

MINUTES

**Independence Planning Commission
Independence Board of Zoning Appeals
Tuesday, November 3, 2020
Veterans Room Memorial Hall 5:30 p.m.**

Call to Order

The Planning Commission meeting was called to order by Mary Jo Meier.

Planning Commissioners Present

Michelle Anderson (in person), Brent Littleton (in person), Mary Jo Meier (in person), Lisa Richard (in person), Kendall Neill (via phone), Barb Emert (via phone) and Anthony Royse (in person).

Planning Commissioners Absent

Andy McLenon

Rachel Lyon

Staff Present

Kelly Passauer, City Manager (via phone); David Cowan, Assistant City Manager (in person); Jeff Chubb, City Attorney (in person), Lydia Collins, and Administrative Aide (in person).

Visitors

Chad Dunham – Indy Fitness

Miranda Bruening – HBK Architecture and Interiors

Minutes

Consider approving minutes of the October 6, 2020 meeting.

Tony Royse made a motion to approve the minutes of the October 6, 2020 meeting, Michelle Anderson seconded the motion. The motion carried 8-0.

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

- b. Public hearing to receive comments on a variance request to exceed the number of signs allowed in a C-4 zone at 2801 W. Main Street.**

Overview of Variance Requested

The Board of Zoning Appeals has received an application from Indy Fitness represented by Chad Dunham to grant a variance from the sign regulations provided for in the zoning

ordinance. Their request is to increase the number of signs allowed in a C-4 zone at 2801 W. Main.

Section 802.5 subsection “a” provides for the following:

802.5. District C-2, general business district and District C-4, highway commercial district:

a. Wall and marquee sign: Each business or commercial establishment shall be permitted not more than three illuminated or non-illuminated wall or marquee signs, not more than one on a facade, the total area of which sign shall not exceed 20 percent of the total area of the facade upon which it is placed. Such signs shall not extend above the average roof level of a one-story building more than five feet and shall not extend above the average level of a two or more story building. Any signs painted directly upon wall surfaces shall not exceed 20 square feet in area.

Review of Request

The applicant is requesting to install a 4' X 8' signs on the side façade of the building which also contains several other tenants. Previously, the Board of Zoning Appeals has granted variances to exceed the number of signs at this location for other businesses, since there are multiple tenants as the code currently only allows up to a maximum of three wall signs, with a maximum of one per façade. There is currently an existing sign that was previously approved on the side façade for Newton's that directs their contractors to their “Contractor's Entrance” which is 15” X 182”.

Board of Zoning Appeals Considerations

In considering the providing of a variance we wish to provide the following information:

- a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner or the applicant; This business is being located in a former big box store that has been repurposed and broken up into sections. It only has a west façade on one side and it abuts another business that utilizes the west and north facades.*
- b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; It is not believed that this additional signage will create any adverse effects to adjacent property owners.*
- c. That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; This signage will provide information to the public regarding services provided by the business.*
- d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; It does not appear that the variance will affect public health, safety or general welfare.*

- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* According to section 801.2 of the zoning code, the intent and purpose of the sign code is:
"Regulation of the location, size, placement, and certain features of signs is necessary to enable the public to locate goods, services, and facilities in the City of Independence without difficulty and confusion, to encourage the general attractiveness of the community, and to protect property values therein." Since the purpose of this sign is to help the public locate goods, services and facilities within the City of Independence, City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance for a 4' X 8' sign on the side (west) façade totaling a maximum of 32 sq. ft., in addition to the previously approved 19 sq. ft. sign on this façade previously approved for Newton's. The total square footage of both signs is 51 sq. ft. or approximately 1.1% of the side (west) façade (20' X 230' = 4,600 sq. ft.). Staff's recommendation is due to the following factors:

1. The total square footage of all signs on the side (west) façade will equal far less than the total 20% of the façade that is allowed for a single wall sign.
2. The signage will assist the public in finding goods and services which meets the spirit and intent of the sign regulations.
3. Similar type signage has been allowed in the C-4 zone in the past; i.e. Newton's, Wal-Mart.

Tony Royse made a motion to approve the variance for a 4' X 8' sign on the side (west) façade totaling a maximum of 32 sq. ft., in addition to the previously approved 19 sq. ft. sign on this façade previously approved for Newton's. Lisa Richard seconded. The motion carried 8-0.

Planning Commission

- c. **Public hearing to receive comments on a request to rezone a tract of land from C-4, Highway Commercial District to C-2, Commercial Services District at 2022 West Main Street.**

Summary:

The Planning and Zoning Commission received a request from HBK Architecture and Interiors on behalf of Quality Motors to rezone a tract of land from C-4, Highway Commercial District to C-2, Commercial Services District at 2022 W. Main Street.

