

## **MINUTES**

### **Call to Order**

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

### **Planning Commissioners Present**

Michelle Anderson (by phone)  
Anthony Royse (by phone)  
Kendall Neill  
Barb Emert  
Brent Littleton

### **Planning Commissioners Absent**

Mary Jo Meier  
Andy McLenon  
Rachel Lyon  
Lisa Richard

### **Staff Present**

Kelly Passauer, City Manager  
David Cowan, Assistant City Manager  
Jeff Chubb, City Attorney  
Lydia Collins, Administrative Aide

### **Visitors Present**

Thomas Korhn  
Machele Korhn  
Toni Camacho (by phone)  
Anna Krstulic (by phone)

### **Minutes**

- a. Consider approving minutes of the November 2, 2021, meeting.

### **Motion**

***Kendall Neill moved to approve the minutes of the November 2, 2021, meeting. Brent Littleton seconded the motion. Motion carried 5-0.***

***Kendall Neill authorized Barb Emert to sign the minutes in place of Rachel Lyon.***

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

- a. Public Hearing To Receive Comments On Variance Requests To Reduce The Setbacks And Relating To The Storage Of Recreational Vehicles In An R-2, Single-Family Dwelling District, At 1328 Irving Street.

Lydia Collins read the Background/History:

Mr. and Mrs. Korhn want to place an RV carport on the property, in line with the existing driveway and street opening. The previous house and garage were damaged due to a fire and the Korhn's demolished both after purchase. There is a residential structure on the lot so the carport would be an accessory use to the remaining residential structure. This structure is a tiny house and if approved the RV carport would extend beyond the front of the residence.

The Request:

The Korhn's are requesting a variance for the south side yard which, according to City code, should be a minimum of eight (8) feet. The site they are proposing would put the carport structure approximately two (2) feet from the property line of the neighbor at 1324 Irving Street. They are using the fence as the property line for the south side yard. This would be an encroachment of six (6) feet. The rear yard has a fence, and they will be seven (7) feet from it and consider it to be 10 feet from the alley because the fence encroaches three (3) feet onto their property line.

The Korhn's are also asking the variance to include the RV carport protruding beyond the front of the residence. The existing tiny house is 14.5 feet long and the RV carport is 35 feet long. The RV carport will be 5 feet beyond the rear of the tiny house which would cause it to extend 15.5 feet beyond the front of the tiny house. The RV carport cannot be extended any further behind the tiny house in order to be 10 feet beyond the rear property line. Even with a variance for the rear setback, the RV carport would still extend beyond the front of the tiny house.

And the Policy Explanation and Variance definition

606.1 Storage of recreational vehicles: Major recreational equipment such as boats, boat trailers, travel trailers, pickup campers or coaches, camping buses or converted trucks and tent trailers shall be stored at the rear of the premises, then such recreational vehicles may be stored at the side of the residence so long as they do not protrude beyond the front of the residence. Temporary storage not to exceed 72 hours is permitted in a private driveway located anywhere on private property. In no event, however, shall such recreational vehicles be parked on public property, streets, or thoroughfares for longer than 72 hours. For purposes of this section, the 72-hour permissible temporary storage or

parking shall be calculated as consisting of 72 hours over a 30-day period. 607.0. - Accessory uses. Accessory uses are permitted in any zoning district in connection with any principal use which is permitted. 607.1. Definitions: An accessory use is a structure or use which shall conform to all of the below: a. Is subordinate to and serves a principal building and principal use; b. Is subordinate in area, extent or purpose to the principal building or buildings served; c. Contributes to the comfort, convenience or necessity of occupants, business or industry in the principal building or principal use served; d. Is located on the same lot or contiguous lot as the principal building or principal use served. 607.2. Permitted accessory uses: Any structure or use that complies with the definition of section 607.1 may be allowed as an accessory use or structure. Accessory structures and uses include, but are not limited to, the following list of examples: a. Private garages or carports, not to exceed the following capacity: 1. For single-family residence: Four cars. 2. For multifamily residence: Two cars per dwelling unit. b. A structure for storage incidental to a permitted use, provided no such structure that is accessory to a residential building shall exceed 200 square feet in gross floor area. Exception: Parking garages.

503.0. - R-2, single-family dwelling district. 503.1. Intent: The purpose of this district is to provide for single-family residential development of low population density together with such public buildings, schools, churches, public recreational facilities and accessory uses, as may be necessary or are normally compatible with residential surroundings.

Staff Recommendation: City Staff recommends approving the variance based upon staff recommendation of the evidence presented in each specific case that

- a. The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the property is located.
  1. There is no apparent issue with public safety, health or welfare.
  2. There is no injury to other property owners or improvements in the neighborhood as the neighbors feel the owners have already made improvements by tearing down the dilapidated house and garage and have no issues with having a carport placed.
- b. The conditions upon which the request for a variation is based are unique to the property for which the variation is sought, and are not applicable generally to other property.
  1. The existing property is a tiny home situated at the rear of the lot.
  2. Other lots in this neighborhood have houses that are located in the front portion of the lot.
- c. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.
  1. The owners would need to make a new street cut and move the driveway.
  2. The owners would not have enough lot space to construct the carport if it could not protrude beyond the front of the tiny house situated at the rear of the lot.

