

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS
MARCH 11, 2015
8:15 A.M.

1. **CALL TO ORDER BY CHAIRMAN.**

2. **CONSENT AGENDA.**

A. Minutes of the regular meeting of February 11, 2015

Action: Consider approving the minutes of the February 11, 2015 meeting.

3. **PUBLIC HEARING ITEMS - None**

4. **NON-PUBLIC HEARING ITEMS. – None**

A. Consider setting a public hearing for a request from Leo Elms requesting a four foot (4') variance to reduce the west rear yard building setback from the required five feet (5') to one foot (1') and a six foot (6') variance to reduce the side yard building setback from the required seven feet (7') to one foot (1') to construct a detached garage at 2303 Plum. (#02-15)

Action: Consider setting a public hearing for a setback variance request to construct a detached garage at 2303 Plum.

5. **OFF AGENDA ITEMS/COMMUNICATIONS.**

A. Update on the Zoning Regulations Rewrite

6. **ADJOURNMENT.**

**DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
FEBRUARY 11, 2015
8:15 A.M.**

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met on Wednesday, February 11, 2015 at 8:15 a.m. in Commission Chambers at City Hall. Chairman Lou Caplan declared a quorum was present and called the meeting to order.

Roll Call:

Present: Lou Caplan
Jerry Sonntag
Gerald Befort

Absent Tom Lippert
Shane Pruitt

City Staff Present: I. D. Creech, Director of Public Works, Jesse Rohr, Superintendent and Linda Bixenman, Administrative Assistant of Planning, Inspection and Enforcement.

2. CONSENT AGENDA:

A. MINUTES: Jerry Sonntag moved, Gerald Befort seconded the motion to approve the minutes from the January 14, 2015 meeting. There were no corrections or additions to those minutes.

Vote: Ayes: Lou Caplan
Jerry Sonntag
Gerald Befort

3. PUBLIC HEARING ITEMS:

A. CASE # 01-15 – PUBLIC HEARING TO CONSIDER A REQUEST FROM JUSTIN GOTTWALD AND L VAN & JANICE K WITHUHN FOR A 35’ SETBACK VARINCE TO REDUCE THE SETBACK ALONG HWY 183 AND RESERVATION ROAD FROM 35’ TO 0’ TO ALLOW AN OFF-PREMISE SIGN TO BE CONSTRUCTED ON AN EXISTING SIGN BASE. Jesse Rohr presented the information and location of the proposed sign on the above property on the overhead visual. The general location is at the intersection of Hwy 183 and Reservation Road.

The applicant has requested a variance to reduce the front yard building setback from the required 35 feet to 0 feet to place his business sign (Cutting Edge Collision) on an off-premise existing sign base at 1000 Reservation Road so that it would be visible from Highway 183.

The sign base will contain the business sign for the on-premise business (Countryside Homes) and the proposed off-premise advertising sign (Cutting Edge Collision) if the variance is approved. He showed them a picture of the sign base with the previous sign.

This case is unique because of the sign regulations. An on-premise advertising sign is allowed with no variance, although an off-premise advertising sign is to meet the building setback; thus the reason for this variance request.

If approved, the applicant will also have to apply for a permit from the Kansas Department of Transportation because it is along a state highway. With the sign permit process, there will be confirmation that they have acquired the KDOT permit.

Lou Caplan asked if there were any comments from the audience. There were none.

Lou Caplan asked if there were any comments from the appeals board. There were none.

Jerry Sonntag moved, Gerald Befort seconded the motion to grant a 35 foot variance to reduce the building setback from the required 35 feet to 0 feet to allow an off-premise sign to be constructed at 1000 Reservation Road requested by Justin Gottwald and L. Van & Janice K. Witthuhn based on the consideration it does meet the five statutory requirements. (Case #01-15)

Vote: Ayes: Lou Caplan
Jerry Sonntag
Gerald Befort

4. NONE-PUBLIC HEARING ITEMS: None.

5. OFF-AGENDA ITEMS/COMMUNICATIONS:

A. Update on the Zoning Regulations Rewrite: Jesse Rohr presented an update on the rewrite of the zoning and subdivision regulations.

