



## HAYS AREA BOARD OF ZONING APPEALS MEETING

City Hall, 1507 Main Street, Hays, KS

Monday, May 19, 2025 – 4:00PM

## AGENDA

### 1. CALL TO ORDER BY CHAIRMAN.

### 2. CONSENT AGENDA.

- A. Minutes of the meeting of April 21, 2025

*Action: Consider approval of the minutes of the April 21, 2025 meeting*

- B. Citizen Comments (on non-agenda items)

### 3. PUBLIC HEARING ITEMS.

- A. Public Hearing for a setback variance request by Jessica Diaz and Mario Diaz-Santiago for a carport at 1402 Oak St.

*Action: Consider approving the variance request for 1402 Oak St.*

### 4. NON-PUBLIC HEARING ITEMS.

- A. Setback Variance requested by Dave and Sheila Eichman for a Carport at 1600 E 29<sup>th</sup> St

*Action: None at this time, a public hearing is set for June 16, 2025.*

### 5. ADJOURNMENT.

**DRAFT**  
**HAYS AREA BOARD OF ZONING APPEALS MEETING**  
**CITY HALL COMMISSION CHAMBERS**  
**April 21, 2025**  
**4:00 P.M.**

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

The Hays Area Board of Zoning Appeals met for their regularly scheduled meeting on Monday, April 21, 2025, at 4:00 p.m. in the Commission Chambers at City Hall. Chairman Matthew Wheeler called the meeting to order.

**Roll Call:**

**Present:** Matthew Wheeler, Jim Schreiber, Bernie Gribben, Brian Garrett, Mike Vitztum, and Joseph Boeckner

**Absent:** Dustin Schlaefli

City staff in attendance: Toby Dougherty, City Manager, Collin Bieler, Deputy City Manager, Jarrod Kuckelman, Assistant City Manager, Jesse Rohr, Public Works Director, Curtis Deines, Superintendent of Planning and Development, and Ashley Kinderknecht, Administrative Assistant.

**2. CONSENT AGENDA:**

**A. Minutes:** Matthew Wheeler asked if there were any changes to the March 17, 2025, Hays Area Board of Zoning Appeals meeting minutes. There were none.

**Motion:** Jim Schreiber moved, Mike Vitztum seconded the motion to approve the minutes from the March 17, 2025, meeting.

**Vote: AYES**

Matthew Wheeler, Jim Schreiber, Bernie Gribben, Brian Garrett, Mike Vitztum, and Joseph Boeckner

**B. Citizen Comments:** There were no citizen comments.

**3. PUBLIC HEARING ITEMS:** None

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

**A. Setback Variance request by Jessica Diaz and Mario Diaz-Santiago for a carport at 1402 Oak St.**

Curtis Deines provided a PowerPoint presentation of an applicant's request for a variance to reduce the required setbacks for a carport from 14ft to 4ft on the south street side and from 5ft to 2ft on the east rear yard. City Staff discovered the carport had been built without a permit and appeared to violate setback requirements. A notice was sent to the property owner on April 10, 2025. Following a site visit with City Staff, the owner

acknowledged the issue. The applicant is now seeking a variance in order to retain the carport in its existing location. The house was built in 1895 on 2 lots. The house is set back off Oak Street and 14<sup>th</sup> Street more than normal. The location of the house on the lot does not allow for a backyard and would not comply with today's setback regulations.

Mr. Deines provided the variance criteria stating that the property is irregularly shaped compared to other lots on the block. The north side of the home is sitting directly on the original property line and the backyard is small. The 14-foot setback creates significant challenges for development. Since the home is built in the far northeast corner it further limits buildable areas, making it more difficult to effectively utilize the site for any detached structures. The proposed request could negatively impact the rights of adjacent property owners, as they would be held to the standard 25-foot front setback requirement along east 14<sup>th</sup> Street and would not be permitted to construct a similar structure as close to the property line. The carport could be relocated to the backyard, but then the owner would no longer have any backyard space. It is unlikely that if granted as proposed, this variance would adversely affect public health, safety or general welfare. Granting the variance would oppose the general spirit and intent of the regulations.

