

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA  
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS  
NOVEMBER 12, 2015  
8:15 A.M.

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

2. **CONSENT AGENDA.**

A. Minutes of the regular meeting of October 14, 2015

*Action: Consider approving the minutes of the October 14, 2015 meeting.*

3. **PUBLIC HEARING ITEMS**

A. Public hearing for a request from Ashley Neuburger for a five foot (5') variance to reduce the west side yard building setback from the required seven feet (7') to two feet (2') to construct a detached garage at 620 E 12<sup>th</sup> Street. (Case #08-15)

*Action: Consider approving a 5 foot variance to reduce the west side yard building setback from the required 7 feet to 2 feet to construct a detached garage at 620 E 12<sup>th</sup> Street.*

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

A. Variance request from Dan and Jennifer Hecker to reduce the distance between structures from 5' to 2 ½', and a four foot five inch (4' 5") variance to reduce the south side yard building setback from the required seven feet (7') to two foot seven inches (2' 7") to construct a 10' x 16' storage shed at 316 E 6<sup>th</sup> Street. (Case #09-15)

*Action: Consider setting a public hearing for a request to reduce the distance between structures from 5' to 2 ½', and a four foot five inch (4' 5") variance to reduce the south side yard building setback from the required seven feet (7') to two foot seven inches (2' 7") to construct a 10 x 16 storage shed at 316 E 6<sup>th</sup> Street.*

B. Request from Bernard H Werth for an eight foot (8') variance to reduce the front yard building setback from the required thirty-five feet to (35') to twenty-seven feet (27') on parcel # 026-138-34-0-30-04-001.02-0 (General Custer Rd). (Case #10-15)

*Action: Consider setting a public hearing for a request for an eight foot (8') variance to reduce the front yard building setback from 35' to 27' on parcel # 026-138-34-0-30-04-001.02-0.*

- C. Consider setting a public hearing for a request from Luecke Properties LLC for a special use permit as required by Section 71-504 (16) to allow the construction of storage units within the "C-2" General Commercial & Service District located at 780 E 41<sup>st</sup> Street. (Case #11-15)

*Action: Consider setting a public hearing for a request for a special use permit under Section 71-504 (16) to permit the construction of storage units within the "C-2" General Commercial & Service District located at 780 E 41<sup>st</sup> Street.*

- D. Request from David Randa for a variance to allow an off-premise advertising sign to be located within the 35' building setback on property located at 1104 E 22<sup>nd</sup> Street. (Case #12-15)

*Action: Consider setting a public hearing for a variance request for an off-premise advertising sign to be located within the 35' building setback on property located at 1104 E 22<sup>nd</sup> Street.*

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

- A. None

6. **ADJOURNMENT.**

**DRAFT**  
**HAYS AREA BOARD OF ZONING APPEALS**  
**COMMISSION CHAMBERS IN CITY HALL**  
**MINUTES**  
**October 14, 2015**

**1. CALL TO ORDER:** The Hays Area Board of Zoning Appeals met on Wednesday, October 14, 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  
Tom Lippert  
Rich Seiker

Absent: Gerald Befort

City Staff Present: Greg Sund, 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, Rich Seiker seconded the motion to approve the minutes from the September 9, 2015 meeting. There were no corrections or additions to those minutes.

Vote: Ayes: Lou Caplan  
Jerry Sonntag  
Tom Lippert  
Rich Seiker

**3. PUBLIC HEARING ITEMS: None**

**A. CASE # 07-15 -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 (CASE #07-15).** Jesse Rohr presented the information on the above case for the request by Midwest Energy for a special use permit to construct a 150 foot microwave communication tower and equipment building at 1330 Canterbury Drive. He presented the list of abutting property owners that were sent notification of the public hearing and a location map. There had not been any questions or comments from the public.

Tom Lippert asked if it was possible they could get by with a shorter tower to capture the signals north of town and communicate with their other offices. He wanted to address the height.

Timothy Flax, representative for Midwest Energy, explained that the microwave antennas require appropriate clearance over trees and structures to see one another to all of its office and substations. The height is determined through the engineering design.

Rick Green, Microwave Engineering President, explained that the height of the tower is determined through the engineering calculations for appropriate clearance. The final engineering calculations will determine if they can lessen the height of the tower.

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

Lou Caplan entertained a motion.

Rich Seiker moved, Jerry Sonntag seconded the motion to approve the special use permit to allow a 150 foot self-supporting telecommunications tower and equipment shelter at 1330 Canterbury Drive at the location on the lot as presented subject to approval by the Federal Aviation Administration for airspace clearance.

Vote: Ayes:

Lou Caplan  
Jerry Sonntag  
Tom Lippert  
Rich Seiker

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

**A. CASE # 07-15 – CONSIDER SETTING A PUBLIC HEARING FOR A REQUEST FROM ASHLEY NEUBURGER FOR A FIVE FOOT (5') VARIANCE TO REDUCE THE WEST SIDE YARD BUILDING SETBACK FROM THE REQUIRED SEVEN FEET (7') TO TWO FEET (2') TO CONSTRUCT A DETACHED GARAGE AT 620 E 12<sup>TH</sup> Street (CASE #08-15).**

Jesse Rohr presented a power point presentation with the information to be considered for setting a public hearing for the request for a five foot variance to reduce the west side yard building setback from the required seven feet to two feet to construct a detached garage at 620 E 12<sup>th</sup> Street.

The intent is to remove an old 10' X 20' garage and replace with a 12' X 20' garage while keeping the same setback along the west property line; thus the reason for the variance request.

The proposed rewrite of the zoning regulations would not require a variance where there is a replacement of a structure in the same place. It would be problematic for access if the garage would be moved to the east.

Staff recommends setting a public hearing to make a decision at that time.

Tom Lippert asked if staff verifies the measurement of the building setbacks. He thought it appeared the building would encroach on the rear yard building setback. Jesse Rohr answered that they do measure with the tools they have available to them.

Lou Caplan entertained a motion.

Jerry Sonntag moved, Tom Lippert seconded the motion to set a public hearing for November 11, 2015 to hear the request for a five foot (5') variance to reduce the west side yard building setback from the required seven feet to two feet to construct a detached garage at 620 E 12<sup>th</sup> Street.

Vote: Ayes: Lou Caplan  
Jerry Sonntag  
Tom Lippert  
Rich Seiker

**5. OFF-AGENDA ITEMS/COMMUNICATIONS: -None**

**6. ADJOURNMENT:** Lou Caplan adjourned the meeting at 8:27 a.m.

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

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## Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #08-15  
 ADDRESS: 620 E 12<sup>th</sup>  
 OWNER: Ashley Neuburger  
 TYPE OF REVIEW: Variance  
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
 DATE PREPARED: October 28, 2015  
 AGENDA DATE: November 12, 2015

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### SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the side yard setback from 7' to 2', a variance of 5' to allow the reconstruction of a detached 12' x 20' garage on the property located at 620 E 12<sup>th</sup> (see further details below and attached site drawing). Staff recommends approval of the request as submitted based on the factors presented.

### BACKGROUND:

- The applicant is requesting a variance on 1 side:
  - West Side – 7' to 2'
- Applicant wishes to construct a 12' x 20' detached garage on the property
- Intent is to replace the existing and very old 10' by 20' garage with a slightly larger 12' by 20' garage while maintaining the same setback along the west property line

	Setback Required	Applicant Proposed
Front Yard	N/A	N/A
Side Yard	7'	2'
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:** *This property is small compared to current lot average size, therefore making it difficult to fit a detached structure on the property. There is a garage on the property currently that is within 2' of the side property line and the proposed garage will encroach no further.*

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

**Staff Analysis:** *The proposed setback will be the same as the setback for the existing garage. The new structure will not have any more adverse impact than the existing garage does which is likely very minimal.*

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

**Staff Analysis:** *The existing garage was not built to today's standards. Older garages built decades ago were commonly 10' in width which is not large enough for today's vehicles. 12' is much more common for a "small" single car garage.*

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

**Staff Analysis:** *This variance **should not** 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, should not be opposed to the general spirit and intent of the zoning regulations.*

**OPTIONS:**

- Approve the variance as requested
- Do not approve the variance

**RECOMMENDED ACTION:**

The owner of this property is attempting to utilize an older lot and is requesting a small change to accommodate a vehicle and be able to better utilize the property for the future. Based on the analysis above, staff recommends approval of the variance request.

**ATTACHMENTS:**

- Variance application
- Variance justification and diagram from owner
- Images/Maps

**APPLICATION FOR VARIANCE**

I. Name of Applicant Ashley Neuburger Phone 785-365-0761  
 Mailing Address 1020 E. 12<sup>th</sup>  
 Name of Owner (if different from applicant) - Phone 785-365-0761  
 \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 Name of Authorized Agent \_\_\_\_\_ Phone \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 Relationship of applicant to property is that of \_\_\_\_\_  
 (Owner, tenant, lessee, other)

II. The variance is requested \_\_\_\_\_  
 \_\_\_\_\_ Request 5' variance to reduce the west side yard building setback from the required 7' to 2' to construct a new garage to set in the same location as the old garage. \_\_\_\_\_

on property located at 1020 E. 12<sup>th</sup> and legally described as: Cochran Addition, block 03, Lot 22+24, section 04 township 41 range 18  
 in the City of Hays and which is presently zoned R3.

