



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 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 regulations. In determining whether the conditional use 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 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.

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

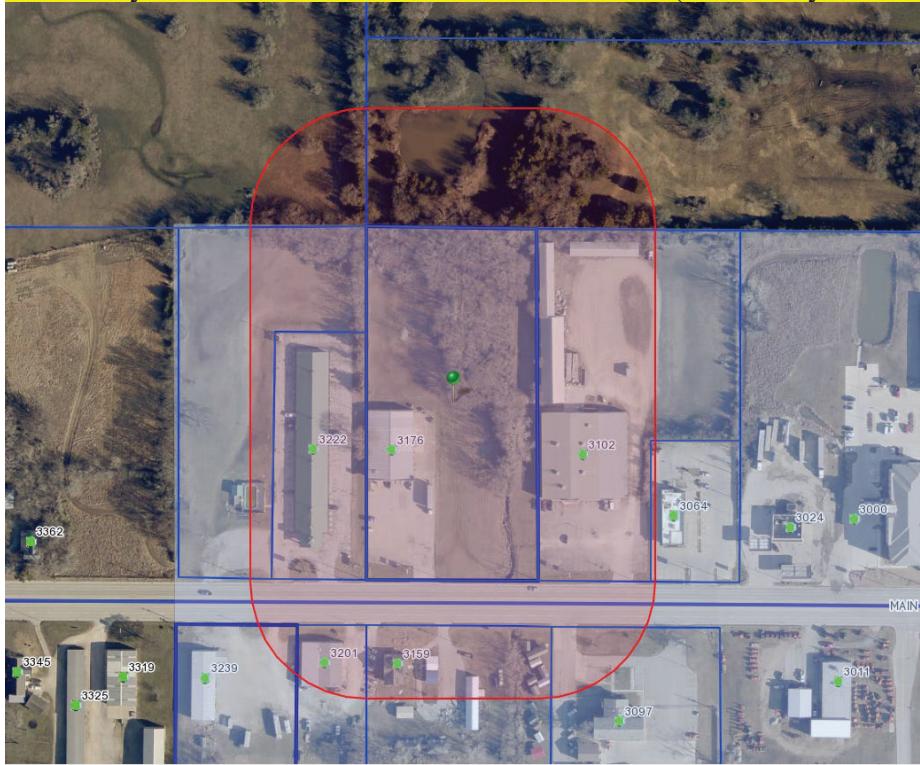
The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. To encourage social distancing, participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373# All interested persons should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

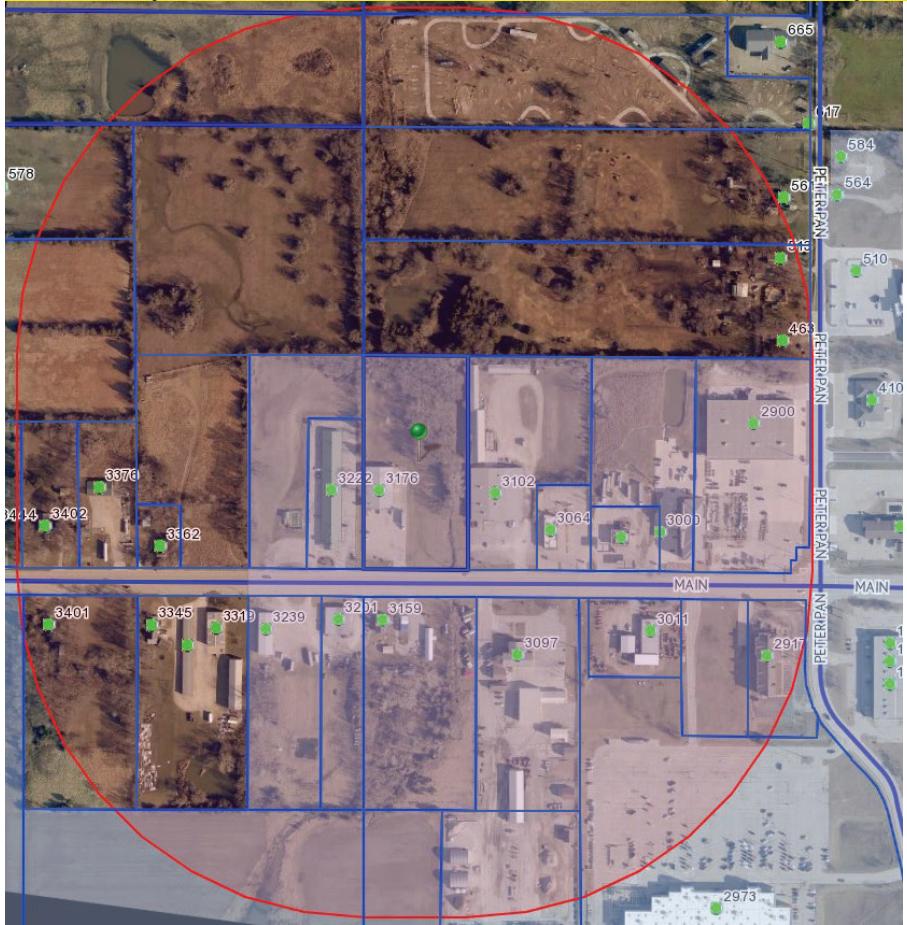
Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

