

**HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA  
CITY COMMISSION CHAMBERS  
1507 MAIN, HAYS, KS  
WEDNESDAY, NOVEMBER 13, 2019  
8:15 A.M.**

**A. CALL TO ORDER BY CHAIRMAN.**

**B. CONSENT AGENDA.**

A. Minutes of the regular meeting of July 10, 2019.

*Action: Consider approving the minutes of the July 10, 2019 meeting.*

**C. PUBLIC HEARING ITEMS.**

None.

**D. NON-PUBLIC HEARING ITEMS.**

A. Request by Stanlee H. Dalton requesting to reduce the front set back from 25 ft to 7 ft. for a carport at 2307 Oak St.

*Action: Consider setting a public hearing for a front setback variance request at 2307 Oak St.*

**E. OFF AGENDA ITEMS/COMMUNICATIONS.**

**F. 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  
JULY 10, 2019**

1. **CALL TO ORDER:** The Hays Area Board of Zoning Appeals met at the regularly scheduled meeting on Wednesday, July 10, 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 (arrived after the vote on approval of the minutes)

City Staff in attendance: Jesse Rohr, Director of Public Works, and Linda Bixenman, Administrative Assistant.

2. **CONSENT AGENDA:**

**A. MINUTES:** Jerry Sonntag moved, Rich Sieker seconded the motion to approve the minutes as submitted from the June 12<sup>th</sup>, 2019 meeting. There were no corrections or additions to those minutes.

**Vote: AYES:**

Lou Caplan, Jerry Sonntag, Rich Sieker

3. **PUBLIC HEARING ITEMS:**

**A. REQUEST BY CURTIS AND BROOKE DEINES FOR A SPECIAL USE PERMIT TO ALLOW A PRESCHOOL ON THE PROPERTY OF 1307 SCHWALLER AVENUE. (CASE #05-19):**

Jesse Rohr provided a power point presentation on the overhead visual with the information, location, and overview site of the above property for the requested special use permit to allow a preschool on the property of 1307 Schwaller Avenue within the "NC.2" Neighborhood Conservation District (Single-Family detached Housing). It is allowed in this zoning district provided, a special use permit is granted by the Board of Zoning Appeals.

The property is in central Hays just south of 27<sup>th</sup> St south of Dollar General on Schwaller Ave.

Within the Unified Development Code, preschools fall within the definition of the Group Day Care Center, defined as: *An establishment other than a public or parochial school, which provides day care, play groups, nursery schools, or education for seven or more unrelated children, ages three years or more. Group day care centers shall meet all requirements of the State Board of Health, Maternal Child Care Division.*

He provided a picture of the zoning map. The subject property is identified in the "NC.2" (Neighborhood Conservation single-family detached housing) zoning district. The property near the north is zoned "C-2" (Commercial General) and "NC.4" (multi-family) area to the east.

The applicants have relocated from 2609 General Custer to 1307 Schwaller Avenue and wish to relocate their preschool that they have operated since 2010. The applicant came to the BZA at that time and was granted a special use permit for a preschool. There have been no complaints or concerns regarding the use and no concerns in parking and noise etc. The owner is currently licensed with the State of Kansas for a Preschool and has been since 2010. They get their new license after the proposed preschool is completed and inspected. This building will be slightly larger than the other.

He provided a picture to show the previous location and new location of the preschool that is up the street in the same neighborhood. The street frontage is 300 feet in length compared to the 60 feet at the previous property. The new property is much larger as well as a wider street and there is less traffic. They have addressed the parking requirements of 4 off-street parking spaces in addition to on-street parking.

For the record, he had received a call from the neighboring property owner from the north, that asked him to pass on to the board that he is opposed to the request because he believes the preschool should be in a commercial zoned area. His tenant of 11 years threatened to move out if this request was granted. She was concerned about parking.

Jesse Rohr explained that the applicants would meet the parking requirements. The nearby property owner acknowledged in agreement that the parking had been addressed.

Jesse Rohr explained that most of the preschools were in residential areas. He pointed out the proposed preschool at 22<sup>nd</sup> and Wheatland next to a residential area will have 55 students. He explained this subject preschool is licensed for 12 students at a time with two sessions a day that run on the school district's schedule being 8:30 a.m. to 11:30 a.m. and 12:15 p.m. to 3:15 p.m. The Unified Development Code regulates the hours of operation from 6:00 a.m. to 6:00 p.m.