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.

Ashley Neuburger  
 APPLICANT

Ashley Neuburger  
 AUTHORIZED AGENT (IF ANY)

Ashley Neuburger  
 OWNER

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OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON September 9, 2015  
 TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00  
Sunda Bytemann, Administrative Assistant Lot Size 52' x 86'  
 NAME AND TITLE

I hereby request a setback from an existing garage to allow for a new garage which will be 12'x20'.

**A. Uniqueness:**

Due to the fact my property is small and narrow. The back lot is only 40 feet wide. If we have to move it in the 3-1/2 feet I will lose most of the grass and yard. Also, by moving it the 3-1/2 feet it would be hard to pull a vehicle in as the house and air conditioning unit would be in the way of the garage door. The existing 20'x10' garage is over 85 years old, only 35% of it is good, and a large size SUV will not fit in it.

**B. Adjacent Property:**

The construction of a new garage will affect only one neighbor to the west of me and it is an empty lot that no one lives in. There is still lawn between us to separate our property line and would not impact any of the vehicles or sheds that are on that property.

**C. Hardship:**

Placing the building on the lot as required by zoning regulations would place the building in the middle of the backyard. The building in this location will block the view and airflow from the French doors on the south side of the house and cut down on the functional greenspace of my limited backyard. In addition, the back door of the house will not be viewable from the alley and would become more difficult to access. If we moved it to in front of the house again it will cut down on the functional greenspace of my limited front yard, it would cut down on the amount of shade that the tree provides and would block the view and airflow from the bedroom window on the north side of the house.

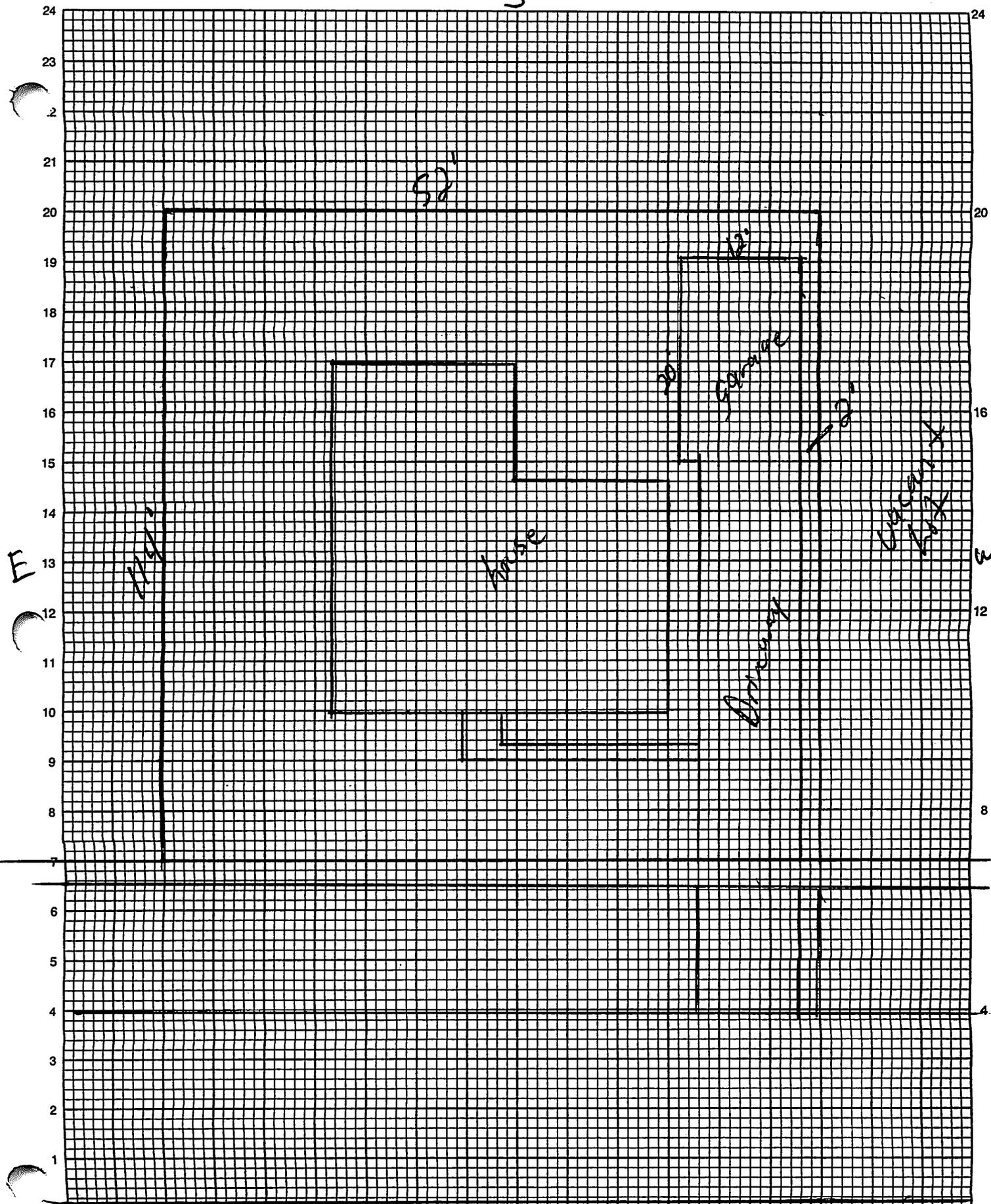
**D. Public Interest:**

My goal in requesting this setback variance is to allow building a new garage on the same location as the old garage, in a location that my neighbors also agree on, and still maintain visual appeal and functionality of the limited backyard space. It will also improve the neighborhood and improve the fair market value of the real estate with the new garage.

**E. Spirit and Intent of the Zoning Regulations:**

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

S



E

W

N

We are wanting to build a new  
12' x 20' garage in place of the  
10' x 20' garage but keep it the  
same distance from the west  
property line.





620 E 12th

Existing 10 x 20 garage

0.001 0 0.002 Miles





This is the list of property owners that own property abutting the subject property that were mailed the notification of the Public Hearing.

#08-15 620 E 12 <sup>th</sup>							
Property Address	Parcel	First Name	Last Name	Address	City	State	Zip
627 E 11th St	026-182-04-0-10-07-022.00-0	Ronald F & Rhonda R	Flax	1908 Marshall	Hays	KS	67601
621 E 11th St	026-182-04-0-10-07-021.00-0	Ralph J	Augustine	2112 Canterbury Dr	Hays	KS	67601
609 E 11th St	026-182-04-0-10-07-020.00-0	WW Rentals LLC		3506 Highway 183 Alt	Hays	KS	67601
626 E 12th St	026-182-04-0-10-07-001.00-0	Cody M	Chaffin	626 E 12th St	Hays	KS	67601
616 E 12th St	026-182-04-0-10-07-003.00-0	Robert Dean	Younker	P O Box 278	Hays	KS	67601
603 E 12th St	026-182-04-0-10-02-009.00-0	Marilyn R	Klaus	3003 E 14th St	Hays	KS	67601
601 E 12th St	026-182-04-0-10-02-008.00-0	Marilyn R	Klaus	3003 E 14th St	Hays	KS	67601
620 E 12th St	026-182-04-0-10-07-002.00-0	Ashley	Neuburger	620 E 12th St	Hays	KS	67601

(Published in the Hays Daily News, October 18, 2015)

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

TO: Ashley Neuburger  
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 Ashley Neuburger. The subject of the hearing shall be a request by Ashley Neuburger 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 west side yard building setback from the required seven feet (7') to two feet (2') to construct a single detached garage at 620 E 12th Street, Ellis County, Kansas.

You are hereby notified that a hearing will be had upon said appeal on the 11th day of November 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

(Published in the Hays Daily News, October 25, 2015 )

**CHANGE OF MEETING DATE TO NOVEMBER 12, 2015 BEFORE THE HAYS AREA BOARD OF ZONING APPEALS THE CITY OF HAYS, KANSAS NOTICE**

TO: Ashley Neuburger  
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 Ashley Neuburger. The subject of the hearing shall be a request by Ashley Neuburger 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 west side yard building setback from the required seven feet (7') to two feet (2') to construct a single detached garage at 620 E 12th Street, Ellis County, Kansas.

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

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## Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #09-15  
 ADDRESS: 316 E 6<sup>th</sup>  
 OWNER: Dan and Jennifer Hecker  
 TYPE OF REVIEW: Variance  
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
 DATE PREPARED: October 28, 2015  
 AGENDA DATE: November 12, 2015

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### SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the distance between structures from 5' to 2 ½', and a four foot five inch (4' 5") variance to reduce the south side yard building setback from the required seven feet (7') to two foot seven inches (2' 7") to construct a 10' x 16' storage shed on the property located at 316 E 6<sup>th</sup> (see further details below and attached site drawing). Staff recommends setting a public hearing for the December 9, 2015 BZA meeting.

