

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

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

2. **CONSENT AGENDA.**

A. Minutes of the regular meeting of October 12, 2016

Action: Consider approving the minutes of the October 12, 2016 meeting.

3. **PUBLIC HEARING ITEMS. – None**

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

A. Request by P & W Commercial Investments, LLC for a ten foot (10') variance to reduce the west side yard building setback from the required twenty-five feet (25') to fifteen feet (15') and a twenty foot (20') variance to reduce the rear yard (north) building setback from the required twenty-five feet (25') to five feet (5') and ten foot (10') variance to reduce the east side yard building setback from the required fifteen feet (15') to five feet (5') to construct a commercial building at 703 East 6th Street. (Case # 07-16)

Action: Consider setting a public hearing for the variances as submitted for a proposed commercial building at 703 East 6th Street.

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

6. **ADJOURNMENT.**

**DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
OCTOBER 12, 2016**

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met at their regularly scheduled meeting date of Wednesday October 12, 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
Jerry Sonntag
Rich Sieker

Absent Tom Lippert

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

2. CONSENT AGENDA:

A. Minutes: There was a motion by Richard Sieker and a second by Gerald Befort to approve the minutes from the September 14, 2016 Hays Area Board of Zoning meeting. There were no corrections or additions to those minutes.

Vote: Ayes: Lou Caplan
Gerald Befort
Rich Seiker
Jerry Sonntag

3. PUBLIC HEARING ITEMS:

A. PUBLIC HEARING 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 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 provided a power point presentation with the recap from last month's meeting of the particulars of the two parts to this variance request to construct a 20' X 26' detached garage in the southeast corner of the property. Rather than the overhead doors facing the alley, they would be facing west to the concrete drive approach to the alley.

He explained the options for the board to consider for this case:

- Grant the variance as submitted (can grant a lesser variance)
- Not approve the variance
- Provide other alternatives or options to the applicant

Staff recommends granting the variance only if the hardship and uniqueness can be determined and found to justify the variance requested especially as relates to other properties in the neighborhood. He pointed out other options that should be considered before making a final determination such as shifting the garage west or north or building a smaller garage.

He stated that he or the applicant would be open for questions.

Lou Caplan asked what would be the minimum length of garage for the boat to fit. Eric Augustine answered that 24 foot would work; although it would be inches between the door and the hitch of the trailer. He would like the 26 foot for more space so he can walk in front and behind the boat.

Jerry Sonntag asked if the garage would be the same distance from the alley as the tool shed. Jesse Rohr and Mr. Augustine answered that it would be the same.

Mr. Sonntag asked if there had been any response from the neighbor. Jesse Rohr answered there has not been any response. Eric Augustine answered that the neighbors are aware of it and are in favor of it.

Lou Caplan asked how close the sewer line would be to the proposed garage. Jesse Rohr answered that it is located in the green space between the proposed garage and existing concrete; it will be under the new concrete driveway. Eric Augustine answered that it would be about 2 or 3 feet from the garage.

Jerry Sonntag asked Mr. Caplan if his question was meant to suggest moving the proposed structure further away from the property line. Mr. Sonntag stated that he was more concerned about the side yard setback then the rear yard setback. Eric Augustine explained that he would not want to build over the sewer line.

Jesse Rohr answered that it is allowed to build over the sewer line; although not recommended. If that is done, generally the sewer pipe is replaced with PVC pipe.

Jerry Sonntag stated that driving down the alley in the neighborhood; the buildings are as close as what is being asked per this request.

Lou Caplan voiced concern about satisfying the "hardship" statutory requirement because of the size of the lot. He asked Eric Augustine if the absolute minimum was a 26 foot length for the garage. Eric Augustine explained the importance of needing a garage 26 feet in length at a minimum would have provide some wiggle room around the boat.

Lou Caplan asked if there was further discussion. There was none.

Lou Caplan entertained a motion.

Gerald Befort moved, Rich Seiker seconded the motion to grant the 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 based on the consideration it does meet the five statutory requirements.

Vote: Ayes: Jerry Sonntag
Gerald Befort
Rich Seiker

Nay: Lou Caplan

4. NON-PUBLIC HEARING ITEMS: None.

5. OFF AGENDA ITEMS/COMMUNICATIONS:

A. DISCUSSION OF ABOVE CASE :

Rich Seiker voiced concern that the final determination of the above case would set precedence. Jerry Sonntag explained that precedence was set many years ago associated with this neighborhood; there are many structures that were built with the same building setback.

