

## AGENDA

**ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING  
NOVEMBER 18, 2015 - 5:30 PM  
MCALLEN MUNICIPAL BUILDING - 1300 HOUSTON AVENUE  
CITY COMMISSION CHAMBERS, 3<sup>RD</sup> FLOOR**

**CALL TO ORDER – ROBERT MOREHEAD, CHAIRPERSON MINUTES:**

[ZBOA – 11/18/15](#)

Minutes for regular meeting held on November 18, 2015.

**PUBLIC HEARINGS:**

- a) Request of Antonio M. & Martina S. Ramos for a variance request to the City of McAllen Zoning Ordinance to allow: a front yard setback of 7 feet instead of 25 feet for a proposed carport measuring 23 feet by 23 feet, for Lot 67, Casa Bonita Subdivision, Hidalgo County, Texas; 512 North 26<sup>th</sup> Street. **(ZBA2015-0052)**
- b) Request of J.J. McDermott to allow the following special exception to the City of McAllen Off-street Parking and Loading Ordinance: to allow 47 parking spaces instead of the required 60 parking spaces for Lot 1, Vista Heights Subdivision, Hidalgo County, Texas; 7300 North 10<sup>th</sup> Street. **(ZBA2015-0053)**
- c) Request of Elida Reyes for a special exception to the City of McAllen Zoning Ordinance to provide 44 parking spaces instead of 60 required spaces for Lot 1, Alonzo Barrera Subdivision, Hidalgo County, Texas; 2711 South 23<sup>rd</sup> Street. **(ZBA2015-0045) (TABLED UNTIL 11/4/2015) (TABLED: 11/18/2015)**
- d) Request of Jose Luis Galindo to allow the following variance requests to the City of McAllen Zoning Ordinance: **1) side yard setback of 2.25 feet instead of 5 feet for a carport measuring 24.16 feet by 25.25 feet, 2) front yard setback of 2.41 feet instead of 25 feet for a carport measuring 24.16 feet by 25.25, for Lot 18, Block 3, McAllen Heights Subdivision, Hidalgo County, Texas; 1009 South 27<sup>th</sup> Street. (ZBA2014-0026) (TABLED: 11/19/2014 UNTIL MEETING OF 1/21/2015) (TABLED UNTIL JULY 15, 2015) (TABLED: 7/15/2015) (REMAIN TABLED UNTIL 9/2/2015) (REMAIN TABLED UNTIL 9/17/2015) (REMAIN TABLED UNTIL 10/21/2015) (TABLED UNTIL 11/18/2015)**
- e) Request of Armando Sotelo for a variance request to the City of McAllen Zoning Ordinance to allow: **1) a rear yard setback of 11.83 feet instead of 60 feet for a storage building measuring 8 feet by 40 feet, 2) a special exception for 51 parking spaces instead of 56 parking spaces for Lot 2, Jackson Triangle Subdivision, Hidalgo County, Texas; 1420 East Expressway 83. (ZBA2015-0035) (TABLED: 8/19/2015 UNTIL 10/21/2015) (REMAIN TABLED UNTIL 11/18/2015)**

**3. DISCUSSION:**

**4. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE,  
SECTION 551.071 (CONSULTATION WITH ATTORNEY)**

**ADJOURNMENT:**

**IF ANY ACCOMMODATION FOR A DISABILITY IS REQUIRED, NOTIFY THE PLANNING DEPARTMENT AT (956) 681-1250 SEVENTY-TWO (72) HOURS PRIOR TO THE MEETING DATE. WITH REGARD TO ANY ITEM, THE ZONING BOARD OF ADJUSTMENT AND APPEALS MAY TAKE VARIOUS ACTIONS INCLUDING BUT NOT LIMITED TO RESCHEDULING AN ITEM IN ITS ENTIRETY FOR A FUTURE DATE OR TIME.**

**STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF McAllen**

**The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, November 4, 2015 at 5:39 p.m. in the City Commission Meeting Room with the following present:**

<b>Present:</b>	<b>Robert Morehead</b>	<b>Chairperson</b>
	<b>Jorge Salinas</b>	<b>Member</b>
	<b>Rolando Ayala</b>	<b>Member</b>
	<b>Sylvia Hinojosa</b>	<b>Alternate</b>
	<b>Jose R. Gutierrez</b>	<b>Alternate</b>
	<b>Terry L. Perez</b>	<b>Alternate</b>
<b>Absent:</b>	<b>Mike Hovar</b>	<b>Vice-Chairperson</b>
	<b>Mike Harms</b>	<b>Member</b>
	<b>Shavi Mahtani</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Victor Flores</b>	<b>Assistant City Attorney</b>
	<b>Ed Taylor</b>	<b>Senior Planner</b>
	<b>Rodrigo Sanchez</b>	<b>Planner II</b>
	<b>Carmen White</b>	<b>Secretary</b>

**CALL TO ORDER – Robert Morehead, Chairperson**

**1. MINUTES:**

- a) Minutes for Regular Meeting held on October 21, 2015 would be postponed until the four board members who were at the meeting be present to vote.

**2) PUBLIC HEARINGS:**

- a) Request of Elida Reyes for a special exception to the City of McAllen Zoning Ordinance to provide 44 parking spaces instead of 60 required spaces for Lot 1, Alonzo Barrera Subdivision, Hidalgo County, Texas; 2711 South 23<sup>rd</sup> Street. **(ZBA2015-0045)**

Ms. Terry Perez made a motion to remove from the table. Mr. Rolando Ayala seconded the motion. The board voted unanimously to remove from the table with five members present and voting.

Mr. Sanchez stated the applicant requested a special exception to reduce the required parking spaces for Plaza 23, a commercial development, from 60 to 44 parking spaces for a deficiency of 16 parking spaces. The applicant submitted a site plan that proposes

to lease 2 suites for a tortilleria and a restaurant. The proposed use was a restaurant for Suite 8 and a tortilleria for Suite 7, requiring additional parking spaces. The subject property was located along the east side of South 23rd Street, southeast of the intersection of South 23rd Street and Jordan Road. The property was zoned C-3 (general business) District. Existing tenants are Cricket, Prestige Boutique, Connect Insurance, and Angel's Day Care. Surrounding land uses are J. Ramon Auto Sales, McAllen Glass Company, Valero convenience store, and other commercial uses. Alonzo Barrera Subdivision was recorded on August 2, 1990. A building permit for a commercial building with 15,617 square feet was issued in January 2009 with parking requirement of 42 spaces and site plan providing 44 parking spaces. The parking requirement for commercial development was 4 parking spaces for the first 400 square feet and 1 parking space for each additional 400 square feet. The parking requirement for a restaurant was 1 parking space for each 75 square feet. Commercial development and office use required a parking requirement of 43 parking spaces. The proposed restaurant use in the shopping center was 1,219 square feet for a parking requirement of 17 parking spaces. Total parking requirement for commercial development, office, and restaurant was 60 parking spaces. Total parking provided was 44 parking spaces for a deficiency of 16 spaces or 73% compliance. The requirement for restaurant parking increased the required parking amount above the parking spaces to be provided. The parking ordinance establishes minimum parking requirements. Actual parking demand will vary by the type, peak hour, season and success of the business. Parking shortages may impact adjacent available parking areas and may discourage customers to seek other less crowded comparable businesses.

Staff recommended disapproval of the special exception request.

Staff indicated a letter was submitted by the applicant indicated property owner permission and authorization to the applicant for the remodeling of Suites 7 and 8. It also states Suite 7 was to be a Taqueria and Suite 8 a Tortilleria.

Ms. Hinojosa inquired to staff if there was additional parking in the back. Staff responded there was no parking because it did not meet the parking dimension and size requirements.

Ms. Elida Reyes, the applicant, stated they decided to leave the wall in order to avoid overlapping of customers going between the two businesses. They will be registered differently. They will have two different entrances for each business. Ms. Perez inquired of the applicant if there would be tables or chairs in the tortilleria. The applicant indicated as a courtesy a couple of chairs for customers while waiting.

Chairperson Robert Morehead inquired if there was anyone else present to speak in favor of the special exception. There was no one else to speak in favor of the special exception.

Mr. Javier Garcia, part owner, stated their business would be small not expecting a large crowd. Their plan was to have a successful business. Mr. Garcia said he would

comply with whatever the board decided.

Chairperson Robert Morehead inquired if there was anyone else present to speak against the special exception. There was no one to speak for or against the special exception.

Ms. Hinojosa inquired of staff the amount of parking spaces used between the two businesses. Staff stated they calculate the rest of the parking as if the rest of the center was retail.

After a brief discussion, suggested to the applicant to ask the neighbor to the north and inquire if they would be willing to lease out 14 parking spaces in order to meet their parking requirements. It was requested the owner be present to answer questions.

Mr. Jose Gutierrez moved to table this item until the meeting of November 18, 2015. Mr. Rolando Ayala seconded the motion. The board voted to table this item with five members present and voting.

- b) Request of Envy Homes RGV, LLC to allow the following variance request to the City of McAllen Zoning Ordinance: a front yard setback of 15 feet instead of 25 feet for a proposed single family residence, for Lot 36, Forest Valley Subdivision No. 2, Hidalgo County, Texas; 3901 Dunlin Avenue. **(ZBA2015-0051)**

Mr. Sanchez stated the applicant requested a variance to allow a front yard setback of 15 feet instead of 25 feet for the front yard setback for a proposed residence to be built on an irregular shaped lot. The property was located was of North 39th Street and Dunlin Avenue and along the north side of Dove Avenue. The property was an irregularly shaped lot with frontage along Dunlin Avenue. The depth for this property was 146.94 feet at its deepest point for a tract size of approximately 7,106 square feet. The property was zoned R-1 (single family residential) District. The adjacent zoning was R-1 District in all directions. Surrounding land use was single family residential. The subject property was vacant and a single family structure is proposed. Forest Valley Subdivision No. 2 was recorded March 17, 2003. The plat for this subdivision indicated a 25 foot front yard setback for Lot 36. An application for a building permit had not been submitted. An application for the variance was submitted October 6, 2015. The lot had a 10 foot side yard setback along North 39<sup>th</sup> Street and 6 feet along the west side of the lot. The applicant had submitted a site plan that indicated the layout of the proposed residence. The applicant had proposed the garage to be accessed from North 39<sup>th</sup> Street in order to meet garage setbacks. The proposed site plan could be modified to be in compliance or closer to compliance.

Staff recommended disapproval of the variance request.

Ricardo Rodriguez and Oscar Arambula, applicants and owners of Envy Homes RGV, LLC on behalf of the perspective property owners. They stated because of the irregular

shaped lot they need more setbacks in order to make the house fit. The majority of the houses in the subdivision were two story homes. The perspective property owners want a one story home because of their two small children for safety concerns.

Chairperson Robert Morehead inquired if there was anyone else present to speak in favor of the variance request. There was no one else to speak in favor of the variance request.

Chairperson Robert Morehead inquired if there was anyone present to speak against the variance request. There was no one to speak against the variance request.

Chairperson Robert Morehead had concerns of other houses having a 25 foot setbacks while this house would sit further out in front.

Board inquired regarding the driveway exiting to 39<sup>th</sup> Street being too close to Dove Avenue. Staff stated it was under review by the Engineering Department and going through site plan approval.

Mr. Jorge Salinas moved to disapprove the variance request. Mr. Jose Gutierrez seconded the motion. The board voted unanimously to disapprove the variance request with five members present and voting.

- c) Request of Ruben Gonzalez, Jr. to allow the following variance request to the City of McAllen Zoning Ordinance: a front yard setback of 2.5 feet instead of 20 feet for a carport measuring 20 feet by 22 feet, for Lot 7, Block 18, Hammond Addition, Hidalgo County, Texas; 2021 Date Palm Avenue. **(ZBA2015-0050)**

Mr. Sanchez stated the applicant requested a variance to allow an existing metal carport to encroach 17.5 feet within the front yard setback. The applicant indicated that they hired a contractor who informed them that a building permit was not required. The applicant wishes to keep the carport for medical reasons. The property was located along the south side of Date Palm Avenue 50 feet east of North 21<sup>st</sup> Street. The property had 50 feet of frontage along Date Palm Avenue and a depth of 140 feet for a tract size of 7,000 square feet. The property was zoned R-2 (duplex-fourplex residential) District. The surrounding land uses were single family residences. There was an existing single family residence located on the subject property. Hammond Addition was recorded on July 6, 1939. The front yard setback was 20 feet as per zoning ordinance. A citation (#20178) was issued on June 16, 2015 for building a carport without a permit. At a retreat on July 11, 2014, the Board of Commissioners held a lengthy discussion on carport variances within the front yard emphasizing greater enforcement to reduce carports in the front yard. The Board of Commissioners held a joint workshop with the Zoning Board of Adjustment on September 8, 2014 and discussed greater enforcement, citations, fines and public information to reduce the number of carport variances in the front yard. The Board held workshop on exceptions to setbacks and a special exception for carport within the front setback for medical purposes. An Ordinance Committee was reviewing

a carport for medical purposes special exception. The existing carport building was setback 2.5 feet from the property line as shown on the submitted site plan page. Front yard setbacks were important in establishing the character of a single family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view. Approval of a variance allowing a carport within the front yard may encourage future carports to be constructed in the front yard.

Staff recommended disapproval of the variance request.

Susana Gonzalez, wife of Mr. Ruben Gonzalez, Jr., the applicant, stated the carport was built about 2 or 3 months ago. A gentleman from Brownsville constructed the carport and told the applicant she didn't need a permit because it was portable and could easily be moved. Ms. Gonzalez stated to the board they needed the carport for her husband's serious medical conditions. The board explained to the applicant the board cannot make a decision based on the factor of the medical issues.

Chairperson Robert Morehead inquired if there was anyone else present to speak in favor of the variance request. There was no one else to speak in favor of the variance request.

Chairperson Robert Morehead inquired if there was anyone present to speak for or against the variance request. There was no one to speak against the variance request.

Ms. Terry Perez moved to disapprove the variance request. Ms. Sylvia Hinojosa seconded the motion. The board voted unanimously to disapprove the variance request with five members present and voting.

- d) Request of Maria G. Veliz to allow the following variances to the City of McAllen Zoning Ordinance: **1)** a front yard setback of 1 foot instead of 20 feet for a carport measuring 20 feet by 19 feet, **2)** a side yard setback of 3 feet instead of 6 feet for a carport measuring 20 feet by 19 feet, for Lot 7, Block 7, Colonia McAllen Unit No. 7, Hidalgo County, Texas; 2004 South 30 ½ Street. **(ZBA2015-0049)**

Mr. Sanchez stated the applicant was requesting variances in order to allow an existing carport to encroach into the front and side yard setback. The applicant stated that she needs the carport for stress relief and to protect her vehicle. The property was located along the west side of 30th ½ Street north of Uvalde Avenue. The property was zoned R-1 (single family residential) District. The surrounding land uses include single family residences. There was an existing single family residence on the subject property. Colonia McAllen Unit No. 7 Subdivision was recorded in April 1977. The front yard setback was 20 feet as per plat. The side yard setback was 6 feet. On September 1, 2015 the applicant was approved for a Conditional Use Permit for a home occupation (office/mobile windshield repair) for one year subject to the carport encroachment being resolved. An application for the variance request was submitted on September 28, 2015. Variance #1: The front yard setback was 20 feet along South 30 ½ Street. Front

yard setbacks help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision. The carport could be located on the rear of the property and accessed through the alley to maintain curb appeal and be closer in compliance. This request did not meet the criteria for granting of a variance. Variance #2: The side yard setback was 6 feet for the common side property line. The carport was open on the side that encroached to the side yard.

Staff recommended disapproval of the variance request.

Ms. Maria G. Veliz, the applicant, stated the carport was built September 2014. The applicant also stated she did not recall if the contractor had told them they needed a permit. The board inquired of the applicant if they had room to install the carport in the rear alley. The applicant responded no and it would be a double expense installing it in the rear. The board inquired of the applicant if there was a wall to the left next to the vehicle under the carport. After viewing the picture the applicant stated it was the shadow from a tree. The board inquired of the applicant if the carport was connected to the house. The applicant responded no.

Chairperson Robert Morehead inquired if there was anyone else present to speak in favor of the variance requests. There was no one else to speak in favor of the variance requests.

Chairperson Robert Morehead inquired if there was anyone else present to speak against the variance requests. There was no one else to speak against the variance requests.

Ms. Terry Perez moved to disapprove the variance requests. Mr. Rolando Ayala seconded the motion. The board voted unanimously to disapprove the variance requests with five members present and voting.

At this time, the board proceeded to approving the minutes of October 21, 2015.

The minutes for the meeting held on October 21, 2015 were approved. The motion was made by Mr. Jorge Salinas. Ms. Terry Perez the motion which carried unanimously with five members present and voting.

- e) Request of Daniel R. Valdez to allow the following variance requests to the City of McAllen Zoning Ordinance: **1)** a front yard setback of .5 feet instead of 20 feet for a carport measuring 19.75 feet by 19.66 feet, **2)** a side yard setback of 0 feet instead of 6 feet for a storage building measuring 10 feet by 12.83 feet, **3)** a side yard setback of 0 feet instead of 6 feet for a pool pump storage building measuring 7 feet by 4.16 feet, **4)** a rear yard setback of 0 feet instead of 15 feet for a water fountain measuring 4 feet by 4.41 feet, for Lot 94, Oak Terrace Subdivision, Hidalgo County, Texas; 1924 North 34<sup>th</sup> Street. **(ZBA2014-0041) (TABLED: 12/3/2014) (ITEM #1 TABLED: 1/7/2015 UNTIL JULY 15, 2015) (REMAIN TABLED UNTIL 9/17/2015) (REMAIN TABLED**

**UNTIL 10/21/2015)**

Ms. Terry Perez made a motion to remove the item from the table. Mr. Jose Gutierrez seconded the motion. The board voted unanimously to remove from the table with five members present and voting.

Mr. Sanchez stated the applicant requested a variance for an existing carport encroaching 19.5 feet into the front yard setback and wishes to keep the structure as currently constructed. The property was located along the east side of North 34<sup>th</sup> Street approximately 50 feet south of Tamarack Avenue. The tract had 50 feet of frontage along North 34<sup>th</sup> Street with a depth of 123.42 feet. The property was zoned R-1 (single family residential) District. The surrounding land uses include single family residences. There was an existing single family residence on the subject property. Oak Terrace Subdivision was recorded in November 1990. The plat indicated a 20 foot front yard setback, a 6 foot side yard setback, and a 15 foot rear yard setback. According to the tax records the applicant obtained the residence in 1991. The applicant received a Stop Work Order on October 13, 2014 from the Building Inspections and Permit Department for construction of a carport without a permit. A building permit application had not been submitted at this time. The metal carport encroached 19.5 feet into the front yard setback with the posts located 5.25 feet from the property line with an overhang of 4.75 feet. There was a 5 foot utility easement in the front of the property. There were two wooden storage units encroaching 6 feet into the side yard setbacks, one used for household objects and the other houses the pool pump. An application for the swimming pool was submitted in 1998 but was never finale. A structure referred to as an incomplete water fountain encroaches 15 feet into the rear yard setback and rear utility easement. Variance #1: The metal carport was currently encroaching into the front yard setback and front utility easement. The overhang could be eliminated to clear the encroachment of the 5 foot utility easement. Front yard setbacks help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision. The metal carport as constructed was not in character with the existing wood and brick residence therefore it does not maintain the curb appeal of the subdivision. Variance #2 and #3: The two storage buildings encroached 6 feet into the side yard setback. The storage unit measuring 10 feet by 12.83 feet was attached to an existing covered patio which was attached to the residence. The pool pump storage unit measuring 7 feet by 4.16 feet could be removed. Pool equipment is permitted within the side yard setback however by enclosing the pool pump with walls and a ceiling the structure was not in compliance. A building permit was not required for an accessory structure less than 200 square feet. Variance #4: The water fountain encroaches in the 15 foot rear yard setback and 15 foot utility easement. The structure would have to be removed completely without an abandonment of the utility easement. The applicant had been advised by staff that an abandonment of both easements would be required should the variance be approved as requested. Setbacks shown on the subdivision plat can only be changed by a vacate and replat process approved by the Planning and Zoning Commission.

Staff recommended disapproval of the variance requests.