### BACKGROUND:

- The applicant is requesting a two-part variance:
  - Distance between structures – 5' to 2.5'
  - Side yard Setback – 7' to 2'7"
- Applicant wishes to construct a 10' x 16' shed on the property

	Setback Required	Applicant Proposed
Front Yard	N/A	N/A
Side Yard	7'	2'7"
Rear Yard	5'	5'
Other Structures	5'	2.5'

## 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:** *This property does not appear to be unique in any way when compared to the other lots within the area. The lot is of average size and the size and placement of the existing structures on the lot are typical.*

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

**Staff Analysis:** *The existing house to the west (312 E 6<sup>th</sup>) appears to already be closer to the property line than would be allowed using today's standards. Wedging a storage shed into the available space beside the house as proposed would be very tight and would seem to encroach upon the open space that is typical of a side yard.*

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

**Staff Analysis:** *As the applicant mentions, there is space within the rear yard for a small shed (although yard size would be reduced). There is also an existing 24' x 30' detached garage on the property that would accommodate large amounts of storage. This request would be considered a self-imposed hardship.*

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

**Staff Analysis:** *This variance **could** adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare of the nearest neighboring property due to the close proximity of the proposed shed to the property line.*

- 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, may be opposed to the general spirit and intent of the zoning regulations. The intent of the zoning regulations is to provide for side yard between structures on opposing properties.*

#### **OPTIONS:**

- Set a public hearing to hear the variance request
- Do not set a public hearing if the case does not meet the requirements for a variance request

#### **RECOMMENDED ACTION:**

This is a difficult request to consider. While the proposed shed is rather small (10' x 16'), it still sets an undesirable precedence. There is yard space available for additional structures that could be placed within the allowable setbacks. Staff recommends setting a public hearing only if it can be determined that this request meets the statutory requirements for a variance, and would find it difficult to favorably recommend the variance as requested if indeed moved forward for hearing.

#### **ATTACHMENTS:**

- Variance application
- Variance justification and diagram from owner
- Images/Maps

**APPLICATION FOR VARIANCE**

I. Name of Applicant DAN HECKER, Jennifer Hecker Phone 785-259-5960  
Mailing Address 316 E. 6th HAYS Kansas 67601  
Name of Owner Dan Hecker Jennifer Hecker Phone \_\_\_\_\_  
(if different from applicant)

Mailing Address \_\_\_\_\_

Name of Authorized Agent \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_

Relationship of applicant to property is that of \_\_\_\_\_

(Owner, tenant, lessee, other)

II. The variance is requested A 2 1/2 Foot VARIANCE between Structures

instead of 5. Sideyard setback reduced from 7' to 2' 7"  
for a variance of 4' 5".

on property located at 316 E. 6th St and legally described as: E 15' Lot 16

↓ Lot 18, Block 13, H P Wilson Add

in the City of Hays and which is presently zoned R-3.

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.

Dan Hecker  
APPLICANT

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

Dan Hecker  
OWNER

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON October 14, 2015,

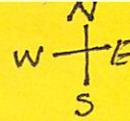
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00.

Linda Bjorkmann, Administrative Assistant. |

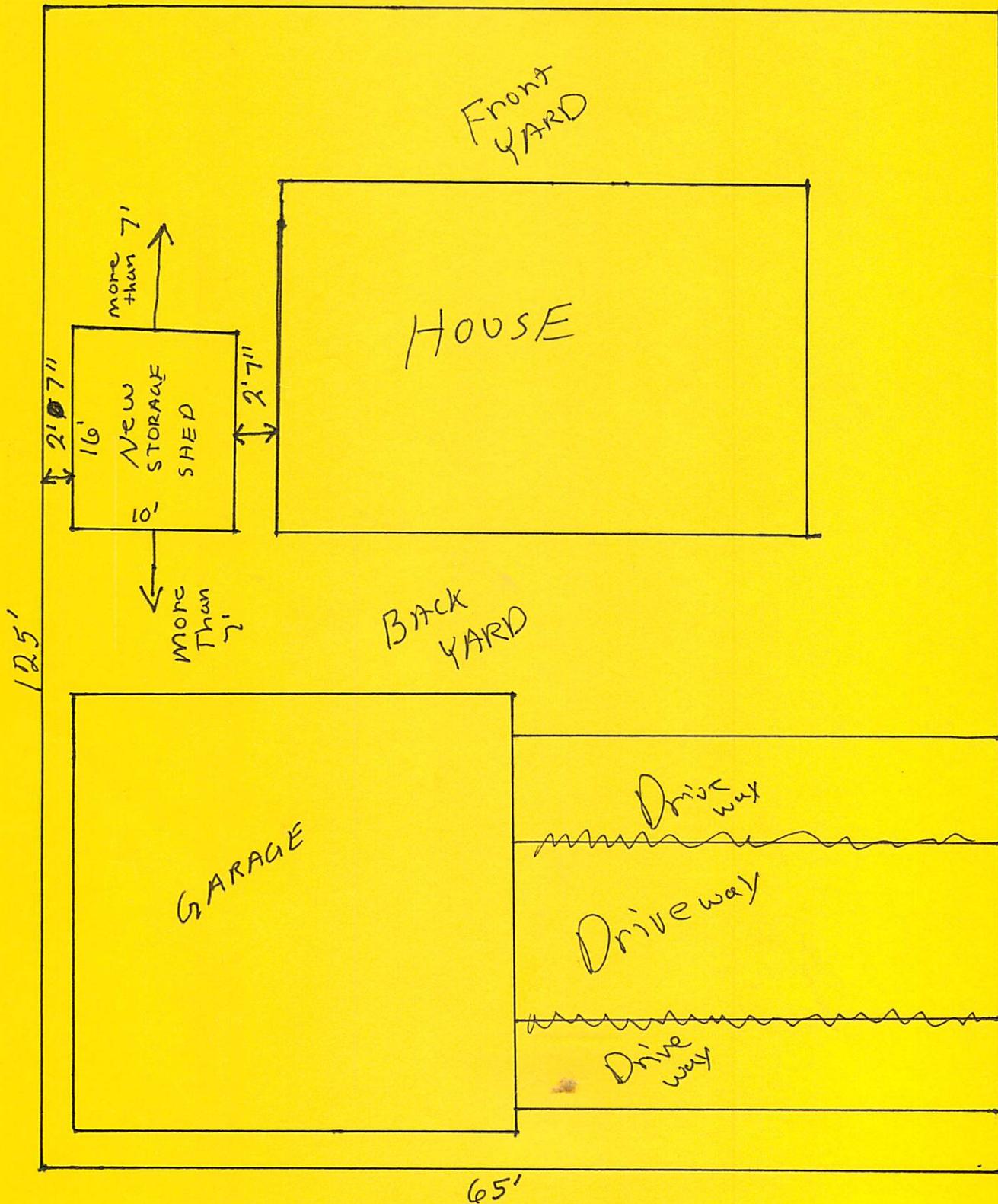
NAME AND TITLE



316 E. 6th



6th St



ALLEN

Approximate  
Proposed Location

Alley

Subject Property

E 8 TH ST

ALLEN ST

00.0000 0000.5 0 00.0000 3 Walk-13



Date: 10-14-2015

To : Hays Area Board of Zoning

From: Dan and Jennifer Hecker

We hereby request a 2 ½ foot variance between structures instead of 5 foot, and a side yard setback variance of 2 ½ foot reduced from 7 feet, to build an 10' x 16' storage shed.

A. Uniqueness: The existing non compliant garage garage which measures 24" wide by 30 ft long has caused no issues with the alley or neighbors fence, and along with the driveway consumes ½ the back yard

B. Adjacent property: The variance should leave ample distance between the house and neighbors fence to gain access for upkeep, and water run off from the roof of the new storage shed.

C. If, new shed is placed to meet required zoning regulations, it would have to be placed next to the existing garage, reducing the lawn part of the back yard by half of what is now, therefore I am wanting to use the side yard behind the house as it is pretty much wasted space.

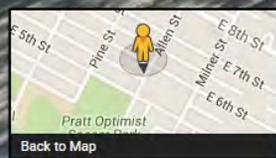
D. Public interest: My goal is to add additional storage to the existing property, allowing the garage that is there to park my vehicles in, while maintaining a visual appeal and functionality of the limited backyard space. I should also improve the fair market value of the real estate with adding additional storage for lawn equipment and so forth.

E. Spirit and Intent of the Zoning Regulations: Granting of these variances will not be opposed to the general spirit and intent of the zoning regulations, nor will the placement of the shed be in the way of any utilities, or interfere with traffic, or maintenance of the property.

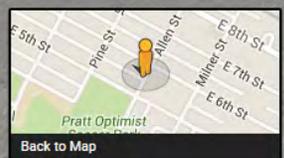
Sincerely,

A handwritten signature in black ink, appearing to read "Dan Hecker", with a large, stylized flourish extending from the bottom right.

