

**HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA  
CITY COMMISSION CHAMBERS  
1507 MAIN, HAYS, KS  
WEDNESDAY, June 9, 2021  
8:15 A.M.**

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

**2. CONSENT AGENDA.**

A. Minutes of the regular meeting of May 12, 2021.

*Action: Consider approving the minutes of the May 12, 2021 regular meeting.*

**3. PUBLIC HEARING ITEMS.**

A. Public Hearing request by Jeremy Hale for a 6-foot variance to reduce the rear yard building setback from the required 25 feet to 19 feet at 4403 Tam Court, Hays, Kansas.

*Action: Consider approving the 6-foot variance to reduce the rear yard building setback from 25 feet to 19 feet at 4403 Tam Court, Hays, KS.*

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

A. None

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

None

**6. ADJOURNMENT:**

**DRAFT**  
**HAYS AREA BOARD OF ZONING APPEALS**  
**COMMISSION CHAMBERS IN CITY HALL**  
**MINUTES**  
**May 12, 2021**

1. **CALL TO ORDER:** The Hays Area Board of Zoning Appeals met for the regularly scheduled meeting on Wednesday, May 12, 2021 at 8:15 a.m. in the Commission Chambers at City Hall. Lou Caplan declared a quorum was present and called the meeting to order.

**Roll Call:** Present: Lou Caplan, Jerry Sonntag, Rich Sieker, Brian Garrett  
Absent: Russell Koenigsman

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

Others in Attendance: Toby Dougherty, City Manager

2. **CONSENT AGENDA:**

A. **MINUTES:** Rich Sieker moved; Jerry Sonntag seconded the motion to approve the minutes as submitted from the April 14, 2021 meeting.

Vote: AYES:  
Lou Caplan, Jerry Sonntag, Rich Sieker, Brian Garrett

3. **PUBLIC HEARING ITEMS:**

A. **Public Hearing for Werth Rentals, LLC for a variance in setbacks and total square feet for an off-premise billboard sign at 1007 E. 37<sup>th</sup> Street, Hays, KS.**

Curtis Deines provided a PowerPoint presentation for the request by Andy Werth, owner of Werth Rentals LLC, for a variance to increase the size of a sign from 200 square feet to 300 square feet, a reduction in setbacks from the required 10 feet on the interior side yard to 2 feet, and a reduction in setbacks from the required 25 feet to 7 feet on the rear for an off-premise billboard sign at 1007 E. 37<sup>th</sup> Street, Hays, Kansas.

Current regulations require a 10-foot side yard and 25-foot rear yard setback in the "I-1" Light Industrial District. This light industrial district allows off-premise signs.

The previous sign, installed in 2005, met the sign regulations for a 300 square foot sign to be placed in this location before the change in regulations in the 2016 UDC. In August 2020, the pole and sign were removed except the base which still exists.

He showed a visual of the previous sign and the existing pole base and its location on the property. The owner would like to utilize the existing base with the same size as the previous sign and setbacks on the subject property.

Kansas Department of Transportation reviews all off-premise advertising signs along major highways and has preliminarily approved the sign contingent upon approval from the City of Hays.

Variance History - He explained that since the update to the regulations in the 2016 Unified Development Code, there have been no other requests similar to this situation.

He stated the options:

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

He provided the recommended action.

He asked for any questions.

He noted that he had received a call from an adjacent property owner that was concerned about the visibility of the sign next to the other signs in the area.

Jesse Rohr pointed out that the proposed sign would be the exact same size and the same setbacks as the previous sign.

Curtis Deines and Lou Caplan asked for questions. There were none.

Lou Caplan entertained a motion.

Brian Garrett moved and Rich Sieker seconded the motion to approve a variance for the proposed sign for an increase in size from 200 square feet to 300 square feet, a reduction in the interior side yard setback from the required 10 feet to 2 feet, and a rear yard setback from the required 25 feet to 7 feet for the use of the existing sign base at 1007 E. 37<sup>th</sup> Street, Hays, Kansas.

