

**HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS
1507 MAIN, HAYS, KS
WEDNESDAY, JANUARY 8, 2020
8:15 A.M.**

A. CALL TO ORDER BY CHAIRMAN.

B. CONSENT AGENDA.

A. Minutes of the regular meeting of November 13, 2019.

Action: Consider approving the minutes of the November 13, 2019 meeting.

C. PUBLIC HEARING ITEMS.

None.

D. NON-PUBLIC HEARING ITEMS.

A. BZA Member Reorganization

E. OFF AGENDA ITEMS/COMMUNICATIONS.

F. EXECUTIVE SESSION (IF REQUIRED).

G. ADJOURNMENT.

Any person with a disability and needing special accommodations to attend this meeting should contact the Planning, Inspection and Enforcement office (785-628-7310) 48 hours prior to the scheduled meeting.

**DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
NOVEMBER 13, 2019**

1. **CALL TO ORDER:** The Hays Area Board of Zoning Appeals met at the regularly scheduled meeting on Wednesday, November 13, 2019 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, Rich Sieker, Michael Berges

City Staff in attendance: Jesse Rohr, Director of Public Works, Curtis Deines, Superintendent of Planning, Inspection and Enforcement and Linda Bixenman, Administrative Assistant.

2. **CONSENT AGENDA:**

A. MINUTES: Rich Sieker moved, Jerry Sonntag seconded the motion to approve the minutes as submitted from the July 10th, 2019 meeting. There were no corrections or additions to those minutes.

Vote: AYES:

Lou Caplan, Jerry Sonntag, Rich Sieker, Michael Berges

3. **PUBLIC HEARING ITEMS:** None

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

A. REQUEST BY STANDLEE H DALTON REQUESTING TO REDUCE THE FRONT SET BACK FROM 25 FEET TO 7 FEET FOR A CARPORT AT 2307 OAK STREET. (CASE #06-19):

Curtis Deines provided a power point presentation on the overhead visual with the information, location, and overview site of the above property for the requested reduction in front yard building setback from 25 feet to 7 feet, a variance of 18 feet for an open carport. This property is in the NC.3 District (Single Family Homes) This carport had been constructed without contacting the city or obtaining a permit; thus, the reason for the variance request. He showed pictures of the open carport.

He provided the setback requirements for this zoning district.

He stated that two previous cases with a similar request in the past had been denied. Most variances for carports with the sides open have been approved for the side yard.

He pointed out two considerations:

- If approved, this would set a precedent for other properties
- The setback standard is not less than 25 ft in the majority of all existing properties in Hays

He stated the options:

- Set a Public Hearing
- Do not set a public hearing

He asked for any questions.

Jerry Sonntag stated that he thought the carport could be moved closer to the home.

Mr. Dalton stated that the carport was 5 feet back from the house. He stated that it did not cross his mind that he needed a permit.

He has a daughter that has severe arthritis and scoliosis and Marfan Syndrome like Michael Phelps and Abraham Lincoln had. This syndrome is where they grow long and tall; the ramification is that you start aging early and whatever is in your genetics as you age happens then. He explained that even though she is 59 years old, he could introduce her as his 85-year-old sister, and no one would challenge him on it. She is on disability.

He said he is trying to do everything he possibly can to fix up the house for her to live in. He had Leon's Welding install iron rail bars and poles throughout the house. He has had one of the walk-in bathtubs installed with all the jets and ports for the help she needs that way. He did not want her to go through another winter with the ice and snow on her vehicle. There is no way she can get out of the house under those conditions.

He stated that he could not see how this carport was harming the City of Hays in any way. There was no visibility problem since it is open. It has a gable roof and matching paint to the home. He thought it added to the value of the property. He explained that it is necessary for his daughter. He has spent a lot of money to improve the home that is acceptable for her to live in.

Rich Sieker asked if he had this put up without contacting the City. Mr. Dalton said he did not contact the city for anything he had installed. He said that was not on his mind.

Lou Caplan asked if the carport was constructed by a contractor. Mr. Dalton answered that the contractor came out of Texas by his order through Advantage Glass on Vine. The contact was from Texas and they let you know how much you owe and the day they will arrive. He had a special order for five feet shorter than the design of 20 feet. He paid Advantage Glass 10% of the sales price and the remainder to the party from Texas that put it up.

The door nearest the carport is the only one on the level. The other entries have stairs. He purchased the house from his friend's estate years ago.

