

**CITY OF MISSION  
BOARD OF ZONING APPEALS  
AGENDA**

**December 23, 2019  
6:30 PM**

**Mission City Hall - 6090 Woodson**

1. *Election of Officers for 2019*
  - Memo
  - Board By-Laws
  - Rules and Regulations
  
2. *Approval of the Minutes of the June 26, 2017 meeting*
  
3. *Application BZA Case #19-01 Variance for a Side-Yard Setback - Public Hearing*  
5501 Outlook St. - Request for a variance to the side-yard setback for the construction of a detached garage.
  - Staff Report BZA Case #19-01
  - Site Aerial with Setback Line and Proposed Garage Location
  - Application
  - Survey Drawing
  - Pictures of Proposed Garage
  - Variance Guidance

Staff Contact: Brian Scott, Assistant City Administrator

Vacant, Chairperson  
Stuart Braden, Vice-Chairperson  
Mission City Hall , 6090 Woodson St.  
913-676-8360



## MEMORANDUM

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**Date:** December 16, 2016  
**To:** Members of the Board of Zoning Appeals  
**From:** Brian Scott, Assistant City Administrator  
**RE: Election of Chair and Vice-Chair**

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There are five members of the Board of Zoning Appeals.

It has been two years since the Board has met. In this time, one member, Mr. Jim Brown, has stepped down. Mr. Aaron Wingert was appointed by Mayor Schowengerdt in August of 2018 to fill the vacancy left by Mr. Brown.

Mr. Brown was the Chair of the Board. The Board will need to elect a new Chair and Vice-Chair as its first action for this meeting.

A Recording Secretary also needs to be appointed. It is recommended that Audrey McClanahan, Office Assistant for the Community Development Department be appointed.

By-Laws of the Board and rules and regulations for considering applications is attached for background information.

## **BYLAWS OF THE BOARD OF ZONING APPEALS**

### **I. OFFICERS**

- A. Officers of the Board of Zoning Appeals shall be Chairman and Vice-Chairman, which officers shall be elected by the Board at the first regular meeting after City Council appointments in the month of January and shall serve for one year and may be re-elected, or replaced by election.
- B. The Board shall elect a recording secretary, who shall be provided by the City of Mission, and may or may not be an appointed member of the Board.

### **II. FUNCTION AND DUTIES OF OFFICERS**

- A. **CHAIRMAN:** The chairman shall be the presiding officer at all meetings of the Board. He or she may call special meetings at his discretion, and may relinquish the chair to the Vice-Chairman or other specified members at his discretion. The Chairman may not make or second motions, but may vote on any and all motions to come before the Board.
- B. **VICE-CHAIRMAN:** The Vice-Chairman shall serve in the absence of the Chairman, and while so serving shall have all the authority held by the Chairman.
- C. **RECORDING SECRETARY:** A recording secretary shall attend all regular meetings of the Board and special meetings when the Chairman deems it advisable that a public record be kept of the proceedings. A recording secretary shall attend all public hearings before the Board and shall keep an accurate record of the spirit and intent of statements made by witnesses at the hearing. All motions shall be recorded and an accurate record of all stated reasons for motions or votes by members of the Board shall be made. The minutes of each such meeting shall be typed and copies distributed to members of the Board and other appropriate persons at an early date. The original of the minutes shall be placed in a binder comprising an accumulating permanent record, such binder to be part of the official records of the City of Mission.

### **III. MEETINGS**

Meetings of the Board shall be held on the third Monday of each month with the exception of January when the meeting will be held the fourth Monday of the month, the time of the meeting being 6:30 P.M. Special meetings may be held at the call of the Chairman, or in his or her absence, the Vice-Chairman. All meetings shall be open to the public. The Chairman or Vice-Chairman may authorize a telephone poll of the members of the Board for the purpose of canceling a meeting.

IV. QUORUM

A simple majority of the appointed members, including the Chairman, shall constitute a quorum for the transaction of business and the conducting of hearings.

V. CONFLICT OF INTEREST

When a member of the Board has an interest in conflict with any interest before the Board in a particular case, he or she shall so state for the record, and vacate his or her chair and shall not vote on the issue. If the vacation of a chair due to conflict of interest shall eliminate a quorum, the Board shall continue the case to the next regular or special meeting.

VI. SUSPENSION OF RULES

Rules and regulations may be suspended for stated reasons by affirmative vote of two-thirds (2/3) of those present at a special or regular meeting with a quorum present. Rules that can be suspended are those that relate to business procedures and to priority of business. The Bylaws cannot be suspended.

I. AMENDMENT OF RULES

These rules and regulations may be amended or repealed for stated reasons by affirmative vote of two-thirds (2/3) of those members present at a regular or special meeting with a quorum present. Previous notice to the entire membership of proposed amendments or revisions to the bylaws is required.

# **RULES AND REGULATIONS OF THE BOARD OF ZONING APPEALS**

## **I. APPLICATIONS**

In order that staff review can take place in an orderly manner and findings distributed to members of the Board with sufficient time for study and review, certain deadlines are hereby established:

All applications and other submittals required for review by the Board shall be received by the Department 28 days prior to the meeting schedule.

## **II. AGENDA**

The agenda shall be prepared and submitted to the Board approximately ten (10) days prior to the meeting. The order of items on the agenda shall be at the discretion of the Chairman and Recording Secretary; due consideration being given to early consideration of items likely to attract a large attendance at the meeting. The Chairman may, for reasons stated to all in attendance, vary from the order of the agenda. An item may be added to the agenda only by affirmative vote of three-fourths (3/4) of the members present.

## **III. MEETING PROCEDURE**

The Chairman shall call each agenda item and briefly describe, or ask a member of the staff to briefly describe the proposition before the Board. Meetings will be conducted according to Robert's Rules of Order. The applicant and/or agent will then be asked to present his or her case. The name and address of the applicant and his agent shall be entered into the record, as well as a summary of his or her presentation. At the conclusion of the applicant's presentation, the members of the Board and Staff shall have the opportunity to question the applicant. Any other supporting testimony will then be heard. Opposition may then be heard with the members of the Board and Staff having an opportunity to question any speaker. The proponent will then be given an opportunity to make a short summary.

