

BOARD OF ZONING APPEALS MEETING AGENDA
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS
JULY 9, 2014
8:15 A.M.

1. CALL TO ORDER BY CHAIRMAN.

2. CONSENT AGENDA.

A. Minutes of the regular meeting of June 11, 2014

Action: Consider approving the minutes of the 6/11/14 meeting.

3. PUBLIC HEARING ITEMS.

A. A public hearing to consider a request from Garry Staab for a three foot (3') variance to reduce the east side yard building setback from the required seven feet (7') to four feet (4') to construct a 15' X 24' detached garage in the backyard to access from the street at 119 W 38th Street (Lot 3, Block 2 Skyline 6th Addition) (Case #08-14) .

Action: Consider approval of the 3 foot variance request for the property at 119 W 38th Street.

4. NON-PUBLIC HEARING ITEMS.

A. None

Action: None

5. OFF AGENDA ITEMS/COMMUNICATIONS.

A. Citizen Comments

B. Other

6. ADJOURNMENT.

**DRAFT
HAYS AREA BOARD OF ZONING APPEALS
COMMISSION CHAMBERS IN CITY HALL
MINUTES
JUNE 11, 2014
8:15 A.M.**

1. CALL TO ORDER: The Hays Area Board of Zoning Appeals met on Wednesday, June 11, 2014 at 8:15 a.m. in Commission Chambers of City Hall.

Roll Call:

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

Chairman Lou Caplan declared a quorum was present and called the meeting to order.

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

2. CONSENT AGENDA:

A. MINUTES OF THE REGULAR MEETING OF MARCH 12, 2014. There was a motion by Tom Lippert with a second by Gerald Befort to approve the minutes from the May 14, 2014 meeting. There were no corrections or additions to those minutes.

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

3. PUBLIC HEARING ITEMS:

A. CASE # 06-14 – REQUEST BY VICKI E MARSICEK FOR A FOUR FOOT (4') VARIANCE TO REDUCE THE EAST SIDE YARD BUILDING SETBACK FROM THE REQUIRED SEVEN FEET TO THREE FEET TO PERMIT AN EXISTING CARPORT RECENTLY ERECTED AT 415 E 16TH ST (LOT 15, BLOCK 15 FAIRVIEW ADDITION): Jesse Rohr presented the above property on the overhead visual.

Vicki E Marsicek presented her application to the board to request a four foot (4') variance to reduce the east side yard building setback from the required seven feet (7') to three feet (3') to permit a 11'6" X 19' X 9 carport already erected in October, 2013. The sole reason for the carport was to have a shed to protect her car. She received a notice from the City in April, 2014 that the carport did not meet the building setback

requirements and that she had not applied for a permit that would have prevented this. The city had given her the option of (a) moving the carport to her backyard or (b) removing the carport entirely. She stated that moving it to her backyard was not an option because the alley is inaccessible in the winter months because it is not plowed when there is snow fall.

Lou Caplan asked if a contractor had erected the carport. The purpose of the permitting process is so cases like this do not arise; so you find out the regulations before something is put in. Mrs. Marsicek answered that a contractor had erected the carport. She did not realize she needed a permit. Her husband used to take care of these types of things.

Shane Pruitt sympathized with her situation. He explained the importance of applying for a permit that would have provided the rules and regulations to prevent this type of situation. He explained that per the 5 statutory requirements that are to be met that this would not be considered a "hardship"; there are few times an alley cannot be used due to weather conditions.

He asked Jesse Rohr if this was considered a garage with three enclosed sides. Jesse Rohr explained that, per the ordinance, by definition, it is considered a garage. Jesse Rohr explained that one criteria of a carport is that it can never be enclosed and there not be any structural issues.

Tom Lippert pointed out that there were many residences in the neighborhood with detached garages in the rear of the property that are much closer to the property line than 7 feet that must have been granted a variance. He asked Jesse Rohr why this request would make a difference; if it is because it is closer to the front.

Jesse Rohr answered that would be correct. To grant this variance would set precedence for requests to build the main structure closer to the property line. There has been one single carport in the neighborhood constructed within 3 feet of the side yard property line in 1982.

Tom Lippert asked what signifies if it is an attached or detached garage. Jesse Rohr answered that a detached garage is identified as "accessory use" and must meet those regulations.

Lou Caplan asked if 16th Street was snow plowed when there is snowfall. Jesse Rohr answered that it is not an emergency snow route; there may be one pass during a significant snowfall.

