

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS
1507 MAIN, HAYS, KS
OCTOBER 12, 2016
8:15 A.M.

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

2. **CONSENT AGENDA.**

A. Minutes of the regular meeting of September 14, 2016

Action: Consider approving the minutes of the September 14, 2016 meeting.

PUBLIC HEARING ITEMS.

A. Public hearing on 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 20th Street. (Case # 06-16)

Action: Consider a request 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 20th Street.

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

4. **OFF AGENDA ITEMS/COMMUNICATIONS.**

5. **ADJOURNMENT.**

DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
SEPTEMBER 14, 2016

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met at their regularly scheduled meeting date of Wednesday September 14, 2016 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
Gerald Befort
Tom Lippert
Rich Sieker

Absent Jerry Sonntag

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

2. CONSENT AGENDA:

A. Minutes: The minutes from the July 13, 2016 minutes were approved by consensus. There were no corrections or additions to those minutes.

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 20TH STREET – CASE # 06-16: Jesse Rohr explained that the Unified Development Code was officially adopted on August 31, 2016. This change lessens the allowed side yard building setback across the board for new built structures to five feet.

He gave a power point presentation with the information, location and site plan on the overhead visual for the above variance request to construct a detached garage for storage. The garage would be aligned with his two small existing sheds on the property. The owner Eric Augustine was in attendance.

Jesse Rohr explained that the reason for the request is that he does not want to build the garage over the gas and sewer lines located in the back yard. Also they would like access to the concrete through a sliding gate.

Eric Augustine explained that the reason for access from the west is for extra length because there is not enough depth between the house and the alley to hold the length of the boat and trailer.

He listed the options to consider for this case:

- Set a public hearing for the variance as submitted
- Do not set a public hearing
- Provide other options for the applicant

Based on the information provided, the City Staff recommends setting a public hearing for October 12, 2016 for the variance request. He explained the publication process and notification to the abutting property owners.

He asked the board for any comments for himself or applicant.

Tom Lippert raised the question of what the justification of "hardship" aspect is to satisfy that consideration of the statutory requirements. Eric Augustine answered that the "hardship" is that the location of the sewer line in the back yard prevents the garage from being built within the setbacks. Also he would like to align the garage to have access to the hard surface through a sliding gate. There would be more distance between the home and less wasted space.

Lou Caplan asked about the garage to the right hand side in the picture. Jesse Rohr explained that was on the back lot. The lots are slightly out of line.

Jesse Rohr pointed out that this was an older part of town. He suggested that the board drive down the alley to note that there are other structures built that close to the side and rear yard property lines.

Jesse Rohr explained that it is allowed to build over the sewer line; although it is not recommended.

Gerald Befort moved, Rich Seiker seconded the motion to set a public hearing for October 12, 2016 for 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 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 20th Street.

Vote: Ayes:

Lou Caplan
Gerald Befort
Rich Seiler

Nay:

Tom Lippert

5. OFF AGENDA ITEMS/COMMUNICATIONS:

A. UPDATE ON THE REWRITE OF THE UNIFIED DEVELOPMENT CODE

Jesse Rohr explained that the Unified Development Code was officially adopted on August 31, 2016. He explained how the new regulations would lessen the number of variance/exception cases. Of the last fifteen cases, seven of them would not have had to come to the board.

B. FURTHER DISCUSSION

Tom Lippert stated that he struggles with the justification of the above case requesting a variance for a greater setback than what is allowed per the new regulations that already provide a lesser setback than the old regulations. He believed lessening the side yard setbacks would not have anyone asking for a greater setback since the five feet was set to satisfy the safety regulations and aesthetics. It would be a 40% reduction from the city regulations. It is condensing it even tighter.

Jesse Rohr concurred. He stated that it is difficult to justify the statutory requirement of "hardship". It is a struggle to determine if it is a "hardship".

