

**BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS
MARCH 12, 2014
8:15 A.M.**

1. CALL TO ORDER BY CHAIRMAN.

2. CONSENT AGENDA.

A. Minutes of the regular meeting of February 12, 2014.

Action: Consider approving the minutes of the 2/12/14 meeting.

3. PUBLIC HEARING ITEMS.

A. A public hearing to consider a request from Deborah and Karl Schmidtberger for a special-use permit to allow a single dwelling unit within the C-3 Zoning District located at 709 Main St. (Lot 1, Block 7, HP Wilson Replat)

Action: Consider approval of the special-use permit request for the property at 709 Main St.

4. NON-PUBLIC HEARING ITEMS.

A. None

Action: None

5. OFF AGENDA ITEMS/COMMUNICATIONS.

A. Citizen comments

B. Other

6. ADJOURNMENT

If you will be unable to attend please contact the Planning, Inspection and Enforcement office at 785- 628-7310. Thank you. 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 time. Every attempt will be made to accommodate any requests for assistance.

**DRAFT MINUTES
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
FEBRUARY 12, 2014
8:15 A.M.**

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met on Wednesday, February 12, 2014 at 8:15 a.m. in Commission Chambers of City Hall. Chairman Lou Caplan declared a quorum was present and called the meeting to order.

Roll Call:

Present: Lou Caplan
Jerry Sonntag
Gerald Befort
Thomas Lippert
Shane Pruitt

City Staff Present: I.D. Director of Public Works, Jesse Rohr, Superintendent of Planning, Inspection and Enforcement, and Linda Bixenman, Administrative Assistant of Planning, Inspection and Enforcement

2. MINUTES: There was a motion by Jerry Sonntag with a second by Gerald Befort to approve the minutes from the February 12, 2014 meeting.

Vote: Ayes: Lou Caplan
Jerry Sonntag
Gerald Befort
Thomas Lippert
Shane Pruitt

3. CASE #01-14 Bruce & Germaine Taggart, Owner – 2302 Donald Dr – variance request for sunroom addition ZONED “R-2”: Jesse Rohr presented the above property on the overhead visual.

Bruce & Germaine Taggart came before the board to request a nineteen foot variance to reduce the rear yard building setback from the required 25 feet to 6 feet to add on a 27'8" X 15'4" sunroom to their home at 2302 Donald Drive. They considered two options; one parallel along the side of the house that would not require a setback and one from the house to the alley. Because of the underground utility lines and gas line, they are not able to build along the side of the house; thus the reason for the variance request for the other option.

Jerry Sonntag asked how far the gas/utility lines would be from the proposed addition. Mrs. Taggart answered they would be 3 feet. She pointed out that the primary structure sets at a unique angle.

Jerry Sonntag explained that this was a rather large addition to a home. He explained the five statutory requirements the board has to consider for a variance. He explained that the building code regulations are designed for fire protection and safety.

The board offered some suggestions of different designs that might work without a variance; like for the addition to be slightly wider and not as long. Lou Caplan asked if they had considered an L shaped structure. Mrs. Taggart explained that there is an existing fireplace and retaining wall in the living room on the east side.

Tom Lippert explained that these are tough cases. The board wants to try to help people and also try to be fair. He understood the justification statement they made in their request. He explained that the board has to base their decision according to the statutory requirements to prevent housing abutting right up to each other. He explained that the next person could come before the board asking for the same thing.

Shane Pruitt explained that the board has to rule that the request meets all of the five statutory requirements. This request does not meet the hardship requirement. Because this is a self-imposed hardship; he explained that the board would not be able to grant that great of a variance.

Mr. Taggart explained that this was a quality of life issue. It would also benefit Hays because they would pay more taxes and there would be less area to water.

He voiced frustration why a detached structure can be built five feet from the rear property line and an addition is required to be 25 feet. The proposed addition was designed to be the same distance from the alley as the neighbor's detached garage before they were aware they needed a variance. He voiced frustration how the city does business. He thought the reason for having a Board of Zoning was to hear cases for requests that deviate from the regulations. When getting bids for the projects, the contractors sounded as though it would not be that difficult to be granted a variance. He pointed out that they could build somewhere else.