351 E 6th St  
Hays, Kansas  
Street View - Apr 2013



Allen St  
Hays, Kansas  
Street View - Apr 2013



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## Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #10-15  
 ADDRESS: 2015 General Custer Rd.  
 OWNER: Bernie Werth  
 TYPE OF REVIEW: Variance  
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
 DATE PREPARED: October 28, 2015  
 AGENDA DATE: November 12, 2015

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### SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the front yard building setback from the required thirty-five feet (35') to twenty-seven feet (27') to construct a commercial building on the property located at 2015 General Custer Rd. (see further details below and attached site drawing). Staff recommends setting a public hearing for the December 9, 2015 BZA meeting.

### BACKGROUND:

- The applicant is requesting a front yard variance of 8':
  - Front yard setback – 35' to 27'
- Applicant wishes to construct a commercial building on the property
- This is a uniquely shaped property (see site maps)

	<b>Setback Required</b>	<b>Applicant Proposed</b>
Front Yard	35'	27'
Side Yard	N/A	N/A
Rear Yard	N/A	N/A
Other Structures	N/A	N/A

## 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:** *This property is very uniquely shaped when compared to a typical lot or other lots in the area. The triangular shape of the lot makes any sort of development very difficult without any sort of variance.*

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

**Staff Analysis:** *The proposed variance of 8' will have little to no impact on surrounding property owners, or city right-of-way (street or alley).*

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

**Staff Analysis:** *As is mentioned by the applicant, staff would agree that the shape of the lot does present a hardship that is not considered self imposed. The lot was in its current state (triangular shape) well before the current owner took possession of the property.*

- 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 building would not appear to be opposed to the general spirit and intent of the zoning regulations.*

**OPTIONS:**

- Set a public hearing to hear the variance request
- Do not set a public hearing

**RECOMMENDED ACTION:**

Based on the factors mentioned above, staff recommends a public hearing be set for the variance request as submitted and would further recommend approval of the variance if indeed a hearing takes place.

**ATTACHMENTS:**

- Variance application
- Variance justification and diagram from owner
- Images/Maps

**APPLICATION FOR VARIANCE**

I. Name of Applicant BERNARD H. WERTH Phone 785-628-1817  
- Mailing Address 1314 Steven DR. Hays, Ks 67401  
Name of Owner (if different from applicant) \_\_\_\_\_ Phone \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
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 8' into the setback - A variance of 8',  
reducing the setback from 35' to 27'.  
026-138-34-0-30-04-001.02-0  
on property located at General Custer and legally described as:  
Just South of Stanion Wholesale Electric  
in the City of Hays and which is presently zoned C-2

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.

Bernard H. Werth  
APPLICANT

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

Bernard H. Werth  
OWNER

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON October 22, 2015,  
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00.  
Sinda Bixemman, Administrative Assistant  
NAME AND TITLE





1105

1205

2201

2202

2200

2201

E22ND ST

1206

1207

1302

1304

00000

E21ST ST

GENERAL CUSTER RD

GENERAL CUSTER RD

1300

1304

1306

1308

1110

2005

1826

1822

1920

1924

1916

HOLMES RD

0.000005 0

0.0001 Miles

1916



StreetDATE: 10/21/15

TO: Hays Area Board Of Zoning

FROM: Bernie Werth

RE: I hereby request a setback from the current 35' setback {See lot Shape}

**A. Uniqueness:**

Due to the property size & shape { See lot shape } I am requesting that you allow me at certain points to go into the setback by 8' in three different places. I am wanting to construct a 50x40 & 24x28 & 20x18 all one shed stair cased thru the lot.

**B. Adjacent Property:**

The setback will not affect anything, beings that the building will be facing General Custer Street & Chetola Creek.

**C. Hardship:**

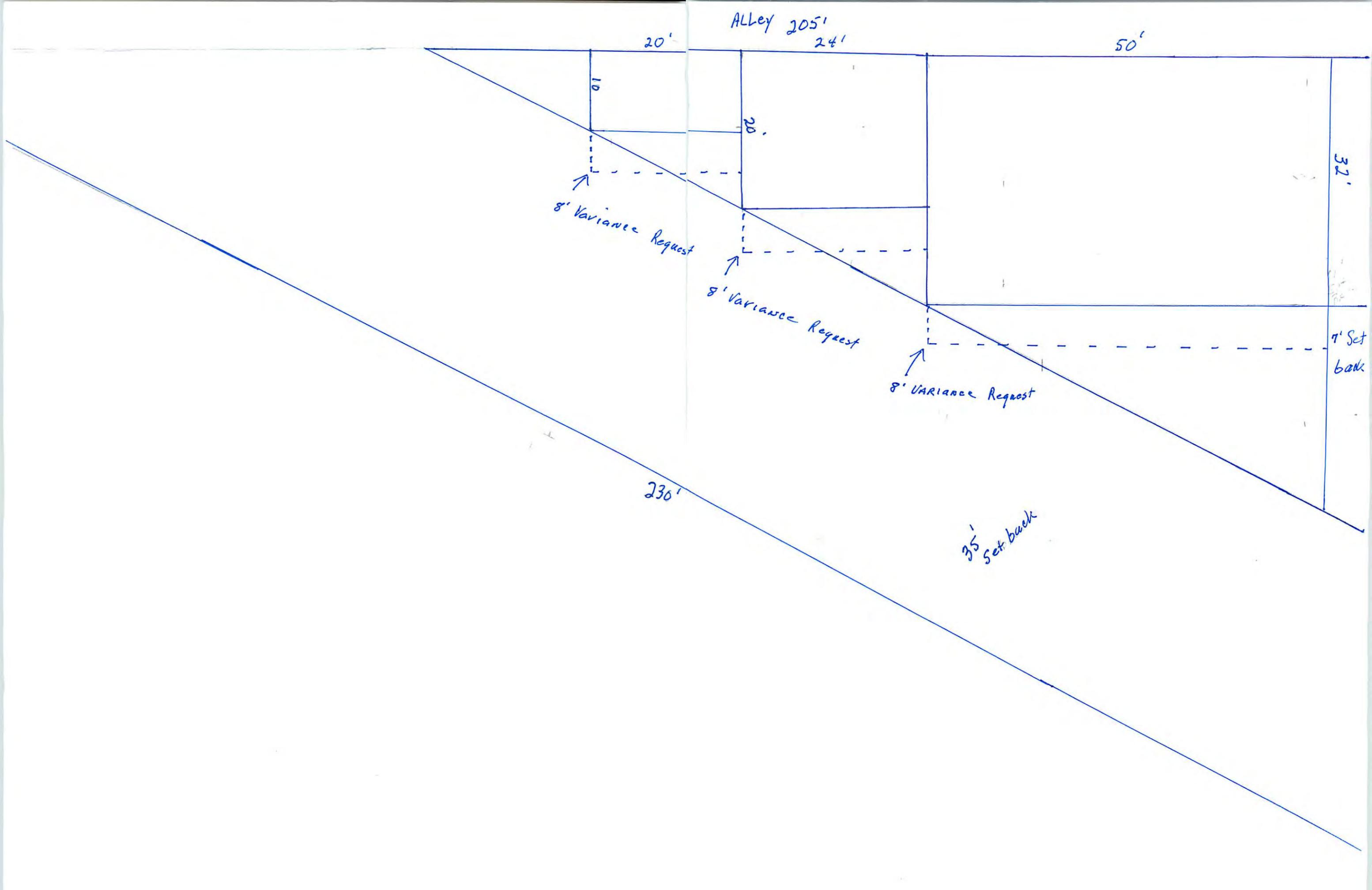
Trying to utilize this lot to the best of my knowledge, there really isn't anything to much that a person can do with this lot because of the shape. Would like to make the best of the situation at hand.

**D. Public Interest:**

Our goal is to make this area pleasing to all concerned by just utilizing the area and keeping it cleaned up.

**E. Spirit and Intent of the Zoning Regulations:**

Granting access to that 8' setback won't interfere with any utilities or traffic or any maintenance in the in-active alley behind the building.



Alley 205'  
24'

20'

50'

32'

10

20

8' Variance Request

8' Variance Request

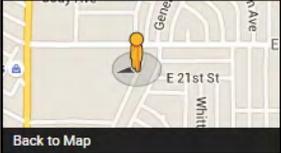
8' Variance Request

7' Set  
back

236'

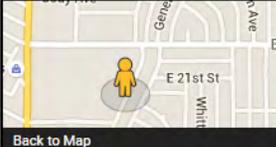
35'  
Set back

2149 General Custer Rd  
Hays, Kansas  
Street View - Apr 2013



Navigation controls including a compass, zoom in (+) and zoom out (-) buttons, a street view pegman icon, and a 'Back to Map' button.

**2099 General Custer Rd**  
Hays, Kansas  
Street View - Apr 2013



Google

Navigation controls including a compass, zoom in (+) and zoom out (-) buttons, a street view pegman icon, and a 'Back to Map' button.