Jerry Sonntag emphasized the difficulty of this case for himself and the board. He empathized that they feel for his daughter's health conditions and his situation. He said he understands why he would say it would not do any harm to the City, but the board members have to look at the precedence that it sets. There are no guidelines for the board on handicap or not and he did not know of anything they can do about that. To set precedence would allow others to come forward to request the same.

Mr. Dalton stated that there are infractions all over town. He noted that his previous neighbors had told him they had an infraction when they constructed their detached garage but did not tell him about it.

Mr. Sieker asked if he could put it in the back yard. Mr. Dalton answered that he would have the high cost to put in a driveway and entrance and then there are stairs and railing. There is also a fence and his daughter has a dog.

Curtis Deines asked if the garage had been converted into living space. Mr. Dalton answered that was done early on. Mr. Deines asked if it was possible to convert back to a garage. Mr. Dalton answered that he had a lot of built in cabinets and other. He said it would be easier for him to find another home. He has already spent a ton of money on this home.

Mr. Dalton pointed out this was an arbitrary law. Laws are meant to help people. It is not hurting the city or anything that he can see to leave it the way it is; it improves the aesthetics of the place. He thought they would even raise his taxes.

Lou Caplan stated that what if half the homes along the street all had carports out in front; he imagines that it would decrease the value of some of those homes. That is the problem that he sees. Once you put in one, then someone else on the same block would want one and the board would have to say "No" to them.

Jesse Rohr addressed about the arbitrary law. He explained that the board of zoning must consider the five statutory requirements to be satisfied before approval of a variance request that make is as non-arbitrary as possible. He read the statutory requirements and used examples to explain them. He explained about the discriminatory factor of this on the accessibility issue if granted a variance for one and not another. He pointed out to keep in mind of setting precedence.

Michael Berges asked when the carport had been constructed. He asked if he had a warranty. Mr. Dalton stated that it was about a month ago. Mr. Berges said he hated to say it this way, but if Advantage Glass had done their due diligence with the out-sourced contractor, they would have told him up front that it could not be done. To come in after the fact and ask for forgiveness; it seems like if they would have done the proper leg work that most construction contractors do to make sure they are not going to have issues.

Jesse Rohr and Curtis Deines stated that the company's guidance is limited noting to the customer to follow the city regulations. They have had discussions with them.

Jerry Sonntag stated that it is no different than buying a car and the salesman states that they need proof of insurance. They are there to sell a car. There is a difference between the one selling it and the one putting it up.

Jesse Rohr disagreed and pointed out that it is no different than a home builder to sell a home; they are held to a standard. They are the ones in the know.

Jerry Sonntag noted that Jesse Rohr had pointed out the five statutory requirements and the consideration of setting precedence. He explained to Mr. Dalton that they cannot consider just him, they have to consider future owners. He empathetically expressed that he does feel for the hardship of this situation. Mr. Dalton asked if it could be put into a stipulation that the carport would have to be torn down if the property is sold.

Jesse Rohr answered that would be treading dangerous waters. This would be a sticky issue of those involved with the transaction. He used a scenario to explain it.

Lou Caplan asked if a carport had to be a certain distance from the house. Jesse Rohr answered that it could be abutting the home; basically, an addition to the structure. The home is built to the front setback line. Jerry Sonntag noted that no one could get in and out of the door if the carport would be pushed closer to the home. Curtis Deines added that there are steps to the main living part of the house no matter where you go.

Mr. Dalton noted that it is hard to go through life with an arbitrary decision someone made long ago. Jesse Rohr noted about the all decisions that have been made that they live with every day.

Lou Caplan entertained a motion of a public hearing or not have a public hearing.

Jerry Sonntag moved, Rich Sieker seconded the motion to not have a public hearing on the above case based on the discussion that it does not meet the five statutory requirements and would set a precedence.

Vote: AYES:

Lou Caplan, Jerry Sonntag, Rich Sieker and Michael Burgess

After the meeting, Chairman Lou Caplan informed Mr. Dalton that he could appeal this decision to the District Court.

5. OFF AGENDA ITEMS/COMMUNICATIONS:

None

6. ADJOURNMENT: Chairman Lou Caplan requested a motion to adjourn.

Jerry Sonntag moved, Rich Sieker seconded the motion to adjourn.

Vote: AYES:

Lou Caplan, Jerry Sonntag, Rich Sieker and Michael Burgess

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

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