

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

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**Call to Order**

The Planning Commission meeting was called to order by Chair Andy McLenon.

**Planning Commissioners Present**

Andy McLenon was present in Person. Those virtually present through Teams were Mary Jo Meier, Barb Emert, Michelle Anderson, Brent Littleton, Lisa Richard, Kendall Neill and Steve McBride.

**Planning Commissioners Absent**

Tony Royse

**Staff Present**

Kelly Passauer, Assistant City Manager/Zoning Administrator, and Jeff Chubb, City Attorney

**Visitors**

Kenneth Devore present in person. Those virtually present were John Trever Wood, JJ Stuttler, Crystal & Greg House, Danny Riggs, Bill Franzon, Aaron Hargrave, and Ben Mellick.

**Minutes**

- a. Consider approving minutes of the March 3, 2020 meeting.

*Barb Emert made a motion to approve the minutes of the March 3, 2020 meeting, Mary Jo Meier seconded the motion. The motion carried 8-0.*

**Planning Commission**

- b. Public hearing to consider a request for a conditional use permit for a communication tower in a C-2, commercial services district at 1101 E. Main Street.

The following staff report was previously provided:

***Summary***

We have received a request for a conditional use permit for a communication tower in a C-2, commercial services district at 1101 E. Main Street.

Appendix "A" of the Zoning Ordinance allows communication towers as a conditional use in the A-1, C-2, C-4 and M-2 districts. The property at 1101 E. Main Street is zoned C-2.

### **Conditional Use Permit**

The zoning ordinance in section 901.1 (page 87) 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 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 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.*

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

Any recommendations regarding a conditional use permit for the subject property shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the request. If the request is approved the applicant must be required to meet the conditions the Planning Commission wishes to require. 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 recommends granting the conditional use permit with the following conditions:

- 1. The conditional use permit is not transferable to another location.
- 2. The conditional use permit shall be reviewed periodically for compliance.
- 3. The antennas shall receive all required local, state and federal permits prior to installation.
- 4. Installation, maintenance and use of the antennas shall be in compliance with all local, state and federal laws and regulations.
- 5. The communication antennas shall be required to meet the

requirements listed in Section 1014.0 Communication antenna or communication towers of Article X. Special Provisions Applying to Miscellaneous Conditional Uses in Appendix B. Zoning of the Independence, Kansas, Code of Ordinances.

If any of the above conditions are not met the conditional use permit will no longer be valid.

The basis of staff's recommendation is that granting the conditional use permits is consistent with criteria "a through g" of Section 902.2 of the zoning code.

John Trever Wood, SSC in Overland Park spoke on behalf of the applicant Evergy who wants to improve their critical infrastructure by decommissioning a standing structure and installing a taller monopole wireless with a single microwave antenna on the east end of the existing Evergy property. Engineer drawings have been provided and it meets all City and EI codes that concerns wind and ice loading structures.

The public hearing was opened by Chair Andy McLenon. Kenneth Devore asked if the tower was a 5G. John Trever Wood explained it was not a 5G tower, that it is a microwave hop to an adjacent facility. Crystal House asked that with this particular tower is there any risk to humans or animals in the near area. John responded that no this is a microwave hop that is FCC licensed and is safe technology that has been used for many years. Crystal asked if that included livestock and John replied that it did. Kenneth Devore asked what the height of the tower is, and Andy replied that it is 100 feet. Mary Jo Meier asked if the pole is 100 feet versus 65 feet and is a monopole design and it increases the circumference of the reception from 200 feet to 1000 feet, what kind of clamps or bolts or structure, do we have enough in this design to secure a 100 foot pole, that it will be secure through winds loading? John Trevor Wood stated that yes, we submitted the plans from the tower manufacturer supporting that the tower and the foundation itself, which is what I believe you're asking is how is the pole secured to the ground, I can tell you it's secured with an immense amount of concrete that is tied into an expansive steel structural system and we meet and exceed all codes. Having permitted this type of structure for the last 20 years of my life, it is one of the last structures to go down in say a F5 tornado. Lisa Richard asked whether the tower is 100 feet or 99. The project says it's 100 but other places stated 99. John stated that 100 feet was put in to make sure they were covered to include the steel. The physical steel is 99 feet and the radius of the microwave is 24 inches. There are a few inches of leeway. Lisa asked under the City Ordinance 1014.0 for Communication Towers, one of the requirements is that the applicant provides a statement that alternative sites or towers within one-half mile are not available and asked if John had a statement of that nature. John stated that if one was not in the material provided, I will state on the record that this tower directly supports the service center that the property of the tower is immediately adjacent the east side of the service center and the equipment that services the tower is within the building so you are going to have a direct input right into the service center. Lisa Richard asked that the applicant's representative provide something clarifying that it's a unique site and that there couldn't be an alternative to cover that requirement in the code. She further asked that this information be to Kelly