The consultant will present Module 2 at the March 16, 2015 Hays Area Planning Commission Meeting. They will have several open houses during the day to present to the focus groups.

The consultant has begun the preparation of Module 3 which covers the sign and parking regulations, etc.

6. ADJOURNMENT: Lou Caplan adjourned the meeting at 8:23 a.m.

Submitted by: Linda K. Bixenman, Administrative Assistant,
Planning, Inspection and Enforcement

Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #02-15
 ADDRESS: 2303 Plum
 OWNER: Leo Elms
 TYPE OF REVIEW: Variance
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent
 DATE PREPARED: March 2, 2015
 AGENDA DATE: March 11, 2015

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the rear yard setback from 5 feet to 1 foot, a variance of 4 feet, AND a 6 foot variance to reduce the side yard setback from the required 7' to 1' to allow the construction of a detached garage on the property located at 2303 Plum (see further details below and attached site drawing). Staff recommends setting a public hearing for the April 8, 2015 Board of Zoning meeting for the request as submitted.

BACKGROUND:

- The applicant is requesting variances on 2 sides:
 - Rear – 5' to 1'
 - Side – 7' to 1'
- Applicant wishes to construct a detached garage on the property
- Building codes would restrict a setback closer than 3' without designed fire wall submittals from a licensed technical professional.

	Setback Required	Applicant Proposed
Front Yard	N/A	N/A
Side Yard	7'	1'
Rear Yard	5'	1'
Other Structures	5'	2'

STANDARDS OF EVALUATION:

Per State Statute 12-759 and City Ordinance Sec. 71-1250

- The BZA has the authority to grant a variance if a literal enforcement of the provisions of the adopted regulations, will, in an individual case, result in unnecessary hardship, provided:
 - The spirit of the regulations shall be observed
 - Public safety and welfare secured
 - Substantial justice shall be done
- The applicant must show that the property was acquired in good faith and that the variance is needed due to extraordinary or exceptional circumstances of the property such as exceptional narrowness, shallowness, or shape of the lot
- Before granting a variance on the basis of unusual difficulty or unreasonable hardship, there must be finding by the Board that all of the following conditions exist:
 - a. Uniqueness of the property not ordinarily found in the same zone or district and not created by willful action of the owner

Staff Analysis: *It is not immediately clear what is unique about this property that would warrant such an extreme variance. There are other similar homes and lots in the neighborhood, particularly to the west of the subject property.*

- b. The granting of the variance will not adversely affect the rights of adjacent property owners

Staff Analysis: *Erecting a structure as close as is proposed could definitely affect the rights of adjacent owners. Setbacks are in place to provide room for light, air movement, and safety and all of these might be compromised if the variance is approved as submitted.*

- c. The strict application of the code will constitute unnecessary hardship upon the property owner

Staff Analysis: *Again, this is a smaller lot that is consistent with others in the neighborhood. In the owner's statement, it states, "...there was no way to determine if we could build a garage on the property prior to purchasing the house." Staff has inquires on a regular basis from individuals who want to know what their options are prior to purchasing property. To staff's knowledge, no inquiries were made of this property.*

- d. The variance will not adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare

Staff Analysis: *It is possible that if granted as proposed, this variance **could** adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare.*

- e. The granting of the variance desired will not be opposed to the general spirit and intent of the regulations

Staff Analysis: *The granting of a variance for the proposed garage, with such an extreme variance, would be opposed to the general spirit and intent of the zoning regulations.*

RECOMMENDED ACTION:

After discussion about these items with the owner, and if the owner still wants to proceed with a hearing, AND if the BZA feels a hearing is warranted, a hearing may be set for the April 8, 2015 Board of Zoning Appeals meeting.

