



Tuesday, March 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

- a. Consider approving minutes of the February 1, 2022, meeting.



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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

Brent Littleton

Mary Jo Meier

Andy McLenon

Rachel Lyon

Lisa Richard

Planning Commissioners Absent

None (1 vacancy)

Staff Present

Kelly Passauer, City Manager

David Cowan, Assistant City Manager

April Nutt, Housing Director

Jeff Chubb, City Attorney

Lydia Collins, Administrative Aide

Visitors Present

Sarah Kromer

Matthew McLenon

Miranda Bruening

Anna Krstulic (by phone)

Minutes

- a. Consider approving minutes of the December 7, 2021, meeting.

Motion

Kendall Neill moved to approve the minutes of the December 7, 2021, meeting. Brent Littleton seconded the motion. Motion carried 8-0.



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

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

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

b. To receive comments on a variance request to exceed the number and size of signs in the C-3, central business district, at 100 North 10th Street.

Details:

Site Address: 100 North 10th Street
Legal Description: Lot 6-9 Block 40 Orig Plat, City of Independence, Montgomery County, Independence.
Property Owner: Brew Crew Properties LLC, Sarah Kromer
Existing Use: Scooter's coffee kiosk
Existing Zoning: C-3, central commercial district

Background/History: Scooter's was recently built, and they are wanting to add three of their brand standard snap signs to the building that are 8 sq. ft. rather than the 5 sq. ft. the City Code allows. They currently have 4 signs, one on the front, one on the back and one on each side of the building. This would add three signs on each side.

Request:

There is a Scooter's Coffee Drive-Thru sign already on the building and they want to add 3 more signs to each side of the building. City Code for a corner building allows for one sign per face of building not to exceed 50 square feet or five percent of the total area, whichever is smaller.

A standard Scooter's coffee kiosk has four (4) signs on each side of the building, one sign in front and one at the rear, for a total of ten (10) signs. They have one free-standing sign which City code allows. The brand standard size they use for the three signs they want to add is 8 sq. ft. The City Code allows for 5 sq. ft. signs. The total sq. ft. for the four signs on each side of the building is 66.4 sq. ft., 16.4 sq. ft. more than the City Code allows.

Policy Explanation:

802.6. District C-3, central commercial district:

a. *Permitted signs:*

1. *[Generally:]* Signs permitted in the C-3 district shall be illuminated signs, nonilluminated signs, marquee signs, temporary signs, wall signs and projecting signs with the exception that no sign shall be mounted, painted or affixed to any surface extending above the transom or storefront beam whichever is higher.



2. *Wall signs:* One sign per face of building not to exceed 50 square feet or five percent of the total area, whichever is smaller.
3. *Corner buildings:* One sign equal to standards above for each wall.
4. *Multiuse signs:* Total sign area for all uses not to exceed above standards.
5. *[Signs hanging from awnings or mounted to storefronts:]* Signs hanging from awnings or mounted to storefronts may not exceed five square feet per face.
6. *[Freestanding buildings:]* Freestanding buildings shall be permitted one freestanding sign not to exceed 80 square feet per face or 160 square feet total of all faces in the sign area. The top of the sign shall not be higher than 25 feet above ground level.
7. *Historical restorations or reproductions:* Historically significant or reproduced signs shall be referred to the Main Street Committee for recommendation to the city commission who may authorize such installation.
8. *[Rear wall signs:]* One rear wall mounted sign not to exceed 18 inches by 36 inches for business identification.

- b. *[Poster panels and billboards:]* Poster panels and billboards shall not be permitted in the C-3 zone.
- c. *Signs on awnings, canopies, and marquees:*
 1. There shall not be more than one sign exceeding an aggregate gross surface area of such awning, canopy or marquee of ten percent of the gross area for each principal building.
 2. The gross surface area of a sign shall not exceed 50 percent of the gross surface area of the awning, canopy or marquee to which the sign is fixed.
- d. *General standards:*
 1. Any awning, canopy, marquee or projecting sign shall not be less than seven feet above the surface of the grade of any street or sidewalk.
 2. Awnings and canopies shall be no closer than four feet from the public street curb and in no case extend more than 12 feet from the property line.
 3. Marquees shall be no closer than two feet from the property line.

Variance: The granting of permission by the board of zoning appeals to allow the development of a lot or tract for uses allowed within the zoning district in a manner which exceeds maximum limits or is less than minimum limits established by these regulations and where such limits prohibit use of the land in a manner equivalent to the abutting similarly zoned properties.

Sec. 2-116. - Variances, exceptions.