Gerald Befort asked if it would be considered a carport if they would remove the east side of the structure and leave the north side. Jesse Rohr answered that it would be; although they would still need the variance.

Jerry Sonntag explained the five statutory requirements that have to be met. If there are other options available to the applicant that they would not need a variance has to be considered. He suggested other options.

Vicki Marsicek asked if they remove the east side, if it could remain where it is located. She asked for a compromise.

Shane Pruitt asked if it would still be safe with the removal of one of the sides. Jesse Rohr answered that generally it is a kit and the sides could be added or removed and not pose a safety risk.

Lou Caplan asked if there were any comments from the audience. There were none.

Jerry Sonntag moved, Gerald Befort seconded the motion to grant the four foot (4') variance to reduce the east side yard building setback from the required 7 feet to 3 feet based on the consideration it does meet the five statutory requirements subject to the condition that they remove the east side of the three-sided enclosed structure to convert to a carport with two sides.

Jesse Rohr pointed out to the board of two conditions that should be added; deadline when the east side should be removed and must submit an application to the city building office for a permit.

Tom Lippert pointed out that there was an existing carport on a neighboring property that is a similar distance from the side yard property line as this request. He asked if the difference between the two was that this carport was closer to the front. Jesse Rohr acknowledged the similarity; both are behind the front line of the main structure of the house; although this house with the carport is closer to the street.

Jerry Sonntag restated the motion:

Jerry Sonntag moved, Gerald Befort seconded the motion to grant the four foot (4') variance to reduce the east side yard building setback from the required 7 feet to 3 feet based on the consideration it meets the 5 statutory requirements subject to the following conditions:

1. Remove the entire east side of the 3 sided enclosed structure to convert to a carport
2. The entire east side enclosed structure must be removed within 90 days from this day, June 11, 2014.
3. Must submit a building permit application and be approved for a building permit for the carport.
4. The carport can never be enclosed

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

Lou Caplan informed the applicant to check with the contractor about what has happened.

Vicki Marsicek thanked the board for the compromise.

B. CASE # 07-14 – REQUEST BY LUECKE PROPERTIES, LLC, JOHN LUECKE, OWNER, FOR A SPECIAL-USE PERMIT TO PERMIT THE CONSTRUCTION OF STORAGE UNITS WITHIN THE “C-2” GENERAL COMMERCIAL & SERVICE DISTRICT UNDER SECTION 71-504 (16) LOCATED AT 780 E 41ST ST (UNDER PARCEL ADDRESS 800 E 41ST – TRACT IN THE NW/4 OF S27-T13S-R18W)

Jesse Rohr presented the above property on the overhead visual. He pointed out the storage unit that was recently constructed. The request is for a special use permit to build more storage units. Per the site plan, there is a 60 foot right of way on the west side.

John Luecke presented the application to the board to request a special use permit for additional storage units under Section 71-504 (16) allowed within the “C-2” General Commercial & Service District with a special use permit on the property at 780 E 41st Street. They built the first 390 foot unit north to south on the west side consisting of 82 storage units that are currently all filled.

The proposed units would be built east to west on the south side of the lot. He explained that the plan had been altered slightly from that presented with his application. They want to build two units on the south side to close it in to make it more appropriate next to the adjoining parcel to the south that is for sale.

It is unknown what development will be for the south of the subject property.

Jerry Sonntag stated that he did not have a problem with building storage units and appreciated what they are doing; although he did not appreciate that the plan had been altered from what was submitted with the application. He was not sure they could make an informed decision without the details and plans.

Tom Lippert asked if they originally planned for Recreational Vehicles Storage Units. He also asked about the proposed building identified as a manager’s apartment. Mr. Luecke stated that it was the family consensus that the original plan be swapped to have the household storage units on the south side rather than the RV Storage because it would close it in nicely for a nice appearance and not appear trashy or like an industrial zone. The plan is for a manager’s apartment also.

The board asked for clarification of the location of the proposed storage units. John Luecke pointed to the location on the map where the next two 30 foot by 100 foot storage units would be constructed on the south side of the property built from east to west. It was a family consensus to build the residential type of storage units since this is what the market wants to build in a way for access for the proposed Recreational Vehicle storage units.

Lou Caplan asked where the entrance was located to the south of the property. Jesse Rohr answered that there is a 60 foot right of way on the west edge of the property.

Lou Caplan asked if there would be a fence along the south side. Mr. Luecke answered that because they do not know how the south side is going to develop, it was unknown if there would be a fence.