All statements shall be directed to the Board and cross conversation among those in attendance is prohibited. Questions between opposing parties shall be directed first to the Chairman, who may then ask the proper person to answer, such answer being directed to the Board. At such time the Board feels that testimony has been sufficiently heard, a motion may be passed by simple majority to terminate testimony after which the public in attendance may address the Board only with the permission of the chairman, and only to answer a question by a member of the Board. All persons who wish to speak shall first give their names and addresses for the record.

## **IV. MOTIONS**

Following closing of a testimony, a motion may be made to recommend approval or denial of the proposition to the governing body, to continue, or in the case of plans or preliminary plats, a motion to approve or deny may be made. A brief statement of reason for the motion should precede the making of the motion.

Any stipulations relative to plans, development procedure, etc., should be listed following the motion to approve. Upon receiving the second, the motion may be discussed and, upon call for the question or at the discretion of the Chairman, brought to a vote. Vote shall be by voice or by the raising of hands or by roll call, at the discretion of the Chairman. Any member may request a roll call vote on any issue. The affirmative vote of a majority of the quorum of Board members present shall result in approval of the motion. Any motion may be tabled or amended in keeping with Roberts Rules.

V. ENDORSEMENT OF EXHIBITS

Any plan, sketch, photo, or other exhibit submitted as part of a zoning hearing and which is deemed by the Chairman as an important part of the presentation, shall be retained for the file. All such documents shall be appropriately annotated at the hearing and signed by the Recording Secretary.

VI. CONTINUANCE BY AN APPLICANT

- A. An applicant may continue his or her own proposal to a date certain for a period not to exceed two (2) months, by notifying the Recording Secretary not less than four (4) days prior to the date of the hearing, whereupon that item will be removed from the agenda. Where notification by mail of adjacent property owners has taken place, the applicant shall further notify to the extent possible the same property owners, by certified mail, return receipt requested, of the continuance and the new date of the hearing. This notification of continuance shall be mailed not less than four (4) days prior to the date of the originally scheduled hearing.
- B. Any proposal not withdrawn prior to preparation of the agenda (four days prior to the meeting) may be continued at the applicant's request only by affirmative vote of three-fourths of the members present at the meeting. In consideration of such a motion to allow continuance, the Board may question the audience as to the number who have been inconvenienced or incurred expense on the presumption that the item would be heard, and the Board may refuse to continue the proposal, and proceed with the hearing and take appropriate action thereon. In any such case of continuance, it shall be to a date certain, only one (1) continuance shall be permitted, and the applicant shall notify by certified mail all parties initially notified of the new hearing date, and such notification is to be mailed not less than five days prior to the date of the new hearing.

VII. CONTINUANCE BY THE BOARD OF ZONING APPEALS

If the Board feels that delaying an action would be in the best interests of the parties involved, the hearing may be continued to a date certain. Such a motion for continuance shall include a reason for the action and shall require a majority vote of those present. The Board may continue a proposition for a period not to exceed two (2) months from the date of the first hearing and one (1) of four (4) actions shall be taken at the end of that period: 1) the proposal may be approved, 2) the proposal may be denied, 3) the Board may continue the hearing at its discretion, or 4) the applicant may withdraw the application. In the latter case, the proposal may come before the Board again only by re-application, publication, etc., as required by ordinance for all such applications.

VIII. APPLICANT NOT IN ATTENDANCE

In case an applicant or agent is not in attendance when his or her item is called, that item shall be set over to the end of the agenda. At the time the item is again called, if the applicant is still not represented, the Board may continue his or her case under procedure of Section VII above or may approve or deny the proposition as it sees fit.

## **MINUTES OF THE BOARD OF ZONING APPEALS MEETING**

**June 26, 2017**

The regular meeting of the City of Mission Board of Zoning Appeals was called to order by Chairman Jim Brown at 6:30 PM Monday, June 26, 2017. Members also present: Mike Lee, Robin Dukelow, Frank Bruce and Stuart Braden. Also in attendance: Danielle Sitzman, City Planner; and Nora Tripp, Secretary to the Board of Zoning Appeals.

*[Mr. Brown read rules and procedures into the record.]*

### **ELECTION OF OFFICERS FOR 2017**

**Mr. Braden moved and Mrs. Dukelow seconded** a motion to elect Jim Brown as Chairman of the Board of Zoning Appeals. The vote was taken (4-0-1). The **motion carried**. Mr. Brown abstained from the vote.

**Mr. Lee moved and Mrs. Dukelow seconded** a motion to elect Stuart Braden as Vice Chairman of the Board of Zoning Appeals. The vote was taken (4-0-1). The **motion carried**. Mr. Braden abstained from the vote.

**Mr. Braden moved and Mrs. Dukelow seconded** a motion to elect Nora Tripp as Secretary to the Board of Zoning Appeals. The vote was taken (5-0-0). The **motion carried**.

### **APPROVAL OF MINUTES OF NOVEMBER 28, 2016**

**Mrs. Dukelow moved and Mr. Braden seconded** a motion to approve the minutes of the November 28, 2016, meeting. The vote was taken (4-0-1). The **motion carried**. Mr. Bruce abstained from the vote.

### **APPLICATION BZA Case #17-01 VARIANCE – Rear setbacks - PUBLIC HEARING** **5128 Riggs Street**

Ms. Sitzman: This is an application for a rear yard variance at 5128 Riggs Street. The subject property is one of the earliest-platted subdivisions in the city, dating back to 1913. As we were discussing informally earlier, this means that there are a lot of plats that were platted that are much narrower than our development standards are today. This particular property is comprised of lots 377-380. They also have driveway access off of Riggs Street through a separate lot.

According to AIMS data, the home was constructed in 1980, and in viewing it on AIMS, it appears the deck may have been original to the home. The deck was approximately 10 feet away from the rear property line. So, when the homeowner applied for a building permit to replace their deck, we noticed that the rear yard setbacks were not being met. It appears that the total depth of the rear yard is about 25 feet. The deck would project 15 feet into the rear yard, leaving only about a 10-foot setback where a minimum 20-foot setback is required today. This lot is very unique in the fact that it's essentially a double-sided lot in the way it's been developed, particularly onto Riggs Street, but there's also undeveloped right-of-way that runs along the west side.