Tom Lippert explained that there have been times the board was able to grant a lesser variance than what is requested. He believed this was too extreme of variance request. He asked Jesse Rohr two questions. One question was about the current regulations comparing the setback requirements of an attached and detached structure from the rear property line. The other question was how this would apply to the rewrite of the zoning regulations.

Jesse Rohr explained that a five foot separation is required per the fire code between a primary structure and an accessory building. An addition to a primary structure is another matter. I.D. Creech and Jesse Rohr explained that with the consideration of new regulations, research will be done if it will remain the same or be different.

Mr. Taggart asked if there would be public input during the process to revise the regulations. I.D. Creech and Jesse Rohr answered that there would be public input.

Tom Lippert asked if they could incorporate more of the structure to the north so they would not need as an extreme of variance. He asked if they want to come back to the board with a little different proposal.

Jerry Sonntag explained that the board is bound to base their decision on the current rules and regulations or it would be like throwing the book out the window. He would consider a lesser variance.

There was no one in the audience for comments.

Shane Pruitt moved to deny the request for this great of a variance based on the fact that it is a self-imposed hardship that does not meet the statutory requirements with this proposed addition to the primary structure.

He explained to the applicants that there are reasons for the rules and regulations they have to abide by the heart of the letter. He pointed out that he would be willing to consider a lesser variance.

Lou Caplan stated that the motion died for lack of a second.

Mrs. Taggart asked if they could consider a lesser variance at this meeting.

Jerry Sonntag explained they could consider a lesser variance. He asked that they make the request. Mrs. Taggart asked how great a variance the board would consider so it would meet the code. Jerry Sonntag stated that he would consider nine feet that would still give them an 18 foot room.

Jerry Sonntag moved, Gerald Befort seconded the motion to grant a 9 foot variance to reduce the rear yard building setback from the required 25 feet to 16 feet for an addition to the primary structure based on the consideration it meets the five statutory requirements.

Vote: Ayes: Lou Caplan
Jerry Sonntag
Gerald Befort
Thomas Lippert

Nay Shane Pruitt

The applicant can go to district court to appeal the decision if they want to pursue their original variance request.

4. CASE #02-14 James Wacker (Potential Buyer) & Inam Haq (owner) – 501 Vine Street – special use permit for construction of storage units ZONED “C-2”: Jesse Rohr presented the above property on the overhead visual.

James Wacker presented the application on behalf of himself as partner to the owner, to request a special use permit to construct 194 storage units within a “C-2” zoning district allowed with the approval of a special use permit. It would be a 1 to 1.1 million dollar project. It would increase tax revenues, additional jobs, increase surrounding property values, and provide storage space for the community. He used the overhead to show how the units would set on the property.

The five or six units would run length wise at an angle from east to west with the first building starting on the north side of the property at 6th Street and the last ending to the south next to Alternate Highway 183 By-Pass. The buildings would be aesthetically pleasing, prefabricated, wood framed metal buildings built by a reputable company similar to those owned by Western Investments along 13th Street. They would be safe to put your belongings in.

There are existing storage units adjacent to this property (east and west). He explained that the surrounding areas include a former car sales lot to the southeast, storage buildings to the east and some to the west, Kansas State Agriculture ground to the south and a mobile home park to the west.

The property is within the 100 year FEMA flood plain. Because it is within a stream channel, it would require a permit from the State of Kansas Division of Water Resources. It takes 60 days after application to know if a permit would be issued. He has not applied for a permit at this time. After speaking with the state personnel, it was explained that the optimum condition would be to build the structures parallel on the lot for managed flow of water. He would also need a state permit for the required fill-dirt that would need to be brought in to meet the elevation requirements.

Because this is the gateway to the city, he asked the board of their ideas and concerns to meet the building goals for the location.

Shane Pruitt asked to see the flood plain on the map as it lies across the property. Jesse Rohr explained that the direction of the water shed is from the northwest to the southeast. The highway to the south is elevated above the flood plain. An elevation survey to attain an elevation certificate would need to be done for direction to meet the elevation requirements and then certified at the end of the project. He had spoken with the state personnel from the Division of Water Resources. There are state requirements for a permit and city permit when the amount of fill brought in is over a certain threshold. The engineering plan would provide the information on the amount of dirt fill needed for the project.

Tom Lippert asked if the office building to the east was being used for commercial use. Jesse Rohr answered that it had been used for commercial use, although is currently empty.

