

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

1. CALL TO ORDER BY CHAIRMAN.

2. CONSENT AGENDA.

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

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

3. PUBLIC HEARING ITEMS.

A. Public hearing for a request from Leo Elms requesting a five and one tenths foot (5.1') variance to reduce the south side yard (alley) building setback from the required seven feet (7') to one and nine tenths feet (1.9') to construct a detached garage at 2303 Plum Street situated in the City of Hays, Ellis County, Kansas. (#02-15)

Action: Consider approving the variance request as submitted for construction of a detached garage at 2303 Plum.

4. NON-PUBLIC HEARING ITEMS. – None

5. OFF AGENDA ITEMS/COMMUNICATIONS.

A. None

6. ADJOURNMENT.

Any person with a disability and needing special accommodations to attend this meeting should contact the Planning, Inspection and Enforcement office (785-628-7310) 48 hours prior to the scheduled meeting.

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

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met on Wednesday, March 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
Tom Lippert

Absent 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: The minutes from the February 11, 2015 meeting were approved by consensus. There were no corrections or additions to those minutes.

Vote: Ayes: Lou Caplan
Jerry Sonntag
Gerald Befort
Tom Lippert

3. PUBLIC HEARING ITEMS: None.

4. NONE-PUBLIC HEARING ITEMS:

A. CASE # 02-15 – 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 FOOT (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. Jesse Rohr presented the information and site of the proposed detached garage on the overhead visual. The site is at Pershing Court and Plum Street. He showed pictures of the home and pointed out the location of the proposed garage.

The applicant presented surveys for two options.

Option 1: Garage size 22' x 26'
South Side Yard (alley) - (Variance - 6') - 7' to 1'
West side (Rear Yard) - (variance - 4') - 5' to 1'
Distance from other structures - 2' 2"

Option 2: Garage size 18' X 26'
South Side Yard (Alley) - (Variance - 4 1/2') - 7' to 2 1/2'
West Side (Rear Yard) - (Variance - 3') - 5' to 2'
Distance from other structures - 4' 6"

The applicant, Leo Elms, came before the board to point out that the proposed garage would be in the southwest corner of the lot. He would like a double car garage for his truck and his woodworking tools. Most of the neighboring homes have a double car attached garage.

Jerry Sonntag asked why they did not enclose the carport in the front of the home. Gerald Befort asked if it was deep enough to hold a vehicle. Mr. Elms answered that they had considered that, but their preference was not to enclose it. It could hold a smaller vehicle but not his truck.

Lou Caplan asked if they had checked the building regulations with the City if there was room for this large of a detached garage before they purchased the property. Mr. Elms answered that they did not research it.

Tom Lippert and Lou Caplan raised the question how this request would fall under the guideline to meet the "hardship" factor; they found this to be a self-imposed hardship. Tom Lippert stated that he thought there would be another solution or alternative for a win, win for everyone.

Lou Caplan asked City Staff if the proposed structure would meet the building code. Jesse Rohr answered that the threshold for requiring fire-rated material (one hour assembly) is if the structure is three feet or less from the property line and any structures.

Gerald Befort and Jesse Rohr asked Mr. Elms if he would plan to build according to the fire code. Mr. Elms answered that the garage would be constructed in wood and the fire rated material where required by the regulations. The design and color would mimic the home.

Jerry Sonntag pointed out that this was too extreme of a variance; the structure would be too close to the property line. He could not remember if there was ever a time this extreme of a variance had been granted. He suggested enclosing the front and deal with something there.

Mr. Elms asked the board what they would consider. He pointed out that one garage is better than no garage.

Tom Lippert asked if they would consider a concrete pad to park the truck and not have a garage.

Jesse Rohr explained that the side of the building on the alley side would not be required to be built with fire-rated material because there is a credit for half of the alley which would be 10 feet.

Leo Elms asked about the size of a standard garage. Gerald Befort stated that the standard width would be 22 foot or 24 foot.