The legal description is: Lots 53-58, Block 5; and Lots 64-68, Block 6; Crestview Addition to the City of Independence, Montgomery County, Kansas.

Description of the Tract:

The area requested to be rezoned consists of two tracts totaling approximately 1.5 acres:

- 40,933.5 square foot tract (.94 of an acre).
- 24,591.7 square foot tract (.56 of an acre)

The lots lie in the western portion of the City and contain an auto dealership and auto service center.

Zoning and Uses of Property Nearby:

The property directly north and east is zoned C-2, Commercial Services District and is utilized primarily for commercial purposes with some residential development to the north. The property to the west and south is zoned C-4, Highway Commercial District and is utilized for commercial purposes.

Character of the Neighborhood:

This area is in the West Main Street retail corridor and is devoted almost exclusively to commercial activities, with some residential development to the north.

Suitability of the Subject Property for the Uses to which it has been Restricted:

The property under consideration is currently zoned C-4, Highway Commercial District which has a minimum 5,000 sq. ft. tenant space. The property is suitable for the present commercial use classification.

Length of Time the Property has Remained vacant as Zoned:

The property is not vacant as it contains an auto dealership which includes repair services.

Extent to which Removal of Restrictions will Detrimentally affect Nearby Property:

No foreseen negative impacts should occur on adjoining commercially zoned properties.

Relative Gain to the Public Health, Safety and Welfare by the Destruction of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners:

The property is presently zoned for commercial use; therefore, it is not likely that the value of the petitioner's property will be reduced. It is also anticipated that permitting the rezoning as requested would have minimal impact on the public health, safety and welfare. Denial of the proposed rezoning will impact the proposed owner's use of the property as they would like to enhance their facilities without restrictions included in the C-4 zone, such as landscaping.

Conformance with the Comprehensive Plan:

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 C11 – The Central Business District (CBD) shall be the primary regional retail center in the City.

Policy C12 – The enhancement of the CBD to attract both shoppers and

prospective businesses through development and redevelopment efforts of the private and public sectors shall be encouraged.

Objective C2 – Provide areas away from downtown for clustered and coordinated commercial development to serve businesses with acreage requirements that cannot be accommodated in downtown.

Policy C21 – Planned commercial areas shall be provided for large lot users (i.e., lumber yards, auto and farm implement dealers). These uses shall be clustered along U.S. 75 west of the Missouri-Pacific right-of-way but no further than 1/2 mile west of Peter Pan Road to minimize their impact on surrounding uses and traffic patterns rather than being allowed to form a long commercial strip and be limited to properties having direct vehicular access to the highway.

Objective C3 – Provide neighborhood convenience shopping adjacent to residential areas but discourage “spot commercial” zoning.

Objective C4 – Limit strip commercial development along the major streets to business directly serving the motoring public.

Policy C41 -- Strip commercial development, single commercial uses stringing out along a street, shall be limited to those uses directly serving the motoring public such as motels, service stations and fast-food restaurants.

Policy C42 -- Strip commercial development shall be limited to major highway entrances to the City and shall be permitted only limited access to Major streets via frontage roads. Generally, commercial use shall be confined to the west side of Pennsylvania between Oak and Mulberry, west on U. S. 75 as far as 1/2 mile west of Peter Pan Road.

Policy C43 -- The Zoning Ordinance should be updated to limit the types of businesses located on the highways outside of the Central Business District.

The uses in the C-4 district are the same as those allowed in a C-2 district. The City's Comprehensive Plan indicates that the area encompassing the present C-4 district should be developed for large lot commercial uses while the downtown should be preserved as the retail center for Independence (page 56, paragraph "a" of the 1982 Comprehensive Plan):

“A city the size of Independence can support only one major retail center. Therefore, the expansion of commercial land uses in the community must be very carefully controlled. If the Central Business District is to remain a viable retail area, it should not be undermined by other commercial centers in the City. Specifically, the commercial development along the highway to the west is particularly dangerous to the downtown. If general retail uses are allowed to expand in that area, major downtown stores may be forced to move to remain competitive; thus destroying the viability of the CBD. Similarly, retail uses which are normally found downtown should

not be allowed to locate in strip commercial centers along arterial streets. These areas should contain only highway service uses such as service stations and drive-in restaurants, convenience uses such as grocery stores and dry cleaners, and large lot uses such as lumber yards. The primary tools to achieve this control are the comprehensive plan and the zoning ordinance. Before it can become a workable tool, however, the commercial sections of the zoning ordinance will need to be more narrowly defined making permitted uses more mutually exclusive."