At the Zoning Board of Adjustment and Appeals meeting of December 3, 2014 the applicant was present and there was no one in opposition of the variance requests. After a brief discussion the Board voted to table the request for one month to allow the applicant time to meet with staff to consider alternative options for Variances #3 and #4 with five members present and voting. At the Zoning Board of Adjustment and Appeals meeting of January 7, 2015 variance #1 was tabled in order to allow the City Commission to discuss the issue of medical conditions as special exceptions. Variance #2 was approved with a side yard setback of 5 feet instead of 6 feet limited to the footprint of the storage building. Variances #3 and #4 were withdrawn by the applicant. At the Zoning Board of Adjustment and Appeals meeting of October 21, 2015 no one appeared in opposition to the variance request. The Board voted to table the variance request until the meeting of November 4, 2015 in order for the applicant's attorney to be present.

Mr. Daniel R. Valdez, the applicant and his attorney, Mr. Alberto Diaz. Mr. Diaz acknowledged to the board they were not taking in consideration the medical causes for the variance request. The carport was built for his daughter with cerebral palsy in order to maneuver the wheel chair getting in and out of the vehicle and for protection from inclement weather. The house had an enclosed garage and used as a garage. The attorney stated he was aware the board cannot take into consideration for medical reasons but stated if not approved the courts would take it into consideration.

Chairperson Robert Morehead inquired if there was anyone else present to speak in favor of the variance request. There was no one else to speak in favor of the variance request.

Chairperson Robert Morehead inquired if there was anyone present to speak against the variance request. There was no one against the variance request.

The board inquired of staff if there were any other carports in the vicinity from a year ago. Staff stated they did not recall from the site visit 1 year ago from the noticing other carports. Chairperson inquired of the applicant when the carport was built. Mr. Valdez stated it he built it a year ago.

Following a brief discussion with legal counsel, the board proceeded to make a motion for Executive Session at 7:45 p.m.

Ms. Terry Perez made a motion to adjourn for an Executive Session. Mr. Jose Gutierrez seconded the motion. The board voted unanimously with five members present and voting to go into executive session.

Ms. Terry Perez made a motion to reconvene the meeting at 8:03 p.m. Mr. Jorge Salinas seconded the motion. The board voted unanimously with five members present and voting.

Ms. Terry Perez stated the availability of the garage was an issue which can be

resolved by the homeowner.

Chairperson Robert Morehead inquired of the applicant if they had access from the rear of the property. Mr. Valdez stated no because there was a canal.

Mr. Jose Gutierrez **moved** to disapprove the variance request #1. Mr. Jorge Salinas seconded the motion. The board voted unanimously to disapprove variance request #1 with five members present and voting.

- f) Request of Jose Luis Galindo to allow the following variance requests to the City of McAllen Zoning Ordinance: **1)** side yard setback of 2.25 feet instead of 5 feet for a carport measuring 24.16 feet by 25.25 feet, **2)** front yard setback of 2.41 feet instead of 25 feet for a carport measuring 24.16 feet by 25.25, for Lot 18, Block 3, McAllen Heights Subdivision, Hidalgo County, Texas; 1009 South 27<sup>th</sup> Street. **(ZBA2014-0026) (TABLED: UNTIL 1/21/2015) (TABLED UNTIL JULY 15, 2015) (TABLED: 7/15/2015 UNTIL SEPTEMBER 2, 2015) (REMAIN TABLED UNTIL 9/17/2015) (REMAIN TABLED: 10/21/2015) (REMAIN TABLED UNTIL 11/18/2015)**
  
- g) Request of Armando Sotelo for a variance request to the City of McAllen Zoning Ordinance to allow: **1)** a rear yard setback of 11.83 feet instead of 60 feet for a storage building measuring 8 feet by 40 feet, **2)** a special exception for 51 parking spaces instead of 56 parking spaces for Lot 2, Jackson Triangle Subdivision, Hidalgo County, Texas; 1409 East Expressway 83. **(ZBA2015-0035) (TABLED: 8/29/2015 UNTIL 10/21/2015) (REMAIN TABLED UNTIL 11/18/2015)**

#### DISCUSSION:

#### ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Ms. Terry Perez **moved** to adjourn the meeting. Mr. Jorge Salinas seconded the motion which carried unanimously with five members present and voting.

The meeting was adjourned at 8:06 p.m.

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Chairperson  
Robert Morehead

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Carmen White, Secretary

## Planning Department

### Memo

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** November 13, 2015

**SUBJECT:** REQUEST OF ANTONIO M. & MARTINA S. RAMOS FOR A VARIANCE REQUEST TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: A FRONT YARD SETBACK OF 7 FEET INSTEAD OF 25 FEET FOR A PROPOSED CARPORT MEASURING 23 FEET BY 23 FEET, FOR LOT 67, CASA BONITA SUBDIVISION, HIDALGO COUNTY, TEXAS; 512 NORTH 26<sup>TH</sup> STREET. (ZBA2015-0052)

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#### **GOAL:**

The Board shall have the power to authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. McAllen Code of Ordinances Section 138-43(4).

#### **REASON FOR VARIANCE REQUEST**

The applicant is requesting a variance in order to allow construction of a gabled carport to encroach 18 feet into the front yard setback. The applicant states that she needs the carport for protection from inclement weather primarily for medical reasons and protection of their vehicles, and personal safety. Immediate neighbors are not opposed to the proposed carport. The applicant indicates that accessing the existing carport from the alley requires a sharp turning radius that makes it difficult to access.

#### **PROPERTY LOCATION AND VICINITY:**

The property is located along the east side of North 26<sup>th</sup> Street between Ebony Avenue and Gumwood Avenue. The property is zoned R-1 (single family residential) District. The surrounding land uses include single family residences and a church. There is an existing single family residence on the subject property.

#### **BACKGROUND AND HISTORY:**

Casa Bonita Subdivision was recorded on February 14, 1967. The front yard setback is 25 feet as per plat. An application for a building permit was submitted on October 8, 2015 but the permit is pending a variance to the front yard setback. At a retreat on July 11, 2014, the Board of Commissioners held a lengthy discussion on carport variances within the front yard emphasizing greater enforcement to reduce carports in the front yard. The Board of Commissioners held a joint workshop with the Zoning Board of Adjustment on September 8,

2014 and discussed greater enforcement, citations, fines and public information to reduce the number of carport variances in the front yard. The Board held a workshop on exception to setbacks and a special exception for carport within the front setback for medical purposes. An Ordinance Committee is reviewing a carport for medical purposes special exception. McAllen Public Information is preparing television programming and social media regarding building permit and illegal construction to reduce violations.

**ANALYSIS:**

The front yard setback is 25 feet along North 26<sup>th</sup> Street. Front yard setbacks help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision. There is an existing carport located at the rear of the property and accessed through the alley. The carport in the alley could be modified to facilitate access, and it serves all the purpose of the carport in the front. No carports have been constructed with the front yard setback along 26<sup>th</sup> Street between Ebony and Gumwood Avenue. Several of the homes along 26<sup>th</sup> Street have enclosed garages and granting the variance request may encourage future carports to be constructed in the front yard. Setbacks shown on the subdivision plat can only be changed by a vacate and resubdivision process approved by the Planning and Zoning Commission.

**RECOMMENDATION:**

Staff recommends disapproval of the variance request.

ZBA 2015-0052

ZBA  
11/18/15

# City of McAllen

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

## Planning Department

### APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE

<b>Project</b>	Legal Description <u>Lot 67</u> Subdivision Name <u>Casa Bonita Subdivision</u> Street Address <u>512 North 26; McAllen</u> Number of lots <u>1</u> Gross acres _____ Existing Zoning <u>R-1</u> Existing Land Use <u>residence</u> Reason for Appeal (please use other side if necessary) <u>We are requesting your approval of the variance for the set-back guidelines for our</u> <input checked="" type="checkbox"/> \$300.00 non-refundable filing fee <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required
<b>Applicant</b>	Name <u>Antonio M. &amp; Martina S. Ramos</u> Phone <u>(956) 687-4173 (H)</u> <u>(956) 537-4652 (C)</u> Address <u>512 North 26</u> E-mail <u>marprim62@outlook.com</u> City <u>McAllen</u> State <u>TX</u> Zip <u>78501</u>
<b>Owner</b>	Name <u>Antonio M. &amp; Martina S. Ramos</u> Phone <u>(956) 687-4173 (H)</u> <u>(956) 537-4652 (C)</u> Address <u>512 North 26</u> E-mail <u>marprim62@outlook.com</u> City <u>McAllen</u> State <u>TX</u> Zip <u>78501</u>
<b>Authorization</b>	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input type="checkbox"/> No I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization. Signature <u>Antonio Manuel Ramos</u> Date <u>10/20/15</u> <u>Martina S. Ramos</u> Print Name <u>Antonio M. Ramos</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent <u>Martina S. Ramos</u>
<b>Office</b>	Accepted by <u>RS</u> Payment received by _____ Date _____ REVISED 9/11

RECEIVED  
OCT 20 2015  
BY: [Signature]

ZBA 2015-0052

ZBA  
11/18/15

# City of McAllen

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

## Planning Department

### APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE

<b>Project</b>	Legal Description <u>Lot 67</u> Subdivision Name <u>Casa Bonita Subdivision</u> Street Address <u>512 North 26; McAllen</u> Number of lots <u>1</u> Gross acres _____ Existing Zoning <u>R-1</u> Existing Land Use <u>residence</u> Reason for Appeal (please use other side if necessary) <u>We are requesting your approval of the variance for the set-back guidelines for our</u> <input checked="" type="checkbox"/> \$300.00 non-refundable filing fee <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required
<b>Applicant</b>	Name <u>Antonio M. &amp; Martina S. Ramos</u> Phone <u>(956) 687-4173 (H)</u> <u>(956) 537-4652 (C)</u> Address <u>512 North 26</u> E-mail <u>marprim62@outlook.com</u> City <u>McAllen</u> State <u>TX</u> Zip <u>78501</u>
<b>Owner</b>	Name <u>Antonio M. &amp; Martina S. Ramos</u> Phone <u>(956) 687-4173 (H)</u> <u>(956) 537-4652 (C)</u> Address <u>512 North 26</u> E-mail <u>marprim62@outlook.com</u> City <u>McAllen</u> State <u>TX</u> Zip <u>78501</u>
<b>Authorization</b>	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input type="checkbox"/> No I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization. Signature <u>Antonio Manuel Ramos</u> Date <u>10/20/15</u> <u>Martina S. Ramos</u> Print Name <u>Antonio M. Ramos</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent <u>Martina S. Ramos</u>
<b>Office</b>	Accepted by <u>RS</u> Payment received by _____ Date _____ REVISED 9/11

RECEIVED  
OCT 20 2015  
BY: [Signature]



## Reason for Appeal

neuropathy. This has led to tenosynovitis/mononeuropathy (carpal tunnel) in both hands as well as trigger finger also in both hands. I have received treatment and surgery to help this condition. In addition, I also experience radiculopathy or pain, numbness and tingling down my arms and legs. For this I receive physical therapy as needed. Another concern is arthralgias of the hands and knee. This is joint pain and inflammation. As I age, these conditions will accelerate. I have also been advised that I will need surgery on my left knee but doctors recommend that I wait until it becomes absolutely necessary.

Based on these conditions and knowing what is to come, we have been working at remodeling our home so that we may lead independent lives for as long as possible. We have already addressed modifications in our home. We have followed recommendations such as modifying the toilets, adding grab bars and a shower seat, and having an accessible shower stall so providers will have easy access. In another bathroom, we have installed a walk-in tub with anti-scald controls, a hand held shower head, and a sliding bathroom door for accessibility with a wheelchair. All of this was done following recommendations from different organizations on aging.

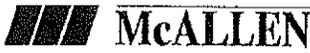
(over)

As we continue to prepare, we are taking into account our safety and security not just indoors but also outdoors. To this end lies our request for the variance. The building of a carport in front of our home will facilitate a short hauling/walking distance, protection from the elements for both ourselves and our vehicles, and increased safety due to the proximity of the carport to our front entrance.

We hope you take into consideration the difficulty of movement caused by my medical conditions and that they will progressively increase. We also spoke with our immediate neighbors before even beginning this process. They are not opposed to this request and show their support by signing a document where we explained what we hoped to accomplish. We have a reputable contractor working with us. At the request of city personnel, he has already filed the building permit paperwork and only awaits your decision. Thank you for your time and thoughtful consideration of our request

Martina S. Ramos (Martina S. Ramos)

Antonio Manuel Ramos (Antonio Manuel Ramos)



P.O. BOX 220 McAlLEN, TEXAS 78505-0220

APPLICATION MUST BE COMPLETE

(Please type or print in black or blue ink)

GC10

PERMIT APPLICATION REFERENCE NUMBER

RES2015-06389

REV. 11/2013

APPLICANT

NAME Enrique Olivarez Construction, Inc PHONE 956-686-4172  
 ADDRESS 1013 N. 23<sup>rd</sup> St.  
 CITY McAllen STATE TX ZIP 78501  
 CONTACT: NAME: Aniel I. Olivarez PHONE 956 686 4172  
 OWNER  CONTRACTOR  TENANT  OTHER

OWNER

NAME Antonio M. Ramos PHONE 956 537 4652  
 ADDRESS 512 N. 26<sup>th</sup> St.  
 CITY McAllen STATE TX ZIP 78501

NEW  ADDITION  REMODELING  REPAIR  MOVE  REMOVE BLDG. HGT. 1 NO. OF FLOORS  
 BLDG SQ. FT. \_\_\_\_\_ NO. PARKING SPACES N/A SQ. FT. LOT 5500 LOT FRONT 50' FLOOR EL ABOVE CURB \_\_\_\_\_  
 EXISTING USE OF LOT residential NEW USE residential IMPROVEMENT VALUE \$ 10,000 1.00

SCOPE OF WORK TO BE DONE add gable carport to front of house

PROJECT

FOR RESIDENTIAL USE ONLY NO. OF UNITS 1 NO BDRMS \_\_\_\_\_ NO BATHRMS \_\_\_\_\_ SQ. FT. NON-LIVING 710 sq ft SQ. FT. LIVING 2146 sq ft

FOUNDATION:  CONCRETE SLAB,  CONCRETE PIER,  CONCRETE BLOCK,  CONCRETE BEAM,  WOOD POSTS,  \_\_\_\_\_  
 EXT WALL:  MASONRY VENEER,  MASONRY SOLID,  METAL SIDING,  COMPOSITION,  WOOD,  \_\_\_\_\_  
 ROOF:  WOOD SHINGLE,  COMPOSITION,  METAL,  BUILD UP,  \_\_\_\_\_  
 SPECIAL CONDITIONS:  FIRE SPRINKLER SYSTEM,  FIRE ALARM SYSTEM,  TYPE OF CONSTRUCTION \_\_\_\_\_,  ASBESTOS SURVEY,  EABPRJA/B#: \_\_\_\_\_,  CONDEMNED STRUCTURE

LOT 67 BLOCK \_\_\_\_\_ SUBDIVISION Casa Bonita  
 SITE ADDRESS ST. NO. 512 ST. NAME N. 26<sup>th</sup> St

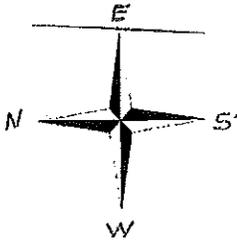
CITY USE ONLY

ZONING \_\_\_\_\_ PERMIT FEE \$ 68.77 DOUBLE FEE \$ \_\_\_\_\_ REC'D BY EEIC  
 PARK DEV.  PERMIT REVIEW FEE \$ \_\_\_\_\_ DATE 10/7/15  
 ZONE # \_\_\_\_\_ TOTAL PERMIT FEE \$ \_\_\_\_\_ TIME 7pm  
 PARK DEVELOPMENT FEE \$ \_\_\_\_\_

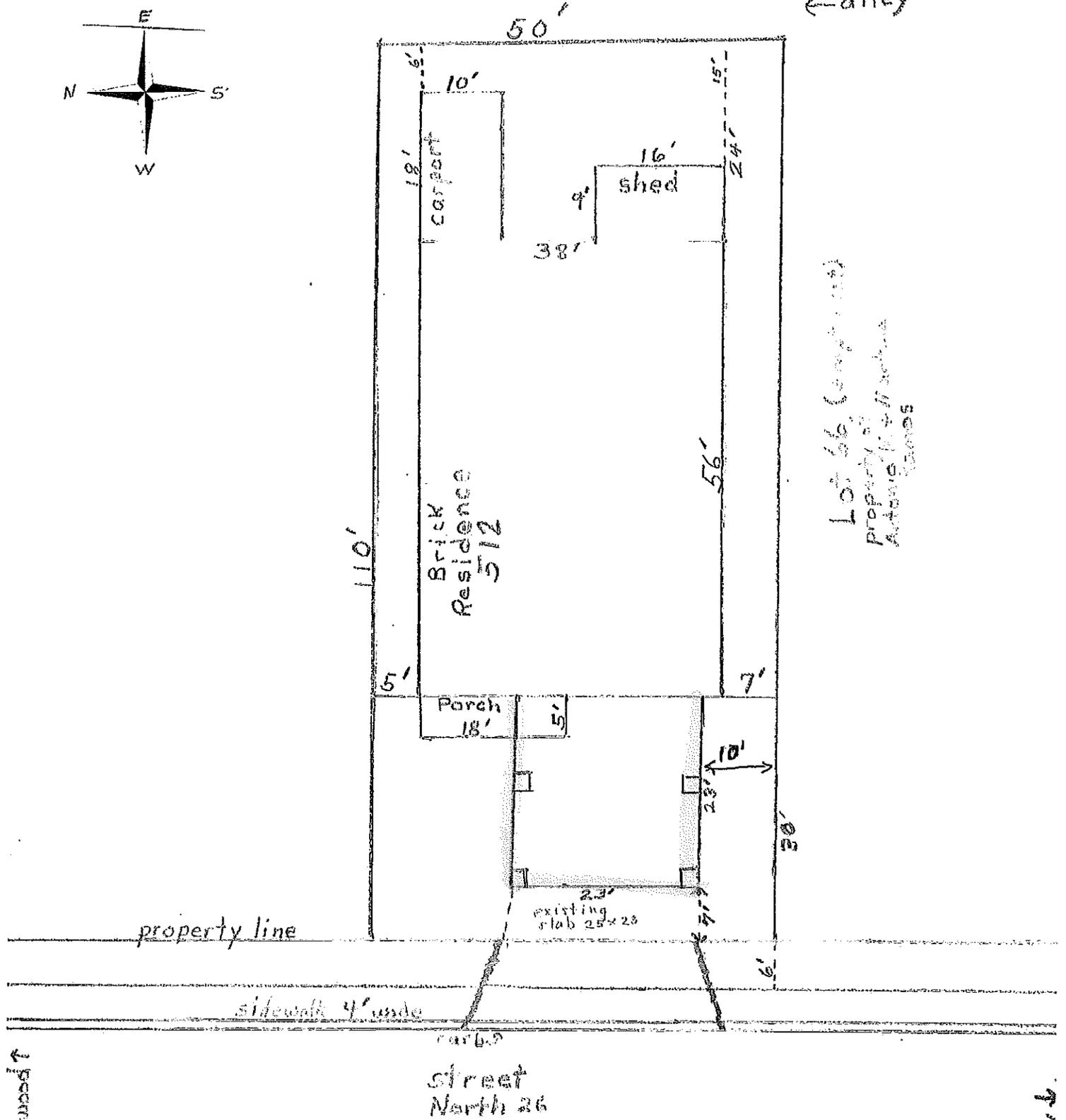
The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant hereby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the improvements shall not be occupied until a Certificate of Occupancy has been issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.