There was discussion to shrink the garage so the variance request would be towards the alley side. Jerry Sonntag pointed out that they would need a 5' variance on the alley side from the required side yard building setback of seven feet (7') to two feet (2'). Jesse Rohr pointed out that the garage door would be on the east side.

Lou Caplan and Jerry Sonntag questioned if the modified survey should be submitted before they set a public hearing.

Jesse Rohr noted that it would be up to the city to ensure the structure was built to code.

Lou Caplan entertained a motion.

Jerry Sonntag emphasized that the motion should include that it is contingent on a modified survey as directed per the discussion for their project.

I. D. Creech, Director of Public Works, pointed out that the application would need to be modified to reflect this request as implied per the discussion.

Gerald Befort moved, Jerry Sonntag seconded the motion to set a public hearing for the request by Leo Elms for a five foot variance (5') to reduce the south side yard (alley) building setback from the required seven feet (7') to two Feet (2') to construct a detached garage at 2303 Plum Street situated in the City of Hays, Ellis County, Kansas contingent that the applicant provide a modified survey and the applicant modify the variance application as implied in the discussion.

Vote: Ayes: Lou Caplan
Jerry Sonntag
Gerald Befort
Tom Lippert

5. OFF-AGENDA ITEMS/COMMUNICATIONS:

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

He invited the board to attend the presentation by Bret Keast, President, of Kendig Keast, Consultant, on Module 2 of the Zoning and Subdivision Regulations. The presentation would be offered to the focus groups from 4:30 p.m. to 6:30 p.m. and to the Planning Commission at 6:30 p.m. on Monday, March 16, 2014.

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 8:51 a.m.

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

DRAFT

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: April 1, 2015
 AGENDA DATE: April 8, 2015

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the side yard building setback from 7 feet to 5.1 feet, a variance of 1.9 feet to allow the construction of a detached garage on the property located at 2303 Plum (see further details below and attached site drawing). This variance request is a significant decrease to what was proposed during the previous meeting when the public hearing was set and is a very minimal request. Staff recommends approval of this request as submitted.

BACKGROUND:

- The applicant is requesting a variance of 1.9 feet to reduce the side setback from a minimum of 7 feet to 5.1 feet.
- Applicant wishes to construct a detached garage on the property.

	Setback Required	Applicant Proposed
Front Yard	N/A	N/A
Side Yard	7'	5.1'
Rear Yard	5'	5'
Other Structures	5'	5'

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: *The setback requested is very minimal and should have little or no impact on surrounding property. The property is somewhat unique in regards to yard size, although not to out of line with adjacent properties.*

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

Staff Analysis: *The proposed variance of 1.9 feet will have little to no impact on surrounding property owners, or city alley right-of-way.*

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

Staff Analysis: *Without the variance as submitted, it would be difficult to construct a garage large enough for a single vehicle. The property owner has changed his plans drastically from the original submission and greatly reduced the amount of variance needed.*

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

Staff Analysis: *It is **unlikely** that if granted as proposed, this variance would 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 the variance for the proposed garage would not appear to be opposed to the general spirit and intent of the zoning regulations.*

RECOMMENDED ACTION:

Based on the factors mentioned above, staff recommends the variance be approved as submitted.

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 varia Request a five foot (5') variance to reduce the south side yard (alley) building setback en needed from the required seven feet (7') to two feet (2') to construct a detached garage at 2303 210 for 6 Plum St situated in the City of Hays, Ellis County, Kansas.

options for garage location, see survey survey
on property located at 2303 Plum and legally described as: Portion of lot
Sixteen (16), Meadows Acres Addition to the City of Hays, Ellis Co
KS

in the City of Hays and which is presently zoned R-1

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 Bixemman, 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,



