



Tuesday, March 1, 2022

Civic Center, Memorial Hall 5:30 p.m.

Independence Planning Commission/Board of Zoning Appeals

To join by Conference Call dial:1-785-289-4727 Conference ID:652-632-373#

I. CALL TO ORDER

A. Reorganization

1. Election of Chair
2. Election of Vice Chair
3. Election of Secretary

II. MINUTES

A. February 1, 2022 Minutes

Documents:

[FEBRUARY 1, 2022 MINUTES.PDF](#)

III. PLANNING COMMISSION

A. A Public Hearing To Receive Comments To Consider Text Amendments To Article B. –Zoning On The Subject Of Tiny Houses.

Documents:

[PUBLIC HEARING TINY HOUSES.PDF](#)

B. Consider Initiating A Public Hearing On April 5, 2022 To Consider Initiating A Text Amendment To The Zoning Code Relating To Dwellings In The C-3, Central Business District.

Documents:

[PUBLIC HEARING C-3 DWELLINGS.PDF](#)

C. Orientation By The City Attorney

IV. BOARD OF ZONING APPEALS (Does Not Include Outside City Appointments)

A. None.

V. ADJOURNMENT



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.

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.

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 10 th 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:

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.

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.

- 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

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.

- 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:

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

Planning Commission

- a. A public hearing to receive comments to consider text amendments to Article B. – Zoning on the subject of tiny houses.

At the February 1, 2022, meeting you 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.

Background:

At the December 7, 2021, 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.

Suggested Motion:

I move to recommend the Governing Body adopt an ordinance implementing the text amendments to Article B. – Zoning on the subject of tiny houses as prepared by Anna Krstulic, Stinson LLP.

Attachments:

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.)

Hearing Notice

ORDINANCE NO. ____

**An Ordinance Setting Forth Text Amendments to the Zoning Code
on the Subject of Tiny Houses**

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

Section 1. Appendix B. – Zoning – Section 403.1 is amended to add the following defined term:

Tiny House: A dwelling that is 400 square feet in floor area or less, excluding lofts, and anchored to a permanent foundation.

Section 2. Appendix B. – Zoning – Section 607.2 (Permitted accessory uses) is amended to add the following permitted accessory use:

- q. A tiny house for use by the property owner's family.

Section 3. Appendix B. – Zoning – Section 607.4 (Accessory uses permitted by conditional use) is amended to add the following permitted accessory use:

- d. A tiny house for *short term rentals not elsewhere listed*.

Section 4. Appendix B. – Zoning – Article VI (Supplementary district regulations) is amended to add a new section, to be denominated as *Section 612.0. Tiny houses*, which shall read as follows:

Section 612.0 Tiny houses.

Tiny houses, whether a permitted or conditional use under these regulations, must be constructed and installed in accordance with the then-current version of all applicable codes as adopted by the City.

Section 5. Appendix B. – Zoning – Section 507.0 (Residential planned unit developments) is amended and replaced in its entirety in the manner shown in Exhibit A, attached hereto and incorporated herein by reference.

Section 6. 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 _____, 2022.

LOUIS YSUSI, Mayor

ATTEST:

DAVID W. SCHWENKER, City Clerk

507.0. Residential planned unit developments.

507.1. Intent: In accordance with ~~K.S.A. 12-725 et seq.~~ [applicable law](#), the residential planned unit development is intended to provide for a greater flexibility in the design of buildings, yards, courts, and circulation, than would otherwise be possible through the strict application of district regulations, and to produce:

- a. A maximum choice in the type of living environment and living units available to the public.
- b. Open space and recreation areas.
- c. A pattern of development which preserves trees, outstanding natural topography, and geologic features, and prevents soil erosion.
- d. A creative approach to the use of land and related physical development.
- e. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.
- f. An environment of stable character in harmony with surrounding development.
- g. A more desirable environment than would be possible through the strict application of other sections of this ordinance.

A residential planned unit development shall function as an "overlay district" which acts in conjunction with the underlying zoning district. As such, the residential PUD may be established in any residential district and will not require a zoning change.