The nearby property owner asked that a fence be constructed between the properties. Jesse Rohr noted that the nearby property owner's own fence had been removed because it was in disrepair. The playground will be on the south side of the preschool surrounded by a minimum six-foot fence with bufferyard of trees and bushes for landscaping around it as per UDC requirements. There will not be any activity happening on the north side of the subject property.

The nearby property owner seemed satisfied with the comments. This was the only comment associated with the special use request.

He showed a layout of the lot with the home, play area to the south, existing shed and an elevation rendering of the proposed preschool. They will construct a six-foot fence around the play area.

He provided a list of considerations for the preschool and the list of considerations for a special use permit as per the guidelines of Unified Development Code to the board. The applicant plans to meet the requirements.

Lou Caplan asked for any questions or comments.

Michael Berges informed the board that he would recuse himself due to a conflict of interest with the Deines's.

Lou Caplan entertained a motion.

Rich Sieker moved, Jerry Sonntag seconded the motion to grant the special use permit for a preschool at 1307 Schwaller as requested per the above case.

**Vote: AYES:**

Lou Caplan, Jerry Sonntag, Rich Sieker

Recuse: Michael Berges (Conflict of Interest)

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

None

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

None

**6. ADJOURNMENT:** Chairman Lou Caplan adjourned the meeting at 8:26 a.m.

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

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**Board of Zoning Appeals Action Report**

**AGENDA ITEM:** Front Setback Variance Application #06-19  
**ADDRESS:** 2307 Oak  
**OWNER:** Standlee H. Dalton  
**TYPE OF REVIEW:** Variance  
**PRESENTED BY:** Curtis W. Deines, P. I. E. Superintendent  
**DATE PREPARED:** November 4, 2019  
**MEETING DATE:** November 13, 2019

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**SUMMARY AND RECOMMENDED ACTION:**

The applicant is requesting a variance to reduce the front yard setback of a residential property from 25 ft. to 7 ft. for a carport. Staff recommends setting a public hearing for December 11, 2019 if the Board feels it meets the requirements of a variance request.

**BACKGROUND:**

- The applicant is requesting a variance of the rear yard:
  - Front Yard – 25' to 7'

	<b>Setback Required</b>	<b>Applicant Proposed</b>
Front Yard	25 ft.	7 ft.
Street Side Yard	N/A	N/A
Rear Yard	N/A	N/A
Other Structures	N/A	N/A

- Applicant wishes to keep the carport in its current location.
- Property is located within the NC.3 District.
- The house sits approximately 24.5 ft from the front property line.

Table 3.2.201 Existing Neighborhood Lot and Building Standards										
Subdistrict	Equivalent District	Predominant Housing Type (dwelling units)	Minimum Lot Width	Lot Area <sup>1</sup>		Minimum Setback				Maximum Building Height
				Minimum	Maximum	Front	Interior Side	Street Side	Rear	
NC.1	A-L / R-S	Single-family detached	140'	1 ac.	N/A	30'	7'	14'	30'	35'
	A-L			21,780 sf.						
NC.2	R-1	Single-family detached	60'	7,000 sf.	12,000 sf.	30'	7'	14'	25'	35'
	R-2		50'	6,000 sf.		25'	5'	10'		
	M-S	Single-family detached - manufactured homes								
	R-3	Single-family detached	50'	5,000 sf.	12,000 sf.	25'	7'	14'	25'	
NC.3	R-3N	detached				20'	5'	10'	15'	35'
	R-3	Single-family attached - duplex	50'	3,000 sf.	15,000 sf.	25'	0'	14'	25'	
	R-3N		20'			10'		15'		
	R-3A	Single-family attached - triplex	60'			30'	30'	15'		

- The purpose of the Neighborhood Conservation (NC) district, as further delineated by subdistricts, is intended to provide for neighborhood stability while at the same time allowing for reasonable expansion and in some cases, new construction, in established residential neighborhoods. The NC district is generally characterized by development of existing residential neighborhoods that pre-dated the effective date of this Code.
- Above is Table 3.3.201 for NC.3 Districts. Previous zoning prior to UDC change had this area as R-3. Indicated in red is the setback requirements.
- Majority of the City of Hays residential districts have a 25ft front yard setback requirement.
- There have been 2 cases in the past with similar requests that have been denied.