Greg Sund explained that the strict interpretation of "hardship" is when there is a restriction of land that would make it unusable. It is difficult to follow; land use is so complicated.

Lou Caplan stated that he looks at older neighborhoods differently and considers more leniencies because the surrounding structures are within the same setback as requested versus a new neighborhood. It will not look out of place because it would conform to structures around it in an older neighborhood.

6. ADJOURNMENT: Lou Caplan adjourned the meeting at 9:34 a.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: October 4, 2016
 MEETING DATE: October 12, 2016

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 granting the variance only if the hardship and uniqueness can be determined and found to justify the variance requested.

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 and shape. 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, or consider placing the garage a couple of feet closer to the house and closer to the west.*

- 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 (although likely quite old) 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 scrutinized closely before being considered. Without the*

variance, the owner can still construct a garage, but maybe not as large as desired or not in the exact spot that is desired.

- 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 31st, 2016 already decreased the side yard setback from a minimum 7 feet to 5 feet.*

RECOMMENDED ACTION:

Staff recommends granting the variance only if the hardship and uniqueness can be determined and found to justify the variance as requested. Other options, such as relocating the garage slightly or constructing a smaller garage, should be considered first.

OPTIONS:

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

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.

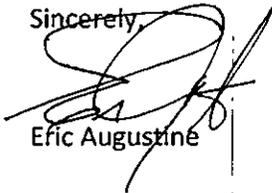
This proposed set back should not affect any neighbor other than needing to trim the neighbor to the East tree back. I was approached by that neighbor earlier this year asking if I would like for him to trim the tree, in which I stated No at the time as I seen no reason to at the moment, So, I doubt 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



