

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA  
CITY COMMISSION CHAMBERS  
1507 MAIN, HAYS, KS  
SEPTEMBER 14, 2016  
8:15 A.M.

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

2. **CONSENT AGENDA.**

A. Minutes of the regular meeting of July 13, 2016

*Action: Consider approving the minutes of the July 13, 2016 meeting.*

3. **PUBLIC HEARING ITEMS - None**

4. **NON-PUBLIC HEARING ITEMS.**

A. Request by Eric Augustine for a two foot (2') variance to reduce the east side yard building setback from the required five feet (5') to three feet (3') and a request for a two foot (2') variance to reduce the rear yard building setback from the required five feet (5') to three feet (3') to construct a 20' X 26' detached garage at 404 W 20<sup>th</sup> Street. (Case # 06-16)

*Action: Consider setting a public hearing for a request for a 2 foot variance to reduce the east side yard building setback from the required five feet (5') to three feet (3') and a request for a two foot (2') variance to reduce the rear yard building setback from the required five feet (5') to three feet (3') to construct a 20' X 26' detached garage at 404 W 20<sup>th</sup> Street.*

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

A. Update on the rewrite of the Unified Development Code.

6. **ADJOURNMENT.**

**DRAFT**  
**HAYS AREA BOARD OF ZONING APPEALS**  
**COMMISSION CHAMBERS IN CITY HALL**  
**MINUTES**  
**July 13, 2016**

**1. CALL TO ORDER:** The Hays Area Board of Zoning Appeals met at their regularly scheduled meeting date of Wednesday July 13, 2016 in Commission Chambers at City Hall, although they met at 2:00 p.m. rather than 8:15 a.m. due to emergency storm clean up (trees and branches down). Chairman Lou Caplan declared a quorum was present and called the meeting to order.

**Roll Call:**

Present: Lou Caplan  
Gerald Befort  
Tom Lippert

Absent Jerry Sonntag  
Rich Sieker

City Staff Present: Jesse Rohr, Superintendent and Linda Bixenman, Administrative Assistant of Planning, Inspection and Enforcement.

**2. CONSENT AGENDA:**

**A. Minutes:** Gerald Befort moved, Tom Lippert seconded the motion to approve the minutes from the June 8, 2016 meeting. There were no corrections or additions to those minutes.

Vote: Ayes: Lou Caplan  
Gerald Befort  
Tom Lippert

**B. No Changes to the Agenda**

**3. PUBLIC HEARING ITEMS:**

**A. PUBLIC HEARING FOR MICHAEL MCINTYRE REQUESTING A 4 ½ FOOT VARIANCE TO REDUCE THE SOUTH SIDE YARD BUILDING SETBACK FROM THE REQUIRED 9 ½ FEET TO 5 FEET TO CONSTRUCT A DETACHED GARAGE AT 2003 LINCOLN DRIVE. (Case # 05-16)** Jesse Rohr presented a power point presentation with the information, location and site plan on the overhead visual on the above case. Joslyn Brungardt and Caci Pommerehn represented the applicant who was not able to attend. The property is located on the west side of Lincoln Draw and north of 20<sup>th</sup> Street.

The applicant would like the variance to construct a detached garage behind the house to have access from the street. There is part of a platted alley although it is not improved so there is no rear access.

He explained that when the new zoning regulations are implemented in 6 to 8 weeks, this would be within the setback standards without the need of a variance.

He explained the options for this case:

- Approve the variance as submitted
- Do not approve the variance
- Provide other options for the applicant

Based on the information provided and that when the new zoning regulations are adopted, the garage would be built within the setbacks without a variance; staff recommends approving the variance as submitted.

Lou Caplan asked for comments from the audience.

One of the representatives of the applicant stated that they had received a favorable letter from the neighbor (John Gatschet, 2001 Lincoln Drive, Hays, KS).

Tom Lippert acknowledged that it was good to know, although ownership changes over time and the next neighbor may feel differently. The board has to adhere to the statutory requirements to base their decision. In this case though, this project would meet the new zoning setback standards and would not be an issue.

One of the representatives of the applicant stated that there would be a fence between the garage and the neighbor's property. Jesse Rohr added that per the rendering, this would look really nice.

Tom Lippert moved, Gerald Befort seconded the motion to grant the 4 ½ foot variance to reduce the south side yard building setback from the required 9 ½ feet to 5 feet to construct a detached garage at 2003 Lincoln Drive based on the consideration it meets the five statutory requirements and especially in light that it would meet the setback standard without a variance with the adoption of the new Unified Development Code in the near future.

Vote: Ayes:

Lou Caplan  
Gerald Befort  
Tom Lippert

**4. NON-PUBLIC HEARING ITEMS: - NONE**

**5. OFF AGENDA ITEMS:**

**A. UPDATE ON THE PROPOSED UNIFIED DEVELOPMENT CODE:** Jesse Rohr provided the update on the proposed Unified Development Code. It was recommended by the Planning Commission to go before the City Commission work session on July 21, 2016. The consultant will provide the presentation.

