

**ORDINANCE NO. 3279**

**AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR 401 COTTAGE AVENUE, AT THE REQUEST OF TSB ENTERPRISES, LLC, CONCERNING THE TEMPORARY USE OF A MOVIE CINEMA AND LIVE PRODUCTION THEATER IN AN "I-1, LIGHT INDUSTRIAL DISTRICT" OF THE CITY OF ABILENE, KANSAS**

**WHEREAS**, the property owners of record have requested the City consider a Conditional Use Permit to allow for the temporary operation of a movie cinema and live production theatre at property generally described as 401 Cottage Avenue in Abilene, Kansas, as provided in **Exhibit A** as attached hereto;

**WHEREAS**, the Planning Commission conducted a public hearing on July 14, 2015, and comments were received from the public both in support of the proposed Conditional Use Permit, and

**WHEREAS**, the Planning Commission recommended the Governing Body approve a Conditional Use Permit allowing the temporary operation of a movie cinema and live production theater at the aforementioned address.

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

**SECTION ONE.** Findings of Fact. That the Findings of Fact, as provided in the Staff Report attached hereto, are hereby accepted and approved by the City Commission.

**SECTION TWO.** Conditional Use Permit. That a Conditional Use Permit is hereby granted to TSB Enterprises, LLC for the operation of a movie theater and live production theater as generally provided in the Conditional Use Permit application, as attached hereto on property legally described as follows:

*A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 13 SOUTH, RANGE 2 EAST OF THE 6TH PM, IN THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:*

*COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SAID SECTION 16, THENCE NORTH 00 DEGREES 56' 22" WEST ON AN ASSUMED BEARING ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER TO A POINT ON THE NORTH LINE OF COTTAGE AVENUE A DISTANCE OF 480.00 FEET; THENCE SOUTH 89 DEGREES 25' 08" WEST TO EXISTING PROPERTY PIN AND TO THE POINT OF BEGINNING A DISTANCE OF 475.21 FEET; THENCE SOUTH 89 DEGREES 22' 44" WEST TO EXISTING PROPERTY PIN A DISTANCE OF 785.14 FEET; THENCE NORTH 00 DEGREES 55' 03" WEST TO SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD A DISTANCE OF 210.72 FEET; THENCE NORTH 78 DEGREES 13' 10" EAST ALONG SAID RIGHT-OF-WAY LINE TO EXISTING PROPERTY PIN A DISTANCE OF 799.75 FEET; THENCE SOUTH 00 DEGREES 52' 18" EAST A DISTANCE OF 365.51 FEET TO THE POINT OF BEGINNING.*

**SECTION THREE. Permit Conditions Approval.** Per Section 26-110, the Planning Commission may impose, and City Commission may approve, reasonable conditions on approval of a Conditional Use Permit. Conditions for this permit are approved as provided in the Staff Report, as attached hereto, with the addition of a condition that the Theatre will encourage the usage of the parking lot located south of the primary structure by patrons and minimize the parking impact on the residents in the area.

**SECTION FOUR. Implementation** The City Manager, or designee, is hereby authorized to issue a Conditional Use Permit once all conditions have been reasonably met.

**SECTION FIVE. Effective Date** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND ADOPTED** by the Governing Body of the City of Abilene, Kansas this 10<sup>th</sup> day of August, 2015



CITY OF ABILENE, KANSAS

By: Dennis P. Weishaar  
Dennis P. Weishaar, Mayor

ATTEST:

Penny Soukup, CMC  
Penny Soukup, CMC

APPROVED AS TO FORM:

Aaron O. Martin

Aaron O. Martin  
Clark, Mize, and Linville, Chartered

**EXHIBIT A**

**Conditional Use Permit Application**

**and**

**Staff Report**

**for**

**401 Cottage Avenue**

**City of Abilene, Kansas**

**August 10, 2015**

## STAFF REPORT

### ***PC 15-6 Consideration of a Conditional Use Permit for 401 Cottage Avenue for the temporary use of a structure as a movie cinema/live production theater.***