Tom Lippert pointed out that the appearance of the site is trashy and there are piles in some areas and asked about their plans of taking care of this. He appreciates they are closing off the south side until things get taken care of. Mr. Luecke answered that some of that was building materials that will get used up. The piles are from his dad's projects that are being cleaned up slowly. It is to their benefit to make things look good.

Lou Caplan asked why not have one continuous building. John Luecke answered that small units fit on the end of a building and they have a demand for small units. Also it prevents having an open end.

Shane Pruitt and Jerry Sonntag asked if they knew for sure the size of the buildings would be 30' by 100'. John Luecke answered that the next project is two 30' X 100' buildings to be constructed on the south side.

Lou Caplan and Jerry Sonntag asked if this is a request for the remainder of the units. They would need the details and plans.

Jesse Rohr answered that they could grant a special use permit for the remainder of the proposed storage units. They could ask the wishes of Mr. Luecke. There were conditions tied to the first building to get an idea what the building and site would look like and there would be installation of the fencing. They have satisfied the conditions. They would have to apply for a separate special use permit for the manager's apartment.

Lou Caplan asked if they could do the special use permit for only these two proposed buildings. Jesse Rohr answered "yes".

Mr. Luecke answered that their main concern is to be granted a special use permit to construct two storage units on the south side of the subject property. It will depend on market demand on the next step.

After discussion among the board, it was determined they would consider the special use permit for two 30 foot by 100 foot storage units to be constructed on the south side of the property.

Lou Caplan asked if there were any comments from the audience. There were none.

Jerry Sonntag moved, Tom Lippert seconded the motion to grant a special use permit to construct two 30 foot by 100 foot storage units on the south side of the property that will look like the building on the recently constructed building on the west side allowed with a special use permit in a "C-2" General Commercial and Service District provided under Section 71-504(16) on the property at 780 E 41st Street (Parcel address 800 E 41st). The condition is only two 30 foot by 100 foot storage units to be built under this special use

permit and to be built on the south side of the subject property. There would be no stipulation of fencing on the south side.

Tom Lippert asked if they plan to construct a fence on the south side. Mr. Luecke explained that it would be determined what is appropriate to go there after they know what will be developed on the south parcel.

Jerry Sonntag explained that he was not worried of having fencing on the south side until they know what will be developed on the south parcel.

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

6. ADJOURNMENT: Lou Caplan adjourned the meeting at 9:12 a.m.

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

Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #08-14
ADDRESS: 119 W. 38th
OWNER: Garry Staab
TYPE OF REVIEW: Variance
PRESENTED BY: Jesse Rohr, P.I.E. Superintendent
MEETING DATE: July 9, 2014

SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the required side yard setback from 7 feet to 4 feet, a variance of 3 feet to allow the placement of a 15 x 24 detached garage with street access on the property located at 119 W 38th. Staff recommends **approval** of the variance due to the request meeting the requirements of State Statute and City Ordinance as they pertain to variances and the statutory requirements, particularly uniqueness, hardship, and the spirit and intent of the adopted regulations. (as further detailed below)

BACKGROUND:

- The applicant is requesting a variance to reduce the required side yard setback from 7 feet to 4 feet, a variance of 3 feet to allow construction of a 15 x 24 detached garage on the property located at 119 W 38th.
- The lot is zoned R-1, Single-Family Dwelling District

	R-3 Required	Applicant Proposed
Front Yard	Min. 30 ft	N/A
Side Yard	10% of width, Min. of 7'	4 ft
Rear Yard	Min. 5 ft	5 ft

STANDARDS OF EVALUATION:

Per State Statute 12-759 and City Ordinance Sec. 71-1250

- 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 is similar in size and shape to others within the area. The proposed garage could fit on the lot without a variance; however the applicant wishes to have access from the street side rather than the alley. The proposed plan for access does make this garage plan unique when compared to most. Also, this is one of only 3 homes on the entire block that only has a single car garage.*

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

***Staff Analysis:** This proposed addition would not appear to have any adverse affects on the rights of nearby property owners*

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

***Staff Analysis:** As mentioned, the current home only has a single car garage which could be considered a hardship in this day and age. However, having a garage with rear access from the alley is possible without a variance. That being said, from the City standpoint, it is preferred to maintain vehicular access from the street and avoid access from alleys if possible in order to keep traffic out of alleys for maintenance purposes.*

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

Staff Analysis: *This proposed addition would not appear to adversely affect the public health, safety, morals, order, convenience, propriety, 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 proposed garage would not seem to go against the spirit and intent of the regulations.*

RECOMMENDED ACTION:

Motion to **approve** the variance due to the request meeting the requirements of State Statute and City Ordinance as they pertain to variances and the statutory requirements, particularly uniqueness, hardship, and the spirit and intent of the adopted regulations.