Vote: AYES:

Lou Caplan, Jerry Sonntag, Rich Sieker, Brian Garrett

Jesse Rohr pointed out that KDOT reviews all off-premise advertising signs. This proposed sign was pre-approved by KDOT subject to approval by the City of Hays.

Andy Werth, applicant, concurred.

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

A. Request for a Public Hearing by Jeremy Hale for a 6-foot variance to reduce the rear yard building setback from 25 feet to 19 feet at 4403 Tam Court, Hays, KS.

Curtis Deines provided a PowerPoint presentation of the applicant's request for a 6-foot variance to reduce the rear yard building setback from 25 feet to 19 feet to construct a new home at 4403 Tam Court. The applicant purchased the lot many years ago and had a house designed prior to the adoption of the 2016 regulation change that may not have required a variance.

He showed a visual of the irregular shaped lot. The current regulations require a 25-foot rear yard building setback. Previous regulations allowed the rear setback to be 25 feet or 20% of the depth of the lot, whichever is less. By averaging the north and south property line, 20% of the depth would be 19.6 feet for a rear setback.

He showed a copy of a plat to show the adjacent lots on Newton Circle and Larned Circle where the setbacks were calculated at an average of 22.5 feet to 23 feet. He showed a plat of other adjacent lots with the lesser setback.

He pointed to the two lots not developed yet.

#### Variance History

There are no cases with this type of request since the change in regulations.

Curtis Deines stated that the five statutory requirements were to be satisfied for the approval. He explained about the uniqueness of the lot and how it pertains to the five statutory requirements. Part of the development was built under the previous regulations.

He explained that staff will initiate the process for a public hearing for the June 9, 2021, Hays Area Board of Zoning Appeals meeting to consider this request.

He asked for questions.

Jerry Sonntag asked what the size of the proposed house is since that would be part of the decision for the applicant to be sure it fit on the lot. Jeremy Hale answered that it would be 2400 square feet.

Jerry Sonntag asked city staff if some of those similarly developed irregular lots do not meet the current code of the 25-foot setback. Curtis Deines answered that it is more restrictive now under the 2016 UDC. The previous regulations for the rear yard setbacks were based on 20% of the lot depth or 25 feet, whichever is less. He noted that in the agenda packet was a list of addresses from nearby properties that had the lesser rear yard setback and were built under the previous regulations.

Lou Caplan asked how many unsold lots remain in this development. Jesse Rohr answered that all the lots are sold. Jeremy Hale gave the addresses of the two lots not built on yet. He had purchased his lot in 2015.

Jerry Sonntag asked if they were going to run into this issue for future lots that require a 25-foot rear yard setback for an irregular shaped lot. Curtis Deines answered that they max out the lot as much as the setback will allow.

Toby Dougherty followed up to Jerry Sonntag's comments for new developments; given that costs are increasing for everything for the developer; it might be in the financial interest to develop smaller lots. Do we really need the 25-foot setback? Are we hamstringing someone if they want to come in and develop lots downtown? Do we want to shoehorn in a 900 square foot home on a lot or do we need to look at the 25-foot setback and a possible reduction? Curtis Deines pointed out that sometimes the minimum home size is stated within the covenants of the development.

Toby Dougherty asked who they are protecting with the 25-foot setback. Jesse Rohr answered that is an arbitrary number that was developed.

Jerry Sonntag stated that most people like the bigger homes; better for everyone.

Toby Dougherty pointed out about the water issue here, the more yard that is put in the more water is put on it as opposed to maximizing the use of the lot for more structure which would lessen the area for a lawn to be taken care of.

Jesse Rohr noted that if the regulations for the rear yard setback were changed, they could choose a larger house with less yard or a smaller house with more yard.

Curtis Deines explained the previous regulations that the side yard setback was 10% of the lot width and now it is seven feet, and the rear yard building setback is 25 feet.