Tony Royse read 607.1 d. of the City Code and said according to the application the applicants live across the street. He said also an accessory use, item d, says it must be a contiguous lot. If it does not meet the definition, can we still grant this variance?

Lydia Collins asked if the tiny home was the principal use building.

Kelly Passauer said yes, there is a structure remaining, it is subordinate to the residential structure remaining on the lot. If there has been a home torn down and the adjoining property owner wants to acquire the lot they are allowed to leave the garage there.

Jeff Chubb said it meets the requirements. There is an existing structure and it can be a rental house, the carport can serve the house that is on the rental property.

Tony Royse asked if the resident of the tiny home owns the trailer. The code says that it has to be on a contiguous lot and the property owners live across the street.

Kendall Neill said it will stay on the lot and stay with the tiny home.

Kelly Passauer said it will be hard to monitor what anyone would utilize a garage for.

Jeff Chubb said he thinks it is fine.

Motion

***Kendall Neill moved to approve the following variances based on staff's recommendation: 1) an encroachment totaling six (6) feet on the south side yard of the property which would reduce the eight (8) feet required side yard setback to two (2) feet; and 2) an extension of 15.5 foot beyond the front of the existing residential house for the purpose of constructing a carport to store a Recreational Vehicle. Barb Emert seconded. Motion carried 5-0.***

### **Planning Commission**

- a. Public Hearing To Receive Comments To Consider Text Amendments To Appendix B-Zoning Of The City Code Including, But Not Limited To, Article IX. Processing Procedures For Conditional Uses.

Text Amendment prepared by the City Attorney in Strikeout

Jeff Chubb proposed the following Ordinance:

ORDINANCE NO. \_\_\_\_\_

An Ordinance Modifying the Processing Procedure for Conditional Use Permits

BE IT ORDAINED by the Governing Body of the City of Independence, Kansas:

Section 1. Zoning code section 902.0 and its subparts are amended to read as follows in their entirety:

902.0. - Processing procedure.

902.1. Application of conditional use permit: Application for conditional uses, as designated in appendix "A" of this ordinance shall be on forms obtained from the city clerk's office. The application ~~and five copies of the preliminary development plan~~ shall be filed with the zoning administrator at least ~~20~~ 30 days prior to the regular city planning and zoning commission meeting at which the proposed conditional use will be considered. As determined by the zoning administrator, the application shall include any or all of the following items deemed relevant by the zoning administrator, plus any other information or materials not listed below which the zoning administrator deems relevant; but not limited to, the below information:

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

902.2. Action by the planning commission: Upon receiving the application for conditional use permit from the zoning administrator, the planning commission shall publish notice and hold public hearing on the proposal. Procedures for public hearings shall be handled the same as a zoning amendment as described in section 1603.0 of the zoning code [article] XIV [XVI] of this ordinance. If the planning commission determines that additional information should be provided to it before making a decision, the planning commission may adjourn the public hearing to a new date and require the applicant to provide such additional information. The decision of the planning

commission to recommend approval or denial of the proposed conditional use shall be based on any or all of the following criteria which the planning commission determines to be relevant:

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

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

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

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

902.5. Action by the governing body: Upon hearing and consideration of the proposed conditional use, the planning commission shall at the earliest date possible, submit its recommendation ~~and endorsed copy of the plans~~ to the governing body for final action along with the reasoning for its recommendation plus all materials considered by it in reaching its recommendation. Within 30 days of receipt of the recommendation report from the planning commission, the governing body shall adopt, modify or deny the planning commission recommendation. The action of the governing body shall be final.

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

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

Section 2. This Ordinance shall take effect upon its publication in the official City newspaper.

Adopted by the Governing Body of the City of Independence, Kansas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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LOUIS YSUSI, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk



Kelly Passauer said sometimes the conditions for the Conditional Use permit are not met until the construction has begun so sometimes the occupancy permit is withheld until the requirements are met.

Jeff Chubb said that is built into the code already. When a building permit is issued an occupancy permit does not automatically occur.

Kelly Passauer said when they issue the building permit the conditions for the Conditional Use permit are not always met until the project is constructed.

Jeff Chubb said that the Zoning Administrator shall communicate with the Building Inspector regarding compliance prior to issuance.

The City will hold up the Occupancy Permit until all requirements are met in order to enforce compliance.

Kendall Neill opened the public hearing.

Motion

***Kendall Neill moves to recommend the Governing Body approve the text amendments to Appendix B Zoning of the City code including, but not limited to Article IX. Processing Procedures for Conditional Uses as prepared by the City Attorney. Brent Littleton seconded. Motion carried 5-0.***

- b. Public Hearing To Receive Comments To Consider Text Amendments To Appendix A-Subdivisions Of The City Code.