ATTACHMENTS:

- Variance application
- Variance justification and survey from owner
- Picture(s)
- Map(s)

APPLICATION FOR VARIANCE

- I. Name of Applicant Leo Elms Phone 785-259-1523
- Mailing Address 2303 Plum Hays, KS
- Name of Owner (if different from applicant) _____ Phone _____
- Mailing Address _____
- Name of Authorized Agent Leo Elms Phone 785-259-1523
- Mailing Address 2303 Plum
- Relationship of applicant to property is that of Owner
(Owner, tenant, lessee, other)

II. The variance is requested for a detached garage in backyard. Variance Needed

The subject of the hearing shall be a request by Leo Elms for a variance as may be deemed by the Hays Area Board of Zoning Appeals of said City, from existing legal requirements for a four foot (4') variance to reduce the west rear yard building setback from the required five feet (5') to one foot (1') and a six foot (6') variance to reduce the side yard building setback from the required seven feet (7') to one foot (1') to construct a detached garage at 2303 Plum St situated in the City of Hays, Ellis County, Kansas.

Give metes and bounds description below or on attached sheet: (required only if property is not part of a legally recorded plat)

- III. The applicant and owner herein, or authorized agent and owner:
 - A. Acknowledges receipt of an instruction sheet concerning the filing and hearing of this variance request.
 - B. Acknowledges the fee requirements established; and that the appropriate fee is herewith tendered.
 - C. Agrees to conform to all requirements of the appropriate section of the Zoning Regulations if this application is approved.
 - D. Acknowledges right to appeal the decision of the board to the District Court.

Leo Elms
APPLICANT

AUTHORIZED AGENT (IF ANY)

Leo Elms
OWNER

OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON February 6, 2015,
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00

Sinda Bixenman, Administrative Assistant
NAME AND TITLE

Leo and Tami Elms
APPLICATION FOR VARIANCES

2303 Plum St. Hays, KS

1. Uniqueness- In mid 2014 my wife and I decide to move from the northwest area of town to the current location on Plum St. This area of town is one of our favorite neighborhood in Hays because of the trees and unique houses. The only drawback to the house was it only had a one car garage but there was no way to determine if we could build a garage on the property prior to purchasing the house. We rolled the dice and bought the house and we are now looking at building a detached garage in the back yard. To my knowledge this is the only house on the block that has a one car garage; the other houses have at least two car garages. Our lot is smaller than many of the other houses on the street. We have an alley on the side of our yard which is unusual as well. It is quite apparent when you drive down our street that our house is the runt of the neighborhood and requires the most attention to bring it up to the same standards as the rest of the houses.
2. Adjacent Property - The only adjacent property that could be affected by the detached garage is located behind us to the west. There is a concrete barrier between the two back yards. My property sits about 2 to 3 feet higher than the property behind us. There is also a 5 foot fence on top of the concrete barrier. There is no one living in the house behind us, however, we do see some work being done to the property from time to time. There is also a large tree that originates in the neighbors property but overhangs my property covering much of the back yard. We love the old trees in this neighborhood and do not plan on modifying the tree in any way.
3. Hardship – My wife and I had previously lived in a larger house with 4 garages. A two door detached garage was where I did all of my woodworking and worked on projects for the house. The house was newer but we did much of the work on the house and all of the landscaping. The house and yard at the 2303 Plum location need lots of work which we are ready and willing to do but it does not make any sense to put too much time or money in to a house that only has a one car garage. The one car garage that we do have has no direct access to the house so you have to go outside to get to the garage. There is also just a one car driveway to the garage; therefore, one of us always has to park in the street. The size of the new detached garage was calculated based on being able to park my truck in the garage and having room to place my wood working tools so I can work. There are times when I build things for friends and family and I need the space to do the work.
4. Public Interest and the Spirit and Intent of the zoning regulations – I believe adding a detached garage to this property would be good for the neighborhood, public, city and me. First, it removes vehicles sitting on the street. The garage itself will follow the same feel as the house, like it was original to the house. It will create value to the house and therefore the neighborhood. Higher resale of the house means increased taxes. I believe it is in the Public's best interest and spirit and intent of the zoning regulations that this variance be granted. It will

help me improve my house, allow me to protect my vehicles from foul weather and continue to do woodworking for myself and other people. Neighbors should be pleased to see improvements made to the house and improve the quality of the neighborhood. My wife and I love this area of town and plan on being at this house for a very long time. Having the variance granted would help us realize the full potential of this house and bring it up to the same standards as the rest of the neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leo Elms', written over the word 'Sincerely,'. The signature is fluid and cursive, extending to the right with a long horizontal stroke.