ATTACHMENTS:

- Variance application
- Variance justification and site map from owner
- Aerial map

APPLICATION FOR VARIANCE

I. Name of Applicant Garry Staab Phone 785-650-0935
 Mailing Address 119 W. 38th
 Name of Owner (if different from applicant) GARRY STAAB + JO ANN STAAB Phone _____
Living Trust.
 Mailing Address _____
 Name of Authorized Agent n/a Phone _____
 Mailing Address _____
 Relationship of applicant to property is that of Owner
(Owner, tenant, lessee, other)

II. The variance is requested Request a 3' VARIANCE to reduce the East Side yard the building set back from the Reg 7' to 4'
 to construct a 15' X 24' detached garage in the backyard to access from the street
 on property located at 119 W. 38th St. and legally described as: Lot 3
Blk 2 Skyline 6th Add
 in the City of Hays and which is presently zoned R1

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.

Garry Staab
 APPLICANT
Garry Staab
 OWNER

 AUTHORIZED AGENT (IF ANY)

OFFICE USE ONLY:
 RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON 06-13-2014
 TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00
Sinda Burdman Administrative Assistant
 NAME AND TITLE

Date: June 12, 2014

To: Hays Area Board of Zoning

From: Garry Staab

RE: Zoning Appeal to property located at 119 W. 38th

We hereby request a 3 foot allowance from the east property line, versus the normal 7 foot requirement.

A. Uniqueness:

The driveway approaching the garage will be very narrow, and if left at the normal building allowances, the garage itself will be set off to the left. It will make driving into the garage an angled approach.

B. Adjacent Property:

This request affects only one neighbor to the east of us and they have no problem with the garage being built as requested. A fence will still divide the property between us.

C. Hardship:

Placing the garage on the lot as required by the zoning regulations would place the garage farther to the west than we'd like/prefer. The garage in this location will not allow for easy access driving in or driving out. The access of the main garage door will be more difficult to access versus the variance we are requesting.

D. Public Interest:

Our goal in requesting this allowance is to allow building a garage, in a location that our neighbors also agree on, and still maintain visual appeal and functionality of our backyard space. The allowance will also help with curb appeal, as the garage will be not be set "off-center" from the street visibility.

E. Spirit and Intent of the Zoning Regulations:

Granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Regulations. The garage will not be in the way of utilities or interfere with traffic or maintenance of the alley.

Sincerely,


Garry Staab

We are planning to come off of 38th St.
beside the east side of the house with a
new driveway instead of using the alley.