Kelly Passauer introduced Anna Krstulic of Stinson LLP who specializes in zoning law and has prepared a text amendment in relationship to minor replats.

Anna Krstulic introduced herself and explained the additions and deletions to Appendix A Subdivisions to the City Code.

Attachments: Text Amendment prepared by the Anna Krstulic, Stinson LLP in Strikeout

Tony Royse asked if there is a definition of what minor changes would consist of.

Anna Krstulic said page 19 of the 26 pages, Article XVI, Section 1, discusses the minor subdivision replat. The way these are written, the Governing Body review is only required if easements or right-of-way will be dedicated or vacated. That could be changed. Also, there is a reference to K.S.A. 12-504 for vacation of easements and that does require the Governing Body review.



Kelly Passauer said she would recommend the Governing Body review them all. It adds to the checks and balances.

Anna Krstulic said she could do that revision right away.

Kelly Passauer said she thinks it would be good to include the procedures to make it clear without having to look up the statute.

Kendall Neill opened the public hearing.

John Heckman said it looks fine.

Motion

***Kendall Neill moved to approve the text amendments and the amendments suggested to Appendix A Subdivisions of the City Code. Barb Emert seconded. Motion carried 5-0.***

c. Continuation Of Tiny Houses Discussion – April Nutt

1. Do you want to allow tiny homes? If so, do you want them on foundations or THOW. If THOW, do you want to allow them only in RV designated areas, do you want to allow them to be placed in a friend or families driveway?

Brent Littleton said he is ok with tiny homes as long as they have to go through the building department and meet all regulations.

Kendall Neill is ok with tiny homes but wants them on foundations.

Tony Royse said yes, on foundation.

2. If on foundation, do you want to allow them to be placed through the City or allowed only on designated developed PDU's or RMU's?

Tony Royse said throughout the City.

Kendall Neill said it needs to be in designated areas. If you are putting a small structure in your backyard you go through the code.

David Cowan said if they want to put something on their property, he would get with Kelly on it.

Kendall Neill said property values could drop if tiny homes were allowed to be placed anywhere.

Brent Littleton said most of those neighborhoods like that have their own codes in their area as far as the size of the home.

Kelly Passauer suggested that David Cowan give the board an idea of what we currently have going on.

David Cowan said we currently have a resident that wants to build some tiny houses. She owns a lot, and she would like to purchase the lot next to her. This lot goes across the block, and she wants the tiny houses all along this lot.

3. Do you want to allow them to be Airbnb's?

Tony Royse said yes.

Kendall Neill said yes.

Brent Littleton said yes.

Kelly Passauer said in a residential area that would require a Conditional Use Permit.

4. Do you want to allow them to be ADU's?

Tony Royse said yes.

Kendall Neill said yes.

Brent Littleton said yes.

Kelly Passauer said currently you would have to have multi-family zoning or have a large enough area to do a lot split. If you want to do a code modification to allow those in a single-family residential district that is something else we will need to know.

Brent Littleton asked if an exception could be made to build a mother-in-law house in back of your property.

Kendall Neill asked if that would be considered an accessory dwelling unit.

Kelly Passauer said it is possible now if you have a large enough lot that you can subdivide the lot and provide access to the street. Otherwise, you would have to rezone the lot to multi-family.

David Cowan said or build on to your structure.

Kelly Passauer said if you want to allow this in a single-family structure we need to know that. You can look at that as a Conditional Use Permit rather than rezoning. If you do it multi-family you are spot zoning in single-family areas. What happens if those people leave and the new owners want to rent that out to someone that is not in their family then you have created a nonconforming use.

Kendall Neill asked about people renting out one private bedroom in their home.

Kelly Passauer said it requires a Conditional Use Permit here to do that.

Kendall Neill said the answer would be yes, we just need to decide about a Conditional Use, rezoning or lot split. What is the size requirement for that?

David Cowan said it varies with each district.

Kelly Passauer said each district has a certain amount of square footage per family unit.

David Cowan said that is why using the Conditional Use Permit lets you look at each one. The Fire Department would be concerned if the lot were small and the structures too close.

Kendall Neill said that can be discussed at the next meeting.

5. On all situations, what exceptions to the rule do you think are needed?

Tony Royse said none.

Kendall Neill said this could also be discussed at the next meeting.

Kelly Passauer said the minimum lot area for an R-2 single-family district is 7200 square feet. To do a lot split for an R-2 you would need to have a 14,400 square foot lot and divided it would have to have access to another street for someone to live in full time.

d. Other Discussion

There are three terms coming up eligible for reappointment and each one has said they wanted to be reappointed.

## **Adjournment**

### **Motion**

***Kendall Neill moved to adjourn. Barb Emert seconded. Motion carried 5-0.***

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Kendall Neill, Chairperson

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Rachel Lyon, Secretary