<b>Date:</b>	June 2, 2015	<b>Prepared by:</b> David Dillner, City Manager, as interim Community Development Director
<b>Owner:</b>	TSB Enterprises, LLC (Casen Brown as agent)	
<b>Applicant:</b>	Elizabeth Weese (Great Plains Theatre)	
<b>Requested Action:</b>	Approval of a Conditional Use Permit	
<b>Purpose:</b>	Temporary use of part of an existing building for movie cinema/live production theater	
<b>Location address:</b>	401 Cottage Avenue, Abilene, Kansas	
<b>Comprehensive Plan:</b>	Comprehensive Plan shows this address as a "I-1, Light Industrial District"	
<b>Sites Existing Zoning:</b>	I-1, Light Industrial District	
<b>Surrounding Zoning and Land Use:</b>	North	<i>I-1, Light Industrial (Railroad tracks)</i>
	South	<i>R-3, High Density Residential</i>
	East	<i>I-1, Light Industrial</i>
	West	<i>I-1, Light Industrial</i>
<b>Land Area:</b>	Site contains approximately 6.22 acres	
<b>Notice Date:</b>	This project was published and noticed by mail as required by City Code.	

#### Comments

- **Departmental Comments:** No comments have been received at the time of writing this report: July 1, 2015.
- **Public Comments:** As of the time of the writing of this report, staff had received one comment from the public concerning this request. Mrs. Doris Hoover of 110 S. Campbell Street commented as follows: "Sir, I have no objections to opening a "shut door" at 401 Cottage for the GPT by opening these vacated buildings for GPT to expand their outreach to our community. God bless to all involved and all those who will get to attend the productions."

#### Recommendation and Findings

Staff is recommending approval of the requested Conditional Use permit with the following findings as outlined in Article 26-110:

- a. **Consistency with intent and purpose of the zoning regulations** – The proposed use is interpreted as being consistent with the intent and purpose of proposed text amendments to the Zoning Regulations. Currently, the proposed use of a movie cinema/live production theater would not be permitted in the "I-1, Light Industrial District." However, a text amendment to the regulations has been proposed that would allow the aforementioned use in an "I-1, Light Industrial District" with an approved temporary conditional use permit.
- b. **Compatibility of proposed use with surrounding uses** – The temporary use of a movie cinema and live production theater is considered a compatible use for the existing uses surrounding the property.

- c. **Public Infrastructure** – The proposed use is not anticipated to have an adverse impact on existing public infrastructure, including public water and sewer, as these services are already existing and provide sufficient capacity to meet and/or exceed the demand that would be needed for the proposed use. Access to the site is provided off of Cottage Avenue and parking is available in a parking lot located approximately 270 feet south of the proposed entrance and exit for the proposed use. The parking lot is located on the south side of Cottage Avenue across the street from the primary structure, and contains sufficient space to meet the City's parking requirements for the proposed use.
- d. **Necessity of the proposal due to changes in the affected area** – There are no changes in the affected area that are a driving factor to cause this change.
- e. **Length of time the property has remained vacant** – The primary structure is approximately 181,456 sq ft, of which approximately 56,242 sq ft is arranged for office use and 125,304 sq ft is arranged for warehousing. Recently, a manufacturing company acquired the structure with plans to locate its manufacturing business into the side of the building built for warehousing. The property owner had no immediate plans to use the remaining floor space until the applicant proposed using the area as a temporary location for its operation until such time as a new building could be constructed to house the movie cinema/live production theater. But for the conditional use permit, a portion of the building will remain vacant until such time as a tenant is found to occupy the floor space anticipated to be unused by the property owner as part of the manufacturing operation.
- f. **Compatibility of the subject property for the proposed use** – Staff is of the opinion that the property is compatible with the proposed uses. The building contains approximately 56,242 sq ft of office space that contains a sizable room where corporate presentations and large meetings were held when the building was occupied by Alco Stores, Inc. The large room, and some adjacent space, is proposed to be used for the movie cinema/live production theater and general office space and concessions.

Staff has made several visits to the building with the applicant and the property owner to determine how the building will be used for the proposed use. Based on these visits and discussions with the applicant and property owner, staff is of the opinion that the subject property is compatible with the proposed use in a temporary context. Staff acknowledges that the facility may not be entirely ideal for the proposed use, but is satisfied that all life and safety issues may be adequately addressed by the applicant and property owner to accommodate the proposed use.