Aniel I. Olivarez PRINT (AUTHORIZED AGENT/OWNER)  SIGNATURE aniel@eoconst.com EMAIL ADDRESS (required) 10/8/15 DATE

Lot 67  
 Casa Bonita Subdivision  
 McAllen, Texas



← alley

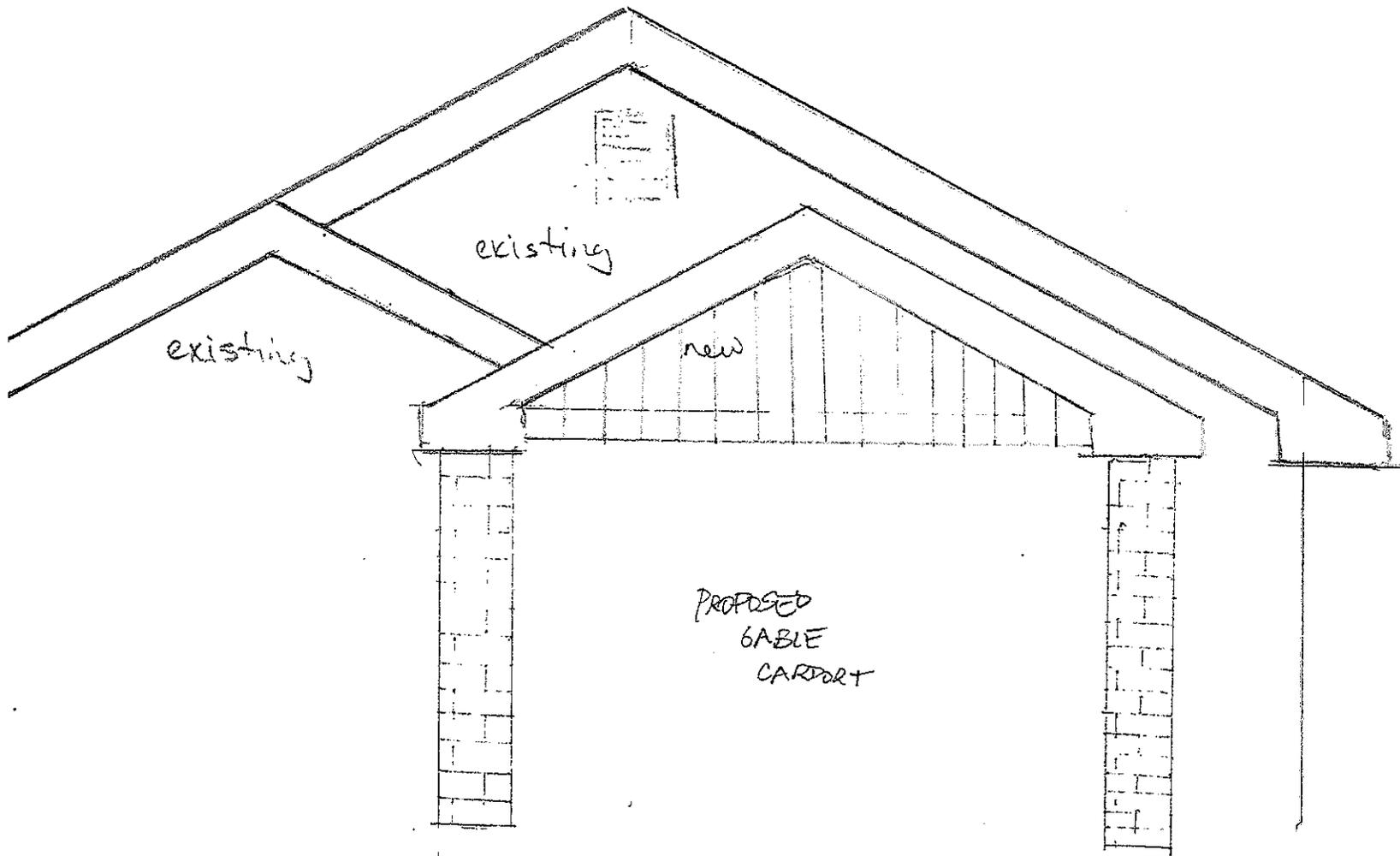


Lot 66, (Completed)  
 Property of  
 Antonio M. & M. Medina  
 McAllen, Texas

Summers ↑

Ebonv ↓

street  
 North 26



existing

existing

new

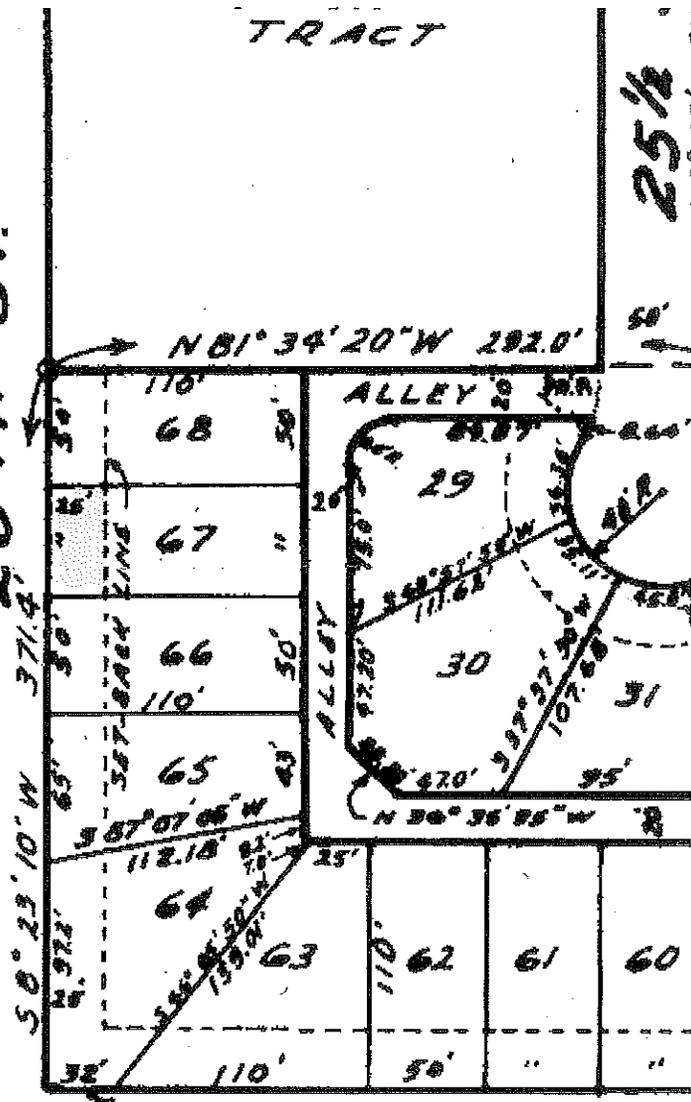
PROPOSED  
GABLE  
CARDORT

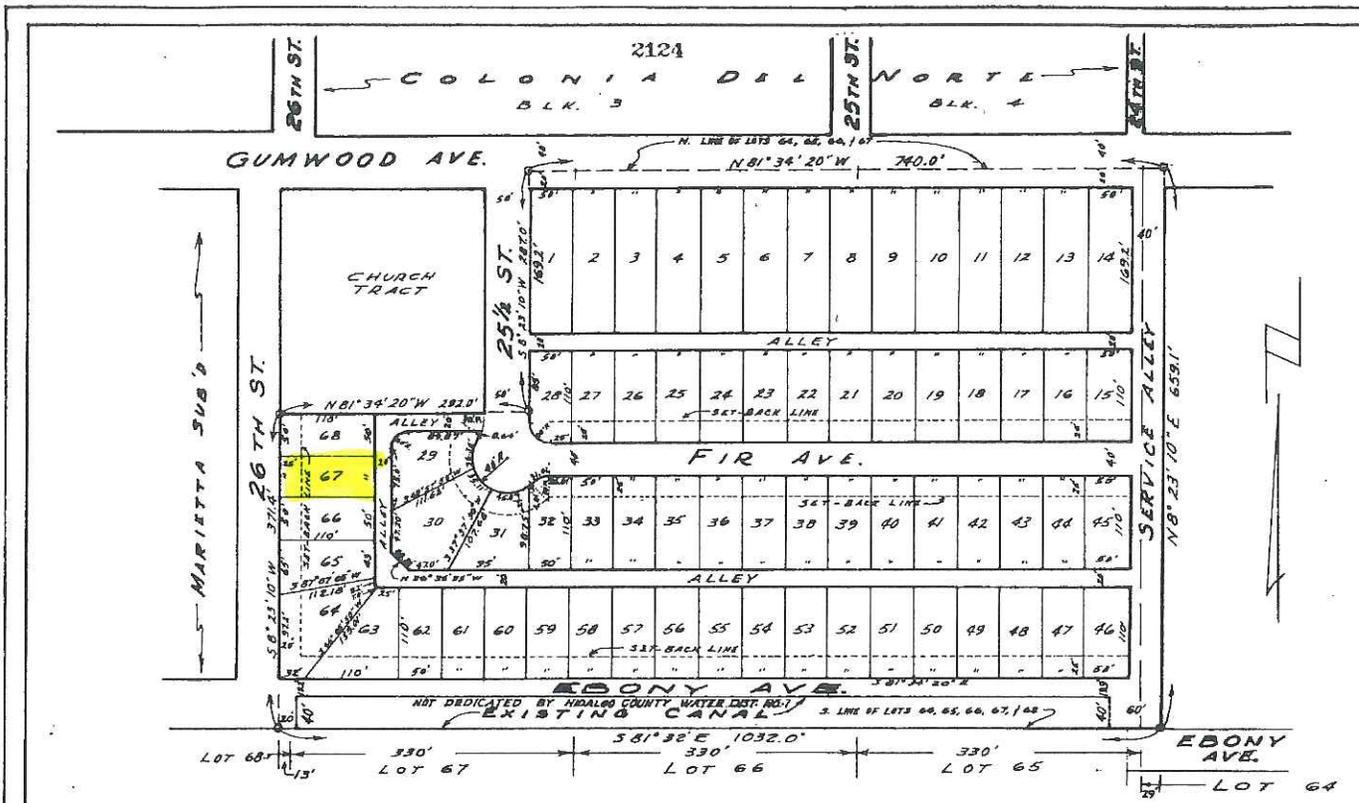
← MARIETTA SUB'D →

26 TH ST.

TRACT

25 1/2





FILED FOR RECORD THIS DATE  
At 11:32 o'clock P.M.

FEB 14 1967

SANTOS SALDANA  
County Clerk, Hidalgo County, Texas  
By *M. Huelley* Deputy

APPROVED FOR RECORDING  
BY  
COMMISSIONER'S COURT  
This Plat filed on *February 19 1967*  
SANTOS SALDANA, County Clerk  
Hidalgo County, Texas  
By *Laura DeBuck* Deputy

MAP  
OF  
**CASA BONITA SUBDIVISION**  
M<sup>c</sup> ALLEN, TEXAS

BEING A RESUBDIVISION OF THE WEST 230 FT. OF LOT 64, ALL OF LOTS 65, 66, 67 AND THE EAST 13.0 FT OF LOT 68; BLOCK 2, C.E. HAMMOND'S SUBD.; HIDALGO COUNTY, TEXAS; less 1 acre except the North 287.0 ft. of the West 232.0 ft. thereof, Containing 13.68 acres of land, more or less.

APPROV FOR RECORC  
Hidalgo Co. Plat of W  
Date *3-10-67*

Scale: 1"=100'

Date: 12-30-66

I, C. L. FABIAN, a Registered Public Surveyor, do hereby certify the foregoing map to be a true and correct representation of the lands hereon shown as platted by me from survey of the outside boundaries of same.

*C. L. Fabian*  
C. L. FABIAN  
REGISTERED PUBLIC SURVEYOR  
MC ALLEN, TEXAS

STATE OF TEXAS:  
COUNTY OF HIDALGO:

KNOW ALL MEN BY THESE PRESENTS: THAT ART BUILDERS, INCORPORATED, OWNER OF THE LANDS HEREON MAPPED AND PLATTED, DO HEREBY DEDICATE THE SURFACE USE OF THE STREETS AND ALLEYS SHOWN ON THE ABOVE MAP TO THE USE OF THE PUBLIC AND UNTO THE CITY OF MC ALLEN, TEXAS, SO LONG AS IT SHALL ACCEPT, MAINTAIN AND PROTECT THE SAME FOR THE USE AND BENEFIT OF THE PUBLIC.

IN TESTIMONY WHEREOF, ART BUILDERS, INC., WAS CAUSED THESE PRESENTS TO BE EXECUTED ON THIS 2ND DAY OF FEBRUARY A.D. 1967.

ATTEST:  
*Leon Rapp*  
LEON RAPP, SECRETARY

ART BUILDERS, INCORPORATED  
BY: *Arthur J. Hausman*  
A. J. HAUSMAN, PRESIDENT



STATE OF TEXAS:  
COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED A. J. HAUSMAN, PRESIDENT OF ART BUILDERS, INC., OWNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND COMBINATION THEREIN EXPRESSED, IN THE CAPACITY THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THE 2nd DAY OF FEBRUARY A.D. 1967.

*Isabella Brown*  
ISABELLA BROWN  
NOTARY PUBLIC IN AND FOR  
HIDALGO COUNTY, TEXAS  
Notary Public in and for Hidalgo County, Texas

THIS PLAT APPROVED BY THE MC ALLEN ZONING AND PLANNING BOARD ON THIS THE 1ST DAY OF FEBRUARY A.D. 1967.

MC ALLEN ZONING AND PLANNING BOARD  
BY: *Ben Silbrey*  
BEN SILBREY, CHAIRMAN

THIS PLAT APPROVED BY THE CITY COMMISSION OF THE CITY OF MC ALLEN, TEXAS ON THIS THE 6th DAY OF FEBRUARY A.D. 1967.  
ATTEST:  
*Paul G. Veale*  
PAUL G. VEALE, CITY CLERK

*Paul G. Veale*  
PAUL G. VEALE, VAYOR

THIS PLAT APPROVED BY THE HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 ON THIS 9th DAY OF February A.D. 1967.

ATTEST:  
*Tom D. Carl*  
TOM D. CARL, SECRETARY

*Richard W. ...*  
RICHARD W. ... PRESIDENT



**NOTICE  
VARIANCE**  
For  
This Property  
**ZBA2015-0052**

City of McAllen Planning Dept - 681-1250  
www.mcalle.gov



### Hidalgo CAD

#### Property Search Results > 133052 RAMOS ANTONIO MANUEL for Year 2015

#### Property

##### Account

Property ID: 133052 Legal Description: CASA BONITA LOT 67  
 Geographic ID: C2050-00-000-0067-00 Agent Code:  
 Type: Real  
 Property Use Code:  
 Property Use Description:

##### Location

Address: 512 N 26TH ST Mapsco:  
 MCALLEN, TX  
 Neighborhood: CASA BONITA Map ID:  
 Neighborhood CD: C205000

##### Owner

Name: RAMOS ANTONIO MANUEL Owner ID: 43222  
 Mailing Address: 512 N 26TH ST % Ownership: 100.0000000000%  
 MCALLEN, TX 78501-7508  
 Exemptions: HS

#### Values

(+) Improvement Homesite Value:	+	\$76,469	
(+) Improvement Non-Homesite Value:	+	\$0	
(+) Land Homesite Value:	+	\$16,500	
(+) Land Non-Homesite Value:	+	\$0	Ag / Timber Use Value
(+) Agricultural Market Valuation:	+	\$0	\$0
(+) Timber Market Valuation:	+	\$0	\$0
<hr/>			
(=) Market Value:	=	\$92,969	
(-) Ag or Timber Use Value Reduction:	-	\$0	
<hr/>			
(=) Appraised Value:	=	\$92,969	
(-) HS Cap:	-	\$8,408	
<hr/>			
(=) Assessed Value:	=	\$84,561	

#### Taxing Jurisdiction

Owner: RAMOS ANTONIO MANUEL  
 % Ownership: 100.0000000000%  
 Total Value: \$92,969

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
CAD	APPRAISAL DISTRICT	0.000000	\$92,969	\$84,561	\$0.00
CML	CITY OF MCALLEN	0.476300	\$92,969	\$84,561	\$402.76
DR1	DRAINAGE DISTRICT #1	0.095700	\$92,969	\$84,561	\$80.92
GHD	HIDALGO COUNTY	0.590000	\$92,969	\$84,561	\$498.91
JCC	SOUTH TEXAS COLLEGE	0.185000	\$92,969	\$84,561	\$156.44
R12	ROAD DIST 12	0.000000	\$92,969	\$84,561	\$0.00
SML	MCALLEN ISD	1.165000	\$92,969	\$59,561	\$693.89
SST	SOUTH TEXAS SCHOOL	0.049200	\$92,969	\$84,561	\$41.60

Total Tax Rate:	2.561200		
		Taxes w/Current Exemptions:	\$1,874.52
		Taxes w/o Exemptions:	\$2,165.78

**Improvement / Building**

<b>Improvement #1:</b>	RESIDENTIAL	<b>State Code:</b>	A1	<b>Living Area:</b>	2146.0 sqft	<b>Value:</b>	\$76,469
Type	Description	Class CD	Exterior Wall	Year Built	SQFT		
MA	MAIN AREA	BRKAV	DBRK	1970	1946.0		
PAT	PATIO	BRKAV		1970	220.0		
POR	PORCH (COVERED)	BRKAV		1970	90.0		
ADD	ADDITION	BRKAV		1970	200.0		
CPT	CARPORT	BRKAV		1970	200.0		

**Land**

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	L	LOT	0.1263	5500.00	50.00	110.00	\$16,500	\$0

**Roll Value History**

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2016	\$74,252	\$16,500	0	90,752	\$0	\$90,752
2015	\$76,469	\$16,500	0	92,969	\$8,408	\$84,561
2014	\$60,374	\$16,500	0	76,874	\$0	\$76,874
2013	\$60,374	\$16,500	0	76,874	\$0	\$76,874

**Deed History - (Last 3 Deed Transactions)**

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1		CONV	CONVERSION	TREVINO LEOCAD	RAMOS ANTONIO I			

**Tax Due**

Property Tax Information as of 10/28/2015

Amount Due if Paid on:

Year	Taxing Jurisdiction	Taxable Value	Base Tax	Base Taxes Paid	Base Tax Due	Discount / Penalty & Interest	Attorney Fees	Amount Due

NOTE: Penalty & Interest accrues every month on the unpaid tax and is added to the balance. Attorney fees may also increase your tax liability if not paid by July 1. If you plan to submit payment on a future date, make sure you enter the date and RECALCULATE to obtain the correct total amount due.

**Questions Please Call (956) 381-8466**

**Memo**

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** November 13, 2015

**SUBJECT: REQUEST OF J.J. MCDERMOTT TO ALLOW THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN OFF-STREET PARKING AND LOADING ORDINANCE: TO ALLOW 47 PARKING SPACES INSTEAD OF THE REQUIRED 60 PARKING SPACES FOR LOT 1, VISTA HEIGHTS SUBDIVISION, HIDALGO COUNTY, TEXAS; 7300 NORTH 10<sup>TH</sup> STREET. (ZBA2015-0053)**

---

**GOAL:**

The Board may grant a special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot. McAllen Code of Ordinances Section 138-43(2)(c).

**REASON FOR APPEAL**

The applicant requests a special exception to reduce the required parking spaces for proposed retail plaza, from 47 to 60 parking spaces for a deficiency of 13 parking spaces. The applicant submitted a site plan that proposes to lease 3 suites which will be restaurant use, a phone sales location, and a third suite that is a restaurant use requiring additional parking spaces.

**PROPERTY LOCATION AND VICINITY:**

The subject property is located at the northeast corner of North 10<sup>th</sup> Street and Trenton Road. The property is zoned C-3 (general business) District. The subject property was previously the site for a Shell convenience store business that has been demolished. A retail center is currently under construction for a proposed Chipotle Restaurant, T-Mobile sales store, and a planned restaurant use for the third suite. Adjacent land uses are McDonald's Restaurant and Target.

**BACKGROUND AND HISTORY:**

Vista Heights Subdivision was recorded on August 9, 1995. A site plan was approved by the Planning and Zoning Commission on May 5, 2015 for 6000 square feet of retail space requiring 18 parking spaces and 47 spaces were provided.

**ANALYSIS:**

Parking requirement for commercial development is 4 parking spaces for the first 400 square feet and 1 parking space for each additional 400 square feet. Parking requirement for a restaurant is 1 parking space for each 75 square feet. Commercial development in the shopping center is 2,500 square feet for a parking requirement of 10 parking spaces. Restaurant use in the shopping center is 3,500 square feet for a parking requirement of 50 parking spaces. Total parking requirement for commercial development and restaurant is 60 parking spaces. Total parking provided is 47 parking spaces for a deficiency of 13 spaces or 78% compliance. The requirement for restaurant parking increases the required parking

amount above the parking spaces to be provided. The additional 13 parking spaces may be provided by adjacent properties by written agreement for minimum of 5 years.

The parking ordinance establishes minimum parking requirements. Actual parking demand will vary by the type, peak hour, season and success of the business. Parking shortages may impact adjacent available parking areas and may discourage customers to seek other less crowded comparable businesses.

**RECOMMENDATION:**

Staff recommends disapproval of the special exception request since a written agreement may be provided.

7 BDA  
11.18.15

7 BDA 2015-0053



# City of McAllen

## Planning Department

### APPEAL TO ZONING BOARD OF

### ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

#### Project

Legal Description Lot 1, Vista Heights, An addition to the city of McAllen, Hidalgo County, TX. As Per Map thereof Recorded in Volume 30 Page 90-93 of the Map Records of said County.

