

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS
SEPTEMBER 9, 2015
8:15 A.M.

1. CALL TO ORDER BY CHAIRMAN.

2. CONSENT AGENDA.

A. Minutes of the regular meeting of June 10, 2015

Action: Consider approving the minutes of the June 10, 2015 meeting.

3. PUBLIC HEARING ITEMS – None

4. NON-PUBLIC HEARING ITEMS.

A. Consider setting a public hearing for a request from Midwest Energy Inc requesting a special use permit for a self-supporting telecommunications tower and equipment shelter at 1330 Canterbury Drive. (#07-15)

Action: Consider setting a public hearing for a special use permit for a self-supporting telecommunications tower and equipment shelter at 1330 Canterbury Drive.

5. OFF AGENDA ITEMS/COMMUNICATIONS.

A. None

6. ADJOURNMENT.

**DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
JUNE 10, 2015**

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met on Wednesday, June 10, 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

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, Tom Lippert seconded the motion to approve the minutes from the May13, 2015 meeting. There were no corrections or additions to those minutes.

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

3. PUBLIC HEARING ITEMS: Lou Caplan explained that the cases would be out of order due to unforeseen circumstances that would delay the first applicant.

B. CASE # 04-15 – A PUBLIC HEARING FOR A REQUEST FROM ROBERT J WICKHAM FOR A FOUR AND THREE TENTHS FOOT (4.3’) VARIANCE TO REDUCE THE WEST SIDE YARD BUILDING SETBACK FROM THE REQUIRED SEVEN AND THREE TENTHS FOOT (7.3’) TO THREE FEET (3’) TO CONSTRUCT AN 18’ x 18’ SHED AT 1308 W 44TH STREET: Jesse Rohr introduced the case for the applicant’s request for a 4.3 foot variance to reduce the west side yard building setback from the required 7.3 feet to 3 feet to allow the construction of an 18’ X 18’ shed on an existing 20’ X 20’ concrete slab on the property located at 1308 W 44th Street, a 73’ by 125’ lot. He presented the information, images, diagrams and the aerial view of the location on the overhead visual. The home faces north.

Chairman Caplan asked the applicant to come forward. Robert J Wickham came before the board with the above request.

Gerald Befort asked if he would consider a 16' X 18' shed that would fit within the building setbacks and fit on the existing concrete slab.

Lou Caplan asked if he could push the building to the north and/or east.

Jerry Sonntag explained that this was too extreme of a variance that would place the building too close to the neighboring property and could pose a fire safety risk. He did not want to set precedence. He explained the five statutory requirements that have to be met for the board to consider for a variance. Per the statutory requirement of "hardship", this would be a self-imposed hardship because there is room for a smaller shed or add a couple more feet of concrete to the east move the building over so he would not need that great of variance.

Mr. Wickham answered that there is a 25' tree to the north and lawn sprinklers to the east plus he did not want to obstruct the view of the back yard from the windows of his home. He explained that because the utilities are in the front yard, it would not hinder this proposed project. He pointed out another property where the building was much larger.

Lou Caplan stated that he would consider a 2.3 foot variance that would put the building 5 feet from the side yard.

Jerry Sonntag stated that it is not about the size of building; it is about it being too close to the property line and the neighboring lot for fire safety. He would consider a 2.3 foot variance.

Jesse Rohr explained to the applicant that setbacks have nothing to do with utility placement. He explained the reason there are setback requirements within the zoning regulations.

Tom Lippert explained to the applicant they are trying to find medium ground to work with. He explained that the request was for too great of a variance. He asked Jesse Rohr if there were any variance requests or variances that were granted in the neighborhood. He asked about some neighboring properties that did have sheds close to the property line.

Jesse Rohr answered that there were not any variance requests from the neighborhood. He explained that structures 120 sq feet or less are not subject to the regulations. The requirement for setbacks and permits are triggered by a structure greater than 120 square feet.

Lou Caplan and Jerry Sonntag stated that they would consider a 2.3' variance that would make the structure five feet from the west side yard building setback.

Gerald Befort suggested other options such as changing the size of the shed or moving it to the east.

Mr. Wickham asked the board if they would consider a 3.3' variance and be closer to the rear property line by one foot.