Included in the staff report there is an exhibit I've tried to color-code for you, the original plat map with the information for this lot. The existing property is in yellow. There are areas highlighted in green that show areas of dedicated right-of-way that has not been improved, so there is essentially no street built on them. There are areas in orange where the City has previously vacated that right-of-way and turned it back over to the private property owners. In fact, this property owner did receive some property back as part of the vacation of the northern section along Raymond Street. So, if they were to pursue those vacations in the future, there are some areas that we've identified as probably no longer being necessary to the City. Those are in red.

To resolve the applicant's conundrum when they discovered their deck was not going to meet setbacks, they have the option of waiting for us to clean up the right-of-way issue and perhaps deed some land back to them; or, to pursue this variance request tonight. We advised them to pursue the variance because if we were going to, as a City, consider right-of-way vacation, we would do it for all of that right-of-way and involve all of those property owners, which would involve a much longer process. We didn't think they should have to wait for that decision to get a determination about their rear-yard setbacks. In either case, because they're kind of at the northern end of Morrison Avenue and adjacent to an area that's already been cut up by previous vacations, I would think there's a very strong case for the City eventually vacating the section that abuts their property anyway, regardless of what we do with the rest of the right-of-way. Like I said, they're kind of at the end of the spur there. Staff does not anticipate construction of streets in that right-of-way. In some areas, it's a substandard width; in some areas, it doesn't connect to anything. There are some real topography challenges from east to west. So, regardless of that, we advised them to consider our variance. If someday we did vacate that right-of-way, typically property owners on each side would get about half of that. They would gain about 20 additional feet to their rear yard, which is the required setback. So, there's this land waiting to eventually go back to them, which would give the required rear yard setback anyway. So, we are fairly comfortable in bringing this to you tonight, to consider that variance tonight, with the idea that eventually it would all kind of go back into compliance.

Included in the staff report is an excerpt of their survey. The way the staff report was written, the applicant had not asked for a specific number, and we didn't want to limit that to a specific rear-yard setback. We wrote it for any building with a portion of their rear yard up to that existing rear property line, with the understanding that eventually the vacation of Raymond would give them back the rear-yard setback. Therefore, it didn't really matter.

One of the board members has contacted me to say that they're not comfortable with that. Mr. Brown, can I put you to the group? *[Laughter.]* He said he would be more comfortable with a concrete number like we've done with other variances. So, I've spoken with the applicant to see if they had a specific number in mind. They've not proceeded yet to a building plan for the new deck, so it was a little up in the air. But, they believe that a 10-foot variance would be sufficient, which would be a 10-foot setback to the existing rear yard. That would leave them room to construct their deck. So, if you would like to make a motion tonight with a specific number, it sounds like a 10-foot variance would work for them. The applicant is here tonight; you can ask them, as well.

As with all variances, there are five conditions that need to be met in order to issue the variance. The applicant has provided their findings of facts in the application as to how they believe those findings were met. I will say that I believe this property is fairly unique in the city, being adjacent to undeveloped right-of-way; essentially being a double-loaded lot, which we don't have any regulations for in our ordinances to deal with how, if your lot has a street on the front and the back. We deal with corners, but we don't deal with double-loaded. So, not really a situation that they created. Like I said, I believe the eventual vacation of that right-of-way, or maybe not having it developed, creates the same kind of conditions as having a 20-foot setback in the rear yard anyway. I'd be happy to answer any questions.

Mr. Brown: At this time, I'd like the applicant to come forward and express their position.

*Sally Enervoldson, 5128 Riggs, appeared before the Board of Zoning Appeals and made the possible comments:*

Ms. Enervoldson: We are requesting a variance on the rear setback for removing and replacing an existing deck. Right now, the existing deck is 10 feet away from the edge of our property, and if we had the road easement turned over to us, it would be 30 feet from the edge of our property, if that were to be vacated. It is our understanding that that will never be a road, and that it will be vacated. So, we're asking right now for the vacation of that road easement, for you to grant a variance so we can build that deck prior to the vacation.

Ms. Dukelow: Mr. Chairman, I have a clarification. I believe I'm seeing the answer here. It's my understanding that the existing deck is 10 feet deep from the house to the outer edge of the deck, and the proposed is 15. Is that correct? Or are they both -?

Ms. Sitzman: I think the drawing you're looking at is the former deck, the existing deck. Correct, Sally?

Ms. Enervoldson: Yes.

Ms. Sitzman: It sounds like the rebuilt deck would be more or less the same footprint as the existing deck.

Ms. Enervoldson: It would be. It will be the same size.

Mr. Brown: Would you be amenable to us basically granting a variance to allow the setback to be reduced to 10 foot from the current rear property line, and that it be an open deck?

Ms. Enervoldson: Okay, when you say "open deck," what -?

Mr. Brown: It doesn't have a roof over it. Or are you planning to put a roof over it?

Ms. Enervoldson: I don't think so. We did think about putting a temporary structure that would allow shade, like something you would buy at Home Depot or Lowe's.

Mr. Brown: But it wouldn't have sides on it.

Ms. Enervoldson: No.

Mr. Brown: My concern, and the reason I called staff today, was the way the staff report was written, they could put any structure right up to the property line. Once the vacation was done, I don't think that would be an issue. You'd be allowed to do that. So, until then, I just didn't think it

would be appropriate to say, “Hey, you can build anything you want, all the way to the property line,” not knowing what’s going to happen with that in the future. I’m uncomfortable with just saying you can build your house right up to the property line.

Ms. Enervoldson: I’m fairly comfortable. The only concern I would have is what if it’s 9.5 feet. I have not measured it myself, but if you require that it be 10 feet, we would do that. I wish my husband were here instead of me. *[Laughter.]*

Mr. Brown: Is staff anticipating requiring a survey here?

Ms. Sitzman: No.

Mr. Brown: So, it’s *[inaudible]* judgment between 9.5 and 10 feet shouldn’t concern you.

Ms. Sitzman: If it’s a matter of inches, I don’t think it matters.

Ms. Enervoldson: All right. I appreciate that.

Mr. Brown: That answers my questions. So, at this time, unless anyone has more questions for the applicant, I’ll open it up to the public.

*Deborah England, 5130 Riggs, Mission, appeared before the Board of Zoning Appeals and made the following comment:*

Ms. England: I live next to the property. I just wanted to hear what they were going to say. If that road was ever going to be developed back there.

Mr. Brown: Okay. Seeing we have nobody from the public that wants to make any comments, I’ll close the public hearing and open it up for panel discussion.