Subdivision Name \_\_\_\_\_

Street Address 7300 W 10<sup>th</sup> St. McAllen, TX. 78504

Number of lots 1 Gross acres 0.80 Acres

Existing Zoning Commercial Existing Land Use Retail Building

Reason for Appeal (please use other side if necessary) Requesting a parking Variance for our shopping center at 10<sup>th</sup> + Trenton

\$300.00 non-refundable filing fee

Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

#### Applicant

Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ E-mail \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

#### Owner

Name Ken Delery Phone 713-893-3187

Address 712 Main St. 29 Floor E-mail jj.mcdermott@sdi.realty.com

City Houston State Texas Zip 77002

#### Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

Yes  No - correct

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

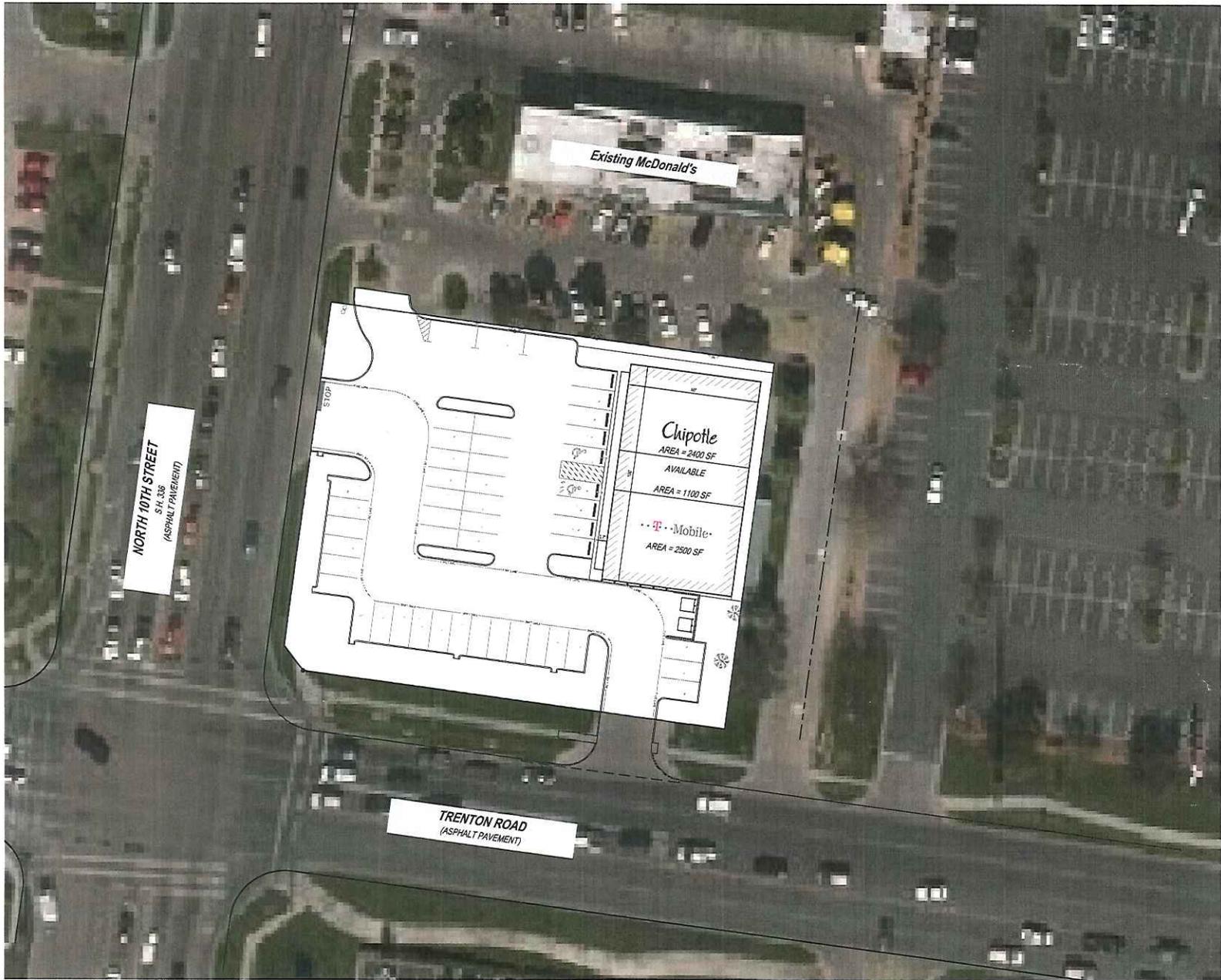
Signature \_\_\_\_\_ Date 10-21-15

Print Name Ken Delery  Owner  Authorized Agent

#### Office

Accepted by [Signature] Payment received by \_\_\_\_\_ Date \_\_\_\_\_

RECEIVED  
OCT 20 2015  
BY: [Signature] 2:31pm



Existing McDonald's

NORTH 10TH STREET  
S.R. 338  
(ASPHALT PAVEMENT)

TRENTON ROAD  
(ASPHALT PAVEMENT)

Chipotle  
AREA = 2400 SF

AVAILABLE  
AREA = 1100 SF

T-Mobile  
AREA = 2500 SF

**JOHNSON & PACE**  
INCORPORATED  
1000 WEST 10TH AVENUE  
DENVER, CO 80202  
TEL: 303.733.1100  
WWW.J&P.COM



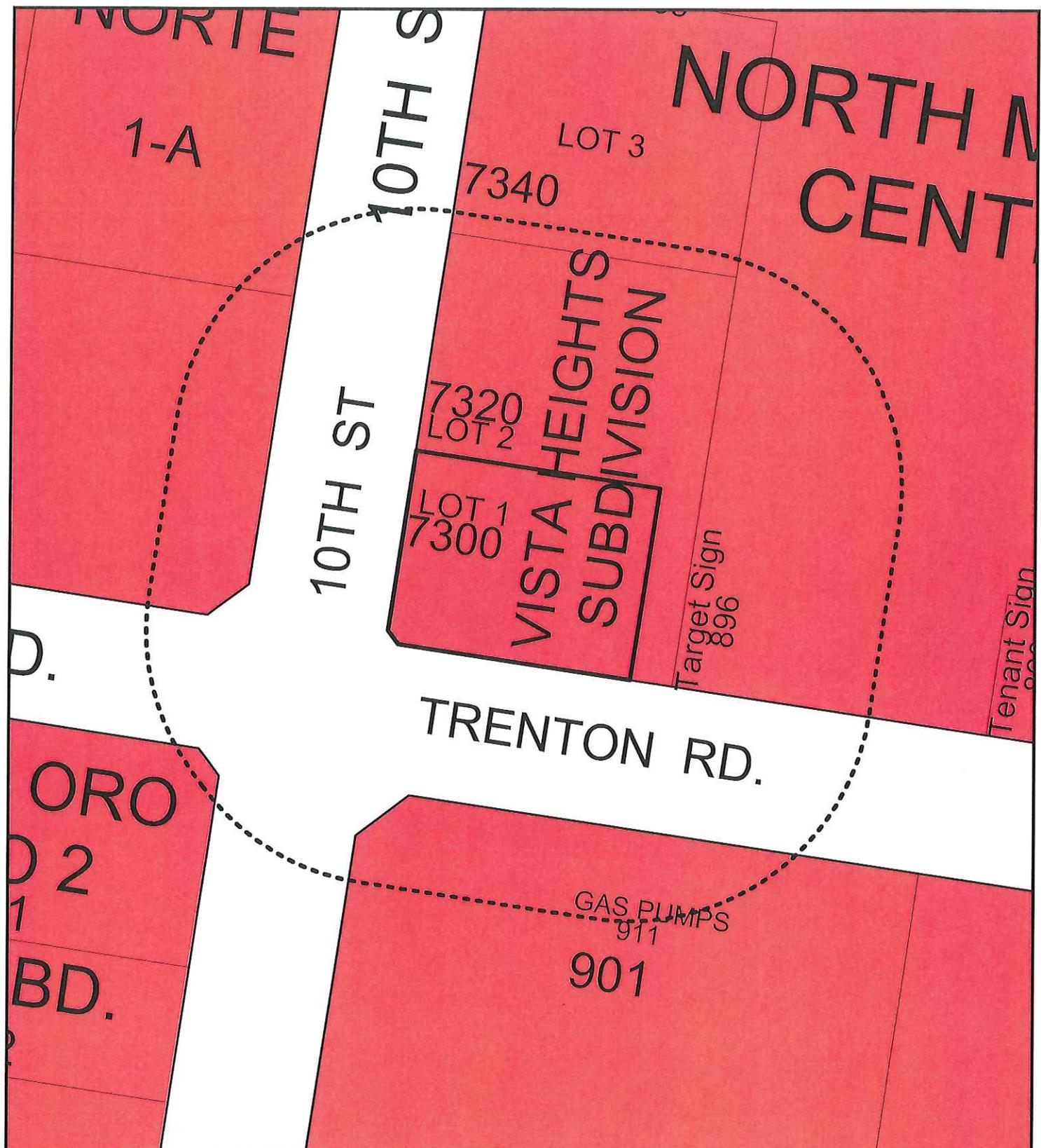
SONHEALTH  
VISTA HEIGHTS RETAIL CENTER  
LOT 11

NO.	REVISION	DATE	BY	CHK

SITE LAYOUT AND DIMENSIONS  
ISSUED FOR PERMIT REVIEW

PROJECT NO.	2758-008
DATE	10/12/13
SCALE	1" = 20'

C-4.0



**CITY OF McALLEN**  
PLANNING DEPARTMENT

AREA MAP

**LEGEND**  
SCALE: N.T.S.

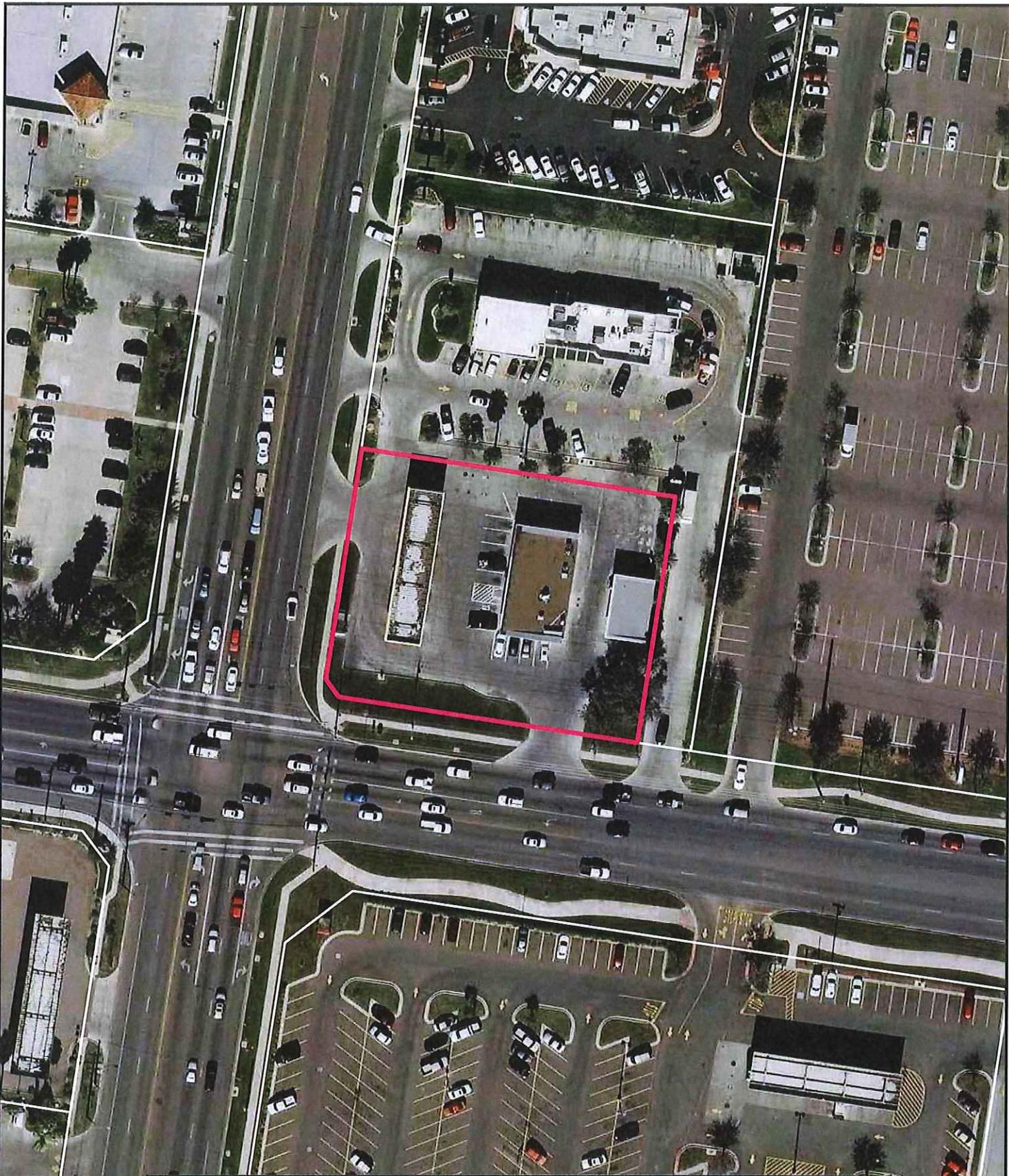


- SUBJECT PROPERTY
- 200 FT. NOTIFICATION BOUNDARY

**ZONING LEGEND**

<span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> A-0 (AGRICULTURAL & OPEN SPACE)	<span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-3A (APARTMENTS)	<span style="background-color: #800000; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-4 (MOBILE HOMES)	<span style="background-color: #FF0000; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-3 (GENERAL BUSINESS)	<span style="background-color: #ADD8E6; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> I-1 (LIGHT INDUSTRIAL)
<span style="background-color: #FFFF00; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-1 (SINGLE FAMILY RESIDENTIAL)	<span style="background-color: #FFA500; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-3C (CONDOMINIUMS)	<span style="background-color: #FF00FF; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-1 (OFFICE BUILDING)	<span style="background-color: #FF0000; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-3L (LIGHT COMMERCIAL)	<span style="background-color: #0000FF; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> I-2 (HEAVY INDUSTRIAL)
<span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-2 (DUPLEX-FOURPLEX)	<span style="background-color: #FFA500; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-3T (TOWNHOUSES)	<span style="background-color: #FFA500; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-2 (NEIGHBORHOOD COMMERCIAL)	<span style="background-color: #0000FF; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-4 (COMMERCIAL INDUSTRIAL)	<span style="border: 2px dashed black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> (SPECIAL DISTRICT)

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcalen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.



**CITY OF McALLEN**  
PLANNING DEPARTMENT



SUBJECT PROPERTY

AERIAL MAP  
SCALE: N.T.S.



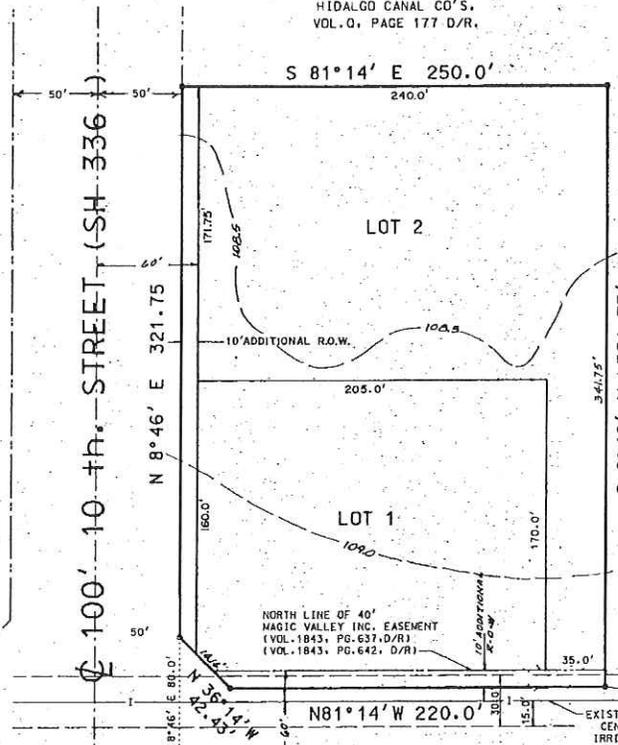
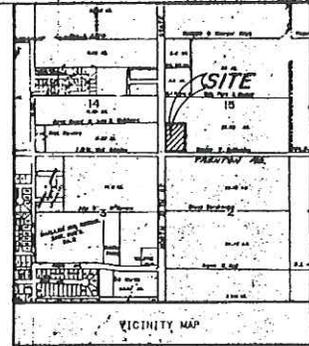
on ground survey and represent approximate relative location of property boundaries.



PART OF LOT 14, SECTION 13, HIDALGO CANAL CO'S, VOL. 0, PAGE 177, D/R

PART OF LOT 15, SECTION 13, HIDALGO CANAL CO'S, VOL. 0, PAGE 177 D/R.

468263  
FILED  
AUG 9 1995  
JOSÉ ELOY PULIDO, COUNTY CLERK  
HIDALGO COUNTY, TEXAS  
DEPUTY



# MAP OF VISTA HEIGHTS

McALLEN, TEXAS.  
BEING A SUBDIVISION OF 2.01 ACRES OF LAND OUT OF THE SOUTH 22.36 ACRES OF LOT 15, SECTION 13, HIDALGO CANAL CO'S, SUBDIVISION OF PORCIONES 64.65 & 66 HIDALGO COUNTY, TEXAS.

APPROVED FOR RECORDING BY COMMISSIONERS' COURT This the 8th day of Aug 1995 JOSÉ ELOY PULIDO, County Clerk Hidalgo County, Texas By *Carson Belmont* Deputy

APPROVED FOR RECORDING HIDALGO CO. PLANNING DEPT. DATE: 8-8-95

TRENTON RD.

APPROVED: *Jose Walker 8-4-95*  
Hidalgo County ROW DEPT. and HCCD #1

STATE OF TEXAS, COUNTY OF HIDALGO  
I, STEPHEN SPOON, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAN.  
*Stephen Spoon*  
REGISTERED PROFESSIONAL ENGINEER  
P.E. REGISTRATION NO. 34723

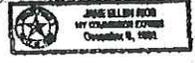
PREPARED BY: FABIAN, NELSON & MEDINA, INC.  
320 N. 15TH STREET, McALLEN, TEXAS  
SCALE: 1" = 50' DATE: 04-13-95  
30 Page 96 B  
of the map records of Hidalgo County, Texas Meiden and Hunt, Inc. County Surveyors

STATE OF TEXAS: COUNTY OF HIDALGO:

I, (WE), THE UNDERSIGNED, OWNER(S) OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED AS THE "VISTA HEIGHTS" SUBDIVISION TO THE CITY OF McALLEN, TEXAS, AND WHOSE NAME(S) IS (ARE) SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATER COURSES, DRAINS, EASEMENTS, WATER LINES, SEWER LINES, STORM SEWERS, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH I (WE), WILL CAUSE TO BE INSTALLED THEREON SHOWN OR NOT SHOWN IF REQUIRED OTHERWISE TO BE INSTALLED OR DEDICATED UNDER THE SUBDIVISION APPROVAL PROCESS OF THE CITY OF McALLEN, ALL THE SAME FOR THE PURPOSES THEREIN EXPRESSED EITHER ON THE PLAT HEREOF OR ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE CITY OF McALLEN.

STATE OF TEXAS: COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED GARY E. CLEMONS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED, GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS 20th DAY OF July, 1995.



*Jose Ellen Rioz*  
NOTARY PUBLIC

I, THE UNDERSIGNED, CHAIRMAN OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF McALLEN, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

STATE OF TEXAS: COUNTY OF HIDALGO:

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL SURVEYOR # 1530 IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.



*Plinio C. Medina*  
REGISTERED PROFESSIONAL LAND SURVEYOR  
McALLEN, TEXAS  
*Mal E. Bunker*  
MAYOR, CITY OF McALLEN

I, THE UNDERSIGNED MAYOR OF THE CITY OF McALLEN, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

THIS PLAT IS HEREBY APPROVED BY THE HIDALGO COUNTY IRRIGATION DISTRICT NO. 20N THIS 17th DAY OF July, A.D. 1995

*Mal E. Bunker* SECRETARY  
*Blaine Key* PRESIDENT

100-10-10-10

### META AND RECORD

DESCRIPTION OF A 2.01 ACRE TRACT OF LAND OUT OF THE SOUTH 22.36 ACRES OF LOT 15, SECTION 13, HIDALGO CANAL CO'S SUBDIVISION, OF PORCIONES 64, 65 AND 66, HIDALGO COUNTY, TEXAS. RECORDED IN VOL. 0, PAGE 177, DEED RECORDS.

