



## HAYS AREA BOARD OF ZONING APPEALS MEETING

City Hall, 1507 Main Street, Hays, KS

Monday, April 21, 2025 – 4:00PM

## AGENDA

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

**2. CONSENT AGENDA.**

- A. Minutes of the meeting of March 17, 2025

*Action: Consider approval of the minutes of the March 17, 2025 meeting*

- B. 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.

*Action: None at this time, a public hearing is set for May 19, 2025.*

**5. ADJOURNMENT.**

**DRAFT**  
**HAYS AREA BOARD OF ZONING APPEALS MEETING**  
**CITY HALL COMMISSION CHAMBERS**  
**March 17, 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, March 17, 2025, at 4:00 p.m. in the Commission Chambers at City Hall. Vice Chairman Jim Schreiber called the meeting to order.

**Roll Call:**

**Present:** Jim Schreiber, Bernie Gribben, Brian Garrett, Mike Vitztum, Joseph Boeckner, and Dustin Schlaefli

**Absent:** Matthew Wheeler

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, Kate Armstrong, Planning Technician, and Ashley Kinderknecht, Administrative Assistant.

**2. CONSENT AGENDA:**

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

**Motion:** Dustin Schlaefli moved, Bernie Gribben seconded the motion to approve the minutes from the February 17, 2025, meeting.

**Vote: AYES**

Jim Schreiber, Bernie Gribben, Brian Garrett, Mike Vitztum, Joseph Boeckner, and Dustin Schlaefli

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

**3. PUBLIC HEARING ITEMS:**

**A. Public Hearing for a setback Variance request for a free-standing ITM canopy at 2500 Vine St.**

Curtis Deines provided a PowerPoint presentation of an applicant's request for an 11ft. variance of the front building setback, adjacent to Vine St, a reduction from the required 25ft. setback to 14ft. and a 10ft. variance of the south street side building setback, adjacent to Centennial Blvd, a reduction from the required 25ft. setback to 15ft. at 2500 Vine St. This variance request is to be able to construct a free-standing canopy for an ITM island for a new credit union location. The new ITM canopy in its proposed location will eliminate 2 of the 4 driveway entrances near the intersection into the property. Last

year, the Love's convenience store closed, and the property was put up for sale. Since last month, the building and structures have been demolished.

Mr. Deines provided the variance criteria stating that while the property is not irregularly shaped, the 25-foot front and street-side setbacks create significant challenges for development. The proposed request is unlikely to negatively impact the rights of adjacent property owners, as the new canopy will be set farther back from Vine Street than the existing canopy, reducing its visual and spatial impact. Lastly, granting the variance aligns with the general spirit and intent of the regulations by maintaining the property's established use for drive-up services without significantly altering its function or appearance.

Mr. Deines then provided the options to be considered by the Board of Zoning Members. The proposed variance is consistent with the spirit of the regulations and does not adversely affect public safety, welfare, or the rights of adjacent property owners. Therefore, staff recommends approving the variance request as it acknowledges the practical hardship caused by the property's current configuration.

Jim Schreiber explained the process of a public hearing. He opened the public hearing as per the Open Meetings Act by Kansas Law. He asked if there were any comments from the audience. There were none. He then closed the public hearing.

Jim Schreiber asked for any discussion by the Commission. There were none.

**Motion:**

Dustin Schlaefli moved to approve the variance as submitted. Mike Vitztum seconded.

**Vote: AYES**

Jim Schreiber, Bernie Gribben, Brian Garrett, Mike Vitztum, Joseph Boeckner, and Dustin Schlaefli

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

**5. ADJOURNMENT:** Jim Schreiber adjourned the meeting at 4:06 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
<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>	April 10, 2025
<b>Agenda Date:</b>	April 21, 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 and from 5 ft. to 2 ft. 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. A public hearing to consider the variance will be set for May 19, 2025.

### 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**

None at this time. A public hearing will be conducted at the May 19 BZA meeting.

### **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.