Jerry Sonntag explained that since there is no alley, he would not agree to any rear yard variance and was against having the structure less than five feet from the west side yard.

Lou Caplan entertained a motion.

Jerry Sonntag moved, Gerald Befort seconded the motion to grant a two and three tenths foot (2.3') variance to reduce the west side yard building setback from the required seven and three tenths foot (7.3') to five feet (5') to construct a detached garage at 1308 W 44th Street based on the considerations that the granted variance does meet the five statutory requirements.

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

A. CASE # 03-15 – A PUBLIC HEARING FOR A REQUEST FROM STEVEN R MONGEAU OF ROOKS COUNTY HOLDINGS LLC AND VIGNESHVARAI, LLC FOR AN EXCEPTION FOR A SPECIAL USE PERMIT TO PERMIT THE CONVERSION OF THE MOTEL TO STUDIO APARTMENTS ALLOWED PER SECTION 71-504 (18) WITHIN THE “C-2” GENERAL COMMERCIAL AND SERVICE ZONING DISTRICT WITH THE ISSUANCE OF A SPECIAL USE PERMIT FOR THE PROPERTY AT 810 E 8TH STREET:

Jesse Rohr introduced the case and presented the information for the applicant's request for a special use permit to convert the existing Budget Inn Motel to studio type apartment units at 810 E 8th Street that is located within a General Commercial and Service Zoning District. They plan to convert the single story buildings to the studio apartments and may leave the two story building for commercial offices. He showed the site from every direction. The applicant had provided examples of several other facilities they had remodeled and drawings of how the proposed studio apartments will look after the renovation and the paint scheme.

After reviewing the factors of this case, City Staff recommends the approval of the special use permit with the following condition:

During the remodel phase of the project, all plumbing fixtures shall be changed out to low-flow, water efficient devices. He noted that the applicant is aware of this condition and has no problem with that. He noted that there are city rebates that are available.

Tom Lippert raised the question that since there would be a considerable number of residents accessing the property, if there might be traffic issues at the entrance on the eastern edge of 8th Street that would impede traffic traveling west. Jesse Rohr explained that the occupant number would be no greater than the occupancy of the current use of the property.

John Braun stated that this was a good observation. If they keep the three access points, he did not believe this would be a problem. Jesse Rohr asked the applicant to come forward to speak of his intention for the entrances.

Steve R. Mongeau, member of Rooks County Holdings, LLC, came before the board to explain that there are no plans to change the access points. He understood that the entrance off of 8th street is skewed and he understood his concern. They will have directional signs in the easement to help alleviate this potential problem.

Jerry Sonntag stated that he did not believe there would be a problem since there are three entrances unless the applicant was planning to change that. If there is traffic where they cannot enter, they can continue west and use the entrance to the north.

Lou Caplan asked if there would be some commercial uses on the property. Mr. Mongeau answered that they have considered an option to keep the front area as single person office area.

He explained that the inoperable pool area will no longer be there. It will be a landscaped area.

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

Jerry Sonntag moved, Tom Lippert seconded the motion to grant a special use permit for the conversion of the motel units to studio apartments allowed per Section 71-504 (18) within the "C-2" General Commercial and Service Zoning District with the issuance of a special use permit at 810 E 8th Street based on that it meets the necessary contributing factors with the condition as follows:

During the remodel phase of the project, all plumbing fixtures shall be changed out to low-flow water efficient devices.

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

C. CASE # 05-15 – A PUBLIC HEARING FOR A REQUEST FROM JEROME ROME FOR A SEVEN FOOT (7') VARIANCE TO REDUCE THE SOUTH SIDE YARD BUILDING SETBACK FROM THE REQUIRED TEN FEET (10') TO THREE FEET (3') TO CONSTRUCT A 30' x 30' DETACHED GARAGE AT 2916 BARCLAY DRIVE:

Jesse Rohr introduced the case of the applicant's request for a 7 foot variance to reduce the south side yard building setback from the required 10 foot to 3 foot on the 100 foot wide lot to allow the construction of a 30' X 30' sized detached garage/shed in southeast corner of the property at 2916 Barclay Drive. The applicant also submitted a second option requesting a five foot variance if his first choice would not be considered. He provided the information, aerial view, front yard picture and sketch on the overhead visual. The house faces southwest.