Lou Caplan also voiced concern of this determination since it was the first case after the implementation of the Unified Development Code. It was difficult to justify the "hardship" statutory requirement. He pointed out that the town was built when most people only had one car and we are no longer in that age. Jesse Rohr noted that everyone wants their car in a garage.

6. ADJOURNMENT: Lou Caplan adjourned the meeting at 9:35 a.m.

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

Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #07-16
 ADDRESS: 703 E 6th St.
 OWNER: Richard Werth
 TYPE OF REVIEW: Setback Variance
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent
 DATE PREPARED: December 7, 2016
 AGENDA DATE: December 14, 2016

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the rear (north) yard building setback from the required twenty-five feet (25') to five feet (5') , a street-side (west) setback reduction from the required twenty-five feet (25') to fifteen feet (15') , and an interior (east) side setback reduction from the required fifteen feet (15') to five feet (5') to construct a commercial building on the property located at 703 E 6th St. (see further details below and attached site drawing). Staff recommends setting a public hearing for the January 11, 2017 BZA meeting.

BACKGROUND:

- The applicant is requesting a building setback variance per the table below:
- Applicant wishes to construct a commercial building on the property
- This is a uniquely shaped property (see site maps)

	Setback Required	Applicant Proposed
Front Yard	25'	25'
Street Side (west)	25'	15'
Interior Side (east)	15'	5'
Rear Yard (north)	25'	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 uniquely shaped when compared to a typical lot or other lots in the area. The irregular shape of the lot makes any sort of development very difficult without any sort of variance if the owner wishes to capitalize on the full potential of the property.*

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

Staff Analysis: *The proposed variances would seem to 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 (irregular 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 very **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:

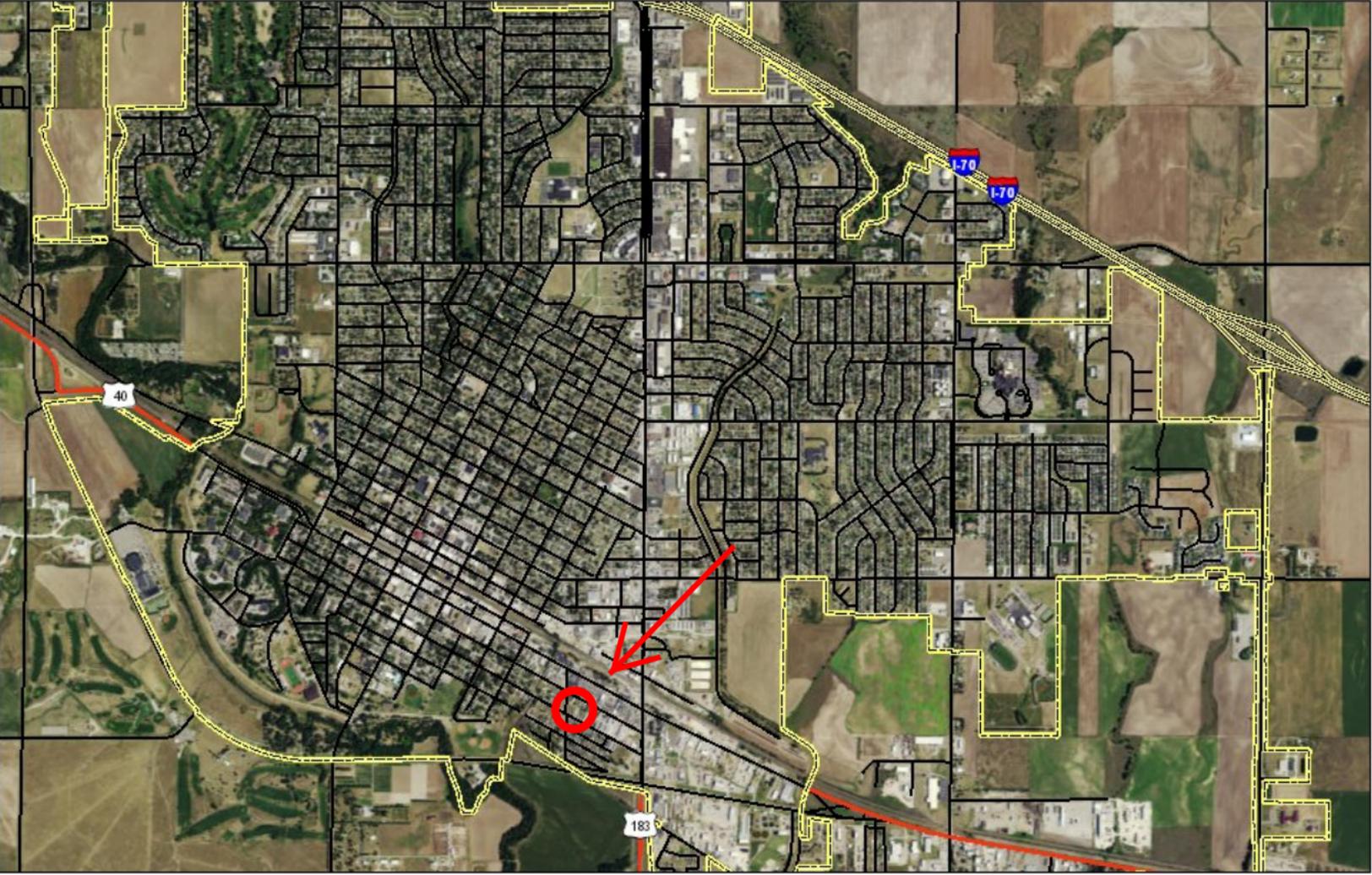
- Set a public hearing to hear the variance request
- Do not set a public hearing