In general, the height and bulk of buildings, the amount of open space, light and air, the concentration of population and parking requirements shall be equal to those in the corresponding district R-1 to R-5 inclusive. The uses permitted shall also be the same as in the equivalent district R-1 to R-5 inclusive.

Variations and departures from normal practice may, however, be permitted provided that the city finds that such modifications shall create an environment for living that is equal or superior to the development obtainable under existing zoning regulations. For example, each building need not face on a public street and more than one main building may be located on a lot. Buildings may be constructed on platted tracts which are smaller than the minimum lot size requirements where other adjacent permanent open space is provided. Buildings may be located closer to lot lines than otherwise permitted provided such buildings are architecturally suitable for such relationship to adjoining buildings or property, due consideration being given to future development of adjoining property under separate ownership. Any building or portion thereof may be owned in condominium under K.S.A. 58-3101. [Variations and departures from normal practice will likely be especially prevalent with Tiny Houses/PUDs, which, given the size limitations on tiny houses, involve a higher residential density than other types of residential developments with proportionally smaller open space, and different needs regarding roadways, parking, open space, landscaping, etc.](#)

507.2. Design standards and conditions for residential planned unit developments:

- a. *Location:* A residential PUD shall be permitted as an overlay district to any residential district and shall not require a zoning change. The residential PUD shall be designated as follows:

Planned Unit Development	Corresponding District
R-1/PUD	R-1 large lot single-family district
R-2/PUD	R-2 single-family district
R-3/PUD	R-3 low density multifamily district

R-4/PUD	R-4 medium density multifamily district
R-5/PUD	R-5 high density multifamily district
Tiny Houses/PUD	R-1 – R-5 Districts, Tiny Houses Only

- b. *Permitted uses:* The uses permitted by right in a residential PUD [\(other than a Tiny Houses/PUD\)](#) shall be only those designated in the corresponding districts R-1, R-2, R-3, R-4 and R-5 as set out in appendix "A" of these regulations. [The only use allowed in a Tiny Houses/PUD are Tiny Houses.](#)
- c. *Conditional uses:* The uses conditionally permitted shall only be those designated in the corresponding districts R-1 to R-5 inclusive, as set out in appendix "A" of these regulations; [provided, however, that the only use allowed in a Tiny Houses/PUD are Tiny Houses.](#)
- d. *Minimum PUD size:* Two acres, [except for a Tiny Houses/PUD which has a minimum size of one acre.](#) However, the city commission may vary ~~said~~ [the applicable](#) minimum area where such an alteration would not have a negative impact on adjacent property.
- e. *Height limitations:* The height limitations for structures in residential PUDs shall be the same as those for corresponding residential districts. However, the city commission may vary said maximum building height where such an alteration would permit a more harmonious relationship to adjacent property and where the public health, safety and welfare will be preserved.
- f. *Yard regulations:* The design of the residential PUD may provide for modifications of interior yard setbacks provided that the plan provides adequate space between buildings for access by emergency vehicles. Yard setbacks on the outside perimeter of the PUD shall not be reduced and shall meet the yard setback requirements of the corresponding zoning district. However, the governing body may vary said perimeter setback requirement where such an alteration will not be detrimental to adjacent property.
- g. *Off-street parking:* The minimum off-street parking requirements set forth in article VII of this ordinance shall be complied with.
- h. *Number of permitted dwelling units:* ~~The Only tiny houses are allowed in Tiny Houses/PUDs. In all other residential PUDs, the~~ number and type of dwelling units permitted within the residential PUD shall remain the same as would be permitted if the area were to be developed conventionally. However, [for all residential PUDs](#) the dwelling units so permitted may be clustered and located irrespective of yard setback requirements or lot lines in order to create a smaller network of streets and utility lines and to create additional open space for the enjoyment of the residents provided necessary setback be maintained to allow emergency access in case of fire or natural disaster. The maximum number of permitted dwelling units within a residential ~~planned unit development (PUD)~~ shall be computed as follows:

Permitted dwelling units residential PUDs other than Tiny Houses/PUDs	=	Residential area of the PUD divided by minimum average land area per dwelling unit permitted in the applicable PUD.
Permitted dwelling units for Tiny Houses/PUDs	≡	Twice the number of dwelling units permitted by application of the formula, above, to the corresponding underlying zoning district (R-1, R-2, etc.)