The Comprehensive Plan indicates that in order to maintain a strong central business district, strip commercial development has the long-term effect of weakening the downtown commercial area. The Comprehensive Plan recognizes the fact that all businesses will not be accommodated by the central business district and indicates that "big box" retail development should be developed on West Main Street (Highway 75/160).

The Planning and Zoning Commission and the City Commission recognized this planning concept in 2000 when they recommended and adopted the C-4 zoning classification which established a minimum tenant space requirement in addition to other requirements in this new zone, such as landscaping. In 2007 the City Commission adopted an ordinance that reduced the original minimum square foot tenant space requirement from 7,000 to 5,000.

Staff Recommendation

Rezoning this lot to C-2 would fit the character of the neighborhood as properties on the north and east are already zoned C-2. The parcels being requested for rezoning are where the original C-4 zone ended, with the majority of the C-4 district being located west of the SKO/Watco railroad tracks.

The intended continued use of the property by the applicant for a car dealership and service repair center does match the intent of the C-2 district. It would also allow for all the property utilized by Quality Motors to be zoned the same, as some of their property is already zoned C-2.

However, if the Planning Commission is concerned about any future detrimental effects to the downtown by approving this rezoning, they may wish to add a restriction to the rezoning to limit future development of retail tenant spaces on these lots that are less than 5,000 minimum square feet, with an exception for uses consistent with an auto dealership and auto service center.

Another alternative is to deny the rezoning and advise the applicant to apply for a variance to the requirements in the C-4 zone that initiated this rezoning request; i.e. landscaping. This would be consistent with the original purpose for establishing the C-4 district which was to protect the downtown from the repercussions of retail sprawl occurring on West Main. However, this would also further delay the planned improvements for this property.

It should be noted that the C-4 district was originally located around Walmart and other potential “Big Box” developments to restrict smaller retailers who desired to locate near the “Big Box” developments, rather than locate in the downtown. The west edge of the Quality Motors tracts are approximately 2,700’ feet east of the Peter Pan intersection on West Main which leads to Walmart. As previously stated, the Quality Motors property is located on the east edge of the C-4 zone which continues west to the City limits.

Suggested Motion:

I move to recommend approving a request to rezone tracts of land located at 2022 W. Main Street from C-4, Highway Commercial District to C-2, Commercial Services District with the following restrictions which shall be binding on all future owners, assigns or heirs:

1. The applicant will obtain all necessary City of Independence and State of Kansas licenses and/or permits to operate the uses proposed.
2. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
3. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
4. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining residential dwellings under separate ownership other than the auto dealership and service center properties.
5. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
6. Any off-street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees of the business. Such parking area may not be used for storage of vehicles, equipment or merchandise.
7. A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.
8. All property lines must be established by a surveyor licensed in the State of Kansas.
9. A detailed site plan shall be submitted to and approved by City staff prior to any such work commencing.
10. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.
11. If alley improvements are deemed needed by the Zoning Administrator, the adjoining -alley will be resurfaced and improved by the applicant as part of the project. Such resurfacing will need to meet specifications provided by the City, and such work will need to be approved by the Zoning Administrator.

12. The property shall not be utilized for retail purposes in structures with less than 5,000 square feet of space dedicated for each retail business, except for those retail purposes related to auto sales and related auto services.

Lisa Richard asked if there is landscaping now and if it meets the specifications. Miranda Bruening stated that there is no landscaping. Kelly Passauer stated that it was grandfathered in. Lisa asked why it was an issue now. Kelly Passauer stated that they are making improvements which could trigger meeting the current specifications. Lisa said there are forms of landscaping that would not impede a car dealership and that if there are landscaping requirements in the code, we should require adherence. She further stated that it should require a variance and they could specifically propose where they need a variance in the landscaping. She further stated that there is no reason not to have trees around the perimeter so the city can be beautified. She further stated that they do not need a rezoning of these easily defined issues, and that she would vote against a rezoning for that reason.