2001

CANYON BLVD

W 20TH ST

406

404

402

Proposed Garage

409

407

405

403



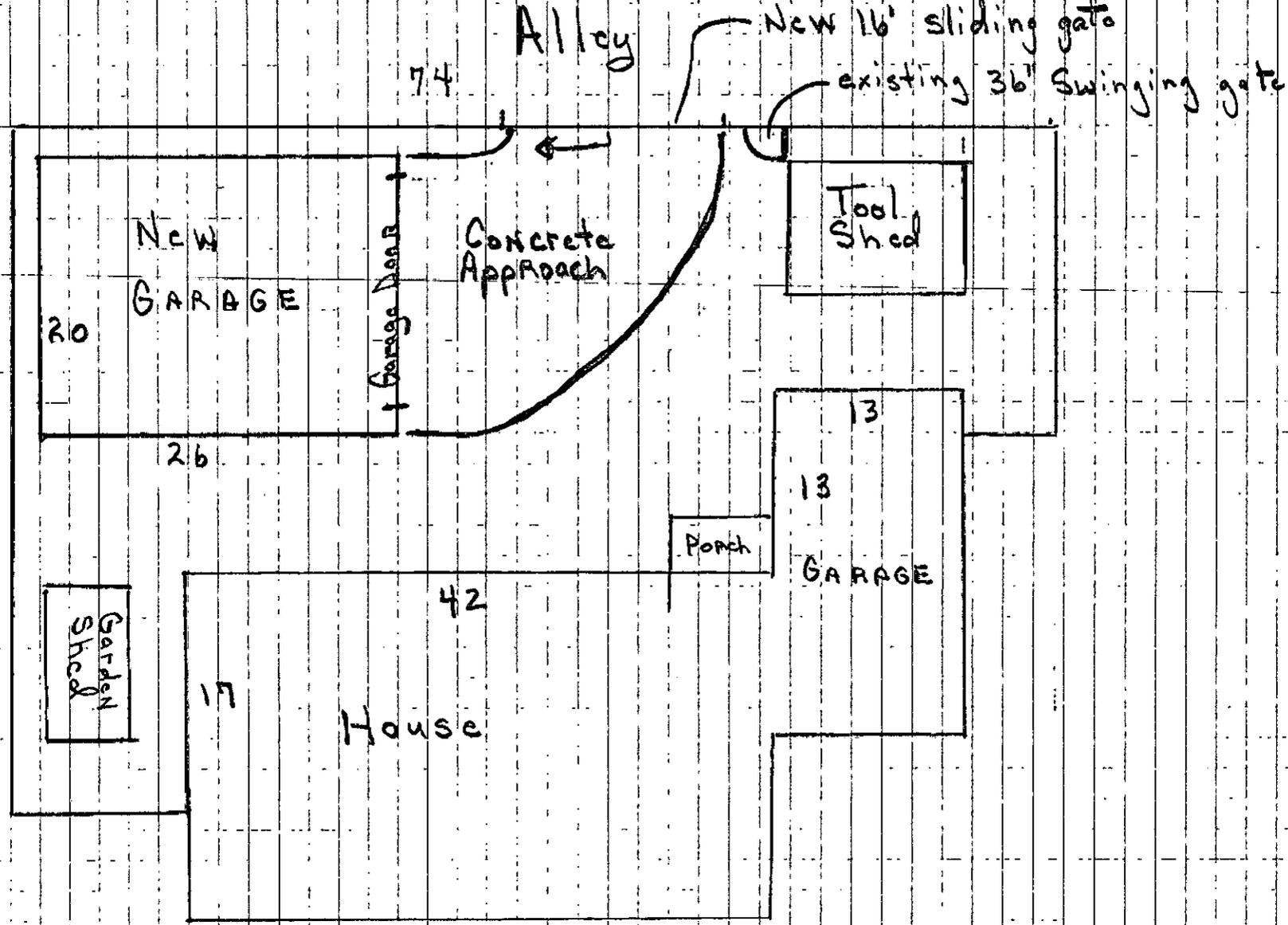
STOP

W 20th St



W 20th St

48



West 20th Street

This is the list of property owners that own property abutting the subject property that are sent notification of the public hearing.

#06-16							
Property Address	Parcel	First Name	Last Name	Address	City	State	Zip
404 W 20th St	026-138-33-0-20-23-003.00-0	Eric & Krista	Augustine	404 W 20th St	Hays	KS	67601
402 W 20th St	026-138-33-0-20-23-002.00-0	Kyle R	Kinser	402 W 20th St	Hays	KS	67601
403 W 19th St	026-138-33-0-20-23-018.00-0	Herbig Revocable Trust #1		403 W 19th St	Hays	KS	67601
405 W 19th St	026-138-33-0-20-23-071.00-0	Craig L & Melissa	Irwin	P O Box 678	Hays	KS	67601
407 W 19th St	026-138-33-0-20-23-016.00-0	Donald & Diane Waldschmidt Trust		1602 E 29th St	Hays	KS	67601
406 W 20th St	026-138-33-0-20-23-004.00-0	Charles B	Romey	406 W 20th St	Hays	KS	67601
2001 Canal Blvd	026-138-33-0-20-16-010.00-0	David D	Williams	2001 Canal Blvd	Hays	KS	67601
2002 Canal Blvd	026-138-33-0-20-12-010.00-0	Luetta M	Kaiser	2002 Canal Blvd	Hays	KS	67601
403 W 20th St	026-138-33-0-20-16-009.00-0	Joyce E Rorabaugh Living Trust		1352 Highway 40	Hays	KS	67601
409 W 19th St	026-138-33-0-20-23-015.00-0	David & Krystal	Randa	409 W 19th St	Hays	KS	67601

Published in the Hays Daily News, September 19, 2016

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

NOTICE

TO: Eric Augustine
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 3919 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 Eric Augustine.

The subject of the hearing shall be a request by Eric Augustine for a variance as may be deemed by the Hays Area Board of Zoning Appeals of said City, from existing legal requirements 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 20th Street, Hays, Kansas.

You are hereby notified that a hearing will be had upon said appeal on the 12th day of October, 2016 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

PUBLISH ON SEPTEMBER 19, 2016