1. *Residential area:* The residential area for the purposes of the above-described computation shall be the gross area of the PUD less the area of nonresidential land.

Nonresidential land shall include street pavement, parking lot pavement, and land allocated to schools, churches, accessory commercial development and other nonresidential uses.

Residential area shall include land allocated to dwellings, accessory buildings, recreational community facilities serving the homeowners and open space.

2. *Minimum land area:* The minimum average land area for the purposes of the described compilation shall be:

MINIMUM AVERAGE LAND AREA BY UNIT TYPE AND PUD DISTRICT

Dwelling Unit Type	PUD District				
	R-1/PUD	R-2/PUD	R-3/PUD	R-4/PUD	R-5/PUD
Single-family	10,000 sf	7,200 sf			
Two-family			4,000 sf	4,000 sf	4,000 sf
Three-family			3,000 sf	3,000 sf	3,000 sf
Low-rise multifamily				2,000 sf	2,000 sf
High-rise multifamily					900 sf

- i. *Common open space:* Open space resulting from the application of the residential PUD standards for density or intensity of land use shall be set aside for the use and benefit of the residents in such development. Such open space shall be owned and maintained in common by the residents through a homeowners' association. The residential PUD shall include such provisions for the ownership and maintenance of the common open spaces as are reasonably necessary to ensure its continuity, care, conservation and maintenance, and to ensure that remedial measures will be available to the city if the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the best interests of the planned unit development or of the entire community. Such remedial measures shall include provisions for right of access over private streets, if necessary.
- j. *Staged development:* The residential PUD may be developed in stages. In such case, the owner of the planned development shall designate divisible geographic sections of the entire parcel to be developed as a unit, and shall specify the intended sequence and time schedule of development for each such unit. Each stage of development shall normally be a balanced unit of development and shall not provide a higher density or less open space as permitted in the PUD standards. However, it is recognized that in some instances it may be desirable to begin development with those portions of the overall PUD area which is devoted to more intensive use, leaving the undeveloped stages of the PUD in depleted density and open space. In such cases the governing body may permit the development of an initial stage containing a density in excess of that allowable within the whole PUD unit provided that such departure is in the best interest of the residents of the PUD and the city. In such case, the developer shall be required to execute a deed running in favor of the city granting it the following rights:
 - (1) The right, in the event that development of the planned unit is abandoned prior to completion, to locate the required amount of open space upon the balance of the PUD site for the exclusive

benefit of the residents of the developed portion of the sites—such location to be established only after a public hearing given to all interested parties;

- (2) The right, after such hearing and decision upon the proper location, to require that the developer deed the open space over [to] the established PUD homes association.
- k. *Landscaping and screening requirements:* The governing body may require additional landscaping and/or screening where it is necessary to protect the property values of the immediate neighborhood or its environs. Such additional requirements may be contained in the conditions in each ordinance authorizing the establishment of the particular residential PUD.
- l. *Homes association:* The developer shall provide for a homes association for improving, operating and maintaining common facilities including streets, drives, service and parking areas, and recreation areas. Such homes association shall be established in the initial phase of development.
- m. *Financial guarantees:* The developer may be required to furnish such performance bonds, escrow deposit, or other financial guarantees as may be reasonably required to assure performance in accordance with the development plan and to protect the public interest in the event of abandonment of said plan before completion.
- n. *Design standards for tiny houses:* Tiny houses must be constructed and installed in accordance with the then-current version of all applicable codes as adopted by the City.

507.3. *Application for approval of residential PUDs:* Processing procedures for residential PUDs are set forth in article XIV of this ordinance.