When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the following manner:



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

1. To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all the following conditions have been met:

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

1. *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;*
 1. The four (4) standard brand signs are made for all Scooter's coffee kiosks and used for continuity.
2. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;* The granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents as the signs are not in excess.
3. *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;* The four (4) standard brand signs are used at all Scooter's coffee kiosks. Scooter's has done ample research for specific sizing on their snap frames and they are large enough to be seen but not in excess.
4. *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 adversely affect public health, safety, morals, order, convenience, prosperity or general welfare.
5. *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."* Granting the variance will not be opposed to the general spirit and intent of the zoning regulations. The signs are standard to any Scooter's coffee kiosk.
2. To grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation.



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the board of commissioners, are not found to be present.

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. The coffee kiosk has already made improvements by tearing down the old gas station and improving the area.
- 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 standard brand snap signs are used universally and would make this coffee kiosk stand out as different from other Scooter's coffee kiosks if the variance is not granted.
- 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 store would not be in continuity with other Scooter's coffee kiosks.

Chair Kendall Neill opened the hearing. There were no public comments.

Motion:

Lisa Richard moved to approve a variance to exceed the number and size of signs in the C-3, central business district, at 100 North 10th Street by allowing three (3) additional signs on both the east and west side of the building for a total of six (6) additional "snap frame" signs measuring 8.4 square feet each for a total of 50.4 square feet of additional signage. Mary Jo Meier seconded. Motion carried 8-0.



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

- c. To receive comments on a variance request to decrease the setbacks in an R-2 single-family dwelling district at 1222 North 2nd Street.

Details:

Site Address: 1222 North 2nd Street
Legal Description: Lot 33 & 34 Belmont Addition, City of Independence, Montgomery County, Independence.
Property Owner: Hentges, Stephanie L Amended & Restated Rev Trust 5/24/2018
Existing Use: Residence
Existing Zoning: R-2, single-family dwelling district

Background/History: Mr. and Mrs. Hentges own the property and have been working with Miranda Bruening from HBK Architecture to build a new garage.

Request:

Mr. and Mrs. Hentges want to place a detached garage within two (2) foot from the south side yard property line and the neighbor's garage. This would be a six (6) foot encroachment. The residence had an existing garage, but it was not structurally sound, and they tore it down. They now want to build a new, deeper garage in the same place the old garage was in with the same two (2) foot between their garage and the neighbor's garage.

Policy Explanation:

03.0. - 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.

503.2. Permitted uses: The listing of permitted uses is set out in appendix "A" of these regulations.

503.3. Conditional uses: The listing of conditional uses is set out in appendix "A" of these regulations.

503.4. Intensity of use regulations:

a. *Minimum lot area:* Single-family dwellings—7,200 square feet

Exception: Where a use is not connected to a public sewer, lot area shall be increased to area determined as adequate by the city engineer to meet current health standards.

b. *Minimum lot width:* 50 feet at the front building line, except cul-de-sac lots may be 35 feet at the front building setback line.



c. *Maximum lot coverage:* 30 percent.

503.5. Height regulations:

a. *Maximum structure height:* 35 feet or 2½ stories (whichever is smaller).

503.6. Yard regulations:

a. *Minimum front yard:*

1. The front yard shall be a minimum of 25 feet in depth measured from the front lot line.
2. Where lots have a double frontage, the required front yard shall be provided on both streets.

b. *Minimum side yard:*

1. Interior side yards: Eight feet.
2. Where the side yard fronts on a street, the minimum front yard shall be provided.

c. *Minimum rear yard:* Ten feet.

Exception: On lots of irregular rear property lines or when residence is located on the lot at an angle, rear yard dimensions shall be taken at each end of building parallel to the sides and the perpendicular measurement taken from the rear of building to the furthest point of the lot. The average of these three measurements shall equal at least ten feet. However, in no case shall the building or structure be located less than eight feet perpendicular from any property line.

503.7. Parking regulations:

a. *Off-street parking:* Two spaces for each single-family dwelling. (See article VII for additional parking requirements.)

Variance: The granting of permission by the board of zoning appeals to allow the development of a lot or tract for uses allowed within the zoning district in a manner which exceeds maximum limits or is less than minimum limits established by these regulations and where such limits prohibit use of the land in a manner equivalent to the abutting similarly zoned properties.

Sec. 2-116. - Variances, exceptions.