Lou Caplan stated that his main concern is what impact a flood event would have on the surrounding properties after building up the property and adding impervious surface.

Jesse Rohr explained that there would have to be a no-rise study with a certificate provided by the engineer.

Jerry Sonntag commended Mr. Wacker for trying to do something with this property. He asked about the design, type of fencing and access to the property, particularly since this was a gateway to the City.

Tom Lippert asked if the city would address the plans of what is acceptable and provide their vision of this area as a gateway as well as how far into the property is the gateway. He wondered if the buildings should not extend as far so there is the space for the intended plans to enhance an aesthetically pleasing gateway. He voiced concern how the board could assure the project would be aesthetically pleasing if the storage units were approved.

Mr. Wacker answered that there are significant setbacks along the highways that cannot be utilized that will provide for that area to be set aside for an aesthetically-pleasing area. It was important to him to comply with the gateway issues so the area would be visually appealing. He suggested several options. He would work with the City on the gateway.

Jerry Sonntag explained that the board can set conditions. Jesse Rohr explained what the city expects of the gateway to the city, particularly the visual impact and the importance for the highest and best use of the property. He pointed out that the board could request the specific design plans for the project.

Gerald Befort asked Mr. Wacker if there is much of a demand for storage units. Mr. Wacker answered that there is a demand for storage units.

Jason Pruitt asked how a flood event would affect the highway and water running through the property. Jerry Sonntag answered that it would have to be approved by the Kansas Department of Transportation for the highway and federal, state and city approval for the infill.

Lou Caplan asked about the entrance off Vine. Jesse Rohr explained that with the change of use, the access from Vine would need to be approved by the Kansas Department of Transportation and city staff per the Corridor Management Policy.

Mr. Caplan pointed out that because of the setbacks, the building would be a distance from the property line, he asked if there are plans for landscaping on the outside.

Jerry Sonntag explained that the board needs more information to know the detailed plans of what it will look like before making a decision. They would need detailed plans of what it will look like after it is complete and information on the in-fill, elevation, fencing, access, and how water run-off would affect the surrounding properties and two highways.

He recommended tabling the request asking the applicant to come back with detailed plans.

The board voiced the importance to know the specific details and what it is planned to look like. Jesse Rohr explained the options to the board. One of the options would be to table the request to request that the applicant come back with more information. He explained that the board does have the authority to impose certain conditions with their motion.

There was no one in the audience for comments.

Lou Caplan entertained a motion.

Jerry Sonntag moved, Shane Pruitt seconded the motion to table for a future date the Special Use Permit request for storage units at 501 Vine Street requesting that the applicants provide the detailed plans to show how the property will look when it is done to include the following documentation:

- Elevations on the property
- Detailed pictures of the buildings and fence
- Plans for the gateway
- Type of fencing
- Entrances to the property
- What will be done with the Dominoes Building
- (Acknowledgment by applicants that they are aware of the regulations and different permits required from the federal, state and city for this project)

Vote: Ayes: Lou Caplan
Gerald Befort
Thomas Lippert
Shane Pruitt
Jerry Sonntag

The board adjourned at 9:50 a.m.

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

Board of Zoning Appeals Action Report

AGENDA ITEM:	Exception Application #03-14
ADDRESS:	709 Main St.
OWNER:	NOVA Properties, LLC (Deborah and Karl Schmidtberger)
TYPE OF REVIEW:	Exception – Special Use
PRESENTED BY:	Jesse Rohr, P.I.E. Superintendent
AGENDA DATE:	March 12, 2014

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a special use permit to allow an existing commercial space to be converted into a single studio apartment (located at 709 Main St.). After taking into consideration all known factors, staff recommends **approval** of the special use permit due to the request meeting the criteria for approval (as further detailed below).