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:

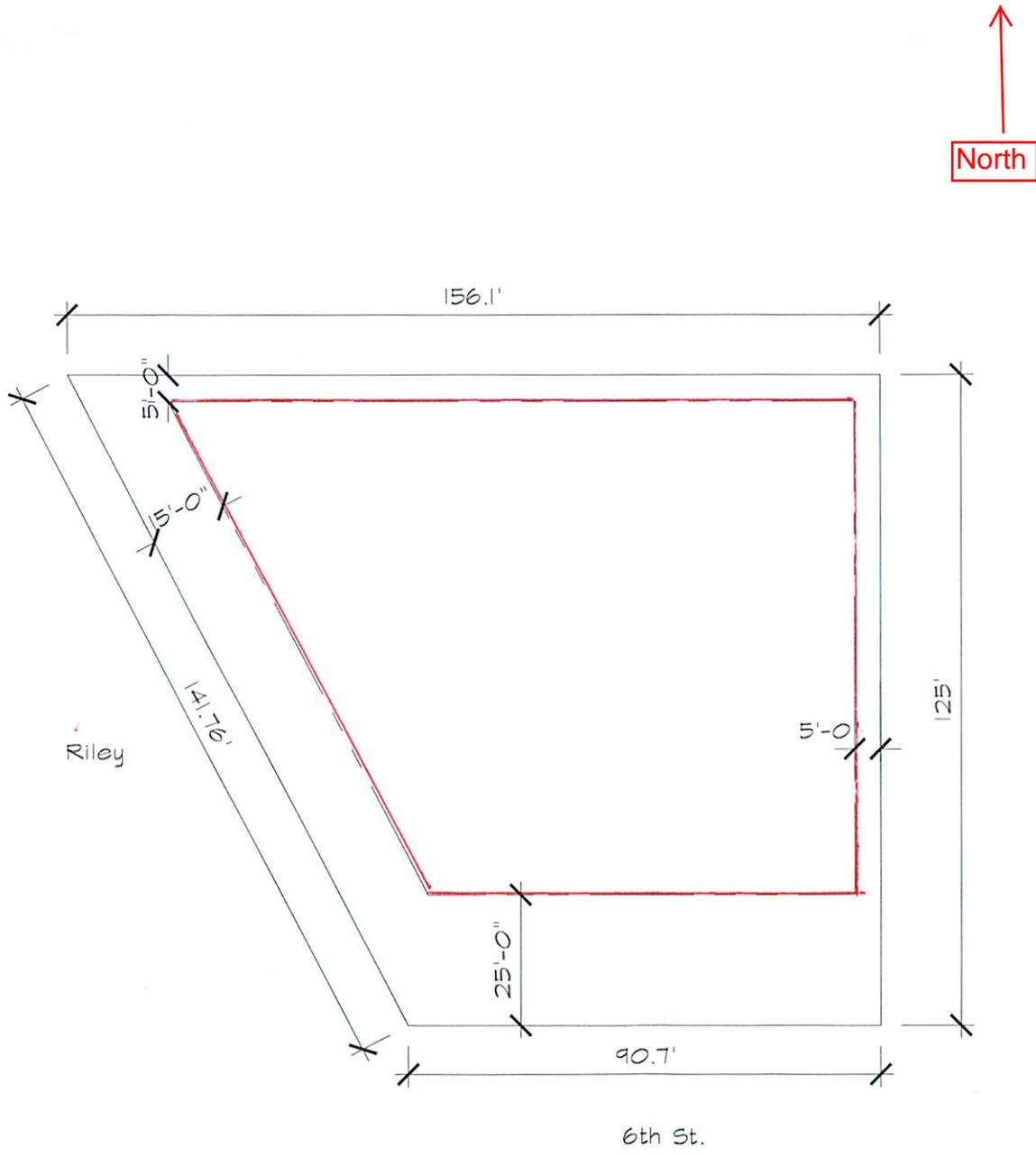
- Variance application
- Variance justification and diagram from owner
- Images/Maps