Mr. Bruce: I have a question for staff. Is it my understanding that the west half of the right-of-way for Morrison Avenue had already been vacated when they built Heritage Hills apartments?

Ms. Sitzman: If it’s highlighted in orange, I’m not exactly sure where Heritage Hills is at, but yes, it’s possible. If that’s the orange area, then yes. That area has already been vacated.

Mr. Bruce: As I recall, attending meetings with Heritage Hills, was proposing their development up there, they asked for – and if I remember correctly – and got the west half of the right-of-way to Morrison Avenue vacated, from 53<sup>rd</sup> Street to 51<sup>st</sup> Street. So, what we’re looking at is just half of the right-of-way. In that process, they *[inaudible]* all the back lots along the west side of Riggs Road from 53<sup>rd</sup> Street to 51<sup>st</sup> Street. And the people that developed the property that is in question built a private road, which obligates any need for right-of-way along that west side of that property. And to me, I think that’s the most practical way to go. And in anticipation of that, it’s the most logical solution.

Mr. Brown: Are you saying that that was an 80-foot right-of-way at one point?

Mr. Bruce: Well, again, half of that right-of-way was vacated when they developed Heritage Hills.

Ms. Sitzman: And I did not look that one up. It could very well be. I’m not looking at the plat.

Mr. Brown: That's what I'm questioning, Mr. Bruce. If they've already vacated it, was it 80 feet wide?

Ms. Sitzman: No, it was originally 40 feet wide. I just don't have a record of the vacation. It doesn't show up on AIMS. I should probably have clicked on Heritage Hills to see what their lot description is. It could be

Mr. Bruce: Whichever way [*inaudible*] the property lines. Along the back properties for the west side of Riggs. I mean, I know because my grandmother owned two lots back there. And they did not have that site vacated. The Heritage Hills developers got the other half of the right-of-way vacated. So, to my knowledge, there's no room to build a street up there unless you have rededication.

Ms. Sitzman: Right. It's possibly true either way. The right-of-way that is shown originally was only 40 feet wide, which is substandard for modern streets. So, even if it had never been partially vacated, it's still subsidy – They've taken away from unstubbed one. That would be a separate process for a variance. That would involve City Council and some other staff.

Mr. Brown: Well, the significance of that conversation here is, if half of it is already vacated, if they vacated the other half, are they going to give 10 feet and 10 feet again? Or are they going to give the full 20 to the -?

Ms. Sitzman: There's no record that this property has received anything from a vacation to their west. They received property vacation further north.

Mr. Brown: Any more questions?

Ms. Dukelow: Sorry, I'm not clear on where Heritage Hills is located. Mr. Bruce, were you saying it's between 54<sup>th</sup> and 53<sup>rd</sup>?

Mr. Bruce: Well, Heritage Hills – which it's no longer called that. The property [*inaudible*] manages. It starts at the centerline of 53<sup>rd</sup> Street and goes basically to the centerline of 55<sup>th</sup> Street, and it's just beyond what is shown here as Morrison Avenue.

Ms. Dukelow: So, it's south –

Mr. Bruce: No, it's west of this property, and it goes to Foxridge Drive, basically.

[*Overlapping dialog.*]

Ms. Dukelow: You can actually see the apartments --

Mr. Bruce: It would actually be more northwest of her property.

Ms. Dukelow: Okay, so, this is Heritage Hills -.

Ms. Sitzman: This is the subject property, and this is the bridges. So, the right-of-way we're talking about runs through here. When I look at the legal description of this parcel, I don't see any evidence in it. It would normally say "and the vacation of," etc. When we look at the subject property's description, it says, "...and the south 23 feet vacated street name here." So, I don't know if a vacation was actually conducted for the development of this property here.

Mr. Brown: But that property hasn't been –

[Overlapping dialog.]

Mr. Brown: Well, but Mr. Bruce's point was, if they've already vacated that, there's no way a road would ever go through there because you'd only have 20 feet to get through. But it looks like they vacated on the 51<sup>st</sup> Street side instead of the other side. Any more questions?

Ms. Dukelow: Mr. Chairman, I would like a clarification. Concerns were expressed earlier, and I understood that you were suggesting that we may say – We can reduce the depth of the distance required. The setback.

Mr. Brown: Yes. There's a 20-foot requirement; we can reduce that to 10.

Ms. Dukelow: To 10 feet. And then, you had a question that you asked the applicant regarding a roof structure over that deck. What was the basis for that?

Mr. Brown: You know, I always deal with fire, fire movement turns. There's nothing back there to catch on fire, though. So, if that's not a concern of anybody else's, it need not be placed on them. They're basically asking to replace the deck.

Ms. Dukelow: Right. And on the west side, I can see where a shade structure may be desirable on the deck. So, to clarify that. There weren't any other concerns related to that.

Mr. Brown: Anything else? [None.] I would entertain a motion.

Ms. Dukelow: I'll make a motion that we approve Application BZA Case No. 17-01, a variance for rear yard setback, and that we allow for the property to have a 10-foot setback in lieu of the 20 feet requirement.

Mr. Braden: I'll second that.

**The vote was taken** (5-0). The **motion passed unanimously**.

Mr. Brown: For the applicant, I would just like to state that your variance has been granted. You're now allowed to have a setback of 10 feet versus 20, and we did not place a restriction on whether it could have a roof or be enclosed.

### **ADJOURNMENT**

With no other agenda items, **Mr. Braden** moved and **Mrs. Dukelow** seconded a motion to adjourn. The vote was unanimous. The motion carried. The meeting adjourned at 6:55 p.m.

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Jim Brown, Chair

**ATTEST:**

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Nora Tripp, Secretary

**STAFF REPORT**  
**Board of Zoning Appeals Meeting December 23, 2019**

**AGENDA ITEM NO.:** 3

**PROJECT # / TITLE:** Variance Application #19-01, Side-Yard Setback

**REQUEST:** Application for a variance to Section 420.010 - Accessory Uses - to allow for the construction of a garage to encroach into the side-yard setback area.