BACKGROUND:

- The applicant is requesting a special use permit as allowed in Section 71-532(1) of the Zoning Regulations to allow for an existing commercial space to be converted to a single dwelling unit.
- The property is zoned C-3, Central Business District
- All dwelling units on the ground floor located within a C-3 zoning district require a special use permit from the BZA

STANDARDS OF EVALUATION:

Per State Statute 12-759 (e) and City Ordinance Sec. 71-1250 (3)

In taking into consideration applications for a special use permit, the BZA shall give consideration to the comprehensive zoning plan, the health, safety, morals, comfort and general welfare of the inhabitants of the community, including, but not limited to, the following factors:

- **The stability and integrity of the various zoning districts**
- **Conservation of property values**

- Protection against fire and casualties
- Observation of general police regulations
- Prevention of traffic congestion
- Promotion of traffic safety and the orderly parking of motor vehicles
- Promotion of the safety of individuals and property
- Provision for adequate light and air
- Prevention of overcrowding and excessive intensity of land uses
- Provision for public utilities
- **Invasion by inappropriate uses**
- **Value, type and character of existing or authorized improvements and land use**
- **Encouragement of improvements and land uses in keeping with overall planning**
- Provision for orderly and proper urban renewal, development and growth

By ordinance, the BZA does have the authority to impose certain restrictions, conditions, terms, time limitations, landscaping, and other appropriate safeguards to protect adjoining property.

STAFF ANALYSIS:

When this request first came forward, the first point of action was to gain approval from the State Historic Preservation Office since this property is a contributing property in the Chestnut Street Historic District. Approval from the SHPO has been given for this project in order to proceed, and an approval letter from the SHPO is attached to this agenda.

Staff feels that the request is reasonable and will not have a detrimental effect on the subject building or surrounding buildings. Street-side exterior modifications will not occur to the structure. There is adequate parking for the proposed use and the owner plans on adding a small carport to the rear of the structure for tenant parking. The owner hopes to attract a professional person or persons to rent the building as a studio apartment.

RECOMMENDED ACTION:

Motion to **approve** the application for a special use permit due to many factors including conservation of adjacent property values, no known invasion of inappropriate uses, and encouragement of uses of existing facilities.

ATTACHMENTS:

- Exception application
- Statement of justification and site drawings from owner



Kansas Historical Society

Sam Brownback, Governor
Jennie Chinn, Executive Director

KSR&C # 14-02-005
February 6, 2014

Jesse Rohr
City of Hays
Via email

Re: Building Remodel, 709 Main, Chestnut Street Historic District, Hays – Ellis County

We have reviewed the materials received on February 6, 2014 regarding the above-referenced project in accordance with the state preservation statute K.S.A. 75-2724. The law requires the State Historic Preservation Officer (SHPO) be given the opportunity to comment on proposed projects affecting historic properties or districts. Properties listed in the National Register of Historic Places and/or the Register of Kansas Places are subject to review. The SHPO has determined that the interior remodeling portion of the proposed project will not damage or destroy the 709 Main. As far as this office is concerned that portion of the project may proceed.

With regard to the proposed storefront replacement, according to the Secretary of the Interior's *Standards for Rehabilitation*, "The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided." The storefront is an original feature of 709 Main and should not be replaced. Replacement of the storefront will damage or destroy the historic property.

The statute states that the project cannot proceed until the local governing body has determined, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the project includes all possible planning to minimize harm to the historic property. The local governing body is required to give five days' notice of such determination, by certified mail, to the SHPO. The statute allows for anyone aggrieved by the governing body's determination to file suit and have the issue decided in the courts.

Please refer to the Kansas State Review & Compliance number (KSR&C#) listed above on any future correspondence. If you have any questions concerning this review, please contact Kim Gant at 785-272-8681, ext. 225 or kgant@kshs.org.

Sincerely,

Jennie Chinn
State Historic Preservation Officer

Patrick Zollner
Director, Cultural Resources Division
Deputy State Historic Preservation Officer

mailings 02-25-14

APPLICATION FOR EXCEPTION

I. Name of Applicant Nova Properties LLC Phone 785-259-4850-c
 Mailing Address 2213 Drum Ave, Hays, Ks 67601
 Name of Owner (if different from applicant) Deborah & Karl Schmittbager Phone 785-259-4850-c
 Mailing Address Same
 Name of Authorized Agent — Phone Same
 Mailing Address —
 Relationship of applicant to property is that of owner
(Owner, tenant, lessee, other)

II. Application is made for an exception as provided in Section 71-532(i) of the Zoning Regulations to permit the installation or construction of Dwelling Unit on property zoned C-3, located at 709 Main and legally described as: Lot(s) 1, Block(s) 7 of the H P Wilson Rep 15 & 17 Addition to Ellis County.

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 exception 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.

