



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**October 22, 2020**

**Department** Administration

**Director Approval** Kelly Passauer

**AGENDA ITEM** Consider recommendation of the Planning Commission to adopt a resolution issuing a conditional use permit for a church with specific conditions at 3176 W. Main Street.

**SUMMARY RECOMMENDATION** Staff recommends adopting a resolution granting the conditional use permit as recommended by the Planning Commission with the addition of the special conditions required in Section 1002.1 in the Zoning Code relating to churches.

**BACKGROUND** The Planning Commission held a public hearing on October 6, 2020 to consider a request for a conditional use permit for a church at 3176 W. Main. After the public hearing, the Planning Commission recommended approval with specific conditions. Staff has prepared a resolution that includes the specific conditions recommended by the Planning Commission. In addition, staff has also incorporated the special conditions required in Section 1002.1 relating to churches.

**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 church at 3176 W. Main with specific conditions as recommended by the Planning Commission, and the special conditions required in Section 1002.1 of the Zoning Code relating to churches.

**SUPPORTING DOCUMENTS**

1. Staff report to Planning Commission
2. Resolution

- d. Public hearing to consider a conditional use permit for a church in a C-4, highway commercial services district at 3176 W. Main Street.

### ***Summary***

On March 3, 2020 the Planning Commission determined that a conditional use permit would be required for a church with potential seating for up to 250 at 3176 W. Main in a C-4 district per Section 901.1 of the City Code. The Planning Commission has received a request for a conditional use permit from Brian Norvell, the Pastor at the Hub of Indy Church which is being relocated to 3176 W. Main Street. The land is zoned as C-4, highway commercial district, and will remain as such. Pending the approval of this conditional use, the proposed use for this land is to remodel an existing building to accommodate a church.



### ***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***

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 Planning Commission should review and make recommendations based in part on 901.1

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

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

### ***Action by the Planning Commission***

Recommendations regarding the conditional use permit for the given subject properties shall be based on Section 902.2, previously outlined in this report. After consideration of all factors, the Planning Commission may either approve or deny the conditional use permit. 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 recommend granting the conditional use permit with the following conditions:

1. The applicant will submit a site plan meeting the off-street parking and loading regulations in Article VII of the Zoning Code, including, but not limited to:
  - a. A minimum of one parking space per 4 seats or 8' of bench length in the main auditorium, and
  - b. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress, and maximum safety for pedestrians and vehicular traffic on the site.
2. If the parking lot surfacing is expanded beyond its current size, the applicant will submit a drainage plan sealed by a licensed Kansas Engineer.
3. The conditional use permit is not transferable to another location.
4. 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.

Included for your reference are the following documents:

1. Public Hearing Notice
2. Notification areas
3. March 3, 2020 Planning Commission Minutes
4. Application

City of Independence, Kansas

## NOTICE TO THE PUBLIC

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

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

To receive comments on a request for a conditional use permit for a church in a C-4, highway commercial services district at 3176 W. Main Street.

### **Legal Description:**

A tract of land located in a portion of the SW/4 SW/4 SW/4, Section 26, Township 32 South, Range 15 East of the 6<sup>th</sup> P.M., Montgomery County, Kansas, being more particularly described as follows: Commencing at the SW/C of Section 26; thence N00°02'20"E along the West line of the SW/4 of Section 26 a distance of 40.98 feet to the North right-of-way line of U.S. Highway 160 & 75; thence following said right-of-way S89°08'32"E a distance of 130.02 feet to the Point of Beginning; thence continuing S89°08'32"E a distance of 99.01 feet; thence N00°18'39"E a distance of 30.23 feet; thence S89°13'20"E a distance of 74.79 feet along said North right-of-way lines; thence N00°04'54"W a distance of 590.16 feet to the North line of the SW/4 SW/4 SW/4 of Section 26; thence N89°08'27"W along the North line of said SW/4 SW/4 SW/4 a distance of 305.43 feet to the West line of said Section 26; thence S00°12'41"E along said West line a distance of 310.53 feet; thence S89°10'00"E a distance of 130.00 feet; thence S00°12'41"E a distance of 310.06 feet to the Point of Beginning, Containing 0.925 acres.