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 Norrell 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

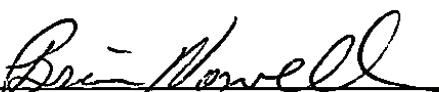
DESCRIPTION OF ARCHITECTURE & EXTERIOR MATERIAL TO BE USED:

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



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

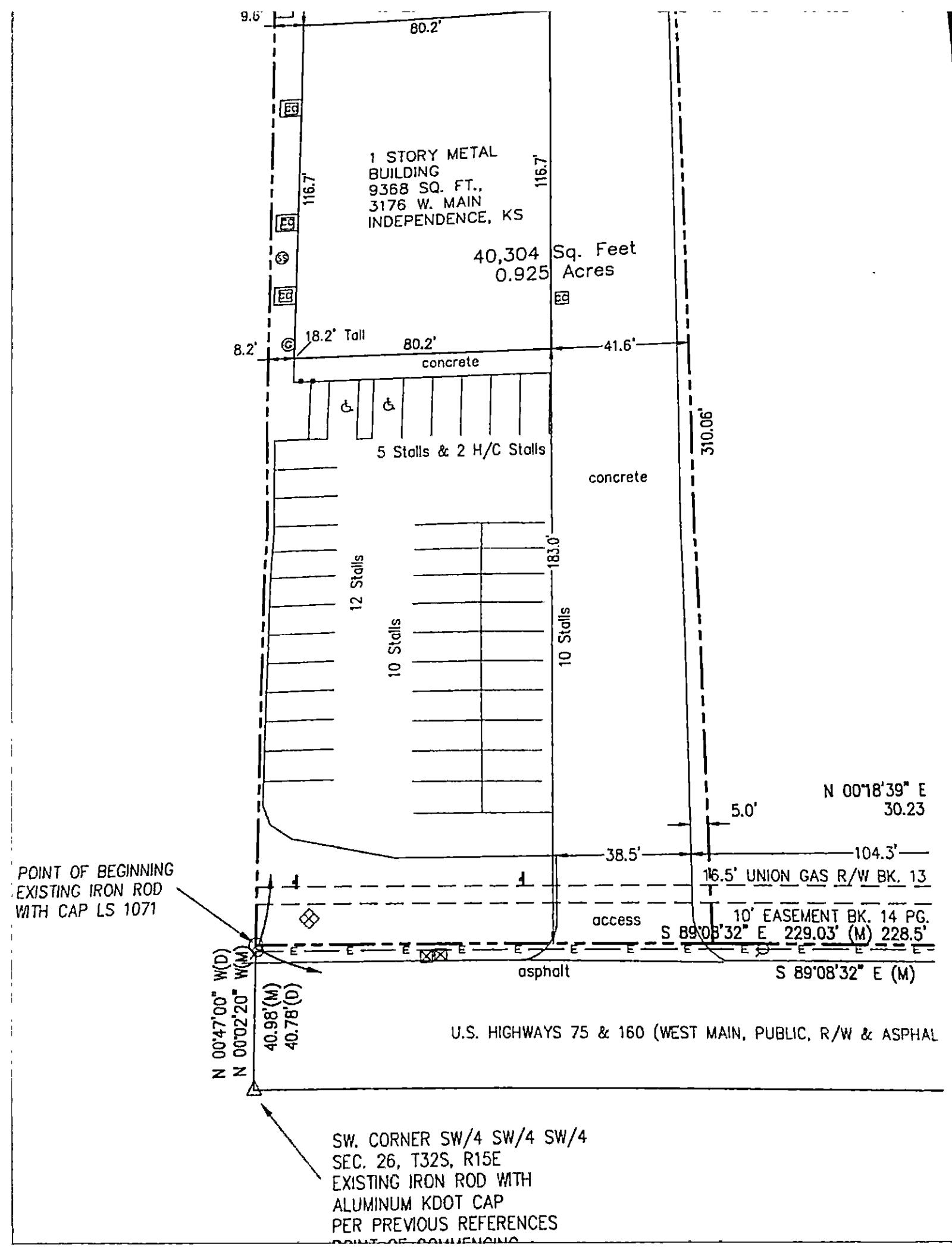


Exhibit "A"

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 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.

HIGHWAY PERMIT FOR HIGHWAY ACCESS

Permittee:		Norvell		Brian	
Last Name		First Name			
1307 Birdie DR.					
Address		Independence		KS	67301
City		620-928-0708		State	Zip Code
Phone No.		Ext.	Fax No.		
Email Address:		pastorbrian@norvell@gmail.com			
Notify By:		<input checked="" type="checkbox"/> Mail	<input type="checkbox"/> Email	<input type="checkbox"/> Fax	
Contact:		Norvell		Brian	
Last Name		First Name		MI	
1307 Birdie DR.					
Address		Independence		KS	67301
City		620-928-0708		State	Zip Code
Phone No.		Ext.	Fax No.		
Email Address:					
Business:		PLMR LLC			
Name		3176 W. Main St.			
Address					
Independence		KS	67301		
City		918-671-9248		State	Zip Code
Phone No.		Ext.			
Church					
Use: Fast Food, Restaurant, Service Station, Office, Shopping Center, etc.					

Location Information:

MONTGOMERY-063	U0007500	21.8	37.225716000	-95.748671000	26	32S	155	INDEPENDENCE
County	Route	Ref Point	Lat	Long	Section	TWP	Range	City
<input type="checkbox"/> City Connecting Link				1.010	Miles	east		US160W/ct
Public Road Intersection		<input type="radio"/> Yes <input checked="" type="radio"/> No	Side of Highway		Number of	Direction from	Cross Street	
Divided Highway		<input type="radio"/> Yes <input checked="" type="radio"/> No	Left of Centerline		Access Expiration Date			

Area Approval:

Signed by: Darin E. Petrovsky at 5/4/2020 1:12:30 PM on PC
DTD10012

Reviewed
by AMU:

Signed by: David D. Seitz at 5/11/2020 5:33:30 PM on PC
DT12W07BMS

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:

This is for a change of use only.

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, utility main stations and
bike 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 windrows 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)

PERMITTEE		APPROVED
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.		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) INDEPENDENCE
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>		Recommended by (KDOT) Signed by Damin E Petrowsky at 5/4/2020 1:12:30 PM on PC DTD10012
<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Agent of the Owner		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

IPER: 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 22nd day of October, 2020.

(Attest)

Leonhard Caflisch, Mayor

David Schwenker, City Clerk