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## Board of Zoning Appeals Action Report

AGENDA ITEM: Exception Application #11-15  
ADDRESS: 780 E 41<sup>st</sup> St.  
OWNER: Luecke Properties  
John Luecke (Authorized Agent)  
TYPE OF REVIEW: Exception – Special Use for Storage Units  
PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
DATE PREPARED: October 29, 2015  
AGENDA DATE: November 12, 2015

---

### **SUMMARY AND RECOMMENDED ACTION:**

The applicant is requesting a special use permit to allow for the construction of storage units on the property located at 780 E 41<sup>st</sup> St. (see attached site drawing) 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 to allow for the construction of storage units on the property located at 780 E 41<sup>st</sup> St.
- The property is zoned C-2, General Commercial and Service District
- All commercial zoning districts require a special use permit from the BZA before storage units are allowed to be developed
- Two separate Special Use Permits have previously been granted for storage units on this property, one in 2013 and one in 2014

### **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:**

While storage units have previously been approved on this property (2013 and 2014), with the expectation that the owner would make further requests for additional units, certain conditions were imposed as a condition of approval. Those conditions, including the perimeter fence erected around the existing units, have been met. This proposal is a continuation of an existing project that has slowly developed over the past 2-3 years. The site continues to develop in an orderly manner and therefore, staff feels the current request for additional storage units may be approved with no new conditions imposed.

**OPTIONS:**

The following are options to consider:

- Set a Public Hearing for this request for storage units
- 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, and no known invasion of inappropriate uses.

**ATTACHMENTS:**

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

APPLICATION FOR EXCEPTION

I. Name of Applicant John Lueck for Luecke Properties LLC Phone 785 639 7368  
 Mailing Address 765 E 41st  
 Name of Owner (if different from applicant) Same Phone Same  
 Mailing Address \_\_\_\_\_  
 Name of Authorized Agent \_\_\_\_\_ Phone \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 Relationship of applicant to property is that of owner  
 (Owner, tenant, lessee, other)

II. Application is made for an exception as provided in Section 71-504(16) of the Zoning Regulations to permit the installation or construction of Self storage building on property zoned C2, located at 780 E 45th and legally described as: Lot(s) \_\_\_\_\_, Block(s) \_\_\_\_\_ of the \_\_\_\_\_ Addition to Ellis County.  
See attached legal

Give metes and bounds description below or on attached sheet: (Required only if property is not part of a legally recorded plat)  
See attached legal - parcel 800 E 41st

- II. 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.

John Lueck for Luecke Properties LLC  
 APPLICANT  
John Lueck  
 OWNER

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

OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, AND ENFORCEMENT DIVISION, ON October 26, 2015.  
 TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00. Receipt # 612015  
Sinda B. Bixenmann Administrative Assnt  
 NAME AND TITLE



To:

City of Hays Board of Zoning appeals

Please consider my request for zoning exception for the construction of a 45' X 100' all steel structure for commercial storage of RV's, trailers and related large items. Color and trim would be the same at existing storage buildings. Building will be erected by Liberty Builder, llc.. Building will be a Sentinel all steel structure. An additional building of similar size and construction is considered for future expansion and would be constructed just east of the building mentioned above. Longer term plans call for a row of small storage units placed between the new RV storage and the existing storage units on the south side of the property.

I am requesting a zoning exception for the building mentioned above plus any additional structures to be located in the same vicinity. Timing of future construction will be determined by market demand and financial feasibility.

John Luecke  
Luecke Properties LLC

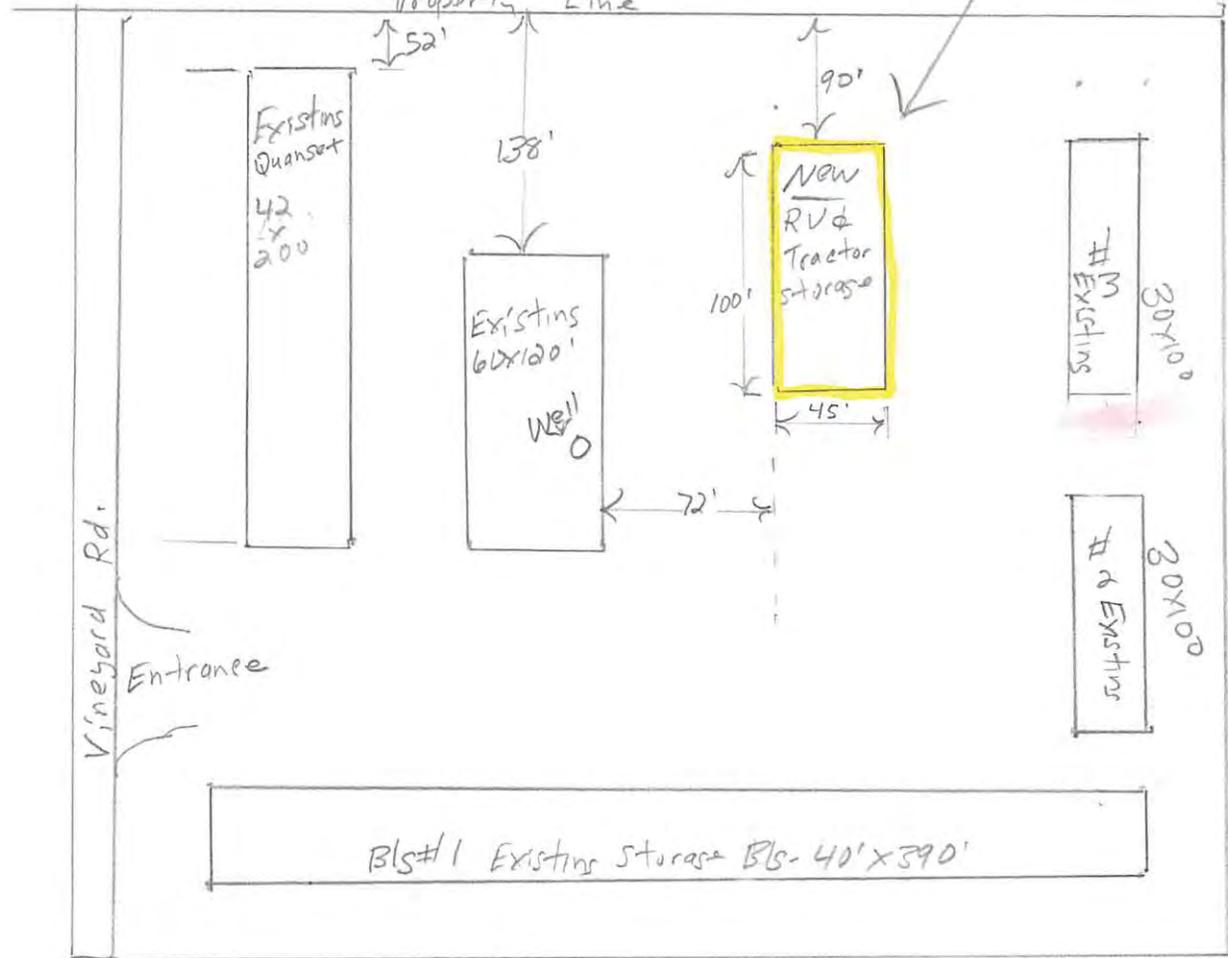
A handwritten signature in black ink, appearing to read "John Luecke", written over the typed name and company name.