## STANDARDS OF EVALUATION:

### *Per State Statute 12-759 and City Ordinance 3919*

- 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 is a 60 ft x 111 ft lot. This is a common size in this neighborhood. No obvious uniqueness to the lot or situation exists.*

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

**Staff Analysis:** *It seems that this request will have limited or no effect on any rights of adjacent property owners. What may occur is more variance requests if this is approved setting a precedent.*

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

**Staff Analysis:** *This is a self-imposed hardship. Even though this is the easiest location for access to the front, there is adequate room to place a carport in the backyard.*

- 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 may not adversely affect the public health, safety, morals, order, convenience, prosperity, 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 a variance for the proposed building with a reduced front yard setback does oppose the general spirit and intent of the zoning regulations and may set a precedent for requests in the future for front yard setback reductions.*

#### **OPTIONS:**

- Set a public hearing for December 11, 2019.
- Do not set a public hearing.



**RECOMMENDED ACTION:**

Staff is not in favor of the variance request as submitted. There have been 2 cases in the past with similar requests that have been denied. The property owner did not obtain a building permit prior to installation. Recommend setting a public hearing if the board feels it meets the requirements of a variance request.

**ATTACHMENTS:**

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

**APPLICATION FOR VARIANCE**

I. Name of Applicant Standlee H. Dalton Phone 785-650-1155

Mailing Address 2903 Cottonwood Ln

Name of Owner (if different from applicant) Same Phone \_\_\_\_\_

Mailing Address Same

Name of Authorized Agent N/A Phone \_\_\_\_\_

Mailing Address N/A

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

II. The variance is requested to reduce the front yard setback from 25 ft to 7 ft  
a reduction of 18 ft for an open carport.