Leo Elms

2303 Plum



Approx. Garage Location

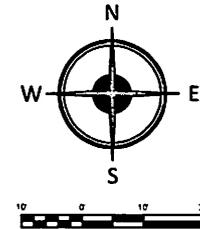
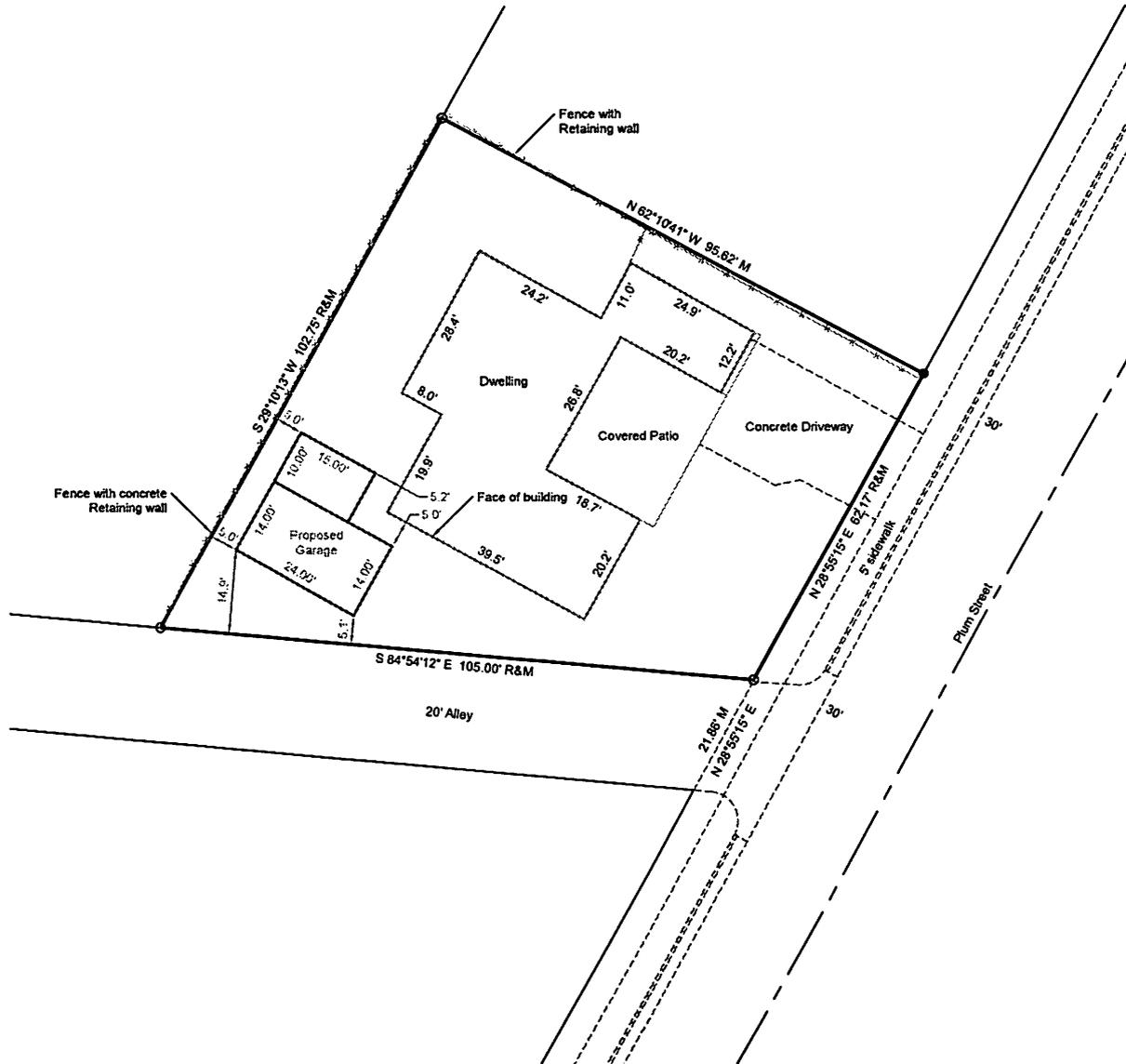
0.002601250

0.00023 131122

2300

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:

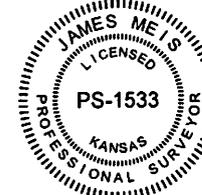
Beginning at a point on the Southeast corner of Lot 16; Thence Northerly along the East line of said lot a distance of Sixty-two feet two inches (62' 2"); Thence Westerly in a straight line to a point on the West line of said lot which is One hundred two feet nine inches (102' 9") North of the Southwest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

<p>Leo & Tami Elms 2303 Plum Street Hays, KS 67601</p>	<p>DRIGGS DESIGN GROUP, PA Surveying Engineering Planning James Meis, PS 1533 205 E 7th, Suite 325, Hays, Kansas 67601 jmeis@driggsdesign.com (785) 650-9864</p>	<p>Project No: 2015-003 Date: 03-13-2015 Scale: 1" = 20' Sheet No: 1 of 1 Drawn By: JM</p>
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THIS IS A LIST OF PROPERTY OWNERS THAT OWN PROPERTY ABUTTING THE SUBJECT PROPERTY THAT WERE MAILED THE NOTIFICATION OF THE PUBLIC HEARING.

#02-15							
Property Address	Parcel	First Name	Last Name	Address	City	State	Zip
2303 Plum St	026-138-33-0-20-08-009.00-0	Leo R & Tami L	Elms	2303 Plum St	Hays	KS	67601
2302 Pershing Ct	026-138-33-0-20-08-005.00-0	Jeremiah E	Clark	2302 Pershing Ct	Hays	KS	67601
2306 Pershing Ct	026-138-33-0-20-08-004.00-0	John M & Roberta S	Von Lintel	P O Box 1753	Hays	KS	67601
2305 Plum St	026-138-33-0-20-08-010.00-0	J Douglas Fellers & Pamela S Allen		2305 Plum St	Hays	KS	67601
2306 Plum St	026-138-33-0-20-09-003.00-0	Roger D & Nancy J	Harman	2306 Plum St	Hays	KS	67601
2302 Plum St	026-138-33-0-20-09-004.00-0	Carolyn J	Miller	2302 Plum St	Hays	KS	67601
2300 Plum St	026-138-33-0-20-09-004.01-0	Richard & Joan	Ostmeyer	2300 Plum St	Hays	KS	67601
1101 E 27th St - Ste F5	026-138-33-0-20-08-008.00-0	Doug	Williams	307 W 23rd St	Hays	KS	67601
309 W 23rd St	026-138-33-0-20-08-007.00-0	Sandra K	Haselhorst	309 W 23rd St	Hays	KS	67601
2302 Pershing Dr	026-138-33-0-20-08-005.00-0	Jeremiah E	Clark	2302 Pershing Dr	Hays	KS	67601

Published in the Hays Daily News
March 16, 2015

**BEFORE THE HAYS AREA
BOARD OF ZONING APPEALS
THE CITY OF HAYS, KANSAS
NOTICE**

TO: Leo Elms
The Hays Area Planning
Commission
The City of Hays, Kansas, and
all other persons concerned

You are hereby notified that
pursuant to the provisions of
K.S.A. 12-716 through K.S.A.
12-724 et seq. as amended, and
Ordinance 3721 of the Code of
Ordinances of the City of Hays,
and Resolution

2007-8 of the Board of County
Commissioners of Ellis County,
Kansas, that a hearing will be had
before said Board upon the appeal
filed by Leo Elms.

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 five foot
(5') variance to reduce the south
side yard (alley) building setback
from the required seven feet (7')
to two feet (2') to construct a
detached garage at 2303 Plum St
situated in the City of Hays, Ellis
County, Kansas.

You are hereby notified that a
hearing will be had upon said
appeal on the 8th day of April
2015 at 8:15 a.m., in the City
Commission Chambers of City
Hall, in the City of Hays, Kansas,
at which time said appeal will be
determined.

Lou Caplan, Chairman
Hays Area Board of
Zoning Appeals

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