Jerry Sonntag stated he agreed that the new regulations were improved to push everything out to allow a greater area to build. It brings homes closer together and fill in the lot.

Jerry Sonntag noted the proximity of homes. Toby Dougherty explained that was for economic reasons.

Jerry Sonntag pointed out that what draws people in, is having the option of a small lot and a large lot. He did not know what the solution would be.

Lou Caplan pointed out this discussion has to do with odd-shaped lots.

Toby Dougherty pointed out that if developers were to go back and build with the grid design, there would be very few irregular shaped lots. Developers want to be market friendly and cost effective for the way they build.

Jesse Rohr added that the 600-foot cul-de-sac is the thing of the past. Regulations now only allow a maximum 150-foot-long cul-de-sac.

Toby Dougherty asked if there were any communities that have very minimal setbacks that could be considered that would maximize the buildable area of a lot. Curtis Deines answered that closer structures may change the building materials for fire protection. Toby Dougherty stated that the Fire Chief would have a comment on that.

Jesse Rohr pointed out that a detached 20 foot by 30-foot garage can be 5 feet from the rear property line and now they can be connected to the home. He pointed out that when talking about the fire rating, five feet is the required distance from structures.

Curtis Deines acknowledged this was a good discussion.

Curtis Deines stated that the State of Kansas is doing a housing study. He will reach out to some of them about design and setbacks.

Toby Dougherty stated that in attending a “Grow Hays” sponsored luncheon, Doug Williams talked about a new community/senior center higher density development to the north side of the hospital. Something like this would allow more garden and patio homes to fit on a particular property.

Curtis Deines talked about the process of a planned development for these types of structures.

Jerry Sonntag pointed out the need to have stipulations in place such as fire rated walls, etc. for higher density developments.

Jesse Rohr noted that the fire last month in the Pinehurst area spread to three homes.

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

A. None

**6. ADJOURNMENT**

Lou Caplan adjourned the meeting at 8:43 a.m.

Submitted by Linda K. Bixenman, Administrative Assistant

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## Board of Zoning Appeals Action Report

AGENDA ITEM: Rear Yard Variance Application #07-21  
 ADDRESS: 4403 Tam Court  
 OWNER: Jeremy Hale  
 TYPE OF REVIEW: Rear Yard Setback Variance  
 PRESENTED BY: Curtis W. Deines, P. I. E. Superintendent  
 DATE PREPARED: May 24, 2021  
 MEETING DATE: June 9, 2021

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### Summary

The applicant is requesting a variance to reduce the rear yard setback for the primary dwelling at 4403 Tam Court. The applicant purchased the lot many years ago and designed a house with the previous regulations in mind. Staff supports the variance request to reduce the rear yard setback from 25 ft. to 19 ft.

### Background

- The applicant is requesting a rear yard variance:
  - Rear Yard – 25 ft. to 19 ft.

	<b>Setback Required</b>	<b>Applicant Proposed</b>
Front Yard	N/A	N/A
Interior Side Yard	N/A	N/A
Rear Yard	25 ft.	19 ft.
Other Structures	N/A	N/A

- Applicant wishes to construct a new home at 4403 Tam Court. The applicant purchased the lot many years ago and had a house designed prior to the adoption of the 2016 regulation change.
- Previous regulation allowed the rear setback to be 25 ft. or 20% of the depth of the lot, whichever is less. The lots on adjacent streets including Newton Circle average a depth of 111 ft. (20% = 22.2 ft.) and Larned Circle where lots average 115 ft. (20% = 23 ft.)
- By averaging the North and South property line for the subject property at 4403 Tam Ct, 20% of the depth would be 19.6 ft. for a rear setback.