### **Common Addresses:**

3176 W. Main Street

### **Applicant/Owners:**

HMS Enterprises Inc, Owner

Brian Norvell, The Hub of Indy Church, Applicant

### **Case Number:**

2020/CUP/05

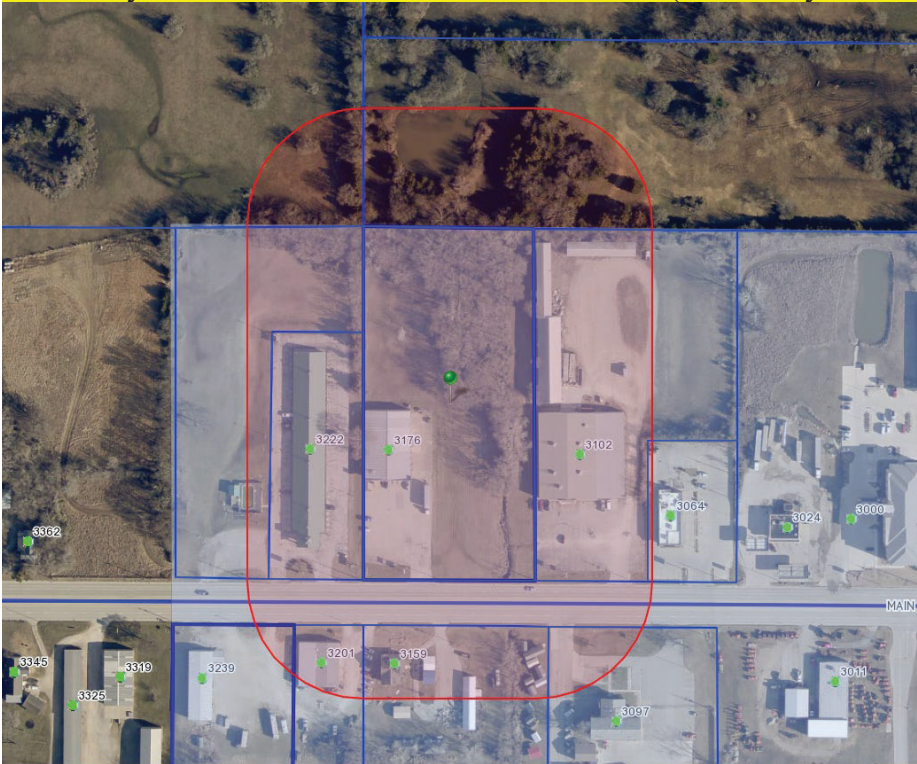
The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. To encourage social distancing, participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373# All interested persons should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

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

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

*Kelly Passauer, Zoning Administrator*

Inside City -- 200' Notification Area Shown in Red (Inside City Limits Shaded in Blue)



Outside City -- 1,000' Notification Area Shown in Red (Inside City Limits Shaded in Blue)



c. Annual review of the Comprehensive Plan.

The following staff report was provided:

By State statute the Planning Commission is required to review the Comprehensive Plan annually. In previous years the Planning Commission has recommended to the City Commission that the Comprehensive Plan be updated. Due to budget constraints funding has not been allocated for this purpose. The estimated cost to update the plan would be approximately \$100,000.

***Mary Jo Meier moved to direct staff to prepare a draft request in writing to be reviewed at their next meeting to ask the Commission to set aside \$50,000 for 2021, and \$50,000 for 2022, or consider funding a portion from the revised 2020 budget to update the Comprehensive Plan. The motion was carried 6-0. Member Kendall Neill was not yet in attendance during this vote.***

d. Consider whether to initiate a conditional use permit for a church at 3176 W. Main.

The following information was reviewed by City staff:

The potential applicant advised that seating would potentially be up to 250. The applicant would be required to follow the off-street parking regulations which require one space per 4 seats or 8' of bench length in the main auditorium.