Passauer. John stated absolutely, I'll write a letter up and make sure Kelly has it first thing in the morning. Lisa stated that she had one more question, also in the requirements for towers there is a requirement that it be 200 feet from any existing residences, is that the case here? John replied that yes, the nearest residences you would have to jump over the top of the service center which is an expansive building, and we are well in excess of that. Andy stated that he heard someone else prior to Lisa Richard or was the question satisfied, Crystal House asked if this microwave was going to cause any disruption in their Wi-Fi. John answered no there will be no disruption, this is within the FCC licensed spectrum that Evergy owns and Wi-Fi operates on a different spectrum. Being no other comments were made, the public hearing was closed. Andy asked Kelly Passauer to give a staff recommendation.

The recommendation in the staff report was reviewed by Kelly Passauer.

***Brent Littleton moved to approve the conditional use permit with the conditions as recommended by City staff, Lisa Roberts seconded the motion. The motion was carried 8-0.***

- c. Consider draft letter regarding updating the Comprehensive Plan.

At the March 3, 2020 Planning Commission meeting during the annual review of the Comprehensive Plan the following motion was made:

***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.***

Attached is a draft letter as requested.

Lisa suggested that the last sentence be worded a little stronger instead of giving them a pretty big out. Barb Emert suggested that the sentence read: However, we ask that this vital project be kept in mind.”

***Andy McLenon made a motion to approve the letter regarding the Comprehensive Plan, as amended. Brent Littleton seconded the motion. The motion carried 8-0.***

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

- d. Consider a variance request to decrease the setbacks in a C-2, commercial services district at 611 W. Main Street, 615 W. Main Street, and 101 S. 12<sup>th</sup> Street.

The following staff report was previously provided:

##### ***Overview of Variance Requested***

The Board of Zoning Appeals has received an application from SimonCRE JC Sparky V, LLC to grant a variance from the setback regulations as provided for

in the zoning ordinance. Their request is to encroach upon the 10' rear yard setback 8.33' to construct a retail store 1.67' from the rear property line.

***Review of Request***

The applicant is planning to construct an O'Reilly's Auto Parts Store 1.67' from the rear property line.

***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 lot is 140' deep, which is common for lots in many of the older neighborhoods in the City. This area was originally platted for residential use. The applicant has indicated that they feel the lot is too shallow to fit their desire site layout.*

*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 encroachment 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; The hardship would consist of requiring the developer to redesign the layout for the auto parts store.*

*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. City staff feels it is not opposed to the general spirit and intent of the zoning regulations.*

***Staff Recommendation***

If the Board of Zoning Appeals wishes to approve this request, then the recommended motion would be to reduce the rear yard setback on the south 8.5', from 10' to 1.5'.

Aaron Hargrave, Anderson Engineering representing SimonCRE spoke on behalf of the applicant. He stated that they are building an O'Reilly retail auto parts store, 7,800 sq ft, and we're removing a couple of houses and structures. We have met all parking requirements per City code and there's an alley behind that is being repaved and we are requesting a setback to 1.8'.