He explained that a new zoning map is being reviewed for approval to coincide with the Unified Development Code and will go before the Hays Area Planning Commission at the July 18, 2016 meeting. It would then go before a public hearing and if recommended for approval, would go before the City Commission work session. Based on their direction, it would go for a formal meeting after that.

**B. OTHER:** - None

**6. ADJOURNMENT:** Lou Caplan adjourned the meeting at 2:11 p.m.

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

## Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #06-16  
 ADDRESS: 404 W 20th  
 OWNER: Eric Augustine  
 TYPE OF REVIEW: Variance  
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
 DATE PREPARED: September 6, 2016  
 MEETING DATE: September 14, 2016

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### SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the east side yard setback from 5 feet to 3 feet, a variance of 2 feet and also a rear yard setback variance of 2 feet to allow the construction of a detached garage on the property located at 404 W 20th (see further details below and attached site drawing). Staff recommends setting a public hearing for the October 12, 2016 Board of Zoning meeting for the request as submitted if it is found to be warranted based on discussion.

### BACKGROUND:

- The applicant is requesting a variance on east side yard and rear yard:
  - East Side – 5' to 3'
  - Rear Yard – 5' to 3'
- Applicant wishes to construct a detached garage on the property

	Setback Required	Applicant Proposed
Front Yard	N/A	N/A
Side Yard	5'	3'
Rear Yard	5'	3'
Other Structures	5'	>5'

## STANDARDS OF EVALUATION:

### *Per State Statute 12-759 and City Ordinance 3919*

- 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. This lot is very typical of others in the area regarding lot size. The applicant's method of access into the garage is a primary reason for the setback request. Also, the owner is attempting to construct a garage that will not interfere with existing underground utilities and still provide a size that will accommodate their proposed uses. However, a slightly smaller garage may be a solution for the owner which may allow it to be constructed within the setbacks.*

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

**Staff Analysis:** *It does not seem that the 2 foot variance being requested would adversely affect nearby property owners in any manner. There are other garages within the neighborhood which appear to have small setbacks.*

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

**Staff Analysis:** *This is a lot that is very consistent with others in the neighborhood. That being said, the variance being requested is minimal in the grand scheme of things, but getting closer than 5 foot from a rear or side yard should be looked at closely.*

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

**Staff Analysis:** *It is unlikely that the 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 a variance for the proposed garage, with approval of a variance as submitted, would not likely be opposed to the general spirit and intent of the zoning regulations, HOWEVER, the newly adopted zoning regulations that went into effect August 31<sup>st</sup>, 2016 already decreased the side yard setback from a minimum 7 feet to 5 feet.*

**RECOMMENDED ACTION:**

After discussion about these items with the owner, and if the BZA feels a hearing is warranted, a hearing may be set for the October 12, 2016 Board of Zoning Appeals meeting.

**OPTIONS:**

- Set a public hearing for the October 12, 2016 BZA meeting
- Do not move this forward for a public hearing

**ATTACHMENTS:**

- Variance application
- Variance justification and site drawing(s) from owner
- Images/Maps/Photos

**APPLICATION FOR VARIANCE**

I. Name of Applicant Eric Augustine Phone 785 639 3546  
 Mailing Address 404 W 20th Hays Ks 67601  
 Name of Owner (if different from applicant) Same Phone \_\_\_\_\_  
 \_\_\_\_\_  
 Mailing Address Same  
 Name of Authorized Agent \_\_\_\_\_ Phone \_\_\_\_\_  
 Mailing Address \_\_\_\_\_

Relationship of applicant to property is that of Owner  
(Owner, tenant, lessee, other)

II. The variance is requested to reduce sideyard from 5' to 3' and rear yard from 5' to 3' to construct detached garage

on property located at 404 W 20th and legally described as:  
Lot 9, Block 15, Hays Dev. Inc. Subdivision  
in the City of Hays and which is presently zoned "R-3" Two Family Dwelling

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.

  
 \_\_\_\_\_  
 APPLICANT  
Same  
 \_\_\_\_\_  
 OWNER

\_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON August 31, 2016  
 TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00  
Sirida K. Bjelomom, Administrative Assistant  
 NAME AND TITLE

Date: August 30, 2016

To: Hays Area Board of Zoning

From: Eric Augustine

Re: New Garage

I am writing to you today to request a setback variance to allow us to construct a new 20' x 26' detached garage in our back yard. The main purpose of this garage is to store both my 1969 Chevy pickup and my fishing boat.

Due to the fact that our lot is small and narrow, I would like to set the new garage approx.: 3' off the alley side fence and approx.: 3' off the East side property line. This will actually put the new garage in line with both the tool shed and the garden shed, and also create some extra distance from the house. Since I plan to construct a 16' sliding gate to allow for a west entrance to the new garage it will allow for easier access to the garage from the alley. Please see photos and sketch attached, the black and white lines are per current zoning regulations while the red lines indicate the proposed location of the Garage.