BEGINNING at an iron rod found on the East line of North 10th Street (S.W. 8336), for the most northerly monument corner of the following described tract of land; to a point located South 81 Deg. 14 Min. East, 220.0 feet to the Northeast corner hereof;

THENCE, with the East line of North 10th Street, parallel to the West line of Lot 15, North 8 Deg. 46 Min. East, 321.75 feet to an iron rod set, for the Northeast corner hereof;

THENCE, parallel to the South line of Lot 15, South 81 Deg. 14 Min. East, 220.0 feet to an iron rod set, for the Northeast corner hereof;

THENCE, parallel to the West line of Lot 15, South 8 Deg. 46 Min. East, 321.75 feet to an iron rod set on the North line of Trenton Road, for the Southeast corner hereof;

THENCE, with the North line of Trenton Road, North 81 Deg. 14 Min. East, 220.0 feet to a point, for the most northerly Southeast corner hereof;

THENCE, continue with the North line of Trenton Road, North 81 Deg. 14 Min. East, 42.42 feet to the POINT OF BEGINNING. Containing 2.01 acres of land, more or less.

### NOTES:

- MINIMUM FINISHED FLOOR ELEVATION SHALL BE 18 INCHES ABOVE TOP CURB AT FRONT CENTER OF LOT.
- THIS PROPERTY FALLS IN ZONE "B" OF THE FLOOD INSURANCE RATE MAPS, COMMUNITY PANEL NO. 480334, 0425 C, REVISED 11-18-82.
- MINIMUM BUILDING SETBACK LINES SHALL BE AS FOLLOWS:  
N. 10TH STREET - 60.0 FEET  
TRENTON ROAD - 60.0 FEET  
OTHER - ACCORDING TO ZONING ORDINANCE AT TIME OF BUILDING PERMIT ISSUANCE, OR APPROVED SITE PLAN, OR EASEMENT LINE, WHICHEVER IS GREATER
- STORM WATER DETENTION OF 0.21 AC-FT IS REQUIRED FOR THIS SUBDIVISION.
- AN ENGINEERED GRADING/DETENTION PLAN SHALL BE APPROVED BY THE ENGINEERING DEPARTMENT PRIOR TO BUILDING PERMIT ISSUANCE.
- SITE PLAN APPROVAL BY PLANNING & ZONING COMMISSION IS REQUIRED PRIOR TO ISSUANCE OF A BUILDING PERMIT.
- A SIDEWALK REQUIRED ALONG N. 10TH STREET AND TRENTON ROAD.
- 5' BUFFER REQUIRED FROM ANY RESIDENTIAL ZONE OR USE.

*Mal E. Bunker*  
8/4/95



**NOTICE  
VARIANCE  
For  
This Property  
ZBA2015-0053**

City of McAllen Planning Dept - 681-1200  
www.mcallen.net

**Memo**

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** October 16, 2015

**SUBJECT: REQUEST OF ELIDA REYES FOR A SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO PROVIDE 44 PARKING SPACES INSTEAD OF 60 REQUIRED SPACES FOR LOT 1, ALONZO BARRERA SUBDIVISION, HIDALGO COUNTY, TEXAS; 2711 SOUTH 23RD STREET. (ZBA2015-0045)**

---

**GOAL:**

The Board may grant a special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot. McAllen Code of Ordinances Section 138-43(2)(c).

**REASON FOR APPEAL**

The applicant requests a special exception to reduce the required parking spaces for Plaza 23, a commercial development, from 60 to 44 parking spaces for a deficiency of 16 parking spaces. The applicant submitted a site plan that proposes to lease 2 suites for a tortilleria and a restaurant. The proposed use is a restaurant for Suite 8 and a tortilleria for Suite 7, requiring additional parking spaces

**PROPERTY LOCATION AND VICINITY:**

The subject property is located along the east side of South 23rd Street, southeast of the intersection of South 23<sup>rd</sup> Street and Jordan Road. The property is zoned C-3 (general business) District. Existing tenants are Cricket, Prestige Boutique, Connect Insurance, and Angel's Day Care. Surrounding land uses are J. Ramon Auto Sales, McAllen Glass Company, Valero convenience store, and other commercial uses.

**BACKGROUND AND HISTORY:**

Alonzo Barrera Subdivision was recorded on August 2, 1990. A building permit for a commercial building with 15,617 square feet was issued in January 2009 with parking requirement of 42 spaces and site plan providing 44 parking spaces.

**ANALYSIS:**

The parking requirement for commercial development is 4 parking spaces for the first 400 square feet and 1 parking space for each additional 400 square feet. The parking requirement for a restaurant is 1 parking space for each 75 square feet. Commercial development and office use requires a parking requirement of 43 parking spaces. The proposed restaurant use in the shopping center is 1,219 square feet for a parking requirement of 17 parking spaces. Total parking requirement for commercial development, office, and restaurant is 60 parking spaces. Total parking provided is 44 parking spaces for a deficiency of 16 spaces or 73%

compliance. The requirement for restaurant parking increases the required parking amount above the parking spaces to be provided.

The parking ordinance establishes minimum parking requirements. Actual parking demand will vary by the type, peak hour, season and success of the business. Parking shortages may impact adjacent available parking areas and may discourage customers to seek other less crowded comparable businesses.

**RECOMMENDATION:**

Staff recommends disapproval of the variance request.

#12  
10/24/15

ZBA 2015-0045

# City of McAllen

## Planning Department

### APPEAL TO ZONING BOARD OF

### ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

**Project**

Legal Description ~~Suite 738~~ Lot 1  
Subdivision Name Alanzo Barrera  
Street Address 2711 S. 23<sup>rd</sup> St. McAllen TX 78503 Ste 738  
Number of lots ~~738~~ 1 Gross acres ~~0~~  
Existing Zoning C-3 Existing Land Use Commercial  
Reason for Appeal (please use other side if necessary) I am appealing because I am short 7 parking spaces.  
 \$300.00 non-refundable filing fee  
 Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

**Applicant**

Name Elida Reyes Phone 432-6014  
Address 2605 S. 27th St Apt D E-mail elidareyes04@gmail.com  
City McAllen State TX Zip 78503

**Owner**

Name ALONSO BARRERA Phone 956 5220696  
Address 5815 N 3RD L E-mail \_\_\_\_\_  
City McAllen State TX Zip 78504

**Authorization**

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?  
 Yes  No  
I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.  
Signature [Signature] Date 9-15-15  
Print Name ALONSO BARRERA  Owner  Authorized Agent

**Office**

Accepted by [Signature] Payment received by \_\_\_\_\_ Date \_\_\_\_\_  
RECEIVED  
SEP 15 2015  
BY [Signature]  
HM



# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

Reason for Appeal

Suite 7 will be used for a tortilleria and Suite 8 will be used for a taqueria, and for me to establish them I am required led parking spaces and there are only 53.

Board Action

Chairman, Board of Adjustment  
Signature

Date

\_\_\_\_\_

\_\_\_\_\_

A QUIEN CORRESPONDA:

Yo Alonso Barrera le doy permiso y/o autorizacion ala Sra. Elida Reyes para que termine de construir la suite # 7 y # 8 .

Ubicada dentro de la Plaza 23 S. en la direccion:

2711 S. 23<sup>RD</sup> ST,

MCALLEN TX 78503

Segun dependiendo las necesidades de sus negocios.

Asi mismo le manifiesto que las suites rentadas no usan los estacionamientos por mucho tiempo y no vemos el inconveniente de que la Sra. Elida Reyes instale su negocio de Taqueria ya que por el dia cocinara ordenes TO GO y por la noche abra el negocio a los clientes para comer dentro de la suite.

Gracias por su Atencion.



Alonso Barrera

OWNER OF PLAZA 23<sup>RD</sup>

9-8-15

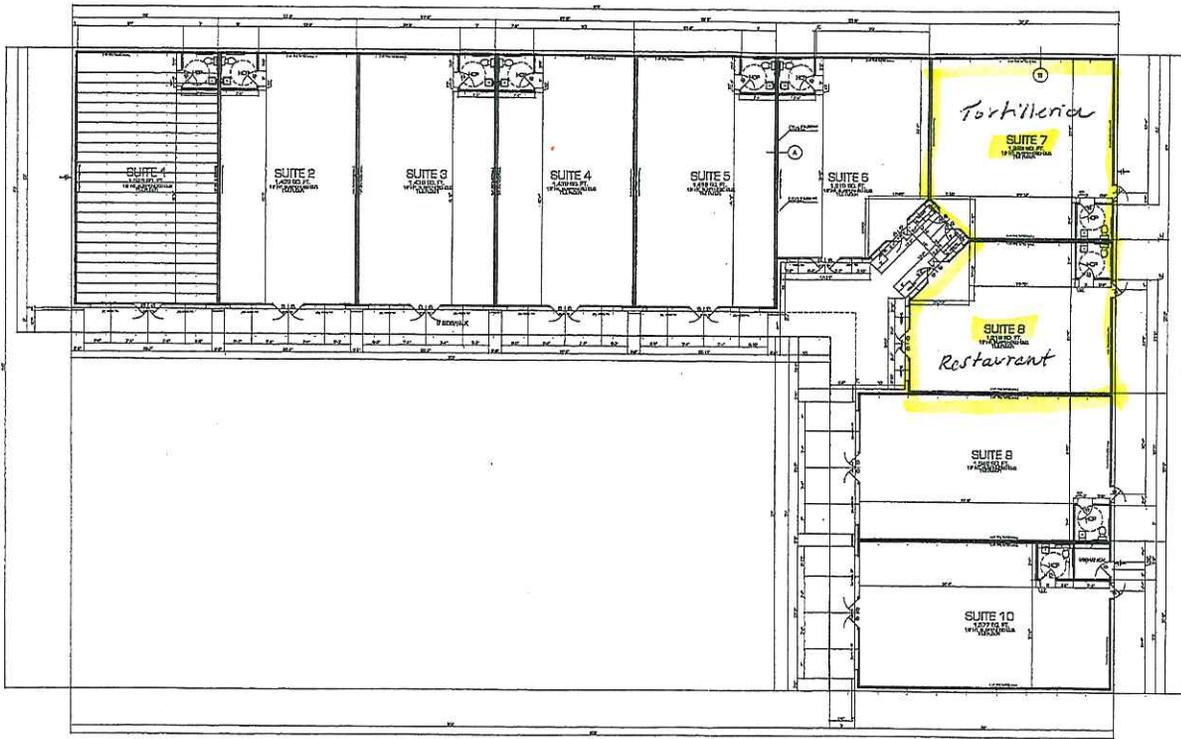
Fecha



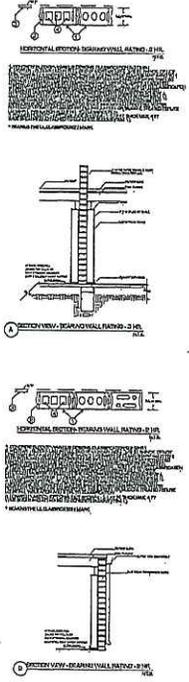
Elida Reyes

9-8-15

Fecha



FLOOR PLAN  
SCALE: 3/32" = 1'



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AREA	SUITE 1	SUITE 2	SUITE 3	SUITE 4	SUITE 5	SUITE 6	SUITE 7	SUITE 8	SUITE 9	SUITE 10	TOTAL AREA
AREA											

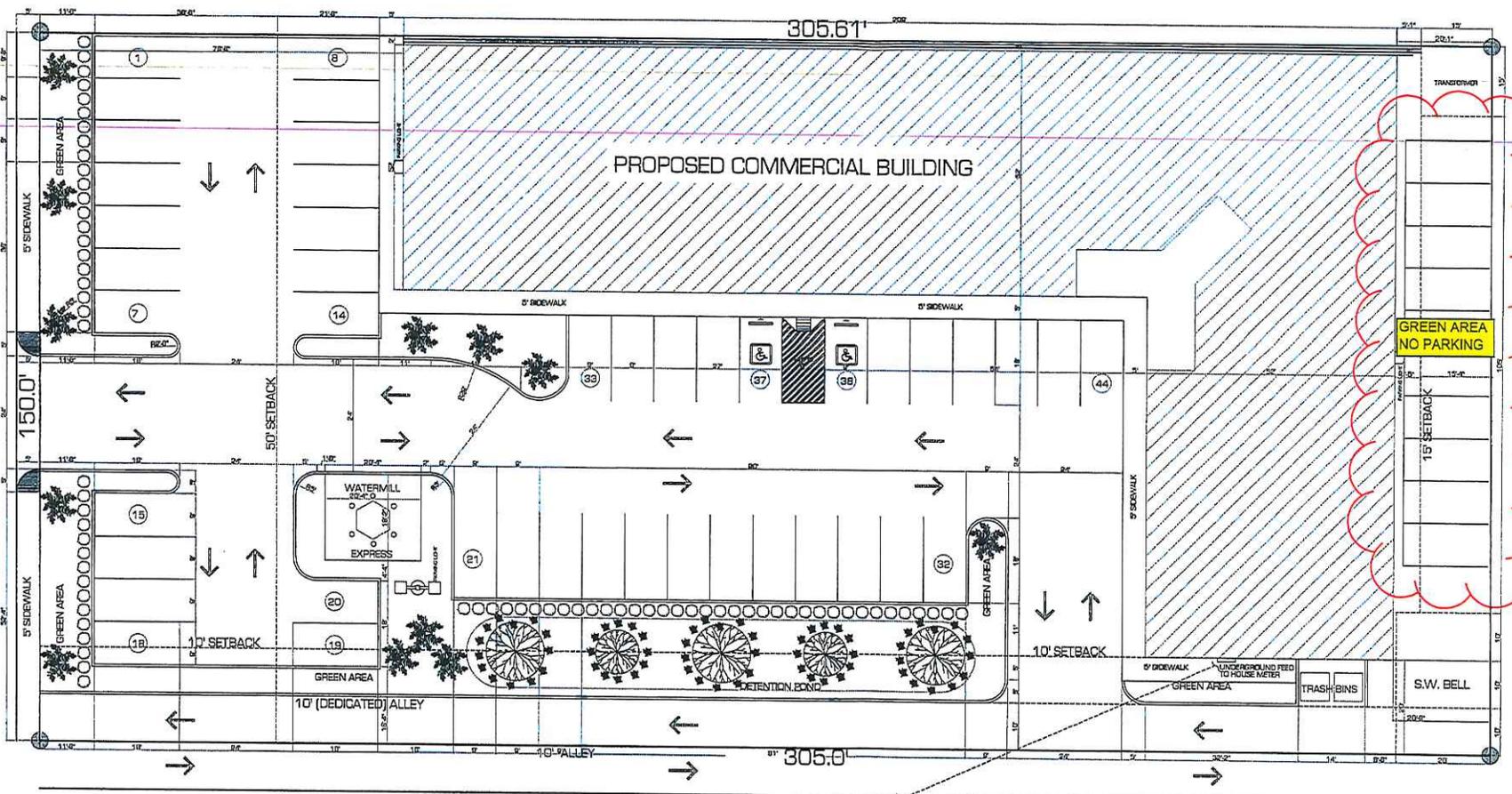
DE LA VEGA PLAN DESIGN & CONTRACTORS  
4905 N. 10TH ST. SUITE B  
MCKALEN, TEXAS 78504  
PH: (856) 533-6137  
dvl@delavegadesign.com

PROJECT: COMMERCIAL  
SITE: LOT 1 ALONZO BARRERA SUBDIVISION MCKALEN, TEXAS 78504  
OWNER: MFR. RAUL PABELA

DATE: 10/19/2007  
SHEET: 4  
FLOOR PLAN



RECEIVED  
SEP 15 2015  
BY: [Signature]  
AM



**SITE PLAN**  
SCALE: 3/32" = 1'

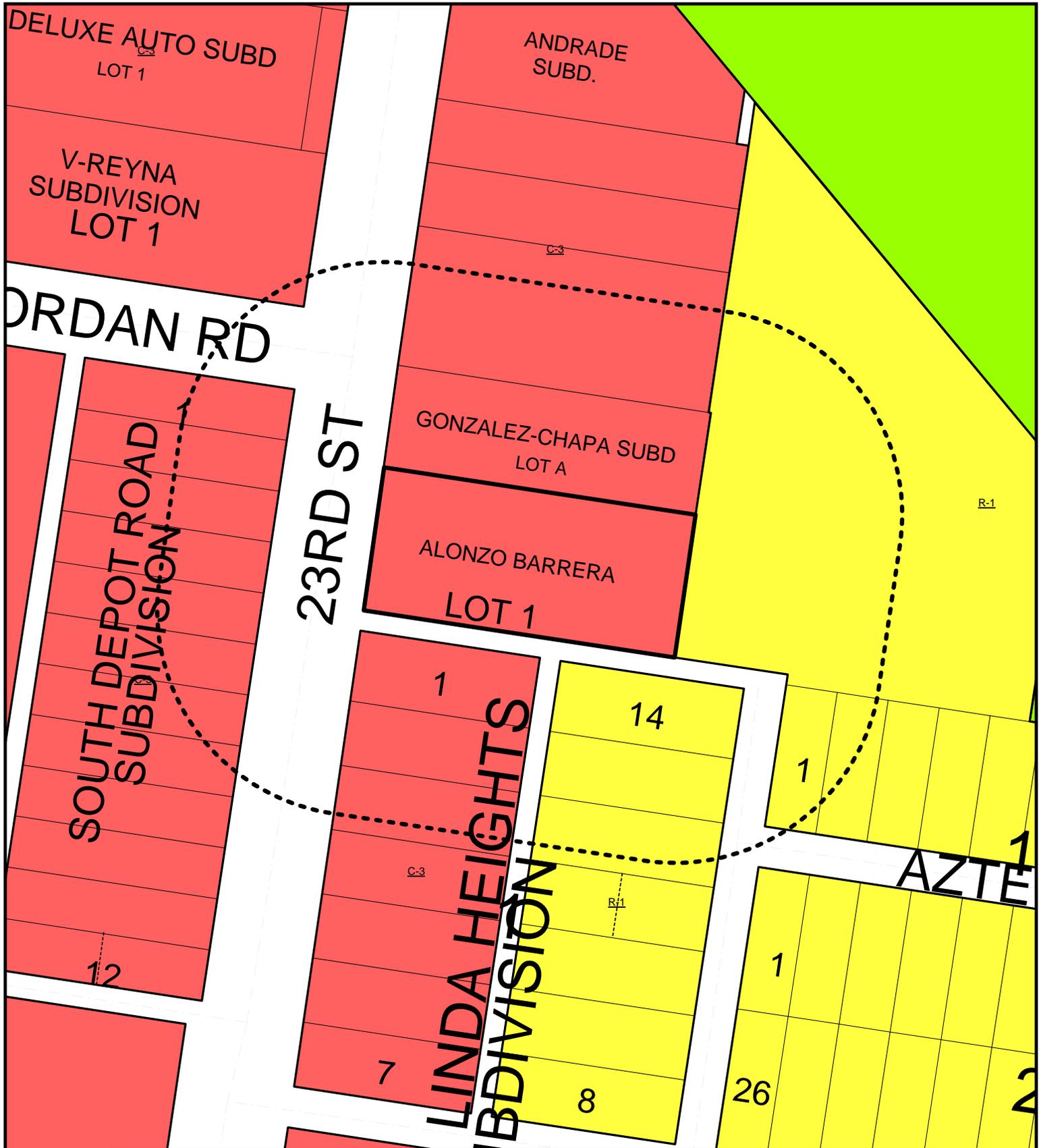
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AREA	DATA
SITE 1	1,420 SQ. FT.
SITE 2	1,420 SQ. FT.
SITE 3	1,420 SQ. FT.
SITE 4	1,420 SQ. FT.
SITE 5	1,420 SQ. FT.
SITE 6	1,420 SQ. FT.
SITE 7	1,420 SQ. FT.
SITE 8	1,420 SQ. FT.
SITE 9	1,420 SQ. FT.
SITE 10	1,420 SQ. FT.
TOTAL AREA	14,200 SQ. FT.