**LOCATION:** 5501 Outlook - Lot 184 of Missionhill Acres

**OWNER:** Carol Chaney  
5501 Outlook  
Mission, KS 66202

**APPLICANT:** Dwayne Hodges, Hodges Garages  
10326 High Drive  
Leawood, KS 66206

**ADVERTISEMENT:** December 3, 2019 - The Legal Record Newspaper

**PUBLIC HEARING:** December 23, 2019 - Board Zoning of Appeals

**STAFF CONTACT:** Brian Scott, Assistant City Administrator

**BACKGROUND INFORMATION:**

The subject property sits at the southeast corner of Outlook Avenue and 55th Street. The property was platted as Lot 184 of Missionhill Acres subdivision in 1926. The original lot was subsequently split prior to the construction of the current single-family home in 1940.

The lot, as it exists today, is 60 feet wide by 140 feet deep. The entire lot is 8,400 square feet. The single-family home on the lot is a two story structure with a footprint of 645 square feet, or 8% of the lot coverage.



A small detached garage, approximately 360 square feet, stood along the south property line of the lot, immediately behind the home. Access to the garage was from 55th Street.

According to the applicant, the garage was old and in a state of disrepair. The homeowner had the structure removed earlier this summer and has since been working with a contractor to install a patio and a small swimming pool in the general area where the garage stood.

The homeowner has contracted with the applicant to construct a new garage in the northeast corner of the lot. The garage will be 20 feet wide by 26 feet deep (520 square feet). The entrance to the garage will be to the west utilizing the current drive.

Given the location of the pool on the lot, the applicant is seeking a 7 foot variance from the 20 foot setback required for garages located on a side-street.

## **APPLICABLE ORDINANCES**

### **Section 420.010. Accessory Uses**

Section 420.010 B(1)(d)(3) - Accessory Buildings - of the Mission Municipal Code provides the following:

*A detached garage shall not be located in any required front or side yard setback area, but may be located in the rear yard setback area provided that no such building may be closer than three (3) feet to any interior property line, closer than twenty (20) feet from any street right-of-way line or in front of any building setback line. In addition, the following criteria must be met:*

- (a) Said garage shall be constructed of materials and architectural style the same as or equal to the principal residence, a paved drive shall be provided the entire distance to the street and no sanitary sewer hook-up to such garage shall be permitted.*
- (b) No detached garage shall exceed five hundred seventy-six (576) square feet and shall be no taller than dwelling or more than (20) feet in height, whichever is less.*

### **Section 405.020 Definitions**

**LOT LINE, FRONT:** The boundary between a lot and the right-of-way on which it fronts.

**LOT LINE, REAR:** The boundary line which is opposite and most distant from the front street line; except that in the case of uncertainty the Building Official shall determine the rear line.

**LOT LINE, SIDE:** Any lot boundary line not a front or rear line thereof. A side line may be a party lot line, a line bordering on an alley or place or a side street line.

**YARD:** An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the building shall be used.

YARD, FRONT: A yard across the full width of the lot extending from the front line of the main building to the front line of the lot.

YARD, REAR: A yard between the rear lot line and the rear line of the main building and the side lot lines.

YARD, SIDE: A yard between the main building and the adjacent side line of the lot and extending entirely from a front yard to the rear yard.

## **ANALYSIS**

As previously stated, the width of the lot is 60 feet. Section 410.010 (5)(E)(2) - "R-1" Single Family Residential District - of the Mission Municipal Code provides, "*Buildings on corner lots shall provide a side yard on the street side of not less than fifteen (15) feet.*" This provides a buildable area of about 40 feet when factoring in the minimum 5 foot setback on the interior side property line. The current structure is approximately 16 feet from the property line along the street side and 10 feet from the interior property line.

Section 420.010 (B)(1)(c) of the Mission Municipal Code permits a private swimming pool to be located in the rear yard provided that it is a minimum of 7 feet from the rear and side property lines and not under or over any electrical lines or other utilities. The pool that is being constructed is in accordance with these provisions. The pool itself is approximately 12 feet by 20 feet and is a current pool where one or two people can swim against a current. Given that there are overhead power lines running along the street side of the property, the location of the pool is probably best.

With all of this said, the property owner would like to build a new detached garage on the property. The logical place for the location of the garage would be the northeast portion of the property along the street side of the property. To build a garage that will accommodate two vehicles will require a minimum width of 20 feet. This will place the garage past the 20 foot setback stipulated in Section 420.010 B(1)(d)(3) by 7 feet.

Generally, good design principles would dictate that the garage be setback from the face, or wall, of the primary structure. Visually it is more appealing in that it implies the subservient relationship that the garage has to the primary structure. In addition, the 20 foot setback off the side street would provide enough space for a vehicle to park on the driveway, safely away from the street. However, to enforce these provisions on a lot that has a narrow buildable area to begin with would be difficult.

In looking at the aerial picture of the property, it would seem that the garage will be about 5 feet beyond the north side of the house, since the house goes beyond the 20 foot setback by a couple of feet. While not the best in terms of design, it is not necessarily offensive either. It should be noted that the property line on the street side is approximately 3 feet from the back of the sidewalk, so the visual appearance is actually a little greater, almost 16 feet, from the sidewalk to the proposed garage. It should also be noted that a 6 foot high privacy fence can be built right along the property line.

Most of the existing driveway on the property will remain, giving a 20 foot long area off the street for the parking of a vehicle. The footprint of the garage will be 520 square feet, less than the maximum



576 square feet permitted. The garage will be constructed of materials and in a style that compliments the main structure.

The applicant is therefore requesting approval of a variance to allow for the construction of a garage that will encroach into the existing side yard along the street.

The Board of Zoning Appeals has the authority to grant variances to Section Title IV. Land Use of the Municipal. When considering applications for a variance the BZA may only grant a variance upon a finding that ***all of the following conditions*** have been met:

- a. The variance requested arises from such condition which is unique to the property in question, is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or the applicant.
- b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.
- c. The strict application of the provisions of this Title would constitute unnecessary hardship upon the property owner represented in the application.
- d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
- e. Granting the variance will not be opposed to the general spirit and intent of this Title.

**BZA Action**

The Board of Zoning and Appeals, will consider this application at a public hearing scheduled for Monday, December 23, 2019.