Since there is no alley or rear yard access, the detached garage would be accessed from the front. Some trees would need to be removed.

Jerome Rome, owner, came before the board with his request. He said he may construct a 30' (wide - north and south) by 28' (deep - east and west). He asked to be three feet from the rear property line. He stated that he had just purchased the property and was not aware this would not work.

A gas and electrical line prevents them from moving the garage over to the north.

Jesse Rohr explained that the variance request was for the south side yard building setback. He would have to submit an application for a rear yard variance request.

He explained an option some buyers have done is when they enter into a contract, they add a contingency to determine if a variance or special use permit can be granted for their project.

Mr. Rome asked if they would consider a 7' variance to reduce the south side yard building setback from the required 10' to 3'. Jerry Sonntag, Lou Caplan and Tom Lippert answered that they would not want to set precedence with that great of a variance.

Tom Lippert stated that he had a hard time with this case.

Gerald Befort moved, Jerry Sonntag seconded the motion to grant a five foot (5') variance to reduce the south side yard building setback from the required ten feet (10') to five feet (5') to construct a detached garage at 2916 Barclay Drive based on the consideration would meet the five statutory requirements.

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

4. NON-PUBLIC HEARING ITEMS: None

5. OFF-AGENDA ITEMS/COMMUNICATIONS: - None

6. ADJOURNMENT: Lou Caplan adjourned the meeting at 9:04a.m.

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

Board of Zoning Appeals Action Report

AGENDA ITEM: Exception Application #07-15
ADDRESS: 1330 Canterbury Dr.
OWNER: Midwest Energy, Inc
Timothy Flax, Authorized Agent
TYPE OF REVIEW: Exception – Special Use for 150' Communication Tower
PRESENTED BY: Jesse Rohr, P.I.E. Superintendent
DATE PREPARED August 28, 2015
AGENDA DATE: September 9, 2015

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a special use permit to allow a 150' tall communication tower to be constructed on the property located at 1330 Canterbury Dr. After taking into consideration all known factors, staff recommends moving this request forward for a public hearing with a recommendation to approve the special use permit as long as any and all applicable conditions are met (as further detailed below)

BACKGROUND:

- The applicant is requesting a special use permit as allowed in Section 71-727(5) of the Zoning Regulations to allow a 150' tall communication tower to be constructed on the property located at 1330 Canterbury Dr. (Midwest Energy)
- The property is zoned C-2, General Commercial and Service District.
- All tower requests located within any zoning district within the City of Hays and 3-mile extraterritorial jurisdiction area require a special use permit from the BZA.

STANDARDS OF EVALUATION:

Per State Statute 12-759 (e) and City Ordinance Sec. 71-1250 (3)

In taking into consideration applications for a special use permit, the BZA shall give consideration to the comprehensive zoning plan, the health, safety, morals, comfort and general welfare of the inhabitants of the community, including, but not limited to, the following factors (particularly the **bolded** factors):

- The stability and integrity of the various zoning districts

- Conservation of property values
- **Protection against fire and casualties**
- Observation of general police regulations
- Prevention of traffic congestion
- Promotion of traffic safety and the orderly parking of motor vehicles
- **Promotion of the safety of individuals and property**
- Provision for adequate light and air
- Prevention of overcrowding and excessive intensity of land uses
- **Provision for public utilities**
- **Invasion by inappropriate uses**
- Value, type and character of existing or authorized improvements and land use
- Encouragement of improvements and land uses in keeping with overall planning
- **Provision for orderly and proper urban renewal, development and growth**

By ordinance, the BZA does have the authority to impose certain restrictions, conditions, terms, time limitations, landscaping, and other appropriate safeguards to protect adjoining property.

STAFF ANALYSIS:

After considering all factors and evaluating the surrounding area, staff feels that the request is reasonable and will not have a detrimental effect on the surrounding properties. The proposed tower is self-supporting (without guy wires) which is considered to be much less intrusive than a tower supported by guy wire anchors. The footprint of the tower and associated equipment shelter is relatively small when compared to the entire parcel.

The applicant has taken the “fall zone” from adjacent properties into consideration even though there are no requirements for such a setback or fall protection. Fall protection is a general concern when towers of any type are erected; however provisions have been considered for this proposal based on the setback form adjacent parcels.