Does the Planning and Zoning Commission find the request to have a church at this location for an occupancy of up to 250 individuals have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article?

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.

If so, the applicant would be required to obtain a conditional use permit.

***Lisa Richard moved to let the owner know that the Planning Commission will require a conditional use permit, seconded by Mary Jo Meier. The motion carried 6-0. Member Kendall Neill was not yet in attendance during this vote.***

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

- e. Consider status update for 2016/VAR/09 relating to a variance from the hard surface requirement in an O & P zoned district at 900 W. Myrtle.

APPLICATION FOR CONDITIONAL USE PERMIT  
PLANNING AND ZONING COMMISSION

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

NAME AND ADDRESS OF PERSON MAKING APPLICATION:

The Hub of Indy Church 3176 W Main  
Brian Norvell 1307 Birdie Dr.

LEGAL DESCRIPTION OF LAND INVOLVED:

See Attached Paper

COMMON ADDRESS OF SAID LAND:

3176 W Main

PRESENT ZONING CLASSIFICATION: Commercial & Industrial

STATEMENT OF INTENDED USE OF PROPERTY:

Church Services

DESCRIPTION OF ARCHITECTURE & EXTERIOR MATERIAL TO BE USED:

Existing Steel building

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.

8-18-2020

Date

Brian Norvell

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

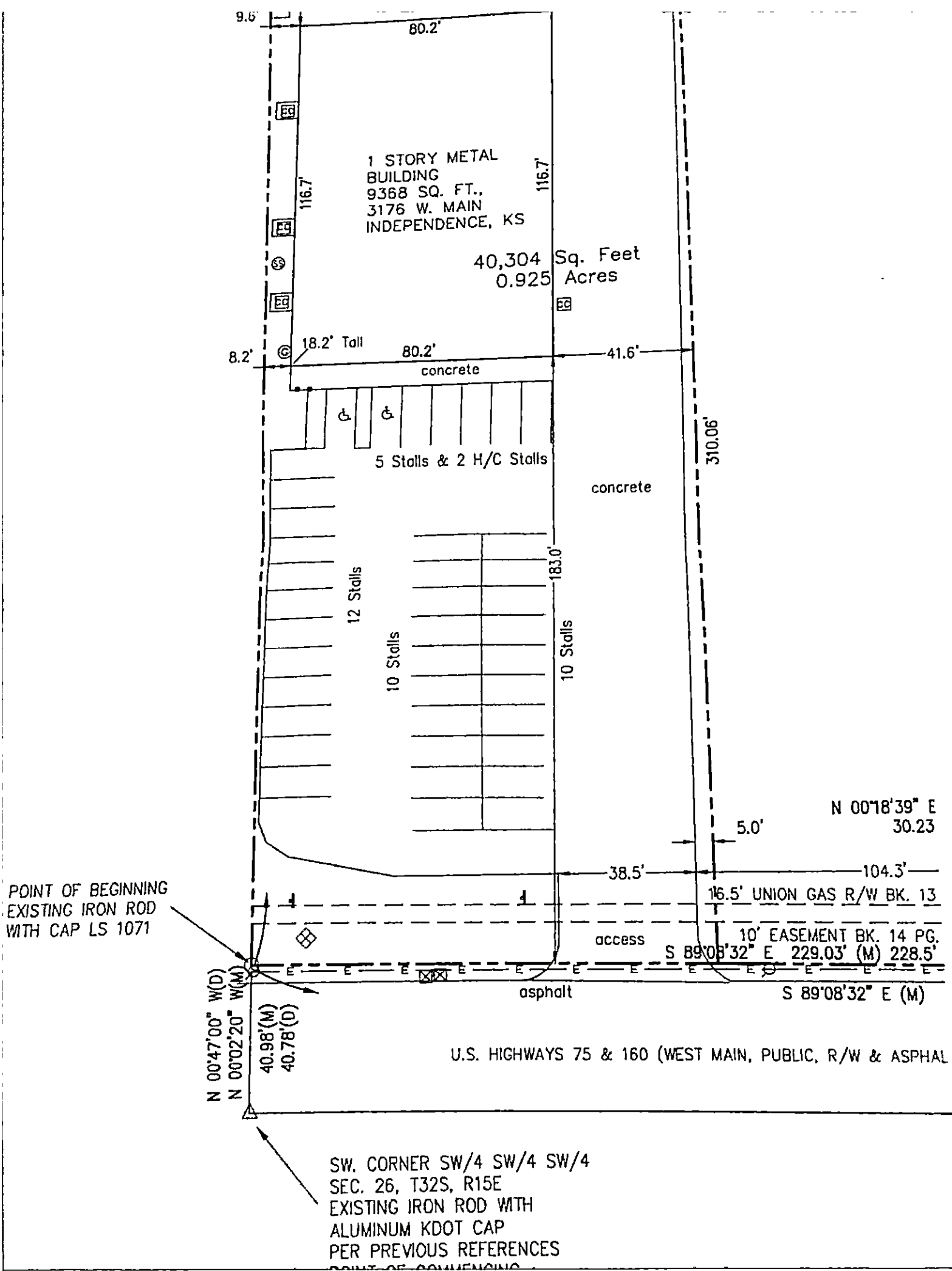


Exhibit "A"

A tract of land located in a portion of the SW/4 SW/4 SW/4, Section 26, Township 32 South, Range 15 East of the 6<sup>th</sup> P.M., Montgomery County, Kansas, being more particularly described as follows: Commencing at the SW/C of Section 26; thence N00°02'20"E along the West line of the SW/4 of Section 26 a distance of 40.98 feet to the North right-of-way line of U.S. Highway 160 & 75; thence following said right-of-way