<https://aims.jocogov.org>

[mapper@jocogov.org](mailto:mapper@jocogov.org)

A product of Johnson County AIMS, 111 S Cherry, Ste 3100, Olathe KS 66061 - 913-715-1600

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Community Development Department  
6090 Woodson Street  
Mission, KS 66202  
Phone: (913) 676-8360  
Fax: (913) 722-1415

Permit # \_\_\_\_ - \_\_\_\_

**Application to the Board of Zoning Appeals**

Applicant Name: <u>Raynae Hodges</u>	Company: <u>Hodges Garages</u>
Address: <u>10326 High Drive</u>	
City/State/Zip: <u>Leawood KS 66206</u>	
Telephone: <u>913-385-9945</u>	
Email: <u>info@hodgesgarages.com</u>	
Property Owner Name: <u>Carol Chaway</u>	Company:
Address: <u>5501 Outlook</u>	
City/State/Zip: <u>Mission KS</u>	
Telephone:	
Email:	
Address of Property: <u>5501 Outlook</u>	
City/State/Zip: <u>Mission KS</u>	
Zoning:	
Application Type	
Variance <input type="checkbox"/>	Appeal <input type="checkbox"/>
Description of Request	
Please provide a brief description of the request including specific Code Section and quantity of variance or decision for appeals:	
<u>Need a variance in the amount of 7'</u>	
<u>A setback of 20' from street right of way is</u>	
<u>Required. Therefore, we are requesting</u>	
<u>a variance of 7' to allow for the garage</u>	
<u>to be 13' from street right of way</u>	


**Consideration of Variances**

The Board of Zoning Appeals has the authority to grant variances upon a finding that all of the following conditions have been met. Please explain how your application satisfies the conditions. Attach additional sheets if necessary.

- 1) The Variance requested arises from such condition which is unique to the property in question, is not ordinarily found in the same zone or district and is not created by an action of the property owner of applicant.
- 2) The granting of the variance will not adversely affect the rights of adjacent property owners or residents.
- 3) The strict application of the provisions of this Title would constitute unnecessary hardship upon the property owner represented in the application.
- 4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
- 5) Granting the variance will not be opposed to the general spirit and intent of the Title.

**Agreement to Pay Expenses**

Applicant intends to file an application with the Community Development Department of the City of Mission, Kansas (City). As a result of the filing of said application, City may incur certain expenses, such as but not limited to publication costs, consulting fee, attorney fee, and court reporter fees. Applicant hereby agrees to be responsible for and to reimburse City for all cost incurred by City as a result of said application. Said costs shall be paid within ten (10) days of the receipt of any bill submitted by City to Applicant. It is understood that no requests granted by City or any of its commissions will be effective until all costs have been paid. Costs will be owed whether or not Applicant obtains the relief requested in the application.

X  \_\_\_\_\_ Date 11/25/19

Signature (Owner)

X \_\_\_\_\_ Date \_\_\_\_\_

Signature (Owner's Agent)

\*\*\*\*\*FOR OFFICE USE ONLY\*\*\*\*\*

<b>File Fee: \$</b>
Total:
<b>Receipt #</b>
Notes:

<b>Meeting Date</b>
PC _____ CC _____
<b>Date Notices Sent</b>
<b>Date Published</b>
<b>Decision</b>

# CERTIFICATE OF SURVEY

DATE: 9/9/19

ORDERED BY: Hodges Garages

FOR: Carole Chaney  
5501 Outlook  
Mission, KS



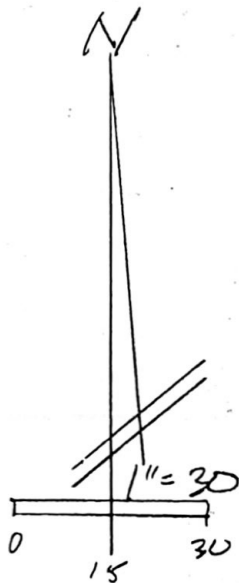
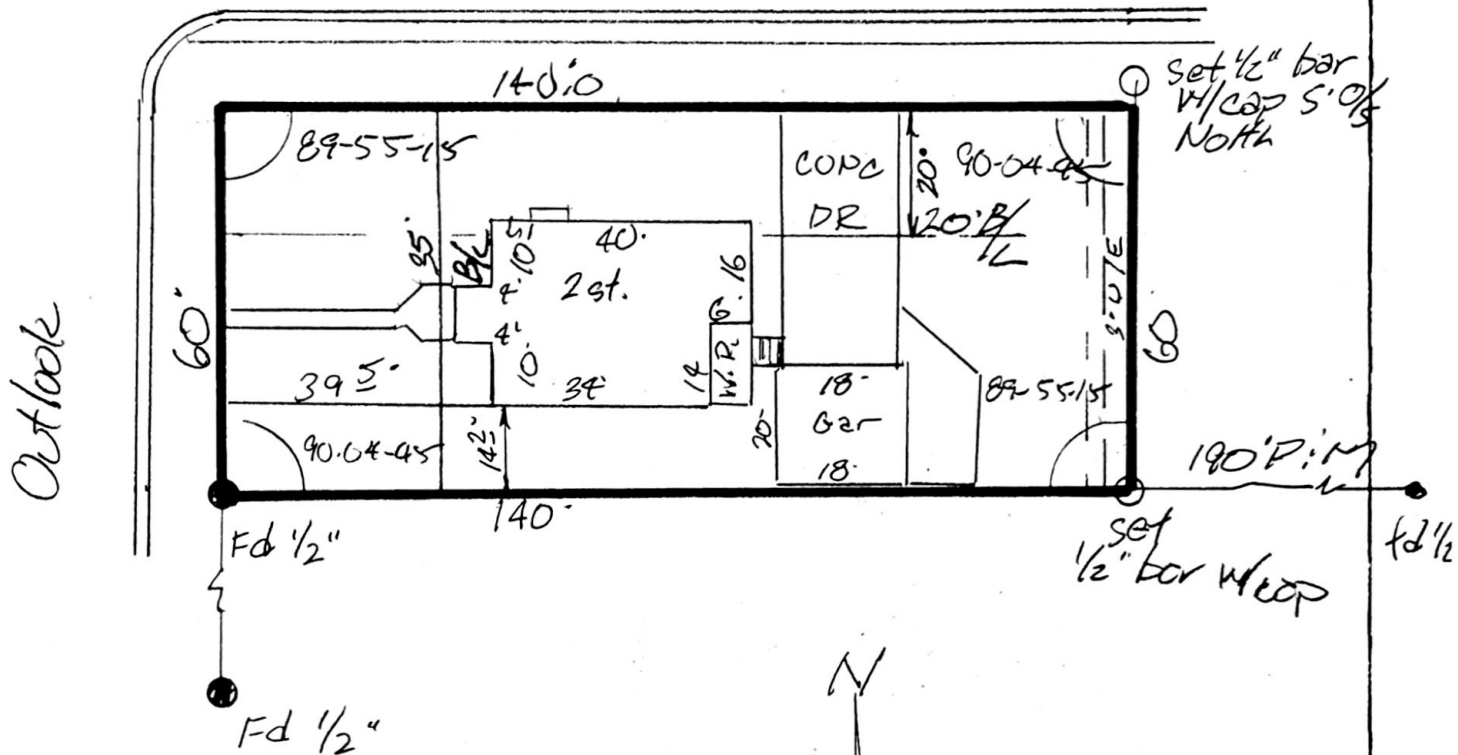
7133 West 80th Street, Suite 210  
 Overland Park, KS 66204  
 Phone: (913) 381-4488  
 FAX: (913) 381-3048