All other possible locations on site shall be considered to ensure a final location that is the least intrusive and still allows for possible future development of adjacent, vacant property.

The applicant will be required to meet all FAA requirements and will be required to submit an application for airspace clearance through the FAA. A building permit will not be issued for the tower until this clearance is verified by City staff.

OPTIONS:

The following are options to consider:

- Set a Public Hearing for this request for approval of the 150' communication tower
- Do not set a public hearing

RECOMMENDED ACTION:

Motion to move this request forward for a public hearing with a recommendation to **approve** the application for a special use permit due to several factors including adequate protection of adjacent properties, no known invasion of inappropriate uses, and the ability to provide for adequate public utilities.

ATTACHMENTS:

- Exception application
- Statement of justification from owner
- Maps of area

APPLICATION FOR EXCEPTION

I. Name of Applicant Midwest Energy, Inc. Phone 785-650-2525
Mailing Address 1330 Canterbury Drive, Hays Kansas 67601-0898
Name of Owner (if different from applicant) - Same - Phone _____

Mailing Address - Same -
Name of Authorized Agent Timothy J. Flax Phone 785-650-2525
Mailing Address 1330 Canterbury Drive, Hays Kansas 67601-0898
Relationship of applicant to property is that of Authorized Agent - Vice President
(Owner, tenant, lessee, other)

II. Application is made for an exception as provided in Section 71-727(5) of the Zoning Regulations to permit the installation or construction of a self-supporting telecommunications tower and equipment shelter on property zoned C2, located at intersection of 13th Street and Canterbury and legally described as: Lot(s) 1, Block(s) 7 of the Golden Belt Sixth Addition to Ellis County.

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 exception 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.

Midwest Energy, Inc.
APPLICANT
Timothy J. Flax
OWNER

Timothy J. Flax
AUTHORIZED AGENT (IF ANY)

OFFICE USE ONLY:
RECEIVED IN THE PLANNING, INSPECTION, AND ENFORCEMENT DIVISION, ON August 21, 2015,
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00.
Sinda Bixenmann, Administrative Assistant
NAME AND TITLE



Midwest Energy, Inc.

Date: 8/21/2015

To: Hays Area Board of Zoning Appeals
Planning, Inspection & Enforcement
1002 Vine St.
Hays, KS 67601

From: Midwest Energy, Inc.
Timothy J. Flax – Vice President Information Technology
1330 Canterbury Dr.
Hays, KS 67601

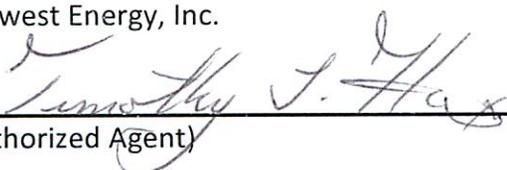
Midwest Energy would like the Hays Area Board of Zoning Appeals to consider our request for a special use permit for a self-supporting telecommunications tower and adjacent equipment shelter at the intersection of 13th Street and Canterbury Drive in Hays (see attached documentation for reference) per section 71-727 (5) within zoning district C2.

The plans are to have a 150 foot tall telecommunications tower constructed at the Northeast corner of the lot. The tower would be placed in excess of 150 feet from the adjacent alley and any property not currently owned by Midwest Energy.

The purpose of the tower and equipment room are to facilitate data and voice telecommunications between Midwest Energy's corporate office and the numerous remote offices, service centers, and substations within our 41 county service territory. As the corporate office hosts our data center, this tower is crucial to our technology infrastructure enhancements and will facilitate a reduction to our operation costs which enables Midwest Energy to maintain a low rate structure. The addition of the telecommunication tower will also allow Midwest Energy to improve our reliability and efficiency, thus enabling us to better serve our customer-owners.

Thank you for your consideration.

Midwest Energy, Inc.



(Authorized Agent)

1330 Canterbury Drive
P.O. Box 898
Hays, Kansas 67601-0898
(785) 625-3437
1-800-222-3121
Fax (785) 625-1494
www.mwenergy.com



Approximate location of tower and equipment shelter

Google earth

© 2015 Google



Fencing

Tower base and adjacent equipment shelter

165 feet from tower base to alley

© 2015 Google

Google earth