Mike Vitztum asked where the carport would need to be on the property to meet regulations. Mr. Deines stated that the carport would need to be 5ft from the east property line and 14ft from the south property line. Matthew Wheeler asked if the carport overhangs the sidewalk. Mr. Deines stated that the carport does not go over the sidewalk. Brian Garrett asked if the carport was right up against the fence. Mr. Deines stated that it was and showed where the properties backyard is currently at.

No action at this meeting. There will be a public hearing on May 19, 2025.

5. **ADJOURNMENT:** Matthew Wheeler adjourned the meeting at 4:09 p.m.  
Submitted by Ashley Kinderknecht, Administrative Assistant



## Hays Area Board of Zoning & Appeals

### Agenda Memo

<b>Agenda Item:</b>	Setback Variance for a Carport at 1402 Oak St.
<b>Owner:</b>	Jessica Diaz and Mario Diaz-Santiago
<b>Type of Review:</b>	Consider a Setback Variance for a Carport at 1402 Oak St.
<b>Presented By:</b>	Curtis W. Deines, Planning & Development Superintendent
<b>Date Prepared:</b>	May 5, 2025
<b>Agenda Date:</b>	May 19, 2025

### Summary

The applicant is requesting variances to reduce the required setbacks for a carport from 14 ft. to 4 ft. on the south street side (14<sup>th</sup> Street) and from 5 ft. to 2 ft. on the east rear yard. City Staff discovered the carport had been built without a permit and it appeared to violate minimum setback requirements. A notice was sent to the property owner on April 10, 2025. Following a site visit with City Staff, the owner acknowledged the issue. The applicant is now seeking a variance in order to retain the carport in its existing location. Staff recommends the board evaluate all the variance criteria and variance history to make a determination of the variance request to reduce the setback from 14 ft. to 4 ft. on the south street side and from 5 ft. to 2 ft. on the east rear yard.

### Background

The applicant is requesting a 10 ft. variance of the south, street side building setback, a reduction from the required 14 ft. setback to 4 ft., and a 3 ft. variance of the east, rear yard setback, a reduction from the required 5 ft. setback to 2 ft.

City Staff sent a notice to the owner of record, Jessica Diaz, on April 10, 2025, after it had come to Staff's attention that there was a carport constructed without a permit and that appeared to be noncompliant with building setbacks. After meeting on site with City Staff, the owner decided to request a variance in hopes of keeping the already constructed carport in its current location.

The house was built in 1895 on 2 lots. (100ft x 71.5ft) The house is set back off Oak Street and 14<sup>th</sup> St. more than normal. The location of the house on the lot does not allow for a backyard and would not comply with today's setback regulations.

## **Standards of Evaluation**

**(Per State Statute 12-759 and City Unified Development Code)**

- 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. The uniqueness of the property not ordinarily found in the same zone or district and not created by willful action of the owner.

**Staff Analysis:** *The property is irregularly shaped compared to other lots on the block. The home was built in 1895 and in some part of history the original lots were split into two smaller lots. The north side of the home is sitting directly on the original property line and the back yard is small. The 14-foot setback creates significant challenges for development. Since the home is built in the far northeast corner it further limits buildable area, making it more difficult to effectively utilize the site for any detached structures.*

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

**Staff Analysis:** *The proposed request could negatively impact the rights of adjacent property owners, as they would be held to the standard 25-foot front setback requirement along E. 14th Street and would not be permitted to construct a similar structure as close to the property line.*

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

**Staff Analysis:** *With the house being set back in the northeast corner of the property, it makes it difficult to build any accessory structures on the property within the required setbacks. The carport could be relocated to the backyard, but then the owner would no longer have any backyard space. They could also*

*relocate to the front of the property but would encounter a large expense by having to add a new driveway to the carport.*

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

**Staff Analysis:** *It is unlikely that if granted as proposed, this variance would adversely affect public health, safety, morals, order, convenience, prosperity, or general welfare as it would not interfere with sight lines, access, or traffic flow.*

- e. The granting of the variance desired will not be opposed to the general spirit and intent of the regulations.