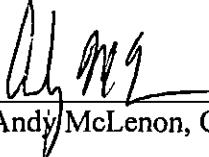
The public hearing was opened by Chair Andy McLennon. Lisa Richard asked if the lot site drawings were 140 feet deep. Aaron Hargrave stated that he did not remember if he had the exact dimensions. Ben Mellick stated that he did not know if they had the dimensions in the preliminary. Andy, it was brought up during that time that we would need the setback. He further stated that the reason they are requesting the setback is because the previous residential parcel does not fit that


much commercial space and the alley already gives a 20 foot buffer and it is the best place to place the building. Lisa Richard stated that they provided a site plan previously that just depicted next to the alley. Lisa Richard further asked if there was any consideration of drainage since the building will be right on the alley. Aaron Hargrave stated that all the runoff is being collected and piped to 12<sup>th</sup> Street, and there is a pipe along the rear of the building collecting runoff so there will not be an adverse impact to the alley. Kelly Passauer stated that when the rezoning was done drainage was one of the conditions of the rezoning and they do have a drainage plan that we have received and are going over. Lisa Richard asked if either of the two big trees in the right-of-way of 12<sup>th</sup> Street are going to be retained. Aaron Hargrave stated the 32-inch oak is going to be kept. The other is in front of the alley will be removed. Being no other comments were made, the public hearing was closed. Andy asked Kelly Passauer to give a staff recommendation. The staff recommendation previously provided was reviewed by Kelly Passauer.

***Mary Jo Meier made a motion to reduce the rear yard setback on the south 8.5', from 10' to 1.5' as recommended by City staff, Kendall Neill seconded the motion. The motion carried 8-0.***

#### **Adjournment**

***Barb Emert moved to adjourn the meeting, with Andy McLenon seconding the motion, which passed 8-0.***

  
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Andy McLenon, Chair

  
~~Michelle Anderson, Secretary~~

Mary Jo Meier



May 5, 2020

Independence City Commission  
City Hall  
811 W. Laurel Street  
Independence, KS 67301

RE: Comprehensive Plan Update

Dear Mayor and City Commissioners,

On March 3, 2020 the Planning Commission completed the annual review of the Comprehensive Plan adopted initially in 1982. The Planning Commission discussed the need to update this important document, particularly as it relates to economic development. With the \$100,000 estimated cost of the plan update, one suggestion was to recommend encumbering funds from multiple budget years until adequate funds were available.

With the 2020 pandemic, we understand that the readjustment of future priorities may need to occur due to the potential long term financial impact on the City's finances. However, we ask that this vital project be kept in mind.

Sincerely,

Andy McLendon  
Andy McLendon (May 10, 2020)

Andy McLendon, Chair  
Independence Planning Commission

Barb Emert  
Barbara Emert (May 10, 2020)

Barb Emert, Vice Chair  
Independence Planning Commission

Michelle Anderson  
Michelle Anderson (May 10, 2020)

Michelle Anderson, Secretary  
Independence Planning Commission





May 7, 2020

**VIA ELECTRONIC MAIL (KellyP@IndependenceKs.gov)**

Kelly Passauer  
Assistant City Manager/Zoning Administrator  
City of Independence, KS  
811 West Laurel Street  
Independence KS 67301  
(620)332-2500

RE: Evergy -- CUP for a communication tower replacement at 1101 E.  
Main Street

Dear Ms. Passauer:

I represented Evergy and Hayden Tower regarding the above-referenced project before the Planning Commission on Tuesday evening. One of the Commissioners asked that I place a formal letter on file with you explaining that it was infeasible to utilize other towers or an alternative property within a certain distance from the tower site.

The tower is an FCC-licensed microwave hop that supports the Evergy Service Center in Independence. It is directly tied to an equipment room inside the Service Center, and it is therefore necessary the tower be placed on-site.

If you could confirm for me when this application will be considered by the Independence City Commission, I would be most appreciative. Please feel free to give me a call at (913)907-4893 with questions.

Congratulations on running a public hearing remotely. It flowed very well. It was a first for me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Trevor Wood", written over the typed name.

J. Trevor Wood

Cc:

David Blaha, Hayden Tower  
Joseph Moore, SSC