DE LA VEGA PLAN DESIGN & CONTRACTORS  
4305 N. 10 TH ST. SUITE B  
MCKALEN, TEXAS 78504  
PH. (956) 533-8137  
dplandesign@yahoo.com

PROJECT: COMMERCIAL  
DATE: 10/10/2007  
SHEET: 1  
SITE: LOT 1 ALONZO BARRERA SUBDIVISION MCKALEN, TEXAS 78504  
OWNER: MR. RAUL FABELA







**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

**AREA MAP**

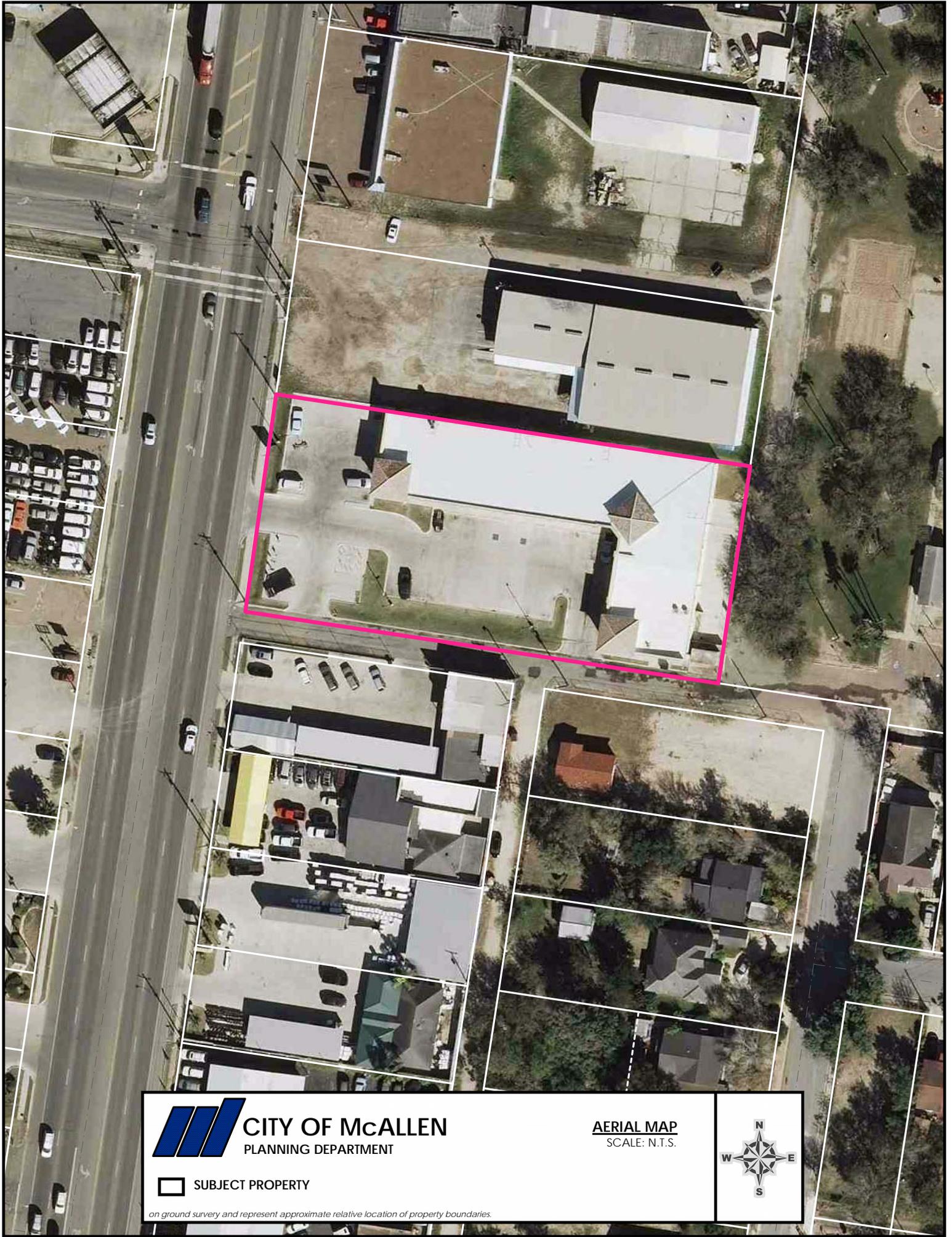


**SUBJECT PROPERTY**

**200 FT. NOTIFICATION BOUNDARY**

<b>A-0</b> (AGRICULTURAL & OPEN SPACE)	<b>R-3A</b> (APARTMENTS)	<b>R-4</b> (MOBILE HOMES)	<b>C-3</b> (GENERAL BUSINESS)
<b>R-1</b> (SINGLE FAMILY RESIDENTIAL)	<b>R-3C</b> (CONDOMINIUMS)	<b>C-1</b> (OFFICE BUILDING)	<b>C-3L</b> (LIGHT COMMERCIAL)
<b>R-2</b> (DUPLIX-FOURPLEX)	<b>R-3I</b> (TOWNHOUSES)	<b>C-2</b> (NEIGHBORHOOD COMMERCIAL)	<b>C-4</b> (COMMERCIAL INDUSTRIAL)
			<b>I-1</b> (LIGHT INDUSTRIAL)
			<b>I-2</b> (HEAVY INDUSTRIAL)
			(SPECIAL DISTRICT)

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**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.

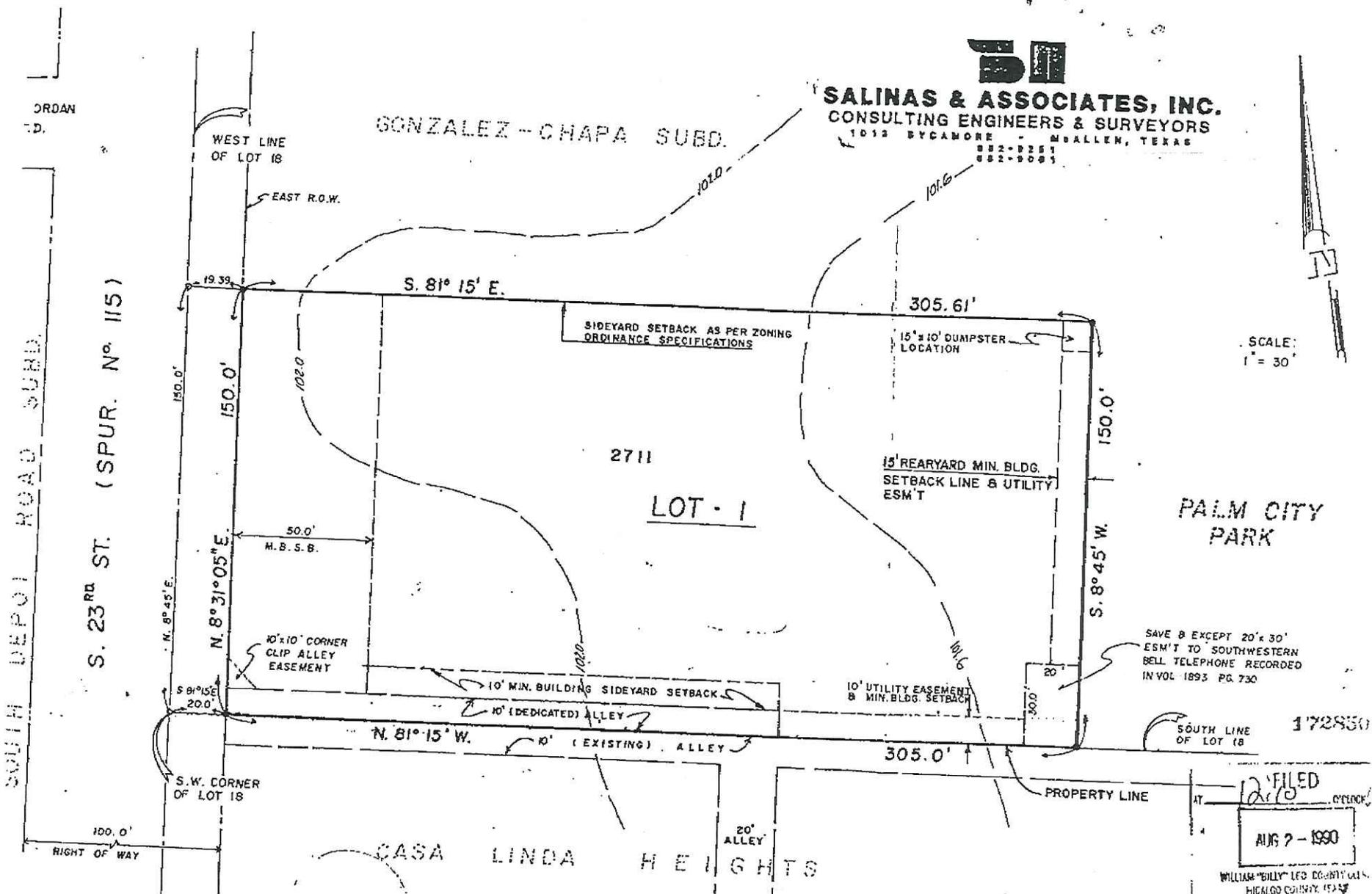
 **SUBJECT PROPERTY**



*on ground survey and represent approximate relative location of property boundaries.*



**SALINAS & ASSOCIATES, INC.**  
 CONSULTING ENGINEERS & SURVEYORS  
 1012 BYCAMORE - MALLEN, TEXAS  
 832-2251  
 832-2081



SCALE:  
1" = 30'

PALM CITY PARK

SAVE & EXCEPT 20' x 30' ESM'T TO SOUTHWESTERN BELL TELEPHONE RECORDED IN VOL 1893 PG. 730

SOUTH LINE OF LOT 18 172850

FILED  
 AUG 7 - 1990  
 WILLIAM "BILLY" LEO COUNTY CLERK  
 HIDALGO COUNTY, TEXAS  
 BY *[Signature]*

APPROVED FOR RECORDING  
 BY  
 COMMISSIONERS' COURT  
 This the 2<sup>nd</sup> day of Oct. 1990  
 WILLIAM "BILLY" LEO, County Clerk  
 Hidalgo County, Texas

# ALONZO BARRERA SUBDIVISION

PE 8 - 26 - 135 B

## **Memo**

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** August 14, 2015

**SUBJECT:** REQUEST OF JOSE LUIS GALINDO TO ALLOW THE FOLLOWING VARIANCE REQUESTS TO THE CITY OF MCALLEN ZONING ORDINANCE: 1) SIDE YARD SETBACK OF 2.25 FEET INSTEAD OF 5 FEET FOR A CARPORT MEASURING 24.16 FEET BY 25.25 FEET, 2) FRONT YARD SETBACK OF 2.41 FEET INSTEAD OF 25 FEET FOR A CARPORT MEASURING 24.16 FEET BY 25.25 FEET, FOR LOT 18, BLOCK 3, MCALLEN HEIGHTS SUBDIVISION, HIDALGO COUNTY, TEXAS; 1009 SOUTH 27<sup>TH</sup> STREET. (ZBA2014-0026)

---

### **GOAL:**

The Board shall have the power to authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. McAllen Code of Ordinances Section 138-43(4).

### **REASON FOR APPEAL**

The applicant requests a variance to allow a side yard setback of 2.25 feet instead of 5 feet for a metal carport measuring 24.16 feet by 25.25 feet and a front yard setback of 2.41 feet instead of 25 feet for a carport measuring 24.16 feet by 25.25 feet. The property owner has built the 610 square foot carport in front of the residence.

### **PROPERTY LOCATION AND VICINITY:**

The property is located along the east side of South 27<sup>th</sup> Street 255 feet north of Lindberg Avenue. The property is zoned R-1 (single family residential) District. The surrounding land use is single family residences. There is an existing single family residence on the subject property.

### **BACKGROUND AND HISTORY:**

McAllen Heights Subdivision was recorded on January 28, 1959. The front yard setback is 20 feet or in line with existing structures as per ordinance. An existing carport is built 2.5 feet from the front property line. The applicant indicates that the carport was built

in May 2014. The applicant built the carport himself. The construction was noticed by Building Permit and Inspections staff while in the area. The applicant received a stop work order and a citation (#12727) for construction without a permit on May 30, 2014 from the Building Permit and Inspections Department. A building permit application was submitted June 2, 2014 and is pending the variance request.

**ANALYSIS:**

The purpose of the front yard setback is to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties within the subdivision.

Variance #1 is a side yard setback of 2.25 feet. The roof has a pitch that will cause rainfall runoff to spill into the neighboring property.

Variance #2 is the front yard setback of 2.41 feet. The carport is of metal construction unlike the house. The size and height of the carport is not compatible with the single family construction along the street.

The variance request is not due to special conditions nor is the plight of the owner unique. The request does not meet the criteria for approval.

**RECOMMENDATION:**

Staff recommends disapproval of the variance request. At the Zoning Board of Adjustment and Appeals meeting of November 19, 2014 no one appeared in opposition of the variance requests. Jose Luis Galindo, the applicant, stated that during the hailstorm of 2012 his vehicles had been damaged and this was one of the reasons for constructing his carport. The applicant stated that the carport remains unfinished. Ms. Gloria Galindo stated that the carport had also been constructed for her since she needed the protection from inclement weather due to medical reasons. The applicant presented pictures of other carport structures in the area. Chairman Jose Gonzalez left the meeting at approximately 6 PM and board member Rolando Ayala stated that he would have to abstain from the consideration of this case. The number of members remaining would not constitute a full board. The Board unanimously voted with 5 members present and voting, to table the variance requests until the meeting of January 21, 2015 so that the requests may be heard by a full Board and to provide additional information with regards to the applicant's medical need for the carport. At the Zoning Board of Adjustments and Appeals meeting of January 21, 2015 the Board voted to table the variance requests until the meeting of July 15, 2015 in order to allow the City Commission to consider a medical reason as a special exception. At the Zoning Board of Adjustment and Appeals meeting of July 15, 2015 no one appeared in opposition of the variance requests. The Board voted to table the variance requests until the meeting of August 5, 2015 in order for the requests to be heard by a full Board.

There were three members present and voting. At the meeting of August 5, 2015 no one appeared to speak in opposition of the variance request. The Board unanimously voted to table the variance requests in order to allow the applicant time to consider a reduction in the building setback encroachments. There were five members present and voting.

ZBA 2014-0026



# City of McAllen Planning Department

1300 Houston Avenue  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

## APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE

<b>Project</b>	Legal Description <u>Carport 24 X 24</u> <u>Lot 18 BIK3</u>
	Subdivision Name <u>McAllen Heights</u>
	Street Address <u>1009 S. 27th St.</u>
	Number of lots <u>1</u> Gross acres _____
	Existing Zoning <u>R1</u> Existing Land Use <u>House</u>
	Reason for Appeal (please use other side if necessary) <u>Carport already</u> <u>Build cost \$3000 due to damage to cars during</u> <u>hail storm.</u>

\$300.00 non-refundable filing fee  
 Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

<b>Applicant</b>	Name <u>Jose Luis Galindo</u> Phone <u>956-537-9254</u>
	Address <u>1009 S. 27th St</u>
	City <u>McAllen</u> State <u>Tx</u> Zip <u>78501</u>

<b>Owner</b>	Name <u>Jose Luis &amp; Gloria Galindo</u> Phone <u>537-9254</u>
	Address <u>1009 S. 27th St</u>
	City <u>McAllen</u> State <u>Tx</u> Zip <u>78501</u>

<b>Authorization</b>	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.
	Signature <u>[Signature]</u> Date <u>6-6-14</u> Print Name <u>Jose Luis Galindo</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent

<b>Office</b>	Accepted by <u>[Signature]</u> Payment received by _____ Date _____
	_____

Scanned + approved

RECEIVED  
JUL 18 2014  
BY: aw

Rct # 218, 588 ✓



# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

Reason for Appeal

Front yard, ~~feet~~ of set back of 3 feet  
in steal of 20 feet

Board Action

Chairman, Board of Adjustment  
Signature

Date

\_\_\_\_\_

\_\_\_\_\_



9-4

McAllen Municipal Court  
1601 N. Bicentennial Blvd.  
McAllen, TX 78501  
(956) 681-2900

Warning

Ticket #  
12727

Date: May 30/14 Time: 10:09 Issuer: Jose Daniel Gonzalez ID: 9099  
Location/Block/Street: 1009 S. 27th License Plate:

<input checked="" type="checkbox"/> Permits	<input type="checkbox"/> Health	<input type="checkbox"/> Zoning
<input type="checkbox"/> Building	<input type="checkbox"/> Weedy Lot	<input type="checkbox"/> Sign Placed in ROW
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Accumulation of trash	<input type="checkbox"/> Signs w/o Permit
<input checked="" type="checkbox"/> Electrical	<input type="checkbox"/> Stagnant Water	<input type="checkbox"/> Erecting Signs w/o Permit
<input type="checkbox"/> Mechanical	<input type="checkbox"/> Illegal Dumping	<input type="checkbox"/> Proh. Portable Signs
<input type="checkbox"/> Work w/o Inspection	<input type="checkbox"/> Gross Unsanitary Cond.s	<input type="checkbox"/> Front Yard Parking
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Deposit of Wastes	<input type="checkbox"/> Fail to Obtain C.U.P.
<input type="checkbox"/> Electrical	<input type="checkbox"/> Food/Retail	<input type="checkbox"/> Expired C.U.P.
<input type="checkbox"/> Mechanical	<input type="checkbox"/> No Certified Manager	<input type="checkbox"/> Violation of C.U.P. Cond.
<input type="checkbox"/> Construction (com./res)	<input type="checkbox"/> No Food Handling Cert.	<input type="checkbox"/> Animal
<input type="checkbox"/> Performing Work w/o Lic.	<input type="checkbox"/> Hazardous Foods	<input type="checkbox"/> Leash Law
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Selling Food w/o Permit	<input type="checkbox"/> No Vaccinations
<input type="checkbox"/> Electrical	<input type="checkbox"/> Business on Sidewalks	<input type="checkbox"/> Fire
<input type="checkbox"/> Mechanical	<input type="checkbox"/> Display/Sale on S/Sidewalk	<input type="checkbox"/> Exceed Occupancy
	<input type="checkbox"/> Proh. Outdoor Display/Sale of Merch.	<input type="checkbox"/> Blocked Exits
	<input type="checkbox"/> No Garage Sale Permit	<input type="checkbox"/> Fail to Maintain Fire Alarm

Violation/Offense: Construction of Cartport

Violation/Offense:

Last Name: Galindo First Name: Jose Middle: Luis

Street Address: 1009 S. 27th City: McAllen State: TX Zip: 78501

Res. Phone: Sex: M DOB: 8/12/45 Age: D.L. #: 09487493 State: TX

Occupation: Self Employer: Phone:

Business Address: City: State: Zip:

I HEREBY PROMISE TO APPEAR BEFORE THE MUNICIPAL COURT ON OR BEFORE: 10th June, 20 14

Signature: [Handwritten Signature]

YOUR FAILURE TO APPEAR MAY CAUSE A CRIMINAL COMPLAINT TO BE FILED AGAINST YOU AND A WARRANT FOR YOUR ARREST WILL BE ISSUED.