**Staff Analysis:** *Granting the variance would oppose the general spirit and intent of the regulations.*

### **Action Requested**

Since the applicant's request does not seem to meet the regulatory and statutory criteria for a variance, staff does not recommend approval as submitted

### **Supporting Documentation**

Visuals

Application & Owner Justification









**HAYS AREA BOARD OF ZONING APPEALS**Case # 02-2025Date Filed 4/8/2025

Date Approved or Denied \_\_\_\_\_

**APPLICATION FOR VARIANCE**

I. Name of Applicant Jessica Diaz and Mario Diaz-Santiago Phone 785-432-3053

Mailing Address 1402 Oak St. Hays, KS 67601 785-432-1972

Name of Owner (if different from applicant) Jessica Rich(Diaz) Phone 785-432-3053

Mailing Address Same as above

Name of Authorized Agent NIA Phone NIA

Mailing Address NIA

Relationship of applicant to property is that of Owner

(Owner, tenant, lessee, other)

II. The variance is requested A 10 ft. variance of the street side yard building setback, a reduction from the required 14 ft. setback to 4 ft. & a 2 ft. variance of the side yard setback, a reduction from the required 5 ft. setback to 3ft.

on property located at 1402 Oak St. and legally described as: Fairview Block 19, S 71.5' Lots 1 & 3, Section 33, Township 13, Range 13

in the City of Hays and which is presently zoned N.C3

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.

Jessica Diaz  
APPLICANT

AUTHORIZED AGENT (IF ANY)

Jessica Diaz  
OWNER

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING & DEVELOPMENT DIVISION ON April 8, 2025,  
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00.

Ashley Kinderknecht, Admin. Assistant

NAME AND TITLE

The Variance is requested for the following reasons:

- A. Our unique situation is due to the fact that we have an extremely small backyard which limits the potential to build a garage or other parking structure in that area. The house was originally built in 1895, and was placed far back from the street, which resulted in a very small back yard.
- B. Since the structure is not solid and the sides are not covered, the adjacent property owners should not be negatively affected in any way. They will be able to see through it and it will not impede their view. It is not an eye sore as it is natural in color.
- C. Should we move the carport directly next to the house, it would further limit the backyard space available for our children, pets, and family. We would no longer have a space to set up our summer pool and moving the carport up would take away our already built deck that we use for family BBQs. It would also affect the space that we have for the children to play basketball. If we moved the carport adjacent to the house, it would require the funds to build a whole new driveway, which at this time is not feasible. It would also require relocation of our boat and possibly the trees in that area.

- D. The current location of the carport does not pose a safety risk to the public. It does not interfere with the sidewalk, nor does it block our vision of the sidewalk and pedestrians when backing out of the driveway. It also does not interfere with the neighbors vision when backing in and out of their driveways.
- E. We understand the need for zoning regulations, however, due to our circumstances we are kindly requesting a 10ft variance in order to leave our carport in its current location. The reason we need the carport, is because we have sustained considerable damage over the years due to hail storms and weathering. This in turn has caused and will continue to cause drastic rate increases in our insurance policies. Thank you very much for considering our unique situation.

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

**NOTICE**

TO: Jessica Diaz and Mario Diaz-Santiago  
The Hays Area Board of Zoning Appeals  
The City of Hays, Kansas, and all other persons concerned,

You are hereby notified that pursuant to the provisions of K.S.A. 12-759 through K.S.A. 12-760 et seq. as amended, and Ordinance 4004 of the Code of Ordinances of the City of Hays, and Resolution 2021-20 of the Board of County Commissioners of Ellis County, Kansas, that a hearing will be had before said Board upon the appeal filed by Jessica Diaz and Mario Diaz-Santiago.

The subject of the hearing shall be a request by Jessica Diaz and Mario Diaz-Santiago for a variance as may be deemed by the Hays Area Board of Zoning Appeals of said City, from existing legal requirements to allow a 10ft reduction of the south building setback from 14ft to 4ft and a 3ft reduction of the east setback from 5ft to 2ft on the real property located at 1402 Oak St., Hays, Ellis County, Kansas.

You are hereby notified that a hearing will be had upon said appeal on the 19th day of May 2025 at 4:00 p.m., in the City Commission Chambers of City Hall at 1507 Main, in the City of Hays, Kansas, at which time said appeal will be determined.