Nova Properties LLC
 APPLICANT
[Signature]
 OWNER
Karl Schmittbager

[Signature]
 AUTHORIZED AGENT (IF ANY)

OFFICE USE ONLY:

RECEIVED IN THE PLANNING, INSPECTION, AND ENFORCEMENT DIVISION, ON February 17, 2014, TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00

Sunda Bixenman, Administrative Assistant.
 NAME AND TITLE

Nova Properties LLC

2213 Drum Ave. Hays KS 67601

7852594850

Legal Description for 709 Main

Quick Ref: 12276

HP Wilson Rep 15&17, Block 7, Lot 1, Section 4, Township 14, Range 18

We are requesting a modification, or change in the zoning classification from Commercial/Industrial. To Title 71-532 for the business property located at 709 Main, Hays Ks.

This building has been in my wife Deborah's family since the mid 1930. Her father Daniel Goetz did operate a successful shoe service, retail store until 1982 at which time we purchased the business. We operated a shoe service/retail store into the mid 1990's. employing 4 people. On line purchasing greatly affected our ability to survive, loosing most retail sales forcing us to change direction for the business. I returned to school for certification in a medical profession, and also received facility accreditation allowing us to receive medical insurance payments. A pre existing medical condition had worsened, restricting my ability to work without pain in 2011, prompting us to advertise our business for lease or sale. We advertised locally and nationwide without success. In November of 2012 conditions did worsen at which time we decided to retire on April 1 2013 and close my practice.

The building has been for lease since April 1 2013. NOVA Properties LLC has not been successful in its attempt to lease the building. We agreed to allow one year from 4-1-2013 at which time we would seek other options for buildings use.

We are asking for permission for the choice to either lease this property as a commercial/industrial or a Title 71-532. We intend to remodel in such a way as to not change the store front from its present appearance, other than replacing display area glass with more energy efficient glass. A separation wall will divide the reception area in front from the open area in the rear. Kitchen and a full bath will be added. The building has four entrance/exits and has passed all City of Hays Fire dept inspections. I also respectfully request permission to place a car cover for two vehicles at the rear of the building.