JOB NO. 2943.76

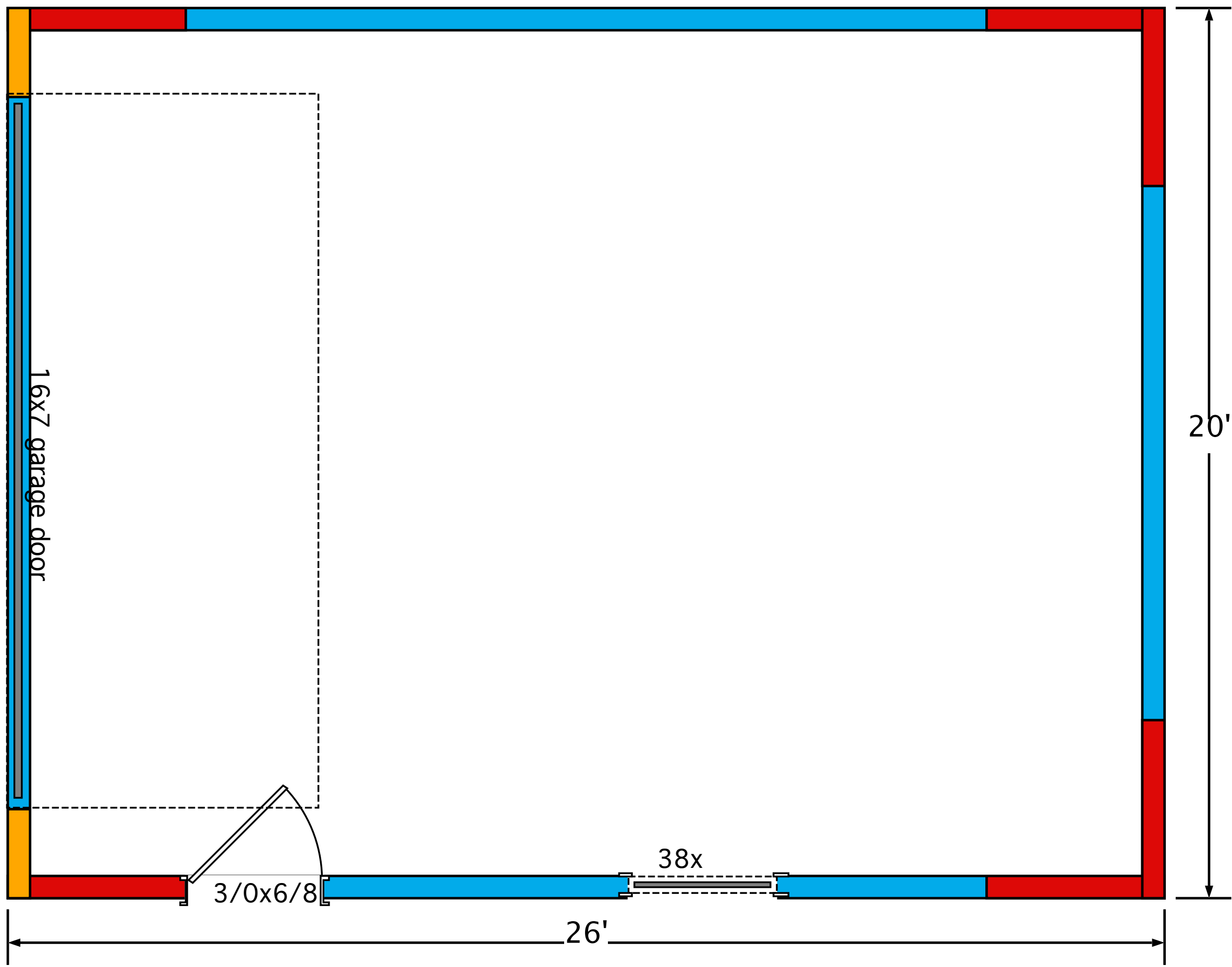
DESCRIPTION: The North half of Lot 184, MISSIONHILL ACRES, a subdivision in Mission, Johnson County, Kansas

No title report furnished, not responsible for unplatted easements

*55th St.*



I hereby certify that a Survey of the above described property has been made under my supervision and the results are as shown hereon.  
 This survey meets or exceeds the minimum standard for property Boundary Surveys for this state.