**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. 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 lot located at the corner of 45<sup>th</sup> & Tam Court is unique in how it is shaped with angles and curves. This is the most unique lot within the plat when it was developed. The north lot line is at an angle from west to east with a width of 136 feet. The south lot line is an east and west line only 60 feet in width.*

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

**Staff Analysis:** *This request should not have an adverse effect on the adjacent properties. For many years, prior to adoption of the UDC in 2016, a setback less than 25 ft. when lots are less than 125 ft. in depth was allowed. Many homes in the area have less than 25 ft. for a rear setback.*

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

**Staff Analysis:** *The property owner bought the lot and designed a house with the previous regulations in mind. The new regulations change the buildable area of the lot for the dwelling by nearly 6 ft. Previous regulation allowed for less than 25 ft. due to a narrower lot. The plans for the new house can be adjusted to make it compliant but would change the current design.*

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

**Staff Analysis:** *If granted as proposed, this variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*

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

**Staff Analysis:** *The granting of a variance for a reduced rear yard setback does not oppose the general spirit and intent of the zoning regulations. Accessory structures can be built within 5 ft. of the rear yard which is significantly closer than the proposed primary structure.*

### **Options**

- Approve the variance request as presented
- Approve the variance request with conditions
- Do not approve the variance request

### **Recommended Action**

Motion to approve a variance to reduce the rear yard setback for the primary structure from 25 ft. to 19 ft. as submitted.

### **Supporting Documentation**

Variance application  
Variance justification and site drawing(s) from owner  
Images/Maps/Photos



APPLICATION FOR VARIANCE

I. Name of Applicant Jeremy Hale Phone 785-650-4753

Mailing Address 4504 Van Buren Hays, KS 67601

Name of Owner (if different from applicant) Same 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 a reduction of rear yard setback from 25' to 19' a variance of 6'

on property located at 4403 Tam Court and legally described as: Golden Belt Estates 4th Addition Block 1 Lot 1

in the City of Hays and which is presently zoned NC.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.

Jeremy Hale  
APPLICANT

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

Jeremy Hale  
OWNER

OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON 04-22-2021

TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00

Linda Bixenman, Administrative Assistant

NAME AND TITLE

We are applying for a variance of our lot at 4403 Tam Court for a reduction of the rear setback from 25 feet to the 20% of the lot depth as many of the homes in the surrounding area were constructed. The lot is in an irregular lot with south part of the lot being only 60 feet deep. Many of the homes adjacent to our proposed new home were constructed with the 20% rear setback. Here is a list of these properties and there approximate rear setbacks:

4416 Newton Circle-20'

4406 Newton Circle-20'

4403 Newton Circle-17'

4405 Newton Circle-17'

4409 Newton Circle-17'

4417 Larned-15'

4405 Larned-20'

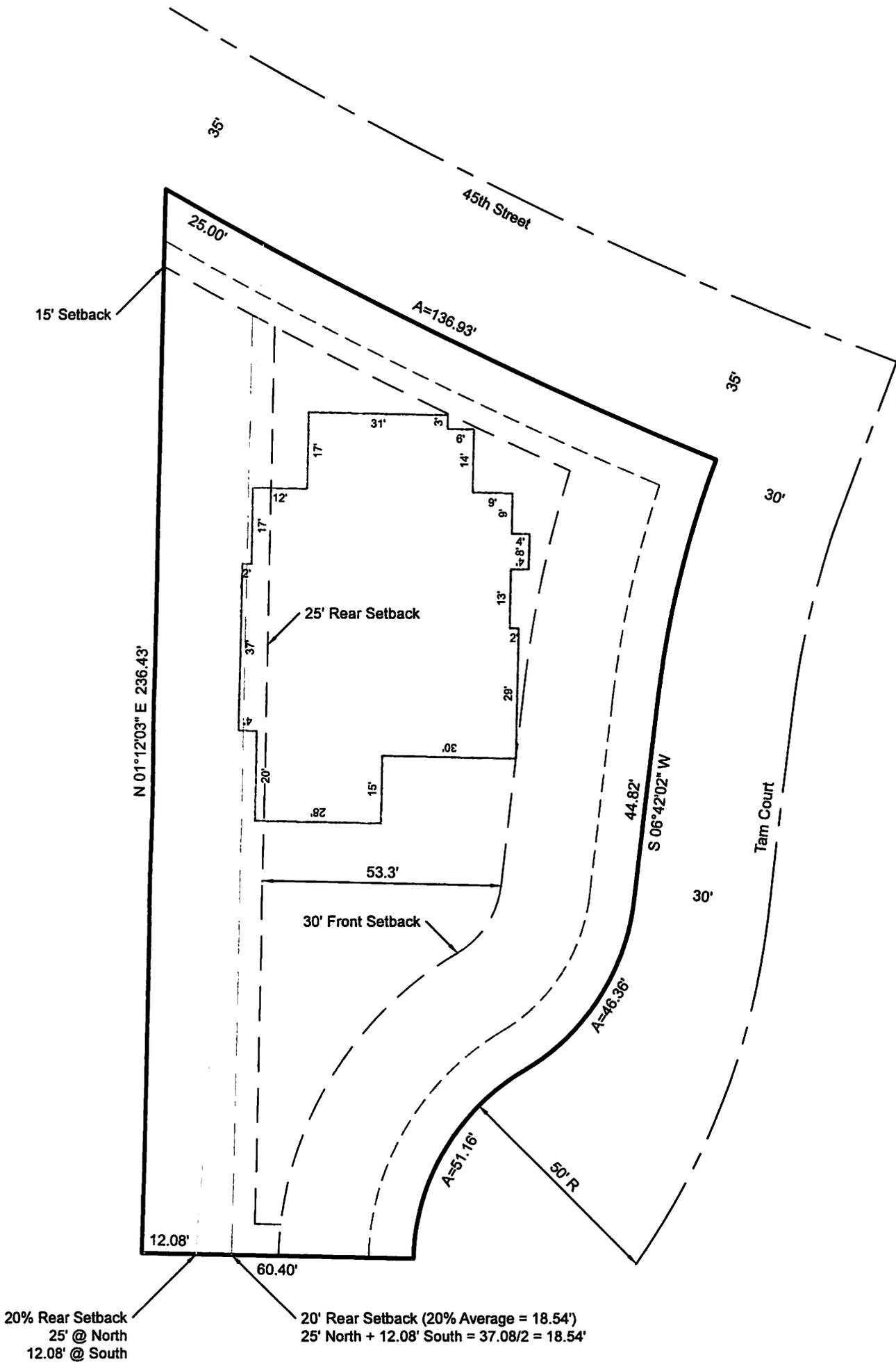
4400 Larned-22' 4402 Larned-22'

4401 Tam Court-18'

Our proposed variance would give us a 19' rear setback.

We have had this floor plan picked out for several years and have already decreased the size of it to try to get it to fit within the current lot setbacks, but we feel that if we decrease it any more we are not getting what we had hoped to have when we bought this lot for building our forever home. We had originally planned on building 4 years ago, but due to some health issues we had to put it on hold.

If granted this variance we will begin the process of finalizing our floor plans and hope to start construction late this summer, lumber prices permitting. We feel that our proposed home with the variance will fit in with the surrounding neighborhood with the setbacks that were in place at the time they were constructed.



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45th Street

25.00'

A=136.93'

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

**NOTICE**

TO: Jeremy L. Hale  
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. 12-759 through K.S.A. 12-760 et seq. as amended, and Ordinance 3919 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 Jeremy L. Hale.

The subject of the hearing shall be a request by Jeremy L. Hale for a six foot (6') variance to reduce the rear yard building setback from the required twenty-five feet (25') to nineteen feet (19') to construct a new home on the property of Lot 1, Block 1, Golden Belt Estates 4<sup>th</sup> Addition generally known as 4403 Tam Ct.

You are hereby notified that a hearing will be had upon said appeal on the 9th day of June 2021 at 8:15 a.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.

Lou Caplan, Chairperson  
Hays Area Board of Zoning Appeals