Deborah K Schmidtberger



Member

DATE

0214 2014

Karl A Schmidtberger



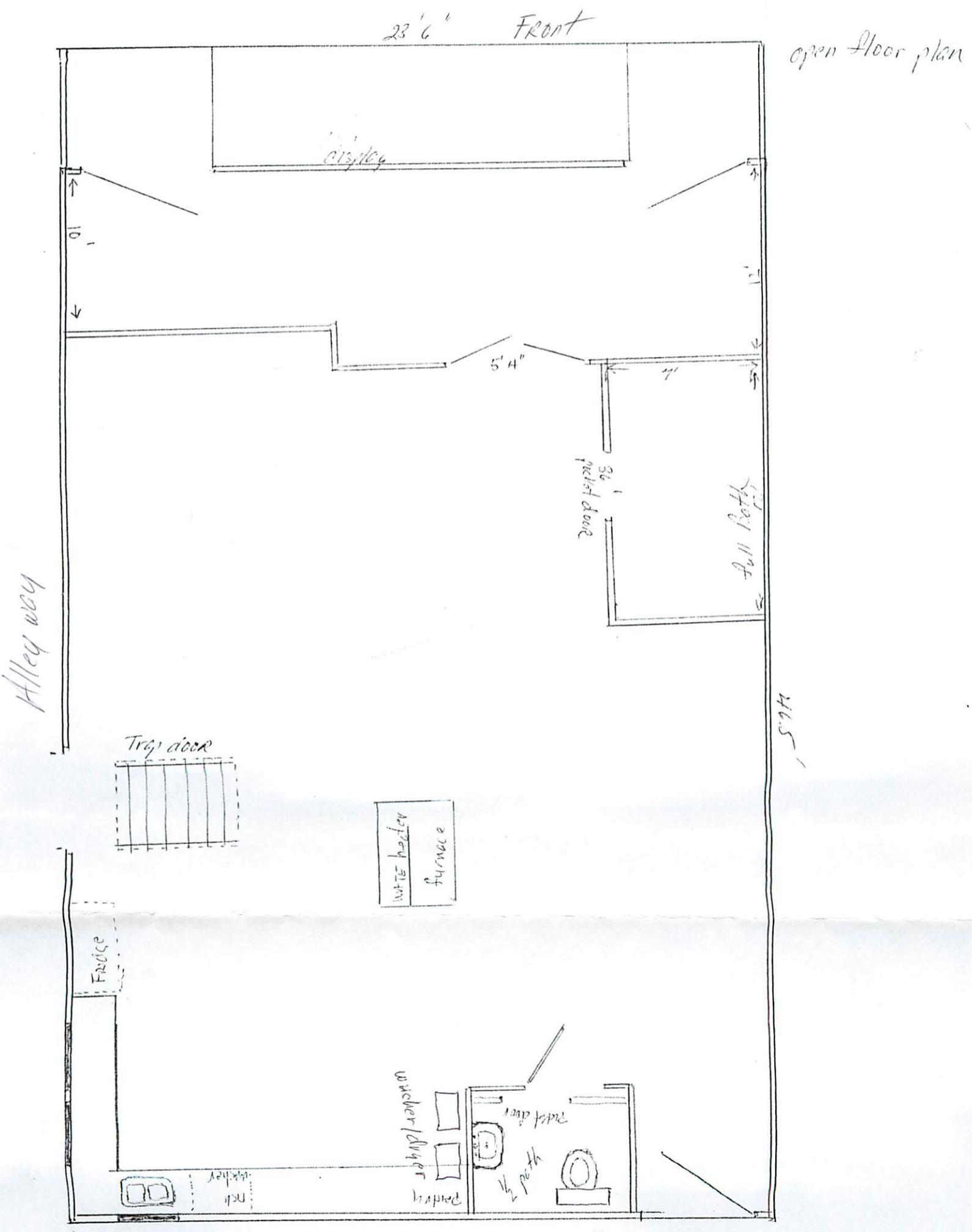
DATE

02-14-2014

Nova PROPERTIES
 709 Main
 Hays, Ks.
 Commercial to
 1096 sq ft.
 980 sq ft Basement