When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the following manner:

1. To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

variance may be granted in such case, upon a finding by the board that all the following conditions have been met:

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;* The previous garage was in the same location and is the only place a new garage would fit.
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;* The neighborhood has mostly detached garages similar to this residence.
- 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;* There is no other space on the property where a garage can be placed.
- 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 adversely affect public health, safety, morals, order, convenience, prosperity or general welfare.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* 503.6. Yard regulations: c. Minimum rear yard: Ten feet. Granting the variance will not be opposed to the general spirit and intent of the zoning regulations. The previous garage was built in the same place and matches the neighborhood.

2. To grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation.

In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the board of commissioners, are not found to be present.

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.



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

- 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 new garage is going back in the same spot as the old garage.
- 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 size of the old garage was too small for modern vehicles and was deteriorating.
 - 2. The new garage will be deeper but in the same location as the previous garage.

Chair Kendall Neill opened the hearing. There were no public comments.

Motion:

Kendall Neill moved to approve the variance to reduce the south side yard setback from eight (8) feet to two (2) feet, based on the staff's recommendation that all City Codes and conditions are met. Rachel Lyon seconded. Motion carried 8-0.

Planning Commission

- d. Consider setting the date of March 1, 2022, for a public hearing to receive comments to consider text amendments to Article B. – Zoning on the subject of tiny houses.

At your previous meeting you provided feedback on what you would like to see regarding a text amendment regarding Tiny Houses. The City requested the assistance of Stinson LLP to assist us with this text amendment. Below and attached is the information they provided:

Attached for review are drafts of the following documents: i) a proposed Ordinance amending provisions of the City's Zoning Code in order to allow for "tiny houses"; and ii) a comparison draft, in Word, showing proposed changes to Section 507.0 of the Zoning Code (Residential Planned Unit Developments). The latter can either be incorporated into the proposed Ordinance as an exhibit or inserted directly into the body of the ordinance, depending upon your preference. The revisions to Section 507 are currently set up as an exhibit for ease of review.

The goal was to follow the apparent consensus from the December Planning and Zoning meeting. Accordingly, the Ordinance provides as follows:



1. Tiny houses must be on permanent foundations (Ordinance, Section 1).
2. A tiny house for use by the property owners' family is a permitted accessory use (Ordinance, Section 2).
3. A tiny house for "short term rentals not elsewhere listed" is a conditional accessory use (Ordinance, Section 3). This seemed like the best way to accommodate an Airbnb type use. If there are special provisions that the City would like to impose for such a use, they can be inserted into Article X of the Zoning Code. There aren't any special provisions listed for Bed and Breakfasts, which is the most similar conditional use.
4. Tiny houses must be constructed and installed in accordance with the then-current version of all applicable codes as adopted by the City (Ordinance, Section 4). If there are any known issues with respect to tiny houses under codes currently adopted by the City, it would be possible to address such issues through an amendment. In addition, the 2018 Edition of the International Residential Code contains an Appendix specific to Tiny Houses. It appears that this Appendix helped resolve issues confronted by cities in applying prior building codes to tiny houses.
5. The revisions to Section 507 allow for a Tiny Houses/PUD. Minimum PUD size is one acre (Section 507.2.d). Permitted dwelling units is determined by doubling the amount of dwelling units that would be calculated if it was a normal residential PUD (Section 507.2.h). Please note that the numbers only reflect a general assessment of what I thought might be appropriate. Adjusting zoning ordinances to accommodate tiny houses appears to be a relatively new concept, and there isn't much in the way of relevant examples.

After discussion and any suggested modifications, if you wish to move forward with this text amendment, the next step is to schedule a public hearing.

Kelly Passauer asked if there were any questions or further modifications. If not, the next step would be to set the date for a public hearing. Any suggested modifications can be made now or at the March 1st public hearing.

An attachment of the Proposed Ordinance amending provisions of the City's Zoning Code in order to allow for "tiny houses"; a comparison draft, in Word, showing proposed changes to Section 507.0 of the Zoning Code (Residential Planned Unit Developments) and the Hearing Notice was provided in the staff report.

Motion:



Tuesday, February 1, 2022
Civic Center, Memorial Hall 5:30 p.m.
Independence Planning Commission/Board of Zoning Appeals

Kendall Neill moved to set the date of March 1, 2022, for a public hearing to receive comments to consider text amendments to Article B. – Zoning on the subject of tiny houses. Lisa Richard seconded. Motion carried 8-0.

e. Other discussion.

- a. Kelly Passauer stated that there is an opening for the Planning and Zoning Commission. The application deadline is February 4, 2022.

Adjournment

Motion

Kendall Neill moved to adjourn. Mary Jo Meier seconded. Motion carried 8-0.

Kendall Neill, Chairperson

Rachel Lyon, Secretary