Matthew Wheeler, Chairperson  
Hays Area Board of Zoning Appeals



**This is a list of property owners abutting the subject property that were sent a copy of the publication notice.**

#02-2025							
Property Address	Parcel	First Name	Last Name	Address	City	State	Zip
1402 Oak St	026-138-33-0-40-30-008.00-0	Jessica Diaz & Mario Diaz-Santiago		1402 Oak St	Hays	KS	67601
1401 Oak St	026-138-33-0-30-16-017.00-0	Andrew & Jennifer	Woolfoot	175 Pacific Ct	Marina	CA	93933
1404 Oak St	026-138-33-0-40-30-007.00-0	Garrett D & Anne Marie	Hager	1404 Oak St	Hays	KS	67601
205 E 14th St	026-138-33-0-40-30-009.00-0	Joyce E Rorabaugh Liv Tr		1352 Hwy 40	Hays	KS	67601
207 E 14th St	026-138-33-0-40-30-010.00-0	Hayden Gillum & Jona Preston		207 E 14th St	Hays	KS	67601
204 E 14th St	026-138-33-0-40-31-006.00-0	Schneider Rentals LLC		3415 Country Ln	Hays	KS	67601
206 E 14th St	026-138-33-0-40-31-005.00-0	William J	Call	206 E 14th St	Hays	KS	67601
1310 Oak St	026-138-33-0-40-31-007.00-0	Paul	Gottschalk	1310 Oak St	Hays	KS	67601
116 E 14th St	026-138-33-0-30-17-001.00-0	Samuel & Quynnalynn	Ayers	116 E 14th St	Hays	KS	67601

## **City of Hays History - Side Yard Variances for Carports since 2021**

- 2021 – 302 E 24<sup>th</sup>
  - **Approved** for a 7' variance from 7' to 0' for lean-to carport that was already constructed. Was conditional that when the owner moves or sells the property the carport be removed.
- 2021 – 2918 Barclay
  - **Approved** a 3.5' variance from 7' to 3.5' for a lean-to-carport
- 2024 – 315 E. 23<sup>rd</sup>
  - **Denied** a 6' variance from 7' to 1 ft for a carport beside the house.



## Hays Area Board of Zoning & Appeals

### Agenda Memo

<b>Agenda Item:</b>	Setback Variance for a Carport at 1600 E. 29 <sup>th</sup> St.
<b>Owner:</b>	Dave & Shelia Eichman
<b>Type of Review:</b>	Consider a Setback Variance for a Carport at 1600 E. 29 <sup>th</sup> St.
<b>Presented By:</b>	Curtis W. Deines, Planning & Development Superintendent
<b>Date Prepared:</b>	May 5, 2025
<b>Agenda Date:</b>	May 19, 2025

### Summary

The applicant is requesting variances to reduce the required setback for a carport from 7 ft. to 2 ft. on the east side yard. City Staff discovered the carport had been built without a permit, and it appeared to violate minimum setback requirements. A notice was sent to the property owner on April 10, 2025. Following a meeting with City Staff, the owner acknowledged the issue. The applicant is now seeking a variance in order to retain the carport in its existing location. A public hearing to consider the variance will be set for June 16, 2025.

### Background

The applicant is requesting a 5 ft. variance of the east side building setback, a reduction from the required 7 ft. setback to 2 ft, for a carport that is already constructed.

City Staff sent a notice to the owner of record, Dave & Shelia Eichman, on April 10, 2025, after it had come to Staff's attention that there was a carport constructed without a permit and appeared to be noncompliant with building setbacks. After meeting with City Staff, the owner decided to request a variance in hopes of keeping the already constructed carport in its current location.

## **Standards of Evaluation**

**(Per State Statute 12-759 and City Unified Development Code)**

- 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. The uniqueness of the property not ordinarily found in the same zone or district and not created by willful action of the owner.

**Staff Analysis:** *The property is not irregularly shaped compared to other lots on the block and surrounding blocks. There are several other houses that are the same shape and size. There is a concrete retaining wall that ranges in height around the rear yard making vehicle access from that area difficult.*

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

**Staff Analysis:** *Even though the proposed carport would still be located on the applicant's property, the proposed request could adversely affect the rights of the adjacent property owners due to the carport possibly being placed within 2' of the adjacent property owner's property line.*

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

**Staff Analysis:** *The request could be considered a self-imposed hardship since there is room to relocate the carport further into the backyard and access the carport from the front yard.*

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

**Staff Analysis:** *It is unlikely that if granted as proposed, this variance would adversely affect public health, safety, morals, order, convenience, prosperity, or general welfare as it would not interfere with sight lines, access, or traffic flow.*

- e. The granting of the variance desired will not be opposed to the general spirit and intent of the regulations.