Vineyard Park

Proposed new building  
No Sewer, Water  
Outside lights only

Property Line

N











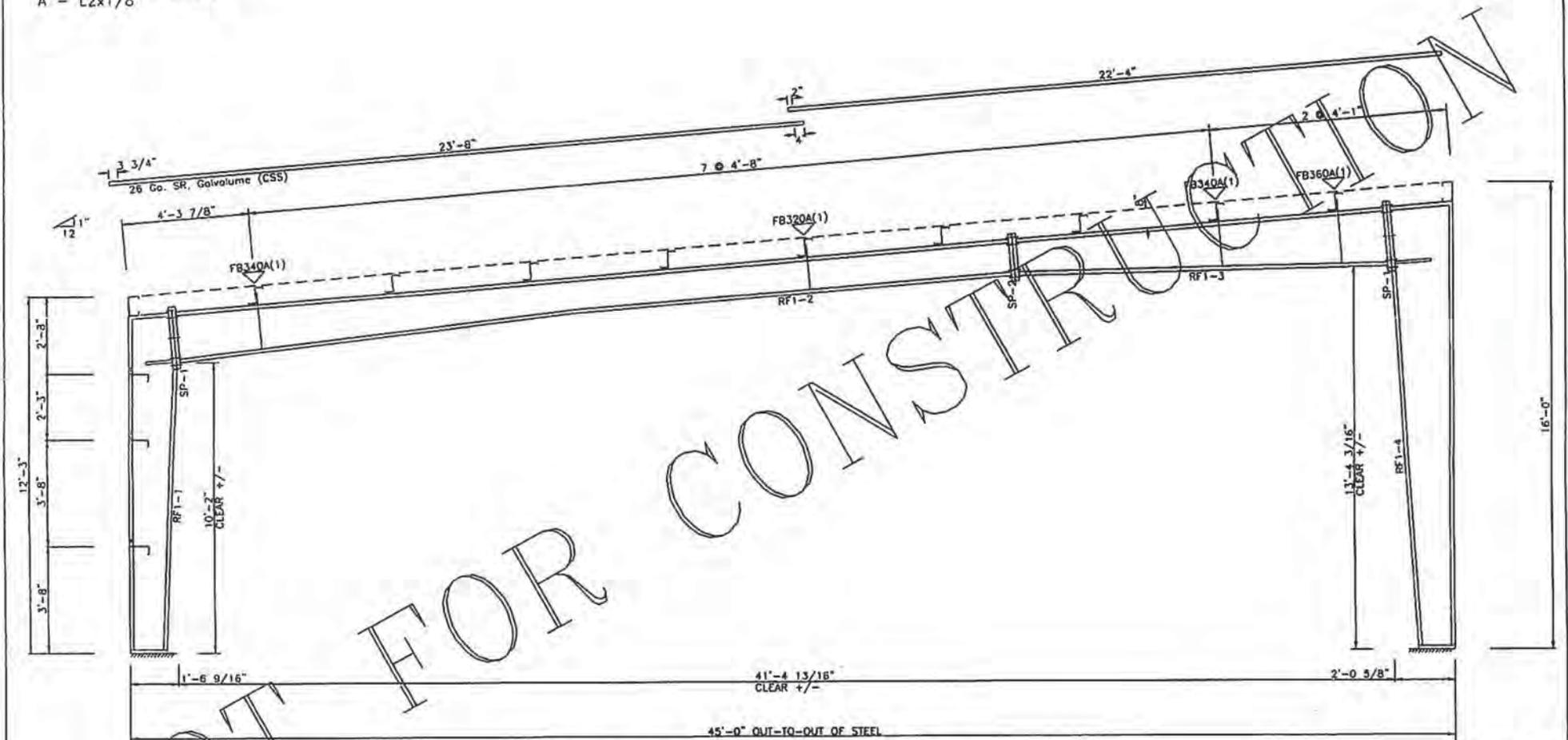
STORAGE  
UNITS  
FOR RENT



STORAGE

STORAGE  
UNITS  
FOR RENT

▽ FLANGE BRACES: Both Sides(U.N.)  
 FBxxA(1): xx=length(in)  
 A - L2x1/8



RIGID FRAME ELEVATION: FRAME LINE 2 3 4

ENGINEER'S SEAL

REVISIONS

REV	DESCRIPTION	DATE	APPROVED
	<i>Taking Pride In Building Excellence</i>		
			PAGE No.
		JOB NUMBER:	44150464
		DESIGN:	
		ENGR:	
		DATE:	9/ 3/15 08P.

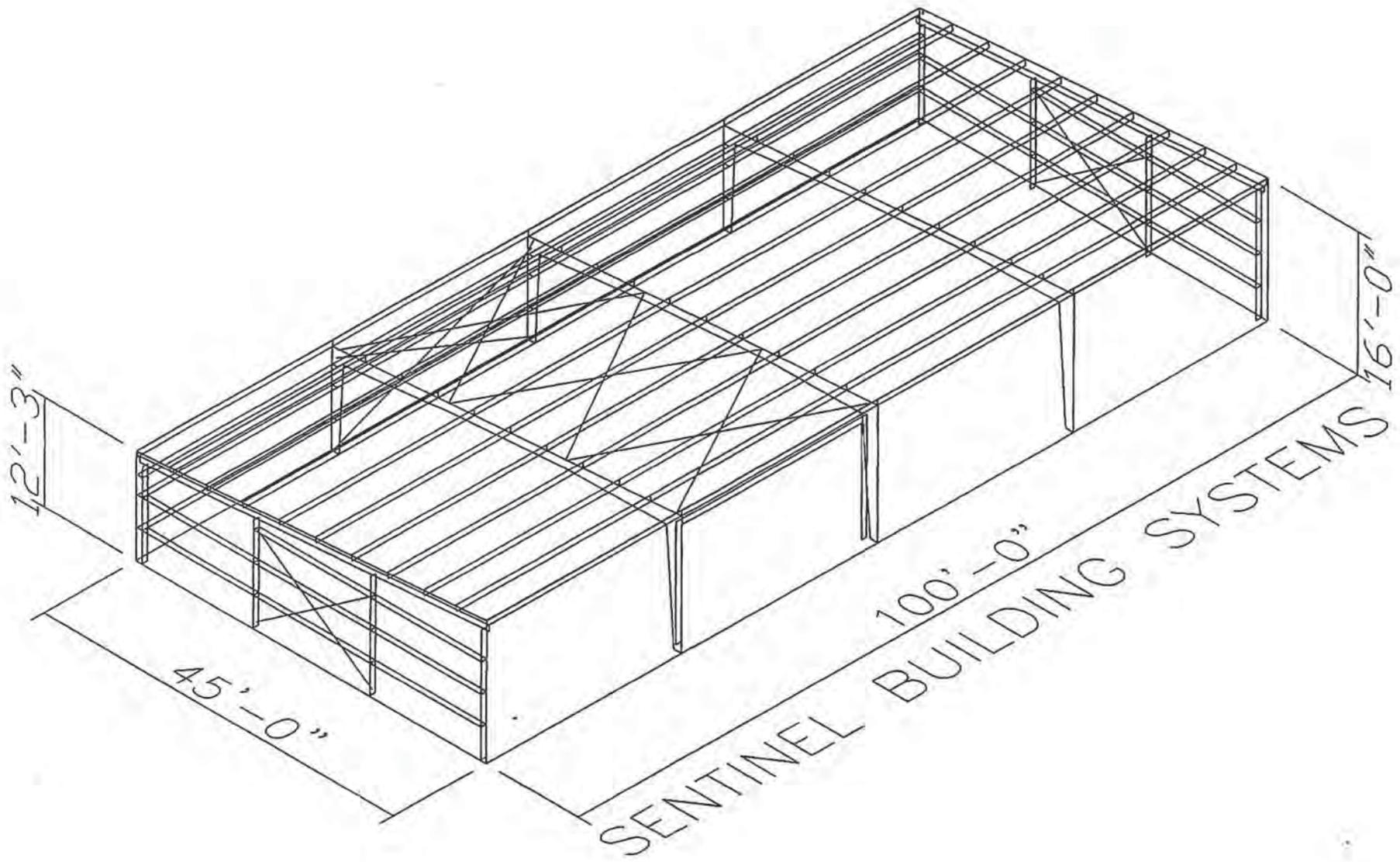
SENTINEL BUILDING SYSTEMS  
 A Division of CH2M HILL  
 237 SOUTH 472 ST  
 ALBION, NE 68620  
 (800) 327-0790

PROJ: 44150464  
 BILL LUECKE  
 HAYS, KS 67801

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NOT FOR CONSTRUCTION

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## Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #12-15  
 ADDRESS: 1104 E 22<sup>nd</sup>  
 OWNER: David Randa  
 TYPE OF REVIEW: Variance  
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
 DATE PREPARED: October 28, 2015  
 AGENDA DATE: November 12, 2015

---

### SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to allow an off-premise advertising sign to be located within the 35' building setback on property located at 1104 E 22<sup>nd</sup> Street. (see further details below and attached site drawing). Staff recommends setting a public hearing for the December 9, 2015 Board of Zoning meeting for the request as submitted.

### BACKGROUND:

- The applicant is requesting a variance to allow an off-premise advertising sign to be located within the 35' building setback
- An on-premise sign could be located in this location with no variance, however the off-premise advertising proposed does require the variance

	<b>Setback Required</b>	<b>Applicant Proposed</b>
Front Yard	Min. 35 ft (for off-premise signage) Min. 0 ft (for on-premise signage)	10-15' 0
Side Yard	0	N/A
Rear Yard	0	N/A

## 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 important to note that an on-premise sign could be located at the proposed location, but regulation requires additional setbacks for off-premise signage. This property is unique due to the platting of the private street that is used to access several commercial properties in the area. The private street is not a through street and gives limited access to the business in the rear of the property. The proposed signage will be important for their businesses.*

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

**Staff Analysis:** *This proposed addition would not appear to have any adverse affects on the rights of nearby property owners. The proposed sign is an attractive sign that will serve a valuable purpose (see sign diagram).*

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

**Staff Analysis:** *Due to the location of the businesses at the end of the private street being "off the beaten path", and the need for directional signage to their location, a hardship could be constituted if the sign could not be erected in the proposed location which gives a clear indication of the location of those businesses.*