computer hookup in basement
 cable into open space
 washer/dry or main floor

copy 1-30-2014



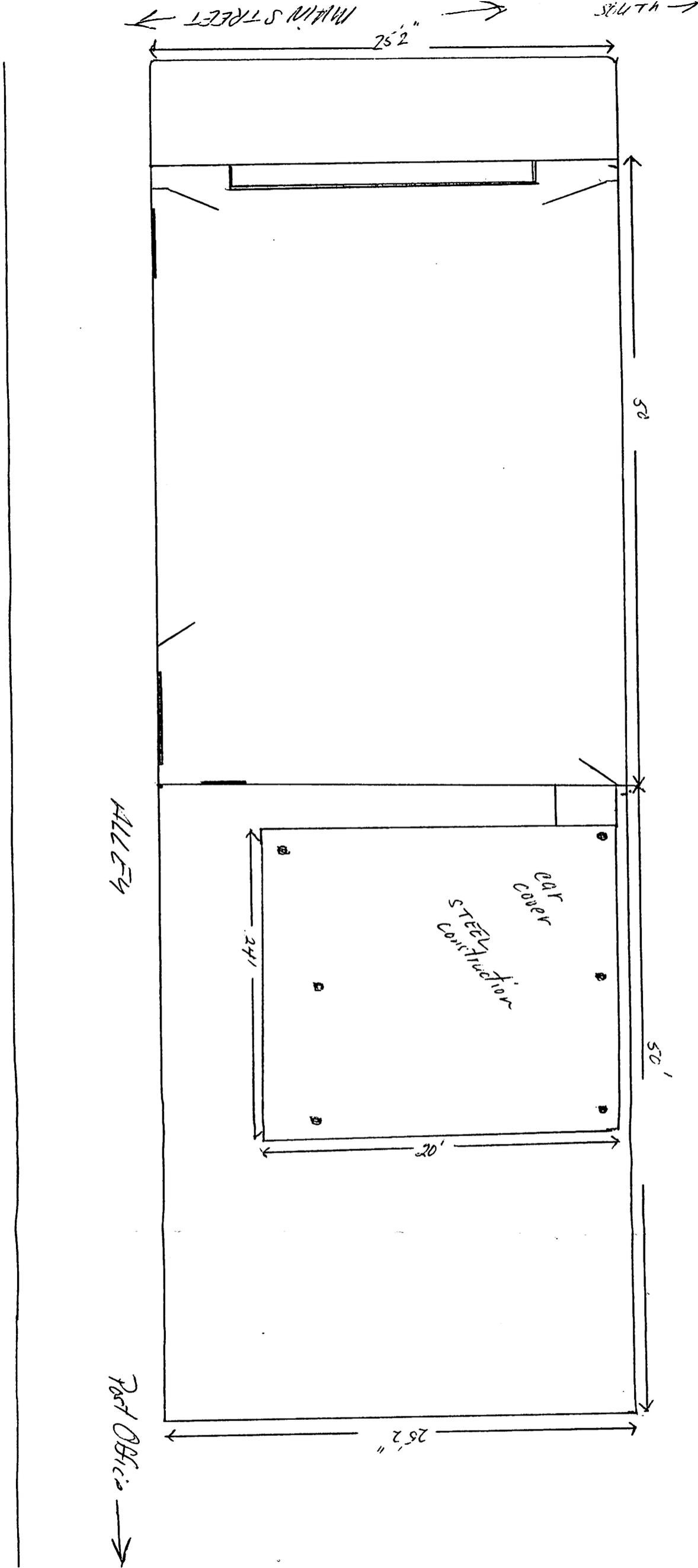
open floor plan

↓ space for 2 cars garage or car port

708 Main
Nova Properties LLC

3-14-2014

Page



The Parcel Number for this Property is 026-182-04-0-20-04-007.00-0
Quick Ref ID: 12276

Owner(s) Name and Mailing Address

Owner Name	NOVA PROPERTIES LLC
Address	2213 DRUM AVE HAYS, KS 67601-2312

Property Situs Address

Address	709 MAIN ST, Hays, KS 67601
	H P WILSON REP 15 & 17 , BLOCK 7 , Lot 1 , SECTION 04 TOWNSHIP 14 RANGE 18

Building Permit Information

Permit Number	Amount	Issue Date	Description
00185	7,500	5/25/1994	

THIS IS THE LIST OF PROPERTY OWNERS ABUTTING THE SUBJECT PROPERTY THAT WERE MAILED THE NOTIFICATION OF THE PUBLIC HEARING.

Property	First Name	Last Name	Address	City	State	Zip
709 Main	Nova Properties LLC		2213 Drum Ave	Hays	KS	67601
111 W 7th	Kenneth F	Gottschalk	P O Box 429	Hays	KS	67601
709 Main St	Deborah & Karl	Schmidtberger	2213 Drum Ave	Hays	KS	67601
706 Fort St	United States of America		601 E 12th St	Kansas City	MO	64106
711 Main St	Michael F & Joyce S	Jilg	317 W 20th St	Hays	KS	67601
718 Main St	Ellis County Board of Commissioners		P O Box 720	Hays	KS	67601
708 Main St	Kim S	Billinger	708 Main St	Hays	KS	67601
706 Main St	Robert F	Stecklein	1345 Grant St	Hays	KS	67601
707 Main St	Robert M & Cari	Readle	1717 Haney Dr	Hays	KS	67601
707 Main St	Robert E & Marsha R	Readle	1717 Haney Dr	Hays	KS	67601

(Published in The Hays Daily News February 20, 2014)
BEFORE THE HAYS AREA BOARD OF ZONING APPEALS THE CITY OF HAYS, KANSAS NOTICE

TO: Nova Properties LLC and Debra and Karl Schmidtberger
 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. 12-716 through K.S.A. 12-724 et seq. as amended, and Ordinance 3721 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 Nova Properties LLC and Debra and Karl Schmidtberger.

The subject of the hearing shall be a request by Nova Properties LLC and Debra and Karl Schmidtberger for an exception as may be deemed by the Hays Area Board of Zoning Appeals of said City, from existing legal requirements to permit a dwelling unit in the "C-3" Central Business District under Section 71-532(1) with the issuance of a special use permit, on the following real property situated in the City of Hays, Ellis County, Kansas to wit: Lot 1, Block 7 of H.P. Wilson Rep 15 & 17 more generally located at 709 Main Street, Hays, KS.

You are hereby notified that a hearing will be had upon said appeal on the 12th day of March, 2014, at 8:15 a.m., in the City Commission Chambers of City Hall, in the City of Hays, Kansas, at which time said appeal will be determined.

Lou Caplan, Chairman
 Hays Area Board of Zoning Appeals

Map Title

