b>Ovr Pct Gd/RCN</b>	/164,280
<b>Remodel</b>	1986
<b>Percent Complete</b>	
<b>Assessment Class</b>	
<b>MU Cls/Pct</b>	

Comp Sales Information	
<b>Arch Style</b>	Ranch
<b>Bsmt Type</b>	Crawl - 2
<b>Total Rooms</b>	7
<b>Bedrooms</b>	3
<b>Family Rooms</b>	1
<b>Full Baths</b>	2
<b>Half Baths</b>	
<b>Garage Cap</b>	2
<b>Foundation</b>	Block - 3

Dwelling Components				
Code	Units	Pct	Quality	Year
Raised Slab Porch (SF) with Roof	6			
Wood Deck (SF) with Roof	200			
Veneer, Brick		25		
Attached Garage (SF)	1,032			
Garage Finish, Attached (SF)	1,032			
Paving, Flagstone (SF)	154		2	1980
Frame, Cement Fiber Siding		75		
Composition Shingle		100		
Raised Subfloor (% or SF)		100		
Warmed & Cooled Air		100		
Plumbing Fixtures (#)	8			
Plumbing Rough-ins (#)	1			
Single 1-Story Fireplace (#)	1			
Automatic Floor Cover Allowance				
Open Slab Porch (SF)	55		2	1980

Building Improvements																					
Id	Occupancy	MSCIs	Rank	Qty	Yr BIt	Eff Yr	LBCS	Area	Perim	Hgt	Dimensions	Stories	Phys	Func	Econ	OVR%	Rsn	Cls	RCN	%Gd	Value
68	Prefabricated Storage Shed	D	1.00	1	1985			64	32	6	8 X 8	1	2	3					1,070	20	210

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APPLICATION FOR CONDITIONAL USE PERMIT  
PLANNING AND ZONING COMMISSION

DATE FILED \_\_\_\_\_  
\$200 FEE PAID \_\_\_\_\_

NAME AND ADDRESS OF PERSON MAKING APPLICATION:

Aubrey Carpenter  
609 Mulberry

LEGAL DESCRIPTION OF LAND INVOLVED:

Residence

COMMON ADDRESS OF SAID LAND:

609 Mulberry

PRESENT ZONING CLASSIFICATION:

R-1

STATEMENT OF INTENDED USE OF PROPERTY:

Daycare

DESCRIPTION OF ARCHITECTURE & EXTERIOR MATERIAL TO BE USED:

N/A

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.

2.3.20  
Date

Aubrey Carpenter  
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

We, Ryan and Tammy Carpenter give  
permission to our daughter,  
Aubrey Carpenter, to have a  
daycare in our home.

3/3/2020

Tammy Carpenter  
Ryan W. Carpenter

CITY OF INDEPENDENCE

REC#: 01079679 2/03/2020 3:27 PM  
OPER: JESS TERM: 001  
REF#:

TRAN: 1.9000 VARIANCE  
AUBREY CARPENTER 609 MULBERRY  
CONDITIONAL USE PERMIT  
MISC FEES 200.00CR

TENDERED: 200.00 CASH  
APPLIED: 200.00-  
CHANGE:            0.00

# RESOLUTION NO. 2020 – \_\_\_\_\_

## **A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT TO OPERATE A DAYCARE AT 609 MULBERRY STREET.**

WHEREAS, at a public hearing conducted on July 11, 2017, the Independence Planning and Zoning Commission voted to approve a request for a conditional use permit to operate a daycare at 609 Mulberry Street.

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

The recommendation of the Independence Planning & Zoning Commission to issue a conditional use permit to operate a daycare at 609 Mulberry Street, is approved as hereinafter modified.

The property in question has the following legal description:

Beginning 35' west of the northeast corner of Lot 2, west 131.2', south 110', east 131.2', north 110' to the point of beginning; Block 3, Highland Park Addition to the City of Independence, Montgomery County, Kansas.

The applicant must meet the following requirements:

1. The applicant must continue to meet all the "special conditions" set forth in Section 1003.1 a, b, c and d of the Zoning Code as follows:
  - a. City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.
  - b. Loading zone: A "hard surfaced" loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide for easy pickup and discharge of passengers.
  - c. Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area.
  - d. Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use.

**RESOLUTION NO. 2020 – \_\_\_\_\_**

2. The conditional use permit is not transferable to another property owner or to another location.
3. The applicant 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.

Adopted and approved by the Governing Body of the City of Independence, Kansas, on this 26<sup>th</sup> day of March, 2020.

*(Attest)*

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Director of Finance / City Clerk