Leo Elms

2303 Plum



2303 Plum



Approx. Garage Location

FUNST ST

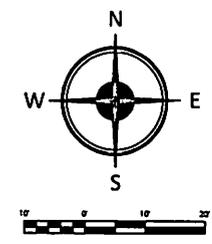
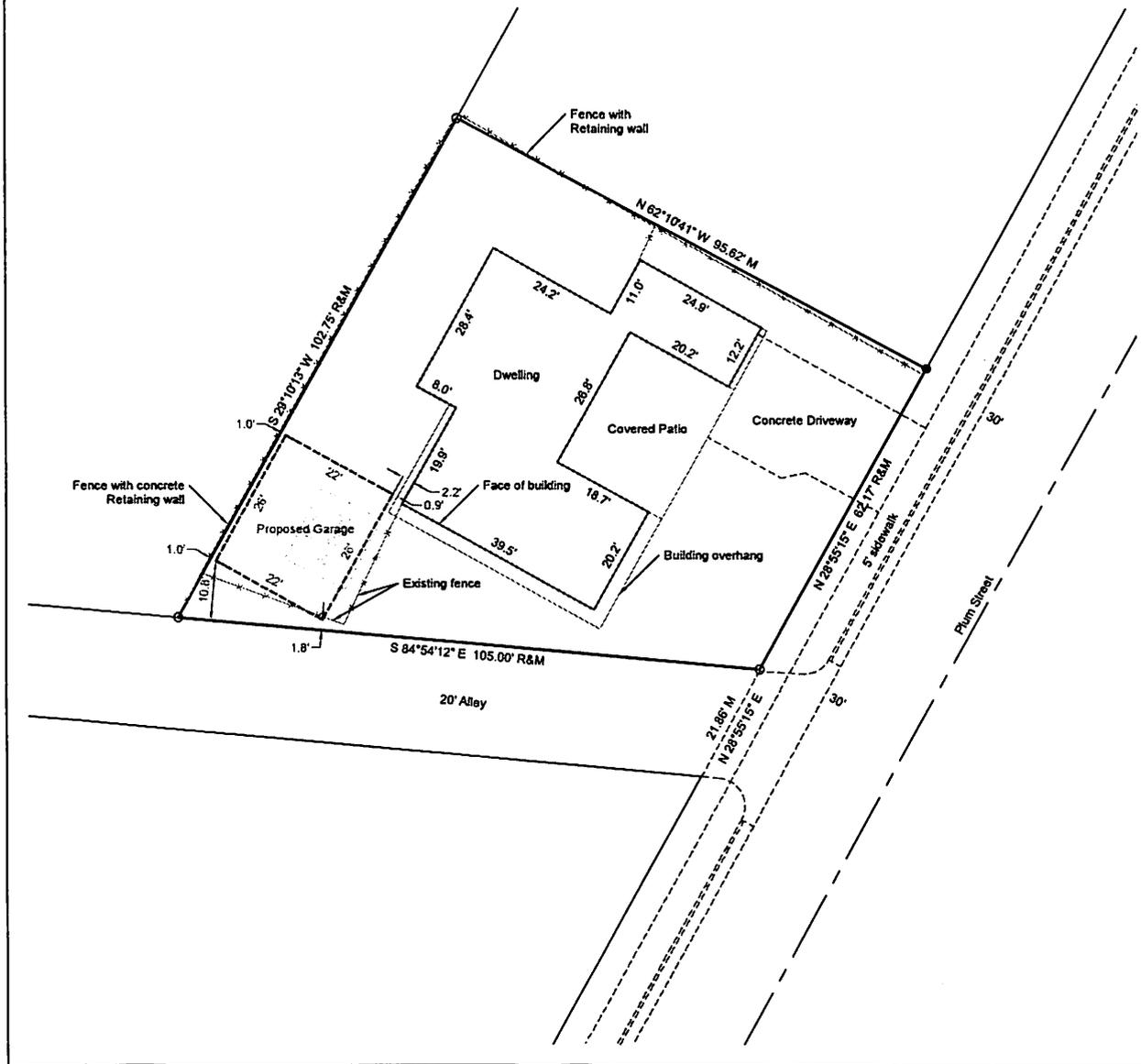