E 7TH ST

RILEY ST
E 6TH ST



PAUL-WERTENBERGER CONSTRUCTION, INC.
 1102 EAST 8TH STREET
 HAYS, KANSAS 67601

PHONE: (785) 625-8220 FAX: (785) 625-8222

DATE: 11-22-16	APPROVED BY:	DRAWN BY: AJW
SCALE: 1/4" = 1'-0"	-	SG. FT. -

THIS DRAWING AND DESIGN ARE PROPERTY OF PAUL-WERTENBERGER CONSTRUCTION, INC. AND MAY NOT BE REPRODUCED FOR ANY REASON WITHOUT PRIOR WRITTEN CONSENT OF SAID COMPANY. PAUL-WERTENBERGER CONSTRUCTION, INC. ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OF THE DRAWINGS OR LACK THEREOF AND CANNOT BE HELD LIABLE.

DRAWING:	Riley and 6th
REVISIONS:	-



Looking East from Riley St.



Looking North from 6th St.

12/7/2016

To: Hays Area Board of Zoning

From: P and W Commercial Investments, LLC

Re: Variance on setbacks on lot

We request that setbacks on the lot be changed to allow for a more useable, larger building area. We would like a 15' setback on the west side, 5' rear yard on north and a 5' side yard on the east.

A: Uniqueness: Due to the fact that the lot is irregular shaped it makes it hard to put a rectangular building of any size on it. Before the new zoning plan was adopted the setbacks were larger.

B: Adjacent Property: As the property is on a corner, the setbacks would not present a problem to adjacent property and with 50 ' lots in the area the 5' on the east is no closer than other lots.

C: Hardship: Placing a building on the lot as now required would not be a large enough building to offset the cost of the lot and the extra cost to pave the exterior land would also be prohibitive.

D: Public Interest: We are attempting to provide infill of existing land within the city and not go outside of the city to build. The building would be an asset to the city in providing sales tax income, in building the building and by a future business locating there and be a positive improvement to the area.

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. There are varying setbacks all along that street, the variance will not interfere with utilities and by being able to set it further back on the lot will increase traffic visibility from the corner.

Thank you,

P and W Commercial Investments, LLC

APPLICATION FOR VARIANCE

I. Name of Applicant P AND W COMMERCIAL INVESTMENTS, LLC Phone 785-625-8220

Mailing Address BOX 1311, HAYS, KS 67601

Name of Owner RICHARD WERTH Phone _____

1152 TOULON AVE.

Mailing Address HAYS, KS 67601

Name of Authorized Agent _____ Phone _____

Mailing Address _____

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

II. The variance is requested 15' SETBACK ON WESTSIDE, 5' REAR YARD ON NORTH,
AND 5' SIDE YARD ON EAST.

on property located at 703 EAST 6TH ST. and legally described as: SEE ATTACHED.

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.

[Signature]
APPLICANT

AUTHORIZED AGENT (IF ANY)

OWNER

OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON 12/7/2016
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00

Sinda K. Biedenman, Administrative Assistant

NAME AND TITLE