City of Independence, Kansas

NOTICE TO THE PUBLIC

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, March 1, 2022, at 5:30 p.m.

To receive comments to consider a text amendment to the zoning code relating to tiny houses.

Case Number:

2022/ZA/01

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373# Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer
Zoning Administrator
811 W Laurel Street
Independence, KS 67301
(620) 332-2506

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

Kelly Passauer, Zoning Administrator

- d. Consider initiating a public hearing on April 5, 2022 to consider initiating a text amendment to the zoning code relating to dwellings in the C-3, Central Business District.

Background:

Currently the permitted and conditional use table (shown below) does not allow any type of dwelling in the C-3, Central Business District that is not already grandfathered in without a conditional use permit.

Land Use Category	Code	Permitted Zoning District												
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Dwelling, elderly	1100				P	P					C			
Dwelling, in nonresidential structure	1190							C	C		C			
Dwelling, mobile home not on permanent foundation	1151					C	C							
Dwelling, mobile home on permanent foundation	1152					C	C							
Dwelling, multifamily	1130				P	P	P	P			C			
Dwelling, single-family attached	1113				P	P	P	P			C			
Dwelling, single-family detached	1111	C	P	P	P	P	P				C			
Dwelling, two-family	1120				P	P	P				C			

The lack of quality housing is a major deterrent to growing the population of Independence. The Historic Downtown District located in the C-3, Central Business District Zone is the heart and soul of Independence. A mixed-use concept with an integral upper story housing component is vital to the future sustainability of the downtown. *"Downtown housing appeals to different age groups, young, middle-aged, and seniors, as well as different income levels. The individuals renting or buying these upper story units appreciate the ambiance, arts and cultural opportunities, shopping venues, restaurants, and service businesses that exist in revitalized downtown districts."* -- **Five Projects with Unique Challenges and Creative Solutions** (https://www.iowaeda.com/UserDocs/Summary_UpperStoryHousingCaseStudies.pdf)

"During a time when communities of all sizes are facing a workforce housing shortage, these spaces can provide high-quality, affordable options, meaning that fewer new subdivisions or expensive new roads or utilities need to be developed. And given the proximity to downtown pharmacies, groceries and parks, many empty-nesters and retirees are choosing to live downtown as well. These spaces are often perfect for single professionals who aren't ready or don't have the time to own or maintain a single-family home on a large lot." -- **Upper-floor housing on Main Street** (<https://wedc.org/blog/upper-floor-housing-on-main-street/>)

One of the top three challenges to revitalizing upper story residential in a downtown area includes architectural and code compliance which consists of a "...complex mix of local, state and federal zoning, land use, ADA and building codes..." -- **Addressing the Top 3 Challenges to Revitalizing Upper Story Residential** (<https://www.vierbicher.com/addressing-the-top-3-challenges-to-revitalizing-upper-story-residential/>)



To encourage redevelopment of the downtown area, the City previously established a neighborhood revitalization zone that provides a rebate of increased property taxes after the improvements are made over a specified period of time. In addition, the Housing Authority has implemented a grant program to specifically encourage upper story housing. Most recently, on February 24, 2022 the City Commission adopted a resolution establishing Rural Housing Incentive Districts to encourage housing development within the community. The Downtown Historic District was included as one of the Rural Housing Incentive Districts for the development of upper-story housing units. To further support these efforts, it is recommended that a text amendment be considered that would allow upper story housing in the C-3, Central Business District as a permitted use, which would not require a conditional use permit.

Attachments:

Hearing Notice

Suggested Motion:

I move to set the date of April 5, 2022 for a public hearing to consider initiating a text amendment to the zoning code relating to dwellings in the C-3, Central Business District.

City of Independence, Kansas

NOTICE TO THE PUBLIC

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, April 5, 2022, at 5:30 p.m.

To receive comments to consider initiating a text amendment to the zoning code relating to dwellings in a C-3 district.

Case Number:

2022/ZA/03

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. You may also participate via conference call: [+1 785-289-4727](tel:+1785-289-4727) Conference ID: 652 632 373# Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

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