CS-WSP

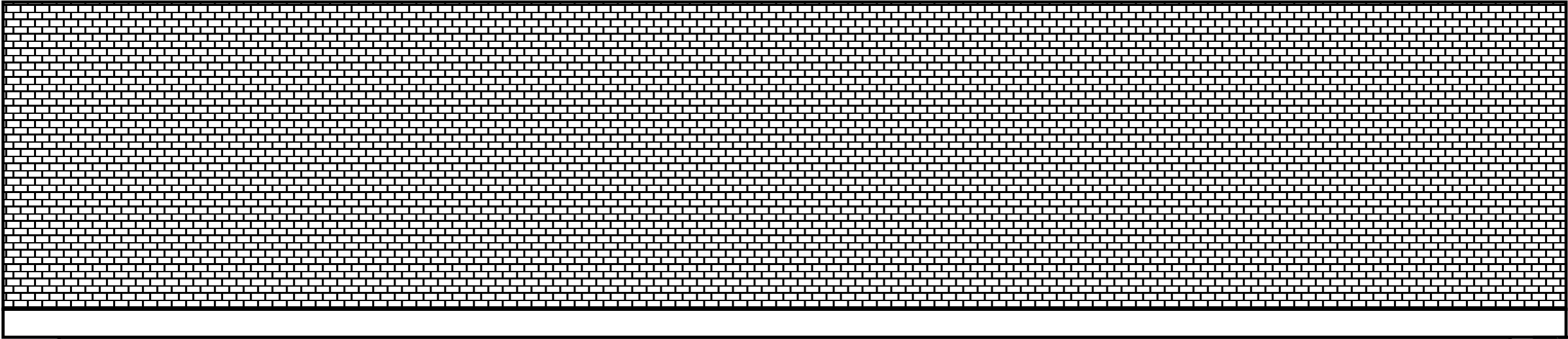


CS-PF

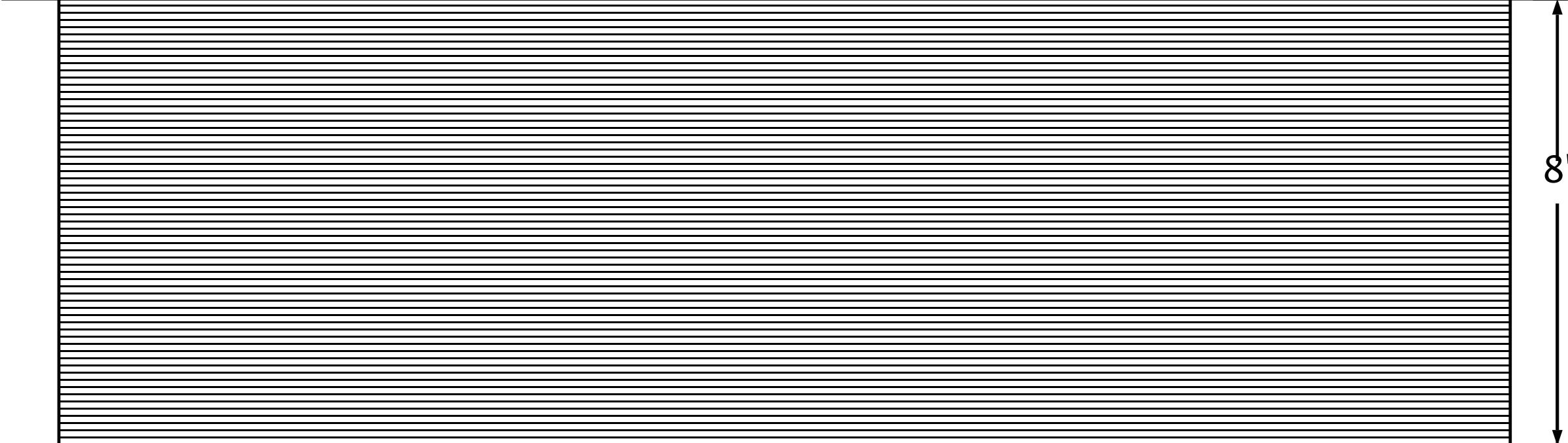
5501 Outlook

North Elevation

Hodges Garages



14'



8'



26'





## ZONING VARIANCES

*A Guide to Applying for a Variance from the City of Mission Board of Zoning Appeals*

### **Background**

Zoning regulations are intended to protect and serve the public good. To do so, they should be applied universally and consistently. Sometimes, however, because of atypical conditions unique to a particular property, carrying out the strict letter of a zoning regulation would not allow reasonable use of that property. To avoid unjust and unnecessary imposition of such extreme hardships on property owners the Mission Municipal Code provides a relief from the standards in unique circumstances. The Code authorizes the Board of Appeals (BZA) to grant variances from zoning regulations.

### **Definition**

A variance is a waiver from compliance with a specific provision of the zoning ordinances. It is a type of exemption to a zoning regulation that allows a property owner to be legally in compliance with the zoning regulations without complying with specific requirements of that regulation. Variances are granted to a particular property owner because of the practical difficulties or unnecessary hardship that would be imposed upon him/her by the strict application of the provisions of the regulation. Zoning regulations that may be waived include yard size, building size, fence height, parking, landscaping, etc. A variance may not be granted in a planned zoning district.

### **Conditions**

Submission of an application for a variance does not guarantee approval. The BZA must find that the zoning regulation in question causes a hardship. A hardship relates to the physical characteristics of the property, not the personal circumstances of the owner or user. The applicant must show that the physical characteristics of their property, like shape or

contour, actually prohibit the practical use of his/her property in the manner similar to that of other property in the zoning district where it is located. A variance may be appropriate if a property has unique physical conditions and the spirit and intent of the ordinance will be satisfied while varying from the regulations in the manner requested. The applicant must also show that the public health, safety, and welfare are not adversely affected by their request. If these legal tests cannot be met, a variance should not be granted. A variance is not appropriate as a matter of convenience, or if it would grant special privileges to an individual property. Economic considerations alone do not constitute a hardship if a reasonable use for the property exists under the Municipal Code.

### **Process**

The granting of a variance in Mission is the responsibility of the BZA. The Board is made up of up to 5 citizen members appointed by the Mayor. A majority vote is necessary to approve or deny a variance. Applications for variances are reviewed by City Staff and the BZA. Any person considering seeking a variance should first contact Community Development Department Staff who will explain the review process and provide the necessary forms, checklists, and deadlines.

To request a hearing, an application must be submitted to the Community Development Department prior to the monthly filing deadline. Staff will review the application for completeness and consistency with applicable plans and ordinances. If the application is complete, the case will be scheduled for review at the next available BZA meeting. Before the meeting, Staff prepares a report containing a summary of the case and the applicant's proposed findings.



In addition to review by City Staff and the BZA, the application is subject to comment from the general public. A public hearing is conducted at the BZA meeting where the application is presented.

**Decision**

At the conclusion of the public hearing the BZA will deliberate and issue a decision. The BZA may only grant a variance upon a finding that all of the necessary conditions have been met.

**Contacts**

Community Development Department  
913-676-8360

**Fees**

Application-\$75  
Public Notice-\$6.49 per property owner within two hundred (200) feet which requires notification as required by City Code.