on property located at 2307 Oak and legally described as: \_\_\_\_\_

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

Standlee H. Dalton  
APPLICANT

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

Standlee H. Dalton  
OWNER

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON October 28, 2019

TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00

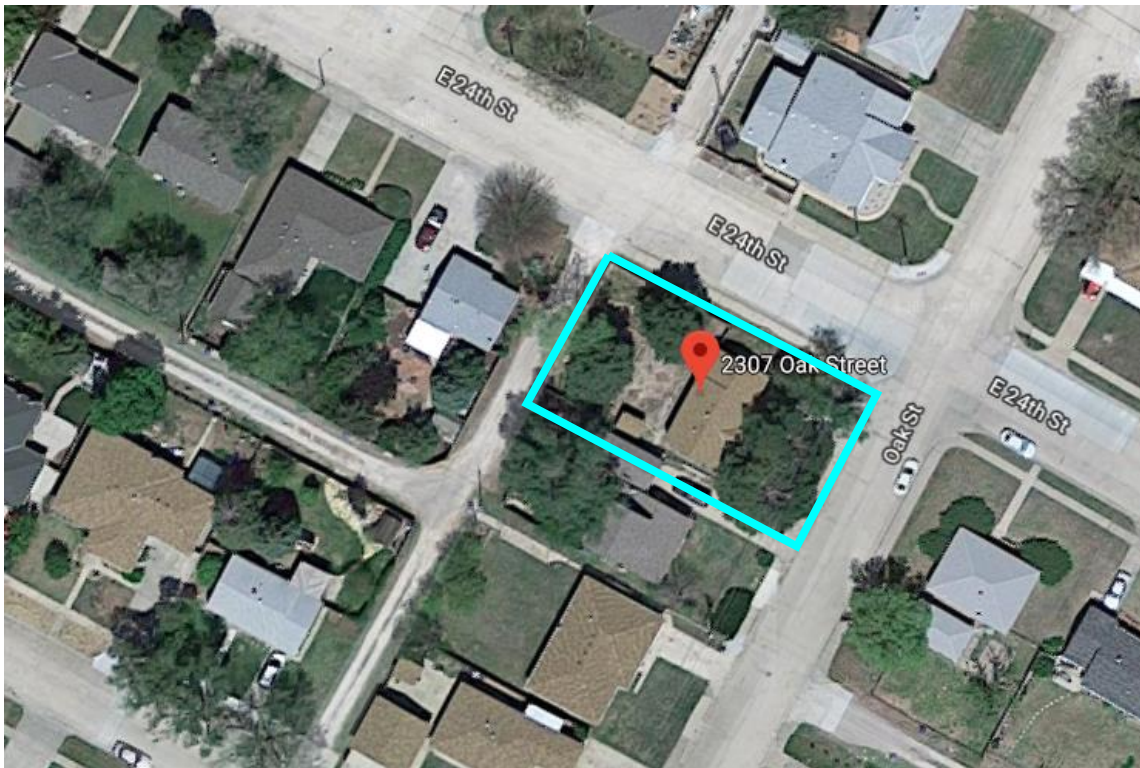
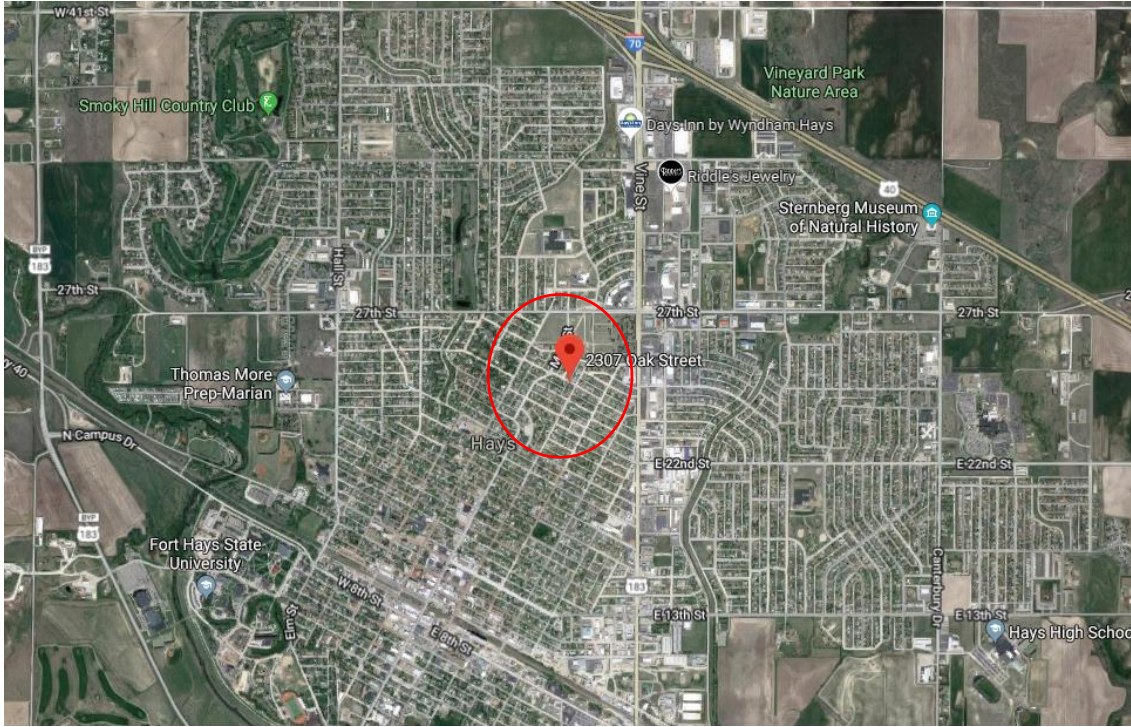
Linda K. Bixenman, Administrative Assistant

**NAME AND TITLE**

## **APPLICATION FOR SETBACK DEVIATION**

- A. Uniqueness:** This carport is on the original driveway for the house. The garage was converted to living space. The entryway on this part of the house is the only one used. It does not have any stairs. This was the only position possible for a protective carport.
- B. Adjacent Property:** This carport is completely open. It will in no way restrict any view. It has tree limbs overhanging the roof and I doubt they will even notice it is there.
- C. Hardship:** The occupant, my daughter, has severe arthritis, is on disability and needs all the protection I can give her. I have converted the house to "handicap accessible" as much as possible. I had multiple bars and rails installed - from Leon's welding. I had a walk in bathtub installed. I feel the carport gives her some protection in bad weather while loading and unloading her car.
- D. Public interest:** As I stated before, I doubt anyone will notice it is there.
- E. Spirit and Intent of the Zoning Regulations:** Since it is completely open it won't interfere with obstruction of view for any neighbors or of traffic.