- g. **Whether the Comprehensive Plan is furthered and supported by this proposal** – It is the opinion of staff that the Comprehensive Plan is both furthered and supported by the proposal. Several Key Issues and Goals of the Comprehensive Plan may be interpreted as supporting the proposed use.
  - i. **Key Issue 1, Goal F** is to "attract working age residents both new and returning." It is reasonable to believe that working age residents seek to reside in communities with certain amenities such as movie cinemas and live production theaters.
  - ii. **Key Issue 2, Goal B** is to "increase education opportunities through supplemental resources, activities and community involvement." The Great Plains Theatre has managed a productive youth education program focused on the performing arts. It is imagined that this program will be continued, in some manner, by the applicant. While not considered traditional educational opportunities, the applicant's program has provided a unique educational opportunity that is a potential regional draw to the community and that develops

many quality characteristics in those that participate. The proposed use would allow the program to continue within the community.

- iii. **Key Issue 5, Goal E** is to "make downtown a regionally recognized shopping and cultural destination." While the proposed location for the proposed movie cinema/live production theater may not be considered as "downtown," it is in a location that is in close proximity to the downtown and is relatively easy to access from downtown. The proposed use will presumably compliment downtown and may help further the desire for a cultural destination in the community, even if the location is temporary. The Great Plains Theatre is not a new entity in Abilene. The appeal of a movie cinema/live production theater is a great cultural asset for any community, and is especially important given the lack of such facilities since the Great Plains Theatre burned down.

h. Adverse impacts on adjacent properties if all conditions placed upon the request are met

- i. **Traffic Congestion:** The proposed use is not anticipated to create an increase in traffic greater than what was created by the daily traffic from the previous owners of the property, although the traffic patterns will be different than the former use. Traffic will not be of a commercial nature and will peak less than an hour or so prior to and following most cinematic presentations and live productions. Traffic congestion is not anticipated to be an issue during these peak periods of operation as vehicles will be able to access the parking lot located south of the building easily and conveniently.
  - ii. **Noise:** The sound created by theaters is usually contained within the confines of the structure and is not anticipated to have any off-site impacts. There may be an increase in noise related to vehicles arriving and leaving the site prior to and after presentations, but noise levels are anticipated to be at or below noise levels from previous uses on the site.
  - iii. **Parking:** Sufficient parking is provided in a parking lot at the corner of Cottage Avenue and Campbell Street.
  - iv. **Signage:** The applicant will be required to install any signage in conformance with Article 27 of the Zoning Regulations. As of the preparation of this report, staff is unaware of any plans to install signage.
  - v. **Safety:** There are adequate provisions for water, sanitation and public utilities and services to ensure that the expanded use would not be detrimental to public health and safety in that the site is located within an urbanized area adequately served by existing infrastructure. Furthermore, the proposed use will be done within an existing commercial building that will be remodeled and renovated to comply with all current life and safety requirements. The property owner and applicant have provided a plan for building modifications that will allow the structure to comply with various requirements found in the Fire Code. The applicant will sell, or make available during performances, alcohol that will be sold in compliance with all applicable federal, state, and local laws.
- i. Solid waste disposal facilities – This item is not applicable to the request.

- j. Other items for consideration – In evaluating individual Conditional Use Permit applications, the Planning Commission may also consider the occurrence of similar land use patterns throughout the City. Staff could not think of any similar uses located in Abilene where a manufacturing use and a low density commercial use existed within the same building for comparative purposes.

**Planning Commission Options:**

1. Recommend approval of the Conditional Use permit. If this option is chosen, the following conditions of approval are strongly recommended:
  - a. All relevant local, state and federal regulations will be followed to include any signage and occupancy certificates.
  - b. All exits will be signed and lighted to the satisfaction of the Building Inspector to ensure that patrons may understand how to exit the building in the event of an emergency or other event requiring the evacuation of the building during a performance. The exit in the primary room of the proposed use leading to the north of the building shall not be used as an emergency exit due to its proximity to adjacent railroad tracks and an inaccessible entrance.
  - c. The applicant must adhere to the maximum occupancy limit of 200 persons for their event space as set forth by the 2003 International Building as adopted by the City.
  - d. The applicant and/or property owner will comply, to the satisfaction of the Building Inspector, with 2003 International Building Code requirements for theaters, as previously discussed with the applicant and attached hereto.
  - e. Any significant change in use or physical alteration of the land or structures may require a review of this Conditional Use Permit at the determination of the Community Development Director.
  - f. The Conditional Use Permit shall be valid for two years following the date of issuance. The applicant will have to request an extension of the Conditional Use Permit, at the discretion of the Planning Commission, if a permanent structure is not completed and approved for occupancy.
  - g. A proposed text amendment to allow movie cinemas/live production theaters as a temporary use in an "I-1, Light Industrial District" must be approved by the City Commission prior to the issuance of a Conditional Use Permit and Certificate of Occupancy.
2. Recommend denial of the Conditional Use Permit.
3. Table for further information. The Planning Commission must specify the information being requested of staff or the applicant in order to allow it to make a recommendation on the request to the City Commission.