THANK'S

GARRY STAAB

Site Plan

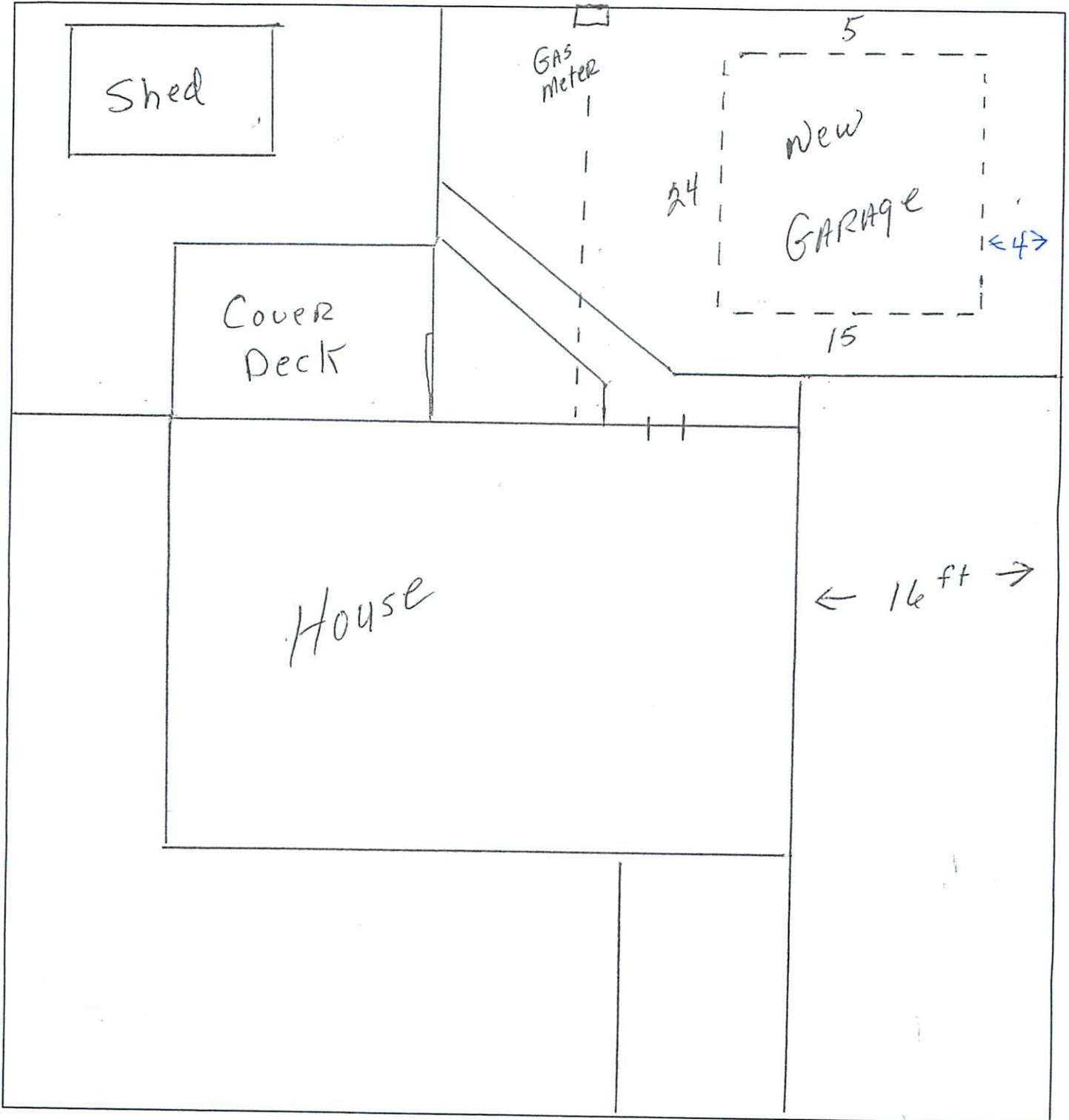
Provide dimensions from new building to property lines and existing buildings.

Lot Width 70
Lot Depth 104

Side Yard Setback (10% of Width) _____ (not less than 7ft)
5ft rear yard setback 5ft separation from existing structures

Show Utility lines including Gas, Electric, and sewer if you know where it is.

Alley 70'



119 W 38th

38th Street

104'

Map Title



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
117 W 38th St	Jeremy J	Dougherty	117 W 38th St	Hays	KS	67601
119 W 38th St	Garry L & JoAnn Staab Living Trust		119 W 38th St	Hays	KS	67601
121 W 38th St	Daniel W & Christina D	Schmidt	121 W 38th St	Hays	KS	67601
Tract 41st Street	Stehno Farms		921 W 41st St	Hays	KS	67601
116 W 38th St	William J & Ruth M	Morarity	116 W 38th St	Hays	KS	67601
118 W 38th St	Dorothy A	Stieben	118 W 38th St	Hays	KS	67601
120 W 38th St	I P Management LLC		2717 Canal Blvd	Hays	KS	67601

(Published in The Hays Daily News June 18, 2014)

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

TO: Garry L Staab
 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 Garry L. Staab.

The subject of the hearing shall be a request by Garry L Staab for a variance as may be deemed by the Hays Area Board of Zoning Appeals of said City, from existing legal requirements for a three foot (3') variance to reduce the east side yard building setback from the required seven feet (7') to four feet (4') to construct a 15 foot by 24 foot detached garage in the backyard with access from the street on the following real property situated in the City of Hays, Ellis County, Kansas to wit: Lot 3, Block 2, Skyline 6th Addition, generally located at 119 W 38th Street.

You are hereby notified that a hearing will be had upon said appeal on the 9th day of July, 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

026-138-28-0-10-01-017.00-0

STAAB GARRY L LIV TRUST

Property Address:

119 W 38th St

Hays, KS 67601

SKYLINE 6TH ADDITION , BLOCK 02 , Lot 003 , SECTION 28
TOWNSHIP 13 RANGE 18

026-138-28-0-10-01-017.00-0

STAAB JOANN LIV TRUST

Property Address:

119 W 38th St

Hays, KS 67601

SKYLINE 6TH ADDITION , BLOCK 02 , Lot 003 , SECTION 28
TOWNSHIP 13 RANGE 18