***Staff Analysis:*** *Granting the variance would oppose the general spirit and intent of the regulations.*

### **Action Requested**

None at this time. A public hearing will be conducted at the June 16, 2025 BZA meeting.

### **Supporting Documentation**

Visuals

Application & Owner Justification





Backyard Retaining Wall



Backyard Retaining Wall



HAYS AREA BOARD OF ZONING APPEALS

Case #03-2025

Date Filed \_\_\_\_\_

Date Approved or

Denied \_\_\_\_\_

**APPLICATION FOR VARIANCE**

I. Name of Applicant Dave & Sheila Eichman \_\_\_\_\_ Phone 785-650-1548

Mailing Address 1600 E 29th St, Hays, KS \_\_\_\_\_

Name of Owner Dave & Sheila Eichman \_\_\_\_\_ Phone 785-650-1548

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

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

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

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

II. The variance is requested The request is for a carport located on the east side of the garage \_\_\_\_\_  
on property located at 1600 E 29th St \_\_\_\_\_ Reduce the side yard setback from 7 ft. to 2 ft. a variance of 5 ft.  
and legally described as: Block 3, Lot 1 Hays Plaza 5th Addition \_\_\_\_\_

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.

APPLICANT/AUTHORIZED AGENT (IF ANY)

OWNER

OFFICE USE ONLY:

RECEIVED IN THE PLANNING & DEVELOPMENT DIVISION ON May 1, 2025  
TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00.

Ashley Kinderknecht, Admin Assistant

NAME AND TITLE

## **Variance Request for 1600 E 29<sup>th</sup> St, Hays, KS**

We are requesting a variance to reduce the side yard setback to 2 feet from the east property line to maintain the metal carport kit used to house our mowing business equipment. We need the additional space to allow clearance when backing the trailer into the side drive. The carport is being used to protect our mowing equipment from the elements.

### **Uniqueness**

The carport is in the only logical place for a carport. It was placed on an existing drive behind our double gate. Because our house is on a sloping corner lot, our back yard is surrounded by a 2' to 6' retaining wall on the east, south, and west sides restricting vehicle access to the backyard to only the northeast corner of our house.

### **Adiacent Property**

The carport does not have a negative impact on any of the adjoining properties. Diann Waldschmidt is the closest neighbor having the property adjoining on the east and has stated she does not have concern with the carport or its impact on her property. The carport does not block access to her property in any way and the runoff from the carport is on our driveway which is channeled on to our lawn. The carport is in our side yard behind a privacy fence next to our garage which does not obstruct anyone's view of the street or sidewalk.

### **Hardship**

As noted above, the carport was placed on the existing driveway, which is next to our garage and in front of our garden. It would be costly and materially impact the usability of our yard to extend the driveway further into the backyard to relocate the carport. Also moving the carport into the back yard would make it impossible to back our work trailer into the carport. Additionally, we need access to electricity to charge our trailer batteries when not in use, which is available from an outdoor plug on the east side of the house.