CITY OF McALLEN BUILDING PERMIT APPLICATION

REV. 11/2013

P.O. BOX 220 McALLEN, TEXAS 78505-0220
APPLICATION MUST BE COMPLETE
(Please type or print in black or blue ink)

PERMIT APPLICATION REFERENCE NUMBER RES201408593

APPLICANT

NAME Jose Luis Galindo PHONE 956 537 9254
ADDRESS 1009 S. 27th St
CITY McAllen STATE TX ZIP 78501
CONTACT NAME Jose Luis Galindo PHONE 956 227 6127
OWNER CONTRACTOR TENANT OTHER

OWNER

NAME Jose Luis & Glorja Galindo PHONE 956 537 9254
ADDRESS 1009 S. 27th St
CITY McAllen STATE TX ZIP 78501

NEW ADDITION REMODELING REPAIR MOVE REMOVE BLDG. HGT. NO. OF FLOORS
BLDG SQ. FT 24x24 NO. PARKING SPACES SQ. FT LOT FLOOR EL ABOVE CURB
EXISTING USE OF LOT House NEW USE IMPROVEMENT VALUE \$ 3,000 1.00

SCOPE OF WORK TO BE DONE Carport

PROJECT

FOR RESIDENTIAL USE ONLY NO. OF UNITS 1 NO BDRMS NO BATHRMS SQ. FT. NON-LIVING SQ. FT. LIVING

FOUNDATION: CONCRETE SLAB, CONCRETE PIER, CONCRETE BLOCK, CONCRETE BEAM, WOOD POSTS
EXT WALL: MASONRY VENEER, MASONRY SOLID, METAL SIDING, COMPOSITION, WOOD
ROOF: WOOD SHINGLE, COMPOSITION, METAL, BUILD UP
SPECIAL CONDITIONS: FIRE SPRINKLER SYSTEM, FIRE ALARM SYSTEM, TYPE OF CONSTRUCTION, ASBESTOS SURVEY, EABPR/JAB#, CONDEMNED STRUCTURE

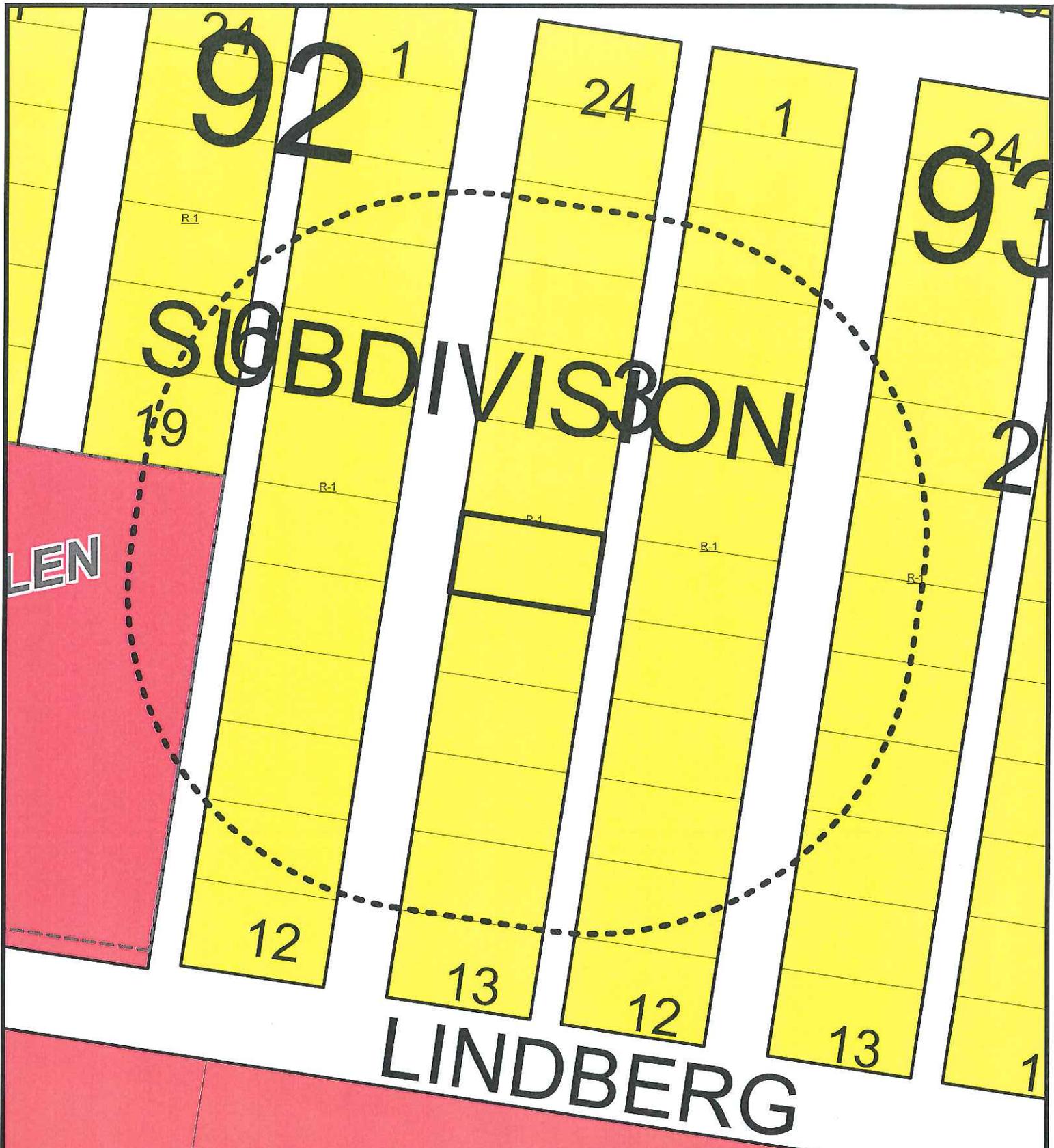
Carport
LOT 18 BLOCK 5 SUBDIVISION McAllen Heights
SITE ADDRESS 1009 S. ST. NO. 27th ST. NAME 27th St.

CITY USE ONLY

ZONING PERMIT FEE \$ 74.88 DOUBLE FEE \$ 74.88 REC'D BY
PARK DEV. PERMIT REVIEW FEE \$ TOTAL PERMIT FEE \$ 149.76 DATE 6/2/14
ZONE # PARK DEVELOPMENT FEE \$ TIME 1:00

The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant hereby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the improvements shall not be occupied until a Certificate of Occupancy has been issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.

PRINT (AUTHORIZED AGENT/OWNER) Signature: Jose L. Galindo EMAIL ADDRESS (required): jlgalindo715e@sbcglobal.net DATE: 6/2/14





**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

AREA MAP



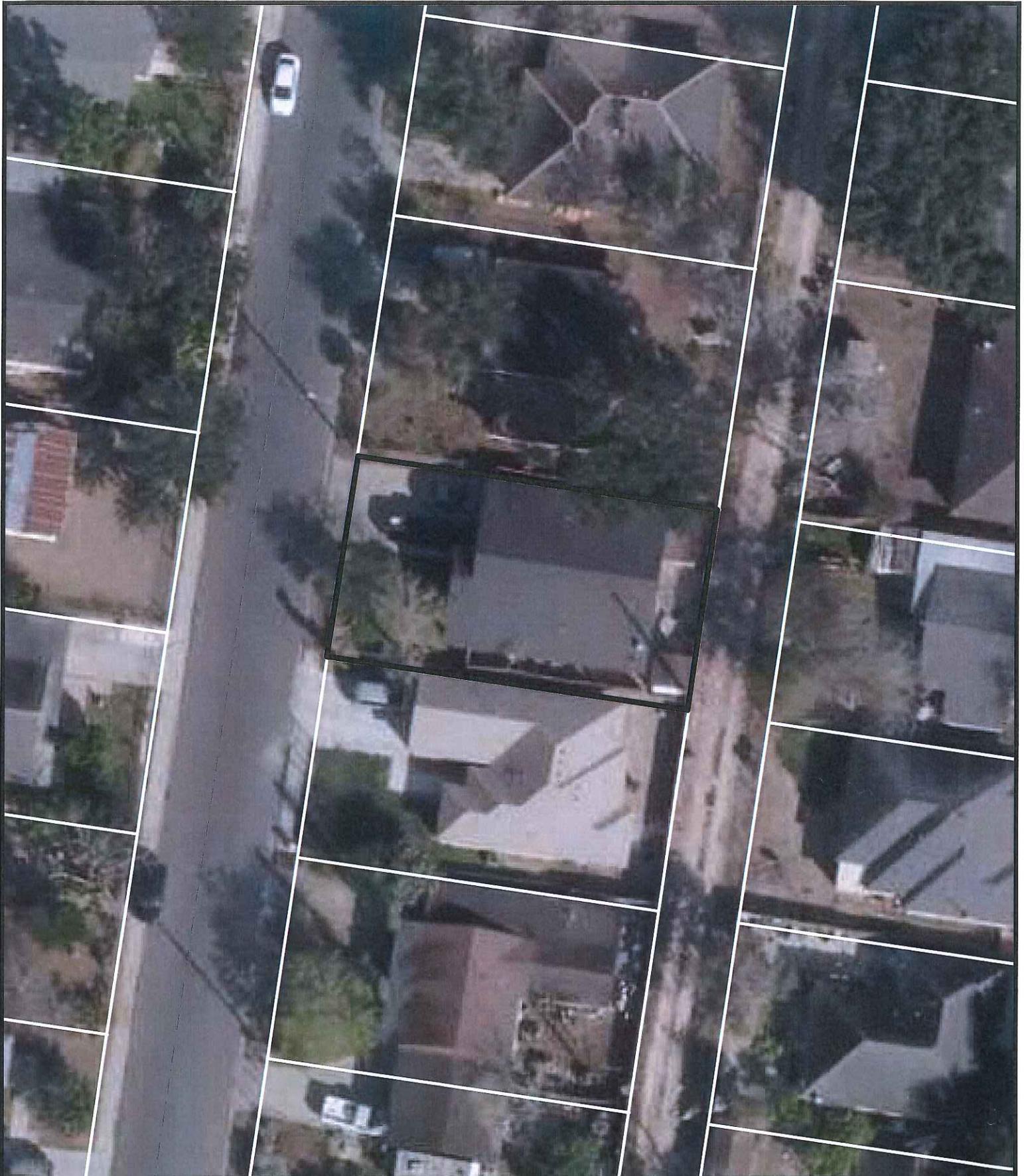
 SUBJECT PROPERTY

 200 FT. NOTIFICATION BOUNDARY

**ZONING LEGEND**

 A-0 (AGRICULTURAL & OPEN SPACE)	 R-3A (APARTMENTS)	 R-4 (MOBILE HOMES)	 C-3 (GENERAL BUSINESS)
 R-1 (SINGLE FAMILY RESIDENTIAL)	 R-3C (CONDOMINIUMS)	 C-1 (OFFICE BUILDING)	 C-3L (LIGHT COMMERCIAL)
 R-2 (DUPLEX-FOURPLEX)	 R-3T (TOWNHOUSES)	 C-2 (NEIGHBORHOOD COMMERCIAL)	 C-4 (COMMERCIAL INDUSTRIAL)
			 I-1 (LIGHT INDUSTRIAL)
			 I-2 (HEAVY INDUSTRIAL)
			 [SPECIAL DISTRICT]

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcalLEN.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.

 **SUBJECT PROPERTY**



*on ground survey and represent approximate relative location of property boundaries.*







## Hidalgo CAD

### Property Search Results > 230316 GALINDO JOSE LUIS & GLORIA for Year 2014

#### Property

##### Account

Property ID: 230316 Legal Description: MCALLEN HEIGHTS LOT 18 BLK 3  
 Geographic ID: M2150-00-003-0018-00 Agent Code:  
 Type: Real  
 Property Use Code:  
 Property Use Description:

##### Location

Address: 1009 S 27TH ST Mapsco:  
 MCALLEN, TX  
 Neighborhood: MCALLEN HEIGHTS Map ID:  
 Neighborhood CD: M215000

##### Owner

Name: GALINDO JOSE LUIS & GLORIA Owner ID: 139070  
 Mailing Address: 1009 S 27TH ST % Ownership: 100.0000000000%  
 MCALLEN, TX 78501-8322  
 Exemptions: DP, HS

#### Values

(+) Improvement Homesite Value:	+	\$35,820	
(+) Improvement Non-Homesite Value:	+	\$0	
(+) Land Homesite Value:	+	\$13,500	
(+) Land Non-Homesite Value:	+	\$0	Ag / Timber Use Value
(+) Agricultural Market Valuation:	+	\$0	\$0
(+) Timber Market Valuation:	+	\$0	\$0
-----			
(=) Market Value:	=	\$49,320	
(-) Ag or Timber Use Value Reduction:	-	\$0	
-----			
(=) Appraised Value:	=	\$49,320	
(-) HS Cap:	-	\$0	
-----			
(=) Assessed Value:	=	\$49,320	

#### Taxing Jurisdiction

Owner: GALINDO JOSE LUIS & GLORIA  
 % Ownership: 100.0000000000%  
 Total Value: \$49,320

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax	Tax Ceiling
CAD	APPRAISAL DISTRICT	0.000000	\$49,320	\$49,320	\$0.00	
CML	CITY OF MCALLEN	0.431300	\$49,320	\$39,320	\$125.52	\$125.52
DR1	DRAINAGE DISTRICT #1	0.095700	\$49,320	\$49,320	\$47.20	
GHD	HIDALGO COUNTY	0.590000	\$49,320	\$49,320	\$234.78	\$234.78
JCC	SOUTH TEXAS COLLEGE	0.150000	\$49,320	\$49,320	\$59.33	\$59.33
R12	ROAD DIST 12	0.000000	\$49,320	\$49,320	\$0.00	
SML	MCALLEN ISD	1.165000	\$49,320	\$24,320	\$172.34	\$172.34
SST	SOUTH TEXAS SCHOOL	0.049200	\$49,320	\$49,320	\$24.27	

Total Tax Rate:	2.481200	Taxes w/Current Exemptions:	\$663.44
		Taxes w/o Exemptions:	\$1,223.73

**Improvement / Building**

<b>Improvement #1:</b>	<b>RESIDENTIAL</b>	<b>State Code:</b>	<b>A1</b>	<b>Living Area:</b>	<b>1666.0 sqft</b>	<b>Value:</b>	<b>\$35,820</b>
Type	Description	Class CD	Exterior Wall	Year Built	SQFT		
MA	MAIN AREA	BRKFA	DBRK	1960	1468.0		
POR	PORCH (COVERED)	BRKFA		1960	112.0		
ENC	ENCLOSED ADD	BRKFA		1960	198.0		

**Land**

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	L	LOT	0.1033	4500.00	50.00	90.00	\$13,500	\$0

**Roll Value History**

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2015	N/A	N/A	N/A	N/A	N/A	N/A
2014	\$35,820	\$13,500	0	49,320	\$0	\$49,320
2013	\$35,820	\$13,500	0	49,320	\$0	\$49,320
2012	\$37,235	\$13,500	0	50,735	\$0	\$50,735
2011	\$37,235	\$13,500	0	50,735	\$2,586	\$48,149
2010	\$37,235	\$13,500	0	50,735	\$6,963	\$43,772
2009	\$37,234	\$13,500	0	50,734	\$10,941	\$39,793
2008	\$37,234	\$13,500	0	50,734	\$14,559	\$36,175
2007	\$41,055	\$13,500	0	54,555	\$21,669	\$32,886
2006	\$22,021	\$7,875	0	29,896	\$0	\$29,896
2005	\$22,820	\$7,875	0	30,695	\$0	\$30,695
2004	\$25,400	\$7,875	0	33,275	\$0	\$33,275
2003	\$24,366	\$7,875	0	32,241	\$0	\$32,241

**Deed History - (Last 3 Deed Transactions)**

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	6/8/1979 12:00:00 AM	WD	WARRANTY DEED	GALINDO JOSE LU	GALINDO JOSE LU			18452
2		CONV	CONVERSION	Unknown	GALINDO JOSE LU			

**Tax Due**

Property Tax Information as of 08/12/2014

Amount Due if Paid on: 

Year	Taxing Jurisdiction	Taxable Value	Base Tax	Base Taxes Paid	Base Tax Due	Discount / Penalty & Interest	Attorney Fees	Amount Due
------	---------------------	---------------	----------	-----------------	--------------	-------------------------------	---------------	------------

NOTE: Penalty & Interest accrues every month on the unpaid tax and is added to the balance. Attorney fees may also increase your tax liability if not paid by July 1. If you plan to submit payment on a future date, make sure you enter the date and RECALCULATE to obtain the correct total amount due.

**Questions Please Call (956) 381-8466**

**Memo**

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** October 15, 2015

**SUBJECT: REQUEST OF ARMANDO SOTELO FOR A VARIANCE REQUEST TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) A REAR YARD SETBACK OF 11.83 FEET INSTEAD OF 60 FEET FOR A STORAGE BUILDING MEASURING 8 FEET BY 40 FEET, 2) A SPECIAL EXCEPTIION FOR 51 PARKING SPACES INSTEAD OF 56 PARKING SPACES, FOR LOT 2, JACKSON TRIANGLE SUBDIVISION, HIDALGO COUNTY, TEXAS; 1420 EAST EXPRESSWAY 83. (ZBA2015-0035)**

---

**GOAL:**

The Board may grant a special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot. McAllen Code of Ordinances Section 138-43(2)(c).

**REASON FOR APPEAL**

The applicant requests a variance to reduce the rear setback from 60 feet to 11.83 feet and a special exception to reduce the required parking spaces from 56 to 51 parking spaces for a deficiency of 5 parking spaces. The applicant requests the variance to allow the storage building for storing items such as paper cups, napkins, etc. for restaurant use and a special exception.

**PROPERTY LOCATION AND VICINITY:**

The subject property is located along the east side of Expressway 83 Frontage Road and Jackson Road. The property is zoned C-3 (general business) District. The subject property is the site for Krispy Kreme Donuts.

**BACKGROUND AND HISTORY:**

Jackson Triangle Subdivision was recorded on March 15, 2006. The permits and conditions page signed on July 13, 2013 shows 56 parking spaces are required. The plat for Jackson Triangle Subdivision indicates a 60 foot building setback along Jackson Road. A citation (#20308) was issued by Code Enforcement staff on June 15, 2015 for placement of storage container in the setback and for reduction in parking.

**ANALYSIS:**

A Conditional Use Permit (CUP) for a portable building in a commercial zone is required. These permits are usually for 1 year and can be renewed annually. A CUP not in compliance with ordinance requirements is disapproved by the Planning and Zoning Commission and may be appealed to the City Commission for a variance. A variance to the setback is permanent and runs with the land and would allow for permanent construction and not only a portable

building.

The setback shown on the plat is 60 feet along Jackson Road and portable buildings are not permitted in the setbacks. An area at the beginning of the drive-thru appears to be available that may require a grease trap to be relocated.

The parking requirement for a restaurant is 1 parking space for each 75 square feet. Total parking requirement for this restaurant containing 4,174 square feet is 56 parking spaces. The storage building occupied 5 parking spaces reducing parking space to 51 or 91% compliance. The parking ordinance establishes minimum parking requirements. Actual parking demand will vary by the type, peak hour, season and success of the business. Parking shortages may impact adjacent available parking areas and may discourage customers to seek other less crowded comparable businesses.

**RECOMMENDATION:**

At the Zoning Board of Adjustment and Appeals meeting of September 2, 2015 staff recommended the variance and special exception requests be tabled until a Conditional Use Permit (CUP) is approved by the City. The requests were tabled by the Board. At the Planning and Zoning Commission of October 6, 2015 the board recommended disapproval of the Conditional Use Permit (CUP) due to non-compliance with parking and setback requirements. The applicant has ten days after the determination to appeal the determination to the City Commission.