S89°08'32"E a distance of 130.02 feet to the Point of Beginning; thence continuing S89°08'32"E a distance of 99.01 feet; thence N00°18'39"E a distance of 30.23 feet; thence S89°13'20"E a distance of 74.79 feet along said North right-of-way lines; thence N00°04'54"W a distance of 590.16 feet to the North line of the SW/4 SW/4 SW/4 of Section 26; thence N89°08'27"W along the North line of said SW/4 SW/4 SW/4 a distance of 305.43 feet to the West line of said Section 26; thence S00°12'41"E along said West line a distance of 310.53 feet; thence S89°10'00"E a distance of 130.00 feet; thence S00°12'41"E a distance of 310.06 feet to the Point of Beginning, Containing 0.925 acres.

# **HIGHWAY PERMIT FOR HIGHWAY ACCESS**

Permittee:  
 Last Name: Norvell First Name: Brian  
 Address: 1307 Birdie DR.  
 City: Independence State: KS Zip Code: 67301  
 Phone No.: 620-926-0708 Ext.:      Fax No.:       
 Email Address: pastorbrianorvell@gmail.com  
 Notify By: ☒ Mail ☐ Email ☐ Fax

Contact:  
 Last Name: Norvell First Name: Brian MI:     

Address: 1307 Birdie DR.  
 City: Independence State: KS Zip Code: 67301  
 Phone No.: 620-926-0708 Ext.:      Fax No.:       
 Email Address:     

Business:  
 Name: PLMR LLC  
 Address: 3176 W. Main St.  
 City: Independence State: KS Zip Code: 67301  
 Phone No.: 918-671-9248 Ext.:     

Church:  
 Use: Fast Food, Restaurant, Service Station, Office, Shopping Center, etc.

Location Information:  
 County: MONTGOMERY-083 Route: U0007500 Ref Point: 21.8 Lat: 37.225716000 Long: 95.748671000 Section: 26 TWP: 32S Range: 15E City: INDEPENDENCE

☐ City Connecting Link  
 Public Road Intersection: ☐ Yes ☒ No Side of Highway: Left of Centerline Access Expiration Date:       
 Divided Highway: ☒ Yes ☐ No

Area Approval: Signed by Darin E. Petrowsky at 5/4/2020 1:12:30 PM on PC DTD10012  
 District Approval: Signed by Michael D. Bright at 5/14/2020 9:25:58 AM on PC DTD00023