# Central Hays

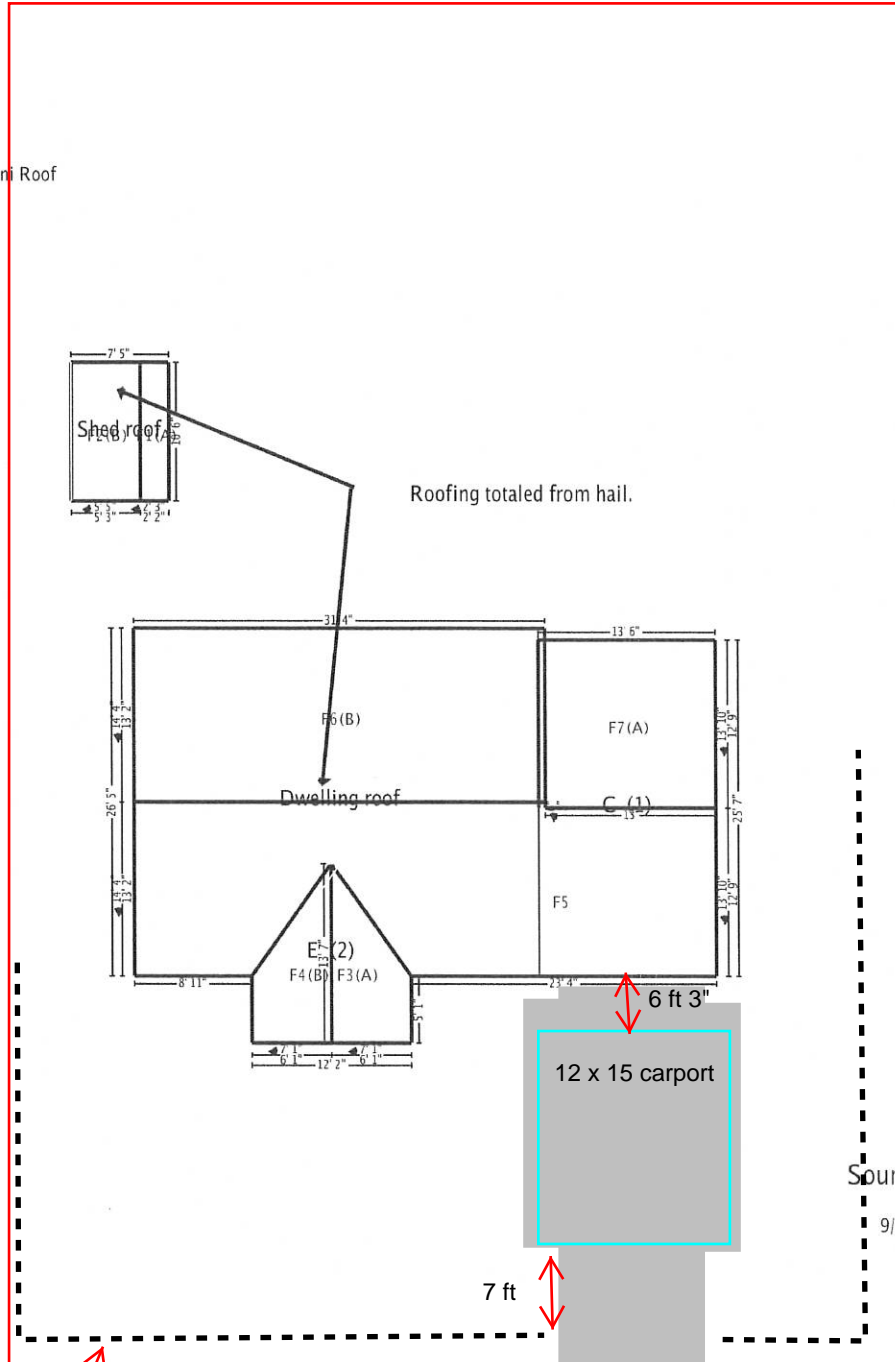


24th & Oak St

2307 Oak St

Source - Geomni Roof - Source - Geomni Roof

07163000055081



24th St

STANDLEE\_DALTON1

Source - Geomni Roof

9/9/2019

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North

Chain Link Fence on property line

Oak St

View from Oak Street looking West



View from 24th St looking South