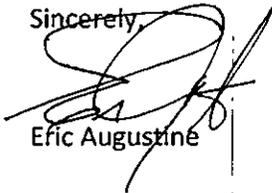
This proposed set back should not affect any neighbor other than needing to trim the neighbor to the East tree back. I was approached by that neighbor earlier this year asking if I would like for him to trim the tree, in which I stated No at the time as I seen no reason to at the moment, So, I doubt that they will mind trimming the tree back. I also plan to construct this garage without soffit/eave to keep as much distance possible from the property lines or existing structures. I have also visited with other neighbors, and the ones I have discussed my plans with have shown support for the project.

If we are to build this new garage as required by zoning regulations, we would need to shorten the building due to the fact that I do not want to build over our sewer line, in which would make the new building too short for the fishing boat. It would also create a lot of wasted space on both the East and South side of the new garage and cause less distance from our home.

The goal in requesting this setback variance is to allow for the construction of this new garage while maintaining visual appeal and creating functionality of the limited space. It should also improve the value of the real estate.

Granting of the variance will not be opposed to the general spirit and intent of the Zoning regulations. The new garage will not be in the way of any utilities or interfere with traffic or maintenance of the alley.

Sincerely,



Eric Augustine



STOP

W 20th St



W 20th St





2001

CANYON BLVD

W 20TH ST

406

404

402

Proposed Garage

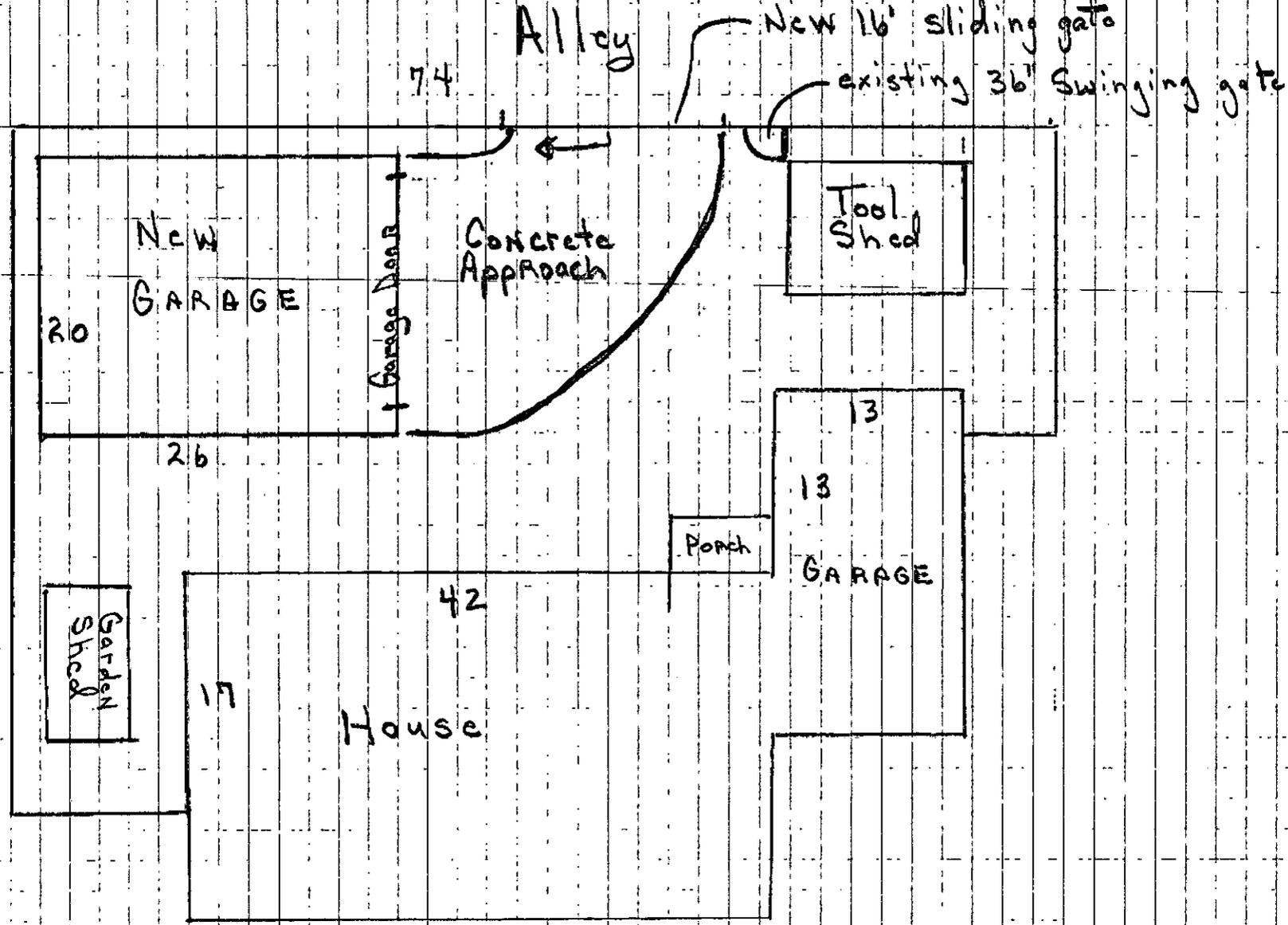
409

407

405

403

48



West 20th Street