Permit No: 04-20-000012A

D-A-S: 04 - 03 - 02

Project Number:     

## **Description of Work:**

☒ KDOT Acceptance of Restored ROW Days to Complete: 365  
☐ KDOT & City Acceptance of Restored ROW Construction Expiration Date: 05/14/2021  
☐ Check if no liability insurance required ☐ Dist. Plan

KDOT Authorized Representative: Marcus Leck [KDOT] (620) 577-7313

Access Type:  
Type 2: Special-use: Treatment plant, microwave station, utilities maint stations and  
dike roads.

☐ Shared Use Access  
☒ Variance Report Needed  
 Access Route Class: B  
 Frontage Rd Access: ☐ Yes ☒ No

11.4 It is further agreed that written notice will not be required for the Secretary's (or City's) normal maintenance including, but not limited to, cleaning ditches, repair/replace surfacing and drainage structures and sign installation or replacement. The Permittee agrees to hold the Secretary (or City) harmless for any temporary loss of use or inconvenience arising out of maintenance activities.

12.0 **SNOW REMOVAL ON FACILITY:** The Permittee is obligated to perform any and all snow and ice removal maintenance to the Facility. Permittee further understands and agrees the Secretary (or City) does not assume any responsibility for the removal or clearance of snow and/or ice, the opening of windows by authorized representatives engaged in normal winter maintenance operations. Permittee agrees to save and indemnify the Secretary (or City) against any and all claims related to maintenance of the Facility.

13.0 **ABANDONED OR RETIRED IN PLACE:** The Permittee agrees to notify the Secretary (or City) when the Facility has been abandoned, in whole or in part, or retired in place and to be responsible for all costs associated with removal and/or closure of said Facility. In the event Permittee receives notice from the Secretary (or City) to remove the abandoned and/or retired Facility, Permittee agrees to perform said work within 180 days of notice. Should Permittee fail to properly perform said work, the Secretary (or City) reserves the right to remove and/or close the Facility at Permittee's expense.

13.1 The Secretary (or City) reserves the right to require Permittee to place certain gates or other infrastructure, as set forth in the *KDOT Access Management Policy*, across the Facility the Secretary (or City) deems inactive. In no event shall the Permittee block or otherwise impede the Facility pursuant to this Permit without the express written authorization of the Secretary (or City).

It is understood and agreed by the Parties that this Permit only creates a license for Permittee to have the right and privilege to use the right-of-way for the specific purpose stated herein and subject to the terms of this Permit. It is further understood and agreed by the Parties that this Permit does not create, grant, convey, transfer, or vest, any property right or interest in the Secretary's real property to the Permittee; thus, the Secretary may terminate, modify, or revoke this Permit without notice and without duty, obligation, penalty, damages, or compensation owed to the Permittee by the Secretary unless otherwise stated herein.

This Permit is hereby accepted and its provisions agreed to by the parties hereto:

KDOT's Access Management Unit has reviewed the Permit and provided comments to the District Engineer regarding the conditions of the Permit.

☐ N/A ☒ Reviewed (Access Types 5 and 6, and all variances)

<b>PERMITTEE</b> The person signing as the Permittee must be the Owner or legal representative of the property (Agent of the Owner) served by the permitted access and have full authority to accept the Permit and its terms and conditions.	<b>APPROVED</b> The permit must be signed by the duly authorized representative of the Secretary of Transportation, the city (when applicable) and the Permittee. The permit is not valid until signed by all parties and returned to KDOT for Permit Approval Date.
Owner/Agent of the Owner Brian Norvell	The City of (when applicable) <b>INDEPENDENCE</b>
Street Address 1307 Birdie DR.	City Representative
City, State, Zip Independence KS 67301	<input type="checkbox"/> Mayor <input type="checkbox"/> City Manager <input type="checkbox"/> City Engineer
Permittee By: <u>Brian Norvell</u> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Agent of the Owner	Recommended by (KDOT) Signed by Darrin E. Petrowsky at 5/4/2020 1:12:30 PM on PC DTD10012 Area/Metro Engineer <input type="checkbox"/> AM Engineer
	Secretary of Transportation of the State of Kansas <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied By: Signed by Michael D. Bright at 5/14/2020 9:25:58 AM on PC DTD00023 District Engineer or Designee
	For KDOT Use Only Permit Approval Date: _____ By: _____ KDOT Representative (Please Print)