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

**Staff Analysis:** *This proposed addition would not appear to 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

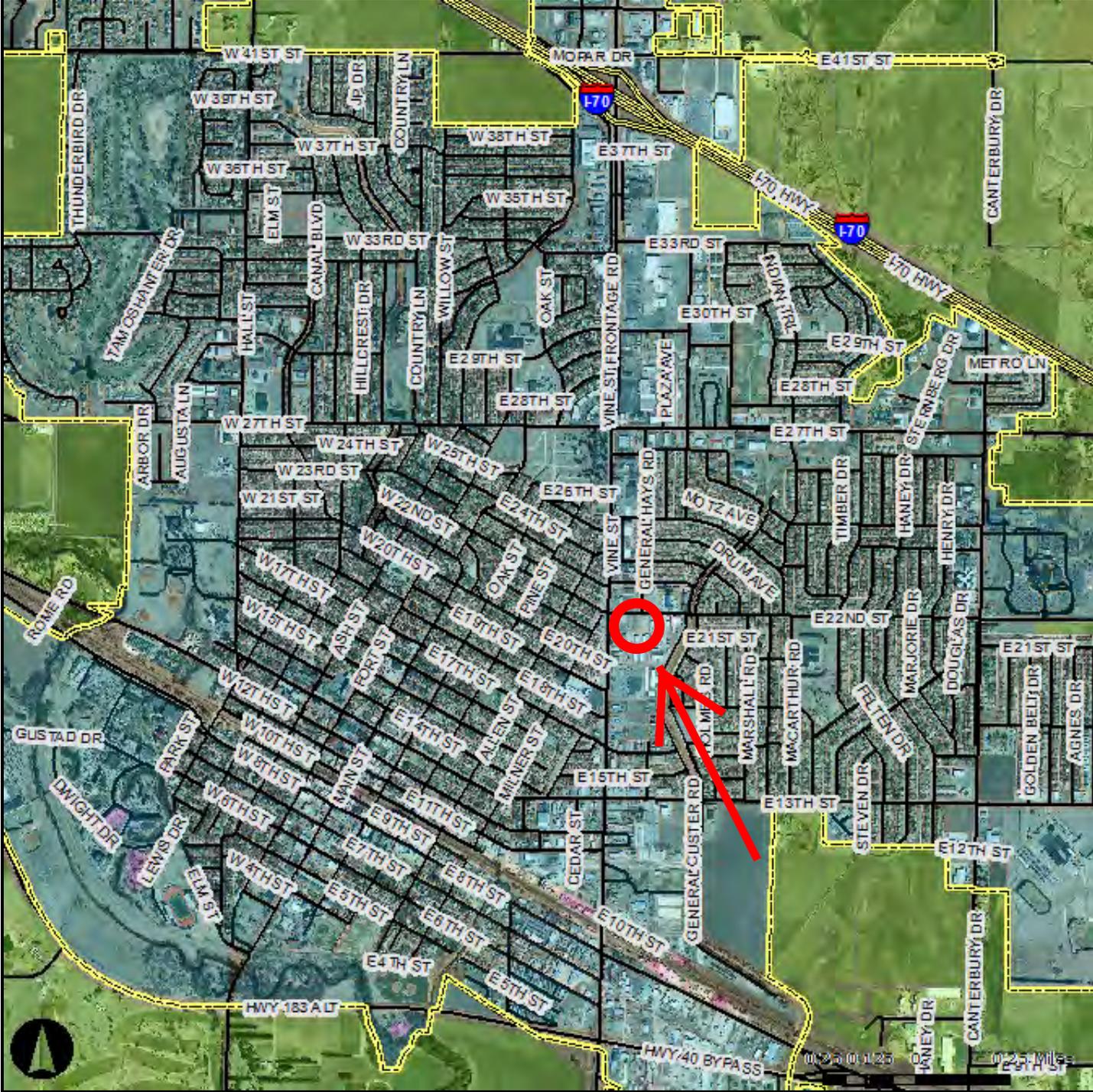
**Staff Analysis:** *The proposed sign location and variance request would not seem to go against the spirit and intent of the regulations. Multiple signs for each business (which would be allowed) would be more of a nuisance and site issue than the one single shared sign that is proposed.*

**RECOMMENDED ACTION:**

Staff recommends setting a public hearing for the December 9, 2015 Board of Zoning meeting for the request as submitted and further recommends approval of the proposed variance.

**ATTACHMENTS:**

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



**APPLICATION FOR VARIANCE**

I. Name of Applicant David Randa Phone 259-4329

Mailing Address 409 West 19th

Name of Owner (if different from applicant) David Randa Phone 259-4329

Mailing Address 409 West 19th

Name of Authorized Agent NA Phone NA

Mailing Address NA

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

II. The variance is requested for a sign with multiple business names that are not on the same lot but all down the private road located beside the sign

on property located at 1104 East 22nd and legally described as: Reg addition Lot # 2

in the City of Hays and which is presently zoned C2

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.

David Randa  
APPLICANT

NA  
AUTHORIZED AGENT (IF ANY)

David Randa  
OWNER

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON October 26, 2015

TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00

Linda Bixenman Administrative Assistant  
NAME AND TITLE

**Date: Thursday, October 29, 2015**  
**To: Hays Area Board of Zoning**  
**From: David Randa, owner of Reliable HVAC**

We hereby request to reduce the front yard setback from the required 35 feet from the front property line to 15 feet to allow for installation of an off-premise sign.

**A. Uniqueness**

Due to the fact that the following businesses are not on a major road, we would like to place a sign advertising all of the businesses listed on 1104 East 22<sup>nd</sup> Street (Professional Cleaning Services, Reliable HVAC, Stanley Homes, Straightline Remodeling, Lisa's Custom Interiors, Munsch Fitness). These businesses are all looking for a sign to direct traffic to their locations, not just advertise their business. Many of the properties listed will be receiving shipments of materials, where a sign would be very helpful in directing the distributors to their locations.

**B. Adjacent Property**

This sign will not affect the adjacent properties because their signs are offset from our proposed sign.

**C. Hardship**

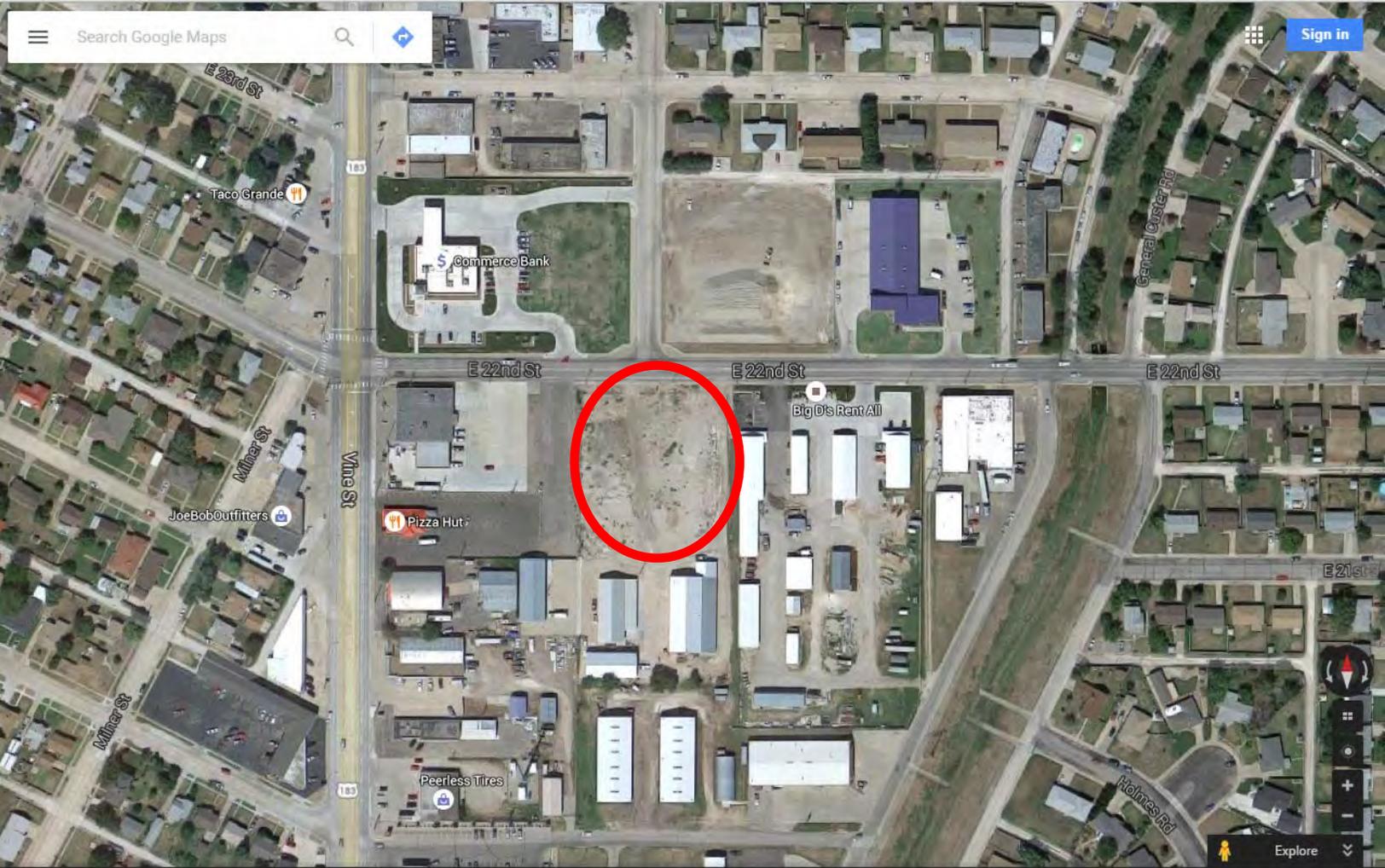
Placing the sign on the lot as currently required by zoning regulations would not help advertise/direct future costumers to other businesses down the private road.