Mary Jo Meier moved to recommend approving a request to rezone tracts of land located at 2022 W. Main Street from C-4, Highway Commercial District to C-2, Commercial Services District with the following restrictions which shall be binding on all future owners, assigns or heirs, except for the last sentence in number 6:

1. *The applicant will obtain all necessary City of Independence and State of Kansas licenses and/or permits to operate the uses proposed.*
2. *All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.*
3. *Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.*
4. *To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining residential dwellings under separate ownership other than the auto dealership and service center properties.*
5. *The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.*
6. *Any off-street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees of the business. ~~Such parking area may not be used for storage of vehicles, equipment or merchandise.~~*
7. *A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.*
8. *All property lines must be established by a surveyor licensed in the State of Kansas.*
9. *A detailed site plan shall be submitted to and approved by City staff prior to any such work commencing.*
10. *All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.*

- 11. If alley improvements are deemed needed by the Zoning Administrator, the adjoining -alley will be resurfaced and improved by the applicant as part of the project. Such resurfacing will need to meet specifications provided by the City, and such work will need to be approved by the Zoning Administrator.*
- 12. The property shall not be utilized for retail purposes in structures with less than 5,000 square feet of space dedicated for each retail business, except for those retail purposes related to auto sales and related auto services.*

Brent Littleton seconded. Lisa Richard dissented. Motion carried 7-1.

d. Other discussion as requested at the October 6, 2020 meeting:

1. Tiny houses
 - i. APA Zoning Practice November 2015 – Tiny Houses
 - ii. APA Planning February 2016 – Tiny Houses: Niche or Noteworthy?
 - iii. APA PAS QuickNotes June 1, 2017 – Making Space for Tiny Houses
 - iv. APA Zoning Practice March 2018 – Micro Apartments

Michelle Anderson moved to table Brent Littleton seconded. Motion carried 8-0.

2. Marijuana dispensaries
 - i. APA Planning July 2015 – Pot Report
 - ii. APA Zoning Practice August 2016 – Regulating Medical and Recreational Marijuana Land Use
 - iii. ICMA September 2018 -- Local Impacts of Commercial Cannabis
 - iv. APA The Commissioner August 2019 – Marijuana and the Zoning Board

Mary Jo moved to table. Brent Littleton seconded. Motion carried 8-0.

3. County Gravel Parking Lot Status -- Conditional Use Permit for Supplementary Parking at the Southwest Corner of Wald Avenue & Myrtle Street
 - i. The City Commission on February 4, 2010 approved the attached conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street. The original conditional use permit indicated that all the requirements had to be met within one year of approval, or by February 4, 2011.
 - ii. On December 8, 2016 the City Commission extended the timeframe to meet the requirements of the conditional use permit originally approved until December 31, 2017.
 - iii. On April 27, 2017, the County requested certain conditions of the conditional use permit be waived by the City Commission relating to hard surfacing, screening, lighting, service drives, drainage, approved

plan, minimum parking space dimensions, etc. The Commission took no action and tabled this item.

- iv. On December 28, 2017 the City Commission provided the County an additional extension to meet the conditions of a conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street until December 31, 2018.
- v. On January 24, 2019 the City Commission denied text amendments recommended by the Planning Commission that would have modified the off-street parking requirements, leaving the ordinances as they currently exist.
- vi. On May 15, 2019 City staff contacted the County to ask for an update of their intentions and offered the following options:
 - 1. Ask the Commission to provide another extension.
 - 2. Ask the Commission to waive the requirements (which was previously tabled).
 - 3. Ask the Commission to reconsider modifying the code.
 - 4. Come into compliance with the conditional use permit
- vii. On June 25, 2019 City staff inquired again, as no response was received from the May 15, 2019 email. Jim Wright indicated that the County was “actively researching our options.”
- viii. On October 29, 2020 City staff contacted Jim Wright at the County for an update, advising them that the Planning Commission was inquiring on the status. Mr. Wright replied that they did not have any additional information, but they would bring it up at the next County Commission meeting.

Kelly Passauer reported that she had requested an update from the County and indicated that Public Works Director Jim Wright stated that he would bring it back up to the County Commission. David Cowan stated that he spoke to the County and answered their questions on the type of hard surfacing required. Lisa Richard stated that there was a period of time where officially they were given an extension, so they are in violation of the Conditional Use Permit. Kelly Passauer stated that their last extension expired in December of 2018. Lisa Richard suggested the item not be tabled for very long so as not to show favoritism or an appearance of such, and that they need to come to us with a proposal. Tony Royse said this compliance issue has been going on since February of 2010 when the conditional use permit was approved. He further stated that the City is bringing their Fire/EMS apparatus bay driveway into compliance and he recommended the City Staff make the County come into compliance.

Lisa Richard moved to table this matter for the next two meetings and at that time City staff can provide an update with the County. Barb Emert seconded. Tony Royse dissented. Motion carried 7-1.

Adjournment

Tony Royse moved to adjourn the meeting, with Brent Littleton seconding the motion, which passed 8-0.

Andy McLenon
Andy McLenon (Jan 8, 2021 08:03 CST)

Andy McLenon, Chair

Michelle Anderson
Michelle Anderson (Jan 8, 2021 15:05 CST)

Michelle Anderson, Secretary