# CITY OF INDEPENDENCE

REC#: 01102857      8/19/2020      8:27 AM  
OPER: JESS    TERM: 001  
REF#:

TRAN:    1.9000    VARIANCE  
         THE HUB 3176 W MAIN  
         CONDITIONAL USE PERMIT  
         MISC FEES                            200.00CR

TENDERED:            200.00    CHECK  
APPLIED:            200.00-

CHANGE:                                  
                                 0.00

# RESOLUTION NO. 2020 – \_\_\_\_\_

## **A RESOLUTION AUTHORIZING A CONDITIONAL USE PERMIT TO OPERATE A CHURCH AT 3176 W. MAIN STREET.**

WHEREAS, at a public hearing conducted on October 6, 2020, the Independence Planning and Zoning Commission voted to approve a request for a conditional use permit to operate a church at 3176 W. Main 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 church at 3176 W. Main Street, is approved as hereinafter modified.

The property in question has the following legal description:

A tract of land located in a portion of the SW/4 SW/4 SW/4, Section 26, Township 32 South, Range 15 East of the 6th P.M., Montgomery County, Kansas, being more particularly described as follows: Commencing at the SW/C of Section 26; thence N00°02'20"E along the West line of the SW/4 of Section 26 a distance of 40.98 feet to the North right-of-way line of U.S. Highway 160 & 75; thence following said right-of-way S89°08'32"E a distance of 130.02 feet to the Point of Beginning; thence continuing S89°08'32"E a distance of 99.01 feet; thence N00°18'39"E a distance of 30.23 feet; thence S89°13'20"E a distance of 74.79 feet along said North right-of-way lines; thence N00°04'54"W a distance of 590.16 feet to the North line of the SW/4 SW/4 SW/4 of Section 26; thence N89°08'27"W along the North line of said SW/4 SW/4 SW/4 a distance of 305.43 feet to the West line of said Section 26; thence S00°12'41"E along said West line a distance of 310.53 feet; thence S89°10'00"E a distance of 130.00 feet; thence S00°12'41"E a distance of 310.06 feet to the Point of Beginning, Containing 0.925 acres.

The applicant must meet the following requirements:

1. The applicant must meet and continue to meet all the "special conditions" set forth in Section 1002.1 a and b of the Zoning Code as follows:
  - a. Entrances: Churches designed to accommodate a total seating of 150 persons or more in the main assembly room (including auxiliary rooms which adjoin and open into the main assembly room and would increase to [the] total seating capacity thereof) shall provide main entrances on thoroughfares or collector streets only with ingress and egress so designed as to minimize traffic congestion.

## RESOLUTION NO. 2020 – \_\_\_\_\_

- b. Bus parking: Any parking area used for the overnight parking of buses and vehicles used for the transportation of church members shall not be less than 100 feet from a residential building.
- 2. The applicant will submit a site plan meeting the off-street parking and loading regulations in Article VII of the Zoning Code, including, but not limited to:
  - a. A minimum of one parking space per 4 seats or 8' of bench length in the main auditorium, and
  - b. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress, and maximum safety for pedestrians and vehicular traffic on the site.
- 3. If the parking lot surfacing is expanded beyond its current size, the applicant will submit a drainage plan sealed by a licensed Kansas Engineer.
- 4. The conditional use permit is not transferable to another location.
- 5. The applicant must follow all City codes.

Adopted and approved by the Governing Body of the City of Independence, Kansas, on this 22<sup>nd</sup> day of October, 2020.

*(Attest)*

\_\_\_\_\_  
Leonhard Caflisch, Mayor

\_\_\_\_\_  
David Schwenker, City Clerk