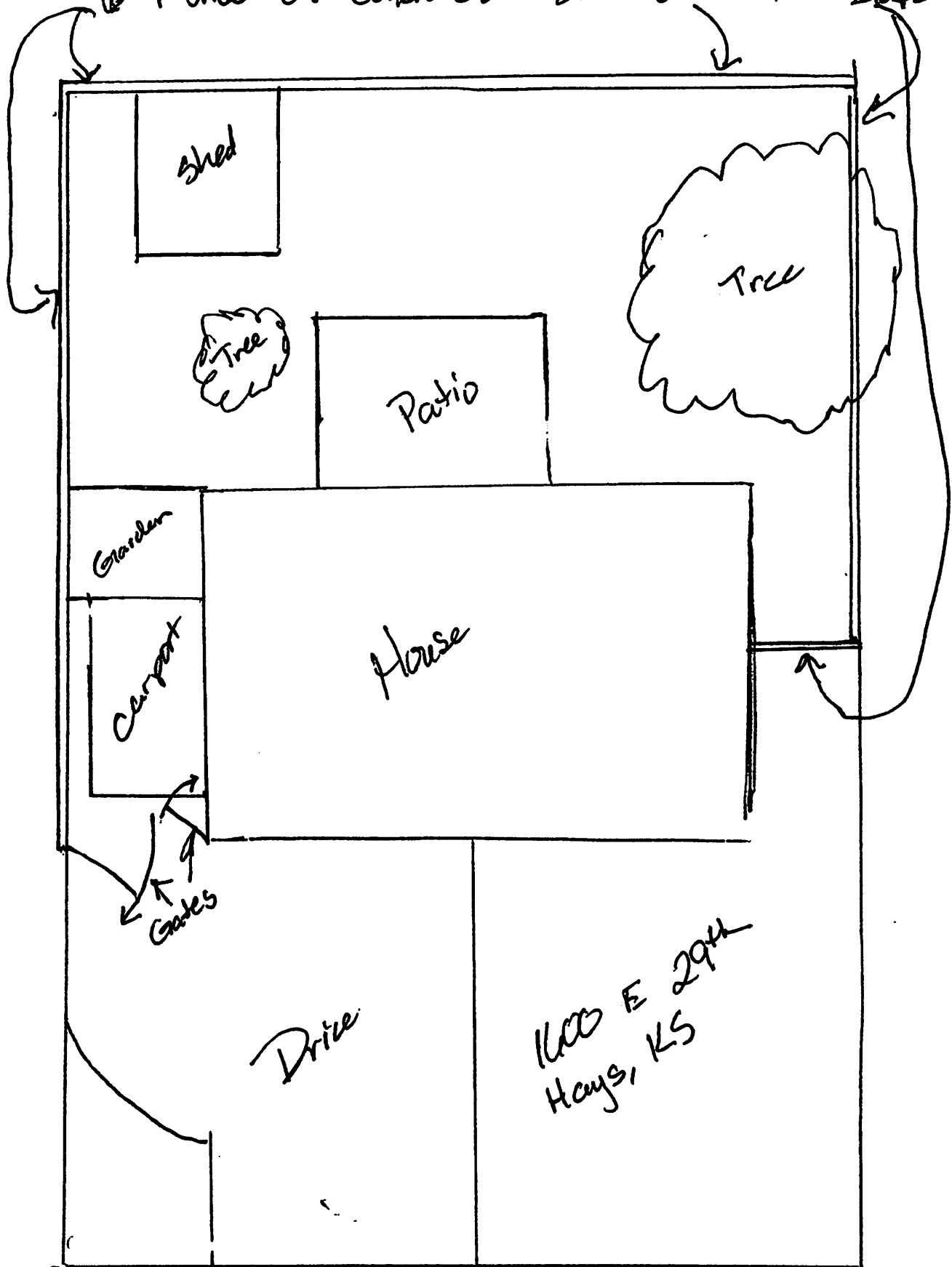
### **Public Interest**

The carport does not have any negative impact on public interest, health, or safety. As mentioned above the carport is in our backyard largely out of public view with no public access. The carport does not detract from the value of any adjoining properties. Our carport is similar in construction and placement to parking structures located in our neighborhood at 1606 E. 29<sup>th</sup> Street and 2018 Metro, as well as numerous other properties in Hays.

### **Spirit and Intent of the Zoning Regulations**

This variance is not opposed to the general spirit and intent of the zoning regulations. The placement of the carport makes effective use of the existing driveway, drive thru gate, and utility services without obstructing right of ways or public sidewalks and streets.

6' Force on concrete wall 2'-6" due to lot slope



## **City of Hays History - Side Yard Variances for Carports since 2021**

- 2021 – 302 E 24<sup>th</sup>
  - **Approved** for a 7' variance from 7' to 0' for lean-to carport that was already constructed. Was conditional that when the owner moves or sells the property the carport be removed.
- 2021 – 2918 Barclay
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- 2024 – 315 E. 23<sup>rd</sup>
  - **Denied** a 6' variance from 7' to 1 ft for a carport beside the house.