0.002601250 0.00023 1311622

OPTION 1

BOUNDARY SURVEY

2303 Plum Street, Hays, Kansas



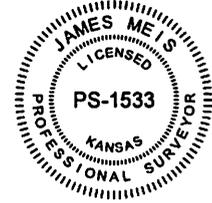
- LEGEND:**
- Found 1/2" rebar
 - Set 1/2"x24" rebar with cap "MEIS LS 1533"
 - M Measured
 - R Record

LEGAL DESCRIPTION: From Book 844, Page 832
 A portion of Lot Sixteen (16), MEADOW ACRES ADDITION to the City of Hays, Ellis County, Kansas, described as follows:

Beginning at a point on the Southeast corner of Lot 16; Thence Northerly along the East line of said lot a distance of Sixty-two feet two inches (62' 2"); Thence Westerly in a straight line to a point on the West line of said lot which is One hundred two feet nine inches (102' 9") North of the Southwest corner of said lot; Thence Southerly along the West line of said lot to the Southwest corner of said lot; Thence Easterly along the South line of said lot to the point of beginning.

- SURVEY NOTES:**
1. Field work completed January 20, 2015
 2. Bearings based on the East line of Lot 16 being North 28°55'15" East

SURVEYOR'S CERTIFICATE:
 I, James Meis, Professional Surveyor #1533 in the State of Kansas, certify that the survey shown on this plat was made by me or under my direct supervision on February 2nd, 2015. This plat is true and correct to the best of my knowledge and belief.



James Meis
 Kansas PS 1533

Leo & Tami Elms 2303 Plum Street Hays, KS 67601	DRIGGS DESIGN GROUP, PA Surveying Engineering Planning James Meis, PS 1533 205 E 7th, Suite 325, Hays, Kansas 67601 jmeis@driggsdesign.com (785) 850-8864	Project No: 2015-003 Date: 02-02-2015 Scale: 1" = 20' Sheet No: 1 of 1 Drawn By: JM
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Parcel Details for 026-138-33-0-20-08-009.00-0

Quick Reference #: R5455

Owner Information	Property Address
Owner's Name (Primary): ELMS, LEO R & TAMI L	Address: 2303 Plum St Hays, KS 67601
Mailing Address: 2303 Plum St Hays, KS 67601	

General Property Information	Deed Information
Property Class: Residential - R	Document # Document Link
Living Units: 1	844-832 View Deed Information
Zoning:	795-137 View Deed Information
Neighborhood: 020 - Hays	
Taxing Unit: 010-HAYS CITY	

Neighborhood / Tract Information	
Neighborhood:	020 - Hays
Tract:	Section: 33 Township: 13 Range: 18
Legal Description:	MEADOW ACRES ADDITION, S33, T13, R18, BEG SE COR LOT 16 TH N 62.2 TH W 98(S) TH S 102.75 TH E 105 TO POB BEING PRT LOT 16 SECTION 33 TOWNSHIP 13 RANGE 18
Acres:	0.00
Market Acres:	0.00

Land Based Classification System	
Function:	Single family residence (detached)
Activity:	Household activities
Ownership:	Private-fee simple
Site:	Developed site - with buildings

Property Factors			
Topography:	Level - 1	Parking Type:	On and Off Street - 3
Utilities:	All Public - 1	Parking Quantity:	Adequate - 2