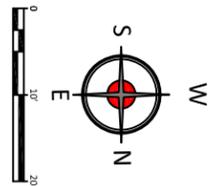
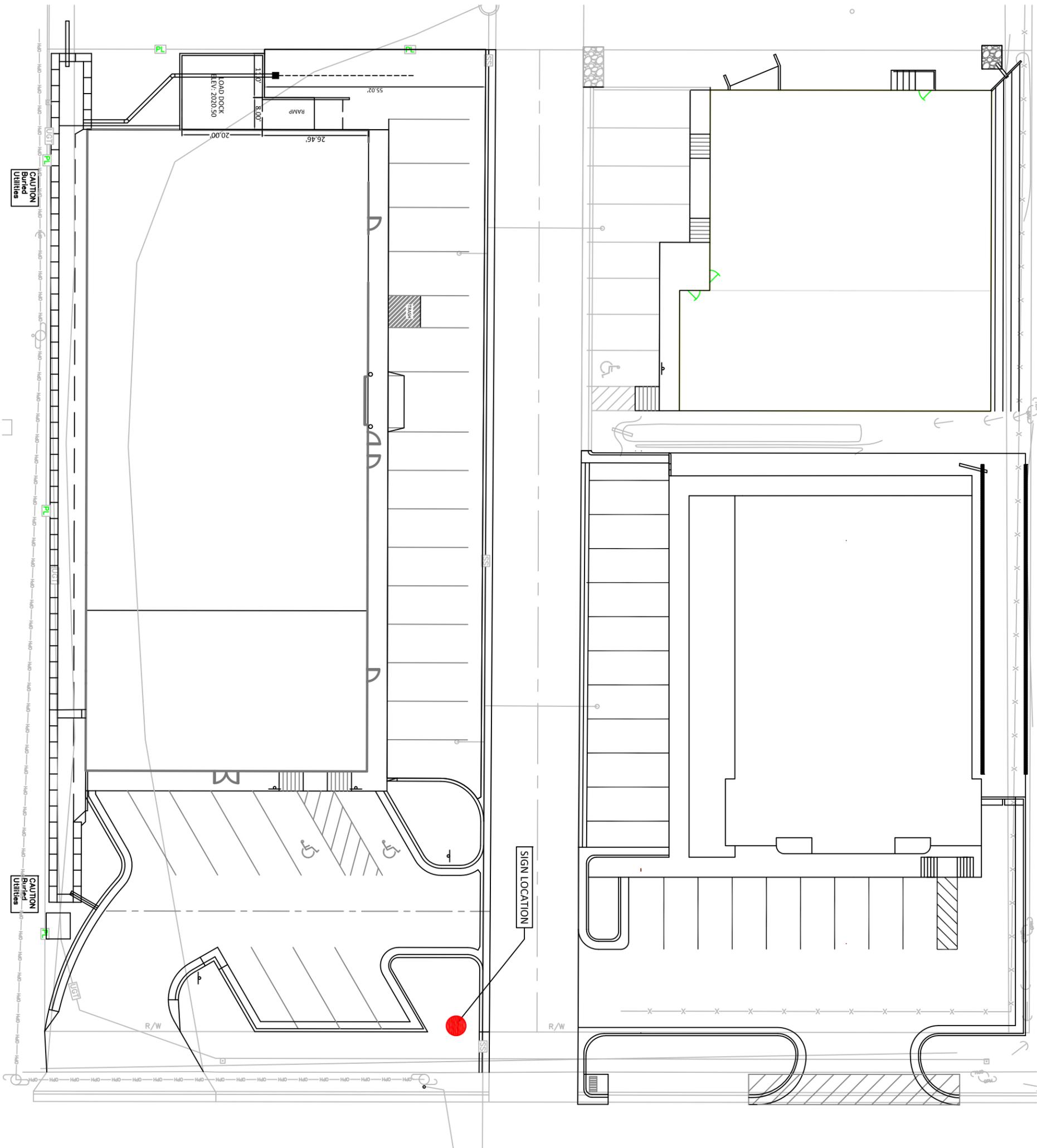
**D. Public Interest**

It is our goal in requesting this variance to help each business (Professional Cleaning Services, Reliable HVAC, Stanley Homes, Straightline Remodeling, Lisa's Custom Interiors, Munsch Fitness, and possibly more) direct traffic to their prospective businesses. The sign will be new and modern looking, fitting in with the other recent developments in the area. Currently none of the listed businesses have access to signage on 22<sup>nd</sup> Street.

**E. Spirit and Intent of the Zoning Regulations**

Granting of the desired variance will not be opposed to the general spirit and intent of the zoning regulations. The sign will not be in the way of utilities or view from any adjacent properties.





Project No.:  
NA  
Date:  
11/1/2015  
Sheet No.:  
1 OF 1

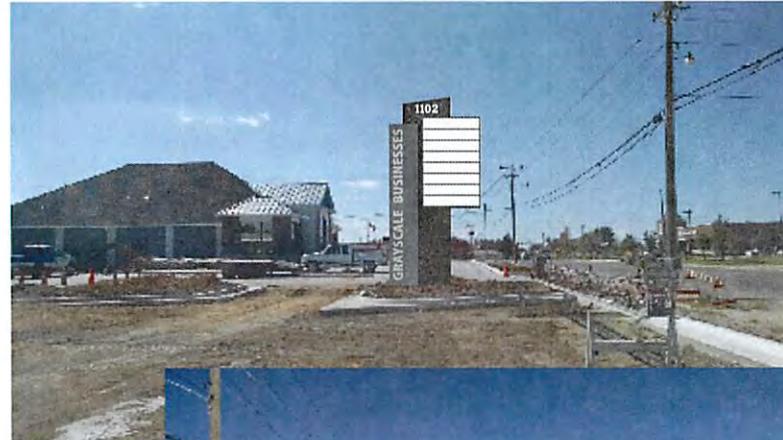
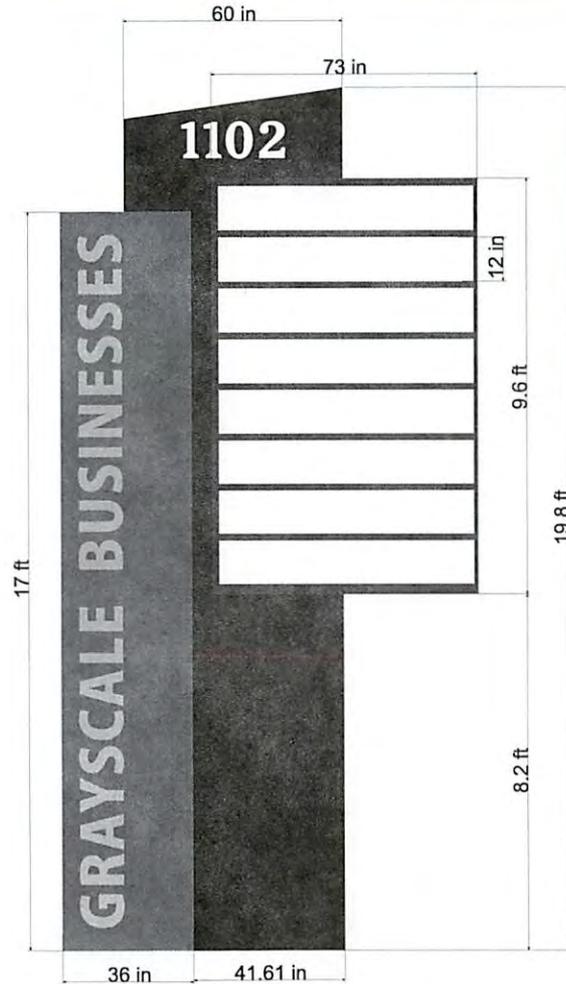


**DRIGGS DESIGN GROUP, PA**  
Surveying Engineering Planning  
MANHATTAN & HAYS

CITY OF HAYS, KANSAS  
RANDA DEVELOPMENT  
RANDA SIGN LOCATION

No.	Revision	Date





Customer: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State/ZIP: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

Accepted \_\_\_\_\_ Date \_\_\_\_\_

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Job No.:	Date: 9/10/2015	
Order Date:	Salesperson:	
Sign Dimensions:	428.825in x 275.406in	Estimate: \$0.00
Comments:		