**Theaters.**

**IBC –Assembly Group A-1**

**IBC-Thunderstruck Bumpers, Factory Group F-1 (Moderate Hazard)**

**IBC- 3 hour fire separation between A-1 & F-1 (IBC 302.3.2)**

**IBC- Maximum occupancy is 1 person per 15 ft<sup>2</sup>, to include occupants from accessory spaces (back stage, dressing rooms etc...IBC 1004.1.2 & 1004.1.3)**

**IBC-Minimum egress width is occupant load x 0.2. For example, an occupancy load of 200 requires a minimum egress width of 40". An Occupancy load of 150 requires a minimum egress width of 30". (IBC Table 1005.1) Exit Corridor width shall be a minimum of 44" (IBC 1016.2)**

**IBC-The means of egress, including the exit discharge, shall be illuminated at ALL times the building space served by the means of egress is occupied, except the aisle "accessways" in Group A. (IBC 1006.1)**

**IBC- The means of egress illumination shall be supplied by the buildings power under normal operation. In the event of power supply failure, an emergency electrical system shall automatically illuminate the Exit access corridors, passageways, aisles, exterior lights at point of discharge. (IBC 1006.3)**

**IBC- The emergency power system shall provide power for a duration of not less than 90 minutes and shall consist of storage batteries or an on-site generator. (IBC 1006.3)**

**IBC- Two or more exits are required. (IBC Table 1014.1)**

**IBC- Required exits shall be unobstructed at all times. (IBC 1014.2)**

**IBC- The maximum exit travel distance is 250' (IBC Table 1015.1)**

**IBC- The clear width of means of egress from the risers/stairs shall be Occupant load x 0.3. (For example, an occupancy load of 200 requires a 60" egress. An occupancy load of 150 requires a 45" egress) (IBC-1024.6.1)**

**IBC- The minimum clear width of aisles shall be 48" for aisle stairs having seating on each side. (IBC 1024.9.1)**

**IFC- 1 Fire extinguisher per 1,500 ft<sup>2</sup> of floor space with a maximum travel distance of 75' to any extinguisher (IFC Table 906.3 (1)).**



CITY OF ABILENE, KANSAS

DEVELOPMENT APPROVAL APPLICATION FORM

419 N. Broadway • Abilene, Kansas 67410 • Tel: (785) 263-2355 • Fax: (785) 263-2552 • www.abilenecityhall.com

INSTRUCTIONS: This Application and all required fees and information must be submitted in accordance with the Code of the City of Abilene and the City of Abilene Zoning and Subdivision Regulations. All information requested in this application must be provided and answered completely.

PART I: TO BE COMPLETED BY APPLICANT

APPLICATION INFORMATION

APPLICATION FOR (CHECK APPROPRIATE BOX):

- Administrative Appeal, Annexation, Certificate of Appropriateness, Comprehensive Plan Amendment, Conditional Use Permit, Development Code Amendment, Final Plat, Home Occupation Permit, Landmark Designation, Lot Split, Non-Conforming Use Certificate, Preliminary Plat, Planned Development, Replat, Rezoning/Zoning Map Amendment, Site Plan, Vacation (Plat, Street, Easement), Variance

FOR OFFICIAL USE ONLY
Appn Number: PC 15-7 text amend
PC 15-6-DUP
Date Received: 5/26/15
Received By: [Signature]

BRIEF DESCRIPTION OF APPLICATION PURPOSE: Temporary use of building for movie/live productions

APPLICANT INFORMATION

APPLICANT/AGENT (If Not Property Owner):

NAME: Elizabeth Weese
TELEPHONE: 785.263.4574
BUSINESS NAME: Great Plains Theatre 311 NW 3rd
CITY: Abilene STATE: KS ZIP: 67410

PROPERTY OWNER (If Different from Applicant/Agent):

NAME: Casen Brown
TELEPHONE: 800.240.9392
BUSINESS NAME: Thunderstruck
CITY: Abilene, KS 67410 STATE: KS ZIP: 67410

ENGINEER/ARCHITECT/SURVEYOR:

NAME:
TELEPHONE:
BUSINESS NAME:
FAX:
CITY: STATE: ZIP:
E-mail:

Print Form

PROPERTY INFORMATION

PROPERTY ADDRESS OR GENERAL LOCATION (IN RELATION TO NEAREST STREETS):

461 Cottage Avenue

PROPERTY TAX IDENTIFICATION NUMBER:

Existing Zoning I-1 Proposed Zoning I-1 Existing Land Use Manufacturing Proposed Land Use

GROSS SIZE OF PLAT/LOT:

Residential: 0 Commercial: 0 Industrial: Other: Total:

NUMBER OF LOTS:

Residential: 0 Commercial: 0 Industrial: 1 Other: 0 Total: 1

IMPROVEMENT CHARACTERISTICS:

Number of Buildings or Structures 1 Maximum Height of Buildings or Structures Total Building Area Total Impervious Area

EXISTING PUBLIC FACILITIES:

Water Service: [X] Public [ ] Private Other (Describe)
Wastewater Service: [X] Public [ ] Private Other (Describe)
Roadway Access: [X] Public [ ] Private Other (Describe)

FLOODPLAIN INFORMATION:

Floodway [ ] Yes [ ] No FIRM Map-Panel Number
Floodway Fringe [ ] Yes [ ] No Zone:

ARE ANY OTHER PERMITS OR DEVELOPMENT APPROVALS REQUIRED, APPLIED FOR OR RECEIVED FOR THE APPLICATION PROPERTY BY THE CITY OR ANY OTHER JURISDICTION OR AGENCY?

[ ] Yes [ ] No If Yes, Describe Briefly and Attach a Copy of Each Permit, Approval or Application

APPLICANT/PROPERTY OWNER CERTIFICATION\*

I/we acknowledge receipt of the instruction sheet explaining the method of submitting this application. I/we realize that this application cannot be processed unless it is completely filled in; is accompanied by a current abstractor's certificate as required in the instruction sheet; and is accompanied by the appropriate fee. I/we further certify that the foregoing information is true and correct to the best of our knowledge. I/we acknowledge that the City of Abilene Planning Commission, Board of Zoning Appeals or City Commission shall have authority to impose such conditions as it deems necessary in order to serve the public interest and welfare.

[Signature]
Applicant Signature

May 26, 2015
Date

Applicant Signature

Date

Fee: \$100.00

\* This Application must bear the signature(s) of the property owner(s). If an authorized agent signs on the owner's behalf, the agent shall sign his own name and attach the owner's written notarized authorization to this Application.

PART II - TO BE COMPLETED BY STAFF

DOCUMENTS TO BE SUBMITTED WITH APPLICATION\*\*

- Copy of Deed
- Site Plan
- Infrastructure Plans
- Elevation Survey
- Performance Agreement
- Text Amendment Language
- Annexation Boundary Map
- Variance Justification
- Easements and Covenants
- Preliminary Plat
- Development Agreement
- Traffic Impact Study
- Proof of Notification
- Property Owner List
- Operating Characteristics Report
- Other building layout + written authorization of use by property owner
- Location Map
- Final Plat
- Grading and Stormwater Plans
- Construction Plans
- Utility Plans
- Comprehensive Plan Amendment Justification
- Administrative Appeal Justification

Additional document requirements provided to applicant on \_\_\_\_\_. The applicant is advised that the application is not accepted for public review until such time as the above identified documents are submitted and a Determination of Complete Application is certified.

David B. Dillner  
Name

City Manager  
Title

David B. Dillner  
Signature

5/19/15  
Date

\*\* Number of copies for submission determined by Zoning Administrator. The Zoning Administrator may request additional information as deemed necessary to properly evaluate the permit application.

APPLICATION REVIEW

DECISION-MAKING BODY:  Staff  Planning Commission  Board of Zoning Appeals  City Commission  
 Heritage Commission  Other (specify): \_\_\_\_\_

DATE OF INITIAL HEARING(S): July 14th, 2015

FEE AMOUNT: 100<sup>00</sup> DATE FEE PAID: 5/26/15

DETERMINATION OF COMPLETE APPLICATION:

I certify that the Development Approval Application and attached documents are sufficient in form and content for review and recommendation by the decision-making bodies of the City of Abilene. As such, all required notifications and hearings may proceed pursuant to City regulations and procedures. This certification does not preclude the review, recommendation and/or decision-making bodies from requesting additional information as deemed necessary to serve the public interest.

David B. Dillner  
Name

City Manager  
Title

David B. Dillner  
Signature

5/26/15  
Date