7 BOA  
5-19-15

ZBA 2015-0035



# City of McAllen Planning Department

## APPEAL TO ZONING BOARD OF

### ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

#### Project

Legal Description Lot 2

Subdivision Name Jackson Triangle Subdivision

Street Address 1420 E. Expressway 83

Number of lots 1 Gross acres 0.6

Existing Zoning C3 Existing Land Use Krispy Kreme Doughnuts

Reason for Appeal (please use other side if necessary) To Allow Krispy Kreme a Storage Container Measuring 7' 11 1/2" width 40' length & 8' 5 1/2" Height

\$300.00 non-refundable filing fee

Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

#### Applicant

Name Armando Sotelo Phone (361) 550-7677

Address 1420 E. Expressway 83 E-mail asotelo@glazing saddles.com

City McAllen State Texas Zip 78503

#### Owner

Name Mark Miller Phone (512) 744-4005

Address 1464 E. Whitestone Blvd. E-mail MMiller@glazing saddles.com

City Cedar Park State Texas Zip 78613

#### Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

Yes  No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature Armando Sotelo Date 7/13/15

Print Name Armando Sotelo  Owner  Authorized Agent

#### Office

Accepted by [Signature] Payment received by \_\_\_\_\_ Date \_\_\_\_\_

REVISD 9/11

JUL 16 2015  
[Signature]



# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

Reason for Appeal

*to remain at rear yard set back of 11' 10".  
this Container is of very high importance to us  
due to high volume and minimum storage space  
inside building. this Container basically holds  
dry goods.*

Board Action

Chairman, Board of Adjustment  
Signature

Date

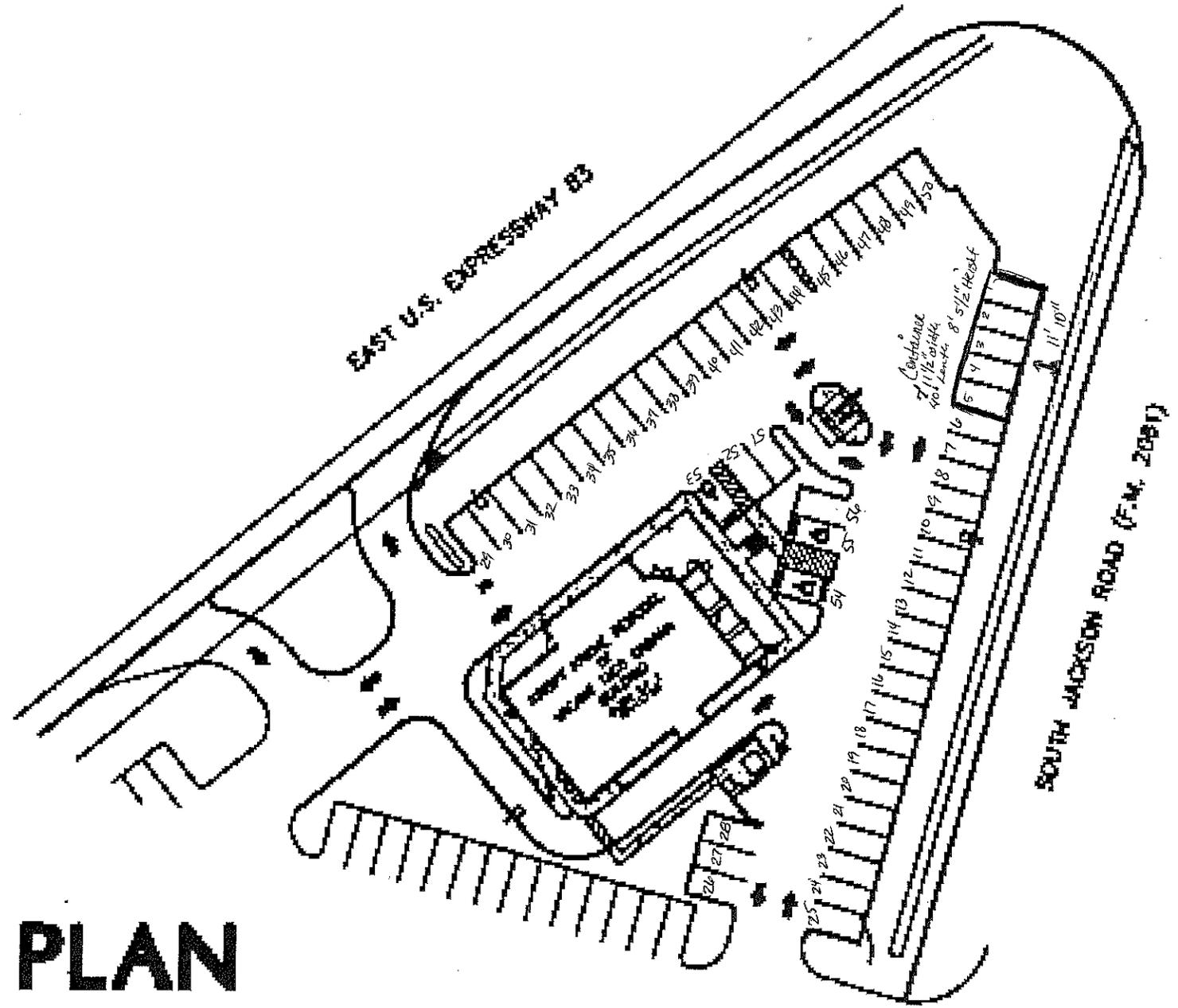
\_\_\_\_\_

\_\_\_\_\_

JUL 1 8 2015  
[Signature]



# SITE PLAN



**McAllen Municipal Court**  
 1601 N. Bicentennial Blvd.  
 McAllen, TX 78501  
 (956) 681-2900

Warning

Ticket #  
 20308

PLANNING Dept 311 U 1542

Office  
 681-1900

Date: 6/19/15 Time: 10:00 Issuer: R Tello ID #: 7186

Location/Block/Street: 1420 E. EXPRESSWAY 83 License Plate:

Permits	Health	Zoning
<input type="checkbox"/> Building	<input type="checkbox"/> Weedy Lot	<input type="checkbox"/> Sign Placed in ROW
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Accumulation of trash	<input checked="" type="checkbox"/> Signs w/o Permit
<input type="checkbox"/> Electrical	<input type="checkbox"/> Stagnant Water	<input type="checkbox"/> Erecting Signs w/o Permit
<input type="checkbox"/> Mechanical	<input type="checkbox"/> Illegal Dumping	<input type="checkbox"/> Proh. Portable Signs
<b>Work w/o Inspection</b>	<input type="checkbox"/> Gross Unsanitary Cond.s	<input type="checkbox"/> Front Yard Parking
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Deposit of Wastes	<input checked="" type="checkbox"/> Fail to Obtain C.U.P.
<input type="checkbox"/> Electrical	<b>Food/Retail</b>	<input type="checkbox"/> Expired C.U.P.
<input type="checkbox"/> Mechanical	<input type="checkbox"/> No Certified Manager	<input type="checkbox"/> Violation of C.U.P. Cond.
<input type="checkbox"/> Construction (com./res)	<input type="checkbox"/> No Food Handling Cert.	<b>Animal</b>
<b>Performing Work w/o Lic.</b>	<input type="checkbox"/> Hazardous Foods	<input type="checkbox"/> Leash Law
<input type="checkbox"/> Plumbing	<input type="checkbox"/> Selling Food w/o Permit	<input type="checkbox"/> No Vaccinations
<input type="checkbox"/> Electrical	<input type="checkbox"/> Business on Sidewalks	<b>Fire</b>
<input type="checkbox"/> Mechanical	<input type="checkbox"/> Display/Sale on St/Sidewalk	<input type="checkbox"/> Exceed Occupancy
	<input type="checkbox"/> Proh. Outdoor Display/Sale of Merch.	<input type="checkbox"/> Blocked Exits
	<input type="checkbox"/> No Garage Sale Permit	<input type="checkbox"/> Fail to Maintain Fire Alarm

Violation/Offense: \* VIOLATION STORAGE CONTAINER 16 MONTHS

Violation/Offense: SPACES + BANNER

Last Name: COLOMCA First Name: PATRICIA Middle: LIBETTE

Street Address: 2106 MORNING ST City: MIJALGO State: TX Zip: 78557

Res. Phone: 956-688-8455 Sex: F DOB: 9/16/94 Age: 20 D.L. #: 36165283 State: TX

Occupation: BEST MGR Employer: KEISY KICMO Phone: 956-688-87

Business Address: 1420 E. EXPRESSWAY City: McAllen State: TX Zip: 78503

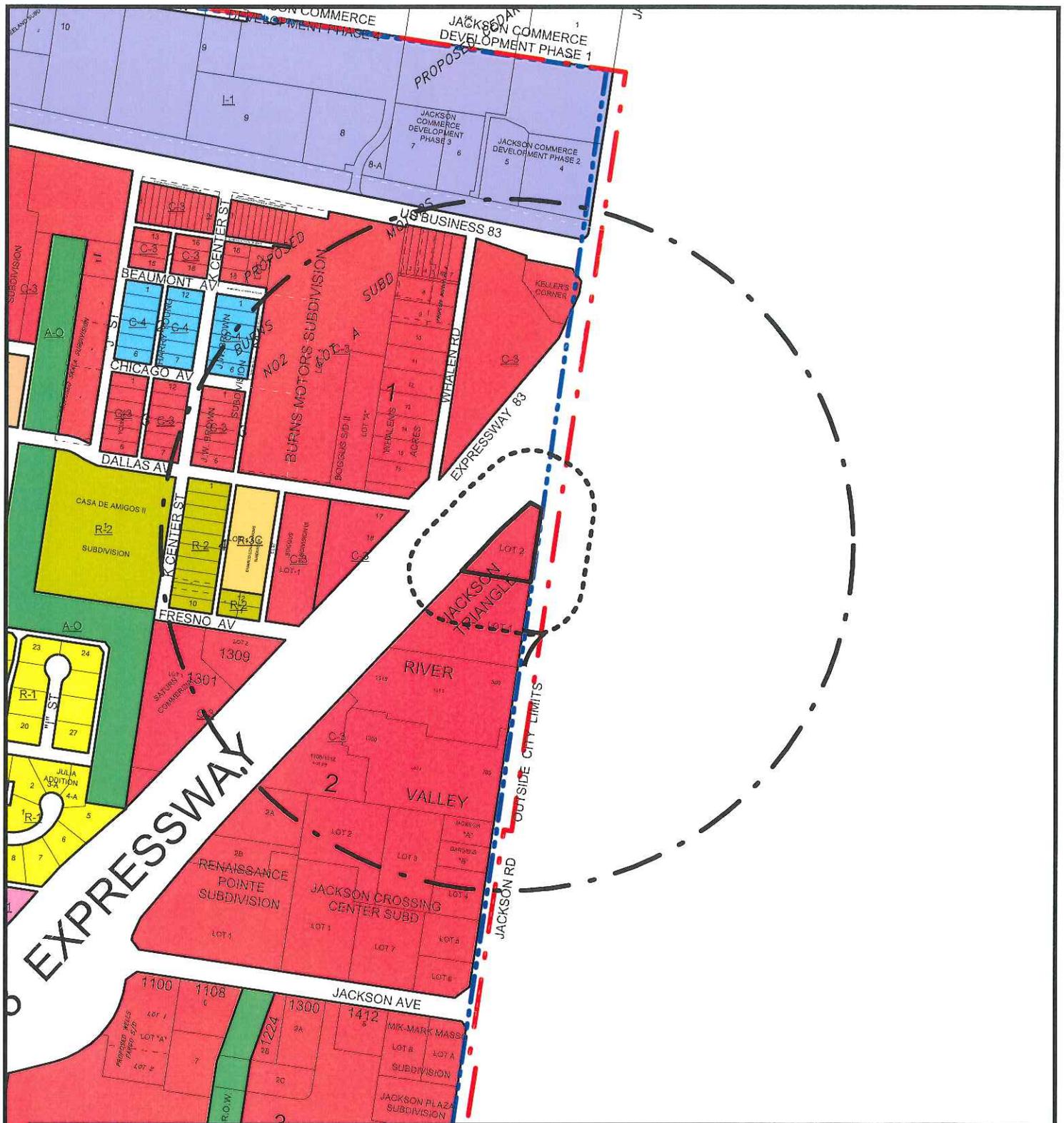
I HEREBY PROMISE TO APPEAR BEFORE THE MUNICIPAL COURT ON OR BEFORE:

June 27, 2015

Signature: *[Handwritten Signature]*

YOUR FAILURE TO APPEAR MAY CAUSE A CRIMINAL COMPLAINT TO BE FILED AGAINST YOU AND A WARRANT FOR YOUR ARREST WILL BE ISSUED.

RECEIVED  
 JUL 16 2015  
 BY: *[Handwritten Signature]*



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AREA MAP**

**LEGEND**  
SCALE: 1" = 500'

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

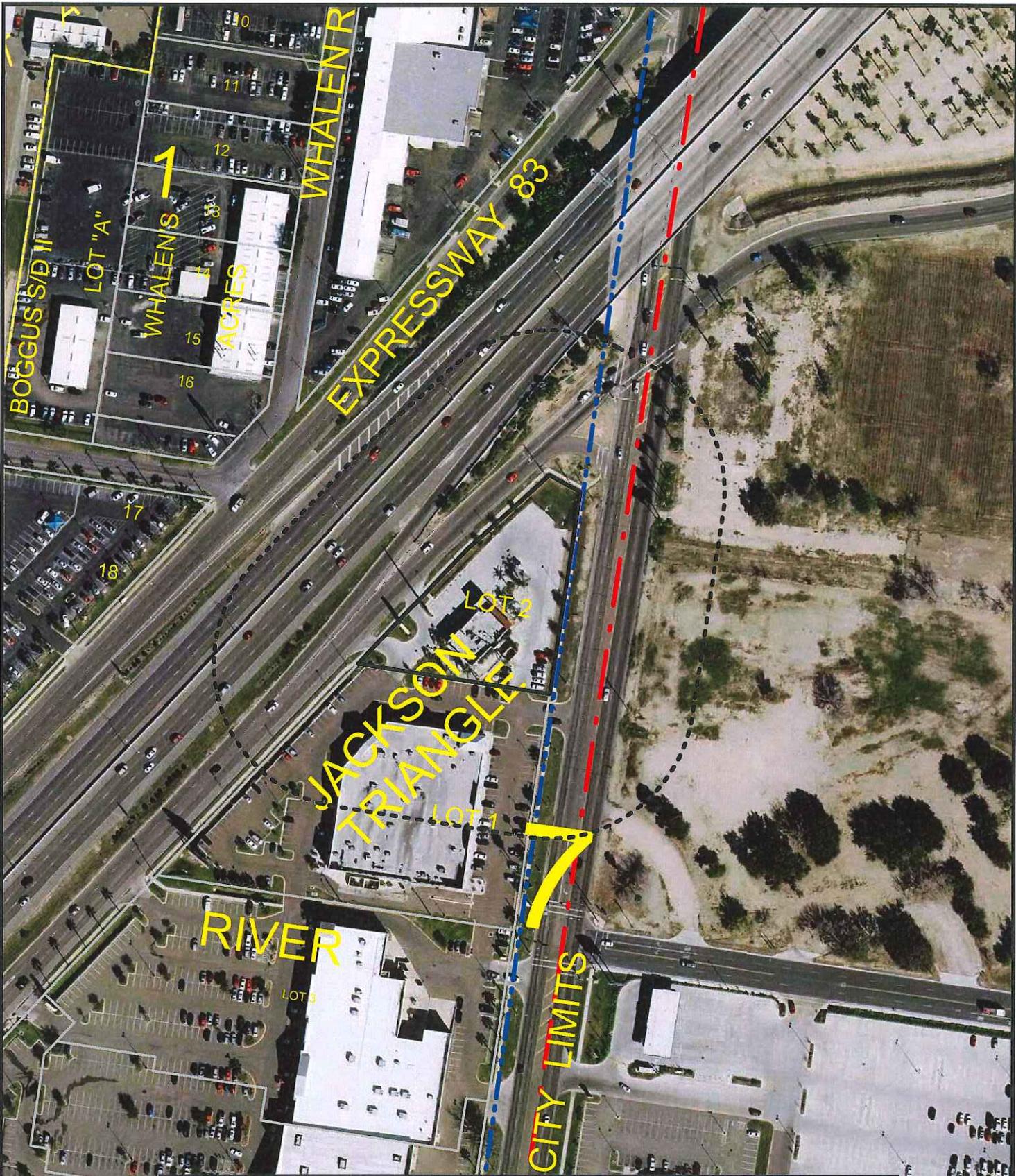
1/4 MILE RADIUS



**ZONING LEGEND**

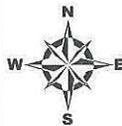
- |                                 |                     |                               |                             |                        |
|---------------------------------|---------------------|-------------------------------|-----------------------------|------------------------|
| A-0 (AGRICULTURAL & OPEN SPACE) | R-3A (APARTMENTS)   | R-2 (MOBILE HOMES)            | C-3 (GENERAL BUSINESS)      | I-1 (LIGHT INDUSTRIAL) |
| R-1 (SINGLE FAMILY RESIDENTIAL) | R-3C (CONDOMINIUMS) | C-1 (OFFICE BUILDING)         | C-3L (LIGHT COMMERCIAL)     | I-2 (HEAVY INDUSTRIAL) |
| R-2 (DUPEX-FOURPLEX)            | R-3T (TOWNHOUSES)   | C-2 (NEIGHBORHOOD COMMERCIAL) | C-4 (COMMERCIAL INDUSTRIAL) | (SPECIAL DISTRICT)     |

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcalLEN.net>. Furthermore, This map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.



**CITY OF McALLEN**  
 PLANNING DEPARTMENT

AERIAL MAP  
 SCALE: N.T.S.



 SUBJECT PROPERTY

 200 FT. NOTIFICATION BOUNDARY

This map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.





## CRITERIA FOR ZBOA DETERMINATIONS

### APPEALS

1. ZBOA may hear and decide appeals **where it is alleged there is error** in any order, requirement, decision or determination made by an administrative official **in the enforcement of Chapter 138** of the Code of Ordinances ("Zoning").
2. In conformity with the provisions of V.T.C.A., Local Government Code § 211.009 et seq. and Chapter 138 of the Code of Ordinances, the **ZBOA may reverse or affirm, wholly or partly, or may modify** the order, requirement, decision or determination appealed from.

### SPECIAL EXCEPTIONS

Authorized under Ord. Sec. 138-43 ("Powers") in the following instances:

1. Where the **street layout** actually on the ground varies from the street layout as shown on such maps.
2. To permit the **reconstruction of a nonconforming building** which has been damaged to the extent of more than 50 percent of its replacement cost.
3. To **waive or reduce the parking and loading requirements** whenever:
  - a. The character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities, OR
  - b. Where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
4. To allow a change **from an existing nonconforming use to another nonconforming use** of a structure, or a structure and premises in combination, if:
  - a. No structural alterations are made, AND
  - b. The Board finds that the proposed nonconforming use is not more nonconforming in the district as the existing nonconforming use.

#### **Ord. Sec. 138-86. – GENERAL POLICY.**

The general public, the board of commissioners, and the planning board are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, wherever and whenever possible, except:

- (1) When necessary to preserve property rights established prior to the date the ordinance from which this article is derived became effective as to the property in question, and
- (2) When necessary to promote the general welfare and to protect the character of the surrounding property.

## VARIANCES

Authorized only when ALL of the following applies:

1. Owing to special conditions, a literal enforcement of Zoning Ordinance provisions would result in **unnecessary hardship**.
2. **Applicant proves** to the Board the following:
  - a. Land in question cannot yield a reasonable return if used only for a purpose allowed in that zone,
  - b. **Plight is unique** and not shared in general by others in the neighborhood, and
  - c. Variance will **not alter the essential character of the locality**.
3. Variance would **not merely serve as a convenience** to the applicant.
4. Variance must be in **harmony with purpose and intent of Zoning Ordinance**.
5. Variance would **not be contrary to the public interest**.
6. **Surrounding property is be properly protected**.
7. **The spirit of this Zoning Ordinance is observed and substantial justice done**.

## Exceptions Cited within the Zoning Ordinance

### Exceptions pertaining to front yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Balconies, uncovered (*Section 138-1, Yard (1)*)
3. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
4. Cornices up to 2 feet (*Section 138-366 (c)*)
5. Eaves up to 2 feet (*Section 138-366 (c)*)
6. Fence not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)
7. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
8. Flues not to exceed 5 feet (*Section 138-366 (d)*)
9. Ornamental features up to 2 feet (*Section 138-366 (c)*)
10. Planting not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)
11. Porches, uncovered (*Section 138-1, Yard (1)*)
12. Projections up to 2 feet (*Section 138-366 (c)*)
13. Pumps, filling station not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d)*)
14. Pumps, gas and canopies not less than 9 feet from the property line or 10 feet from the curb, whichever greater (*Section 138-259*)
15. Pumps, islands not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d)*)
16. Sills up to 2 feet (*Section 138-366 (c)*)
17. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
18. Steps, uncovered (*Section 138-1, Yard (1)*)
19. Structure not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)

### Exceptions pertaining to rear yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Balconies, uncovered (*Section 138-1, Yard (1)*)
3. Buildings, accessory may occupy no more than 30% (*Section 138-369*)
4. Carports, unenclosed abutting an alley may be built up to the rear property line within the R-3A and R-3C Districts (*Section 138-356, Footnote 5*)
5. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
6. Cornices up to 2 feet (*Section 138-366 (c)*)
7. Eaves up to 2 feet (*Section 138-366 (c)*)
8. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
9. Flues not to exceed 5 feet (*Section 138-366 (d)*)
10. Ornamental features up to 2 feet (*Section 138-366 (c)*)
11. Parking, unenclosed may occupy no more than 90% (*Section 138-369*)
12. Porches, uncovered (*Section 138-1, Yard (1)*)
13. Projections up to 2 feet (*Section 138-366 (c)*)
14. Sills up to 2 feet (*Section 138-366 (c)*)
15. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
16. Steps, uncovered (*Section 138-1, Yard (1)*)

Exceptions pertaining to side yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Canopy, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d)*)
3. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
4. Cornices up to 2 feet (*Section 138-366 (c)*)
5. Eaves up to 2 feet (*Section 138-366 (c)*)
6. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
7. Flues not to exceed 5 feet (*Section 138-366 (d)*)
8. Ornamental features up to 2 feet (*Section 138-366 (c)*)
9. Porte-cochere, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d)*)
10. Projections up to 2 feet (*Section 138-366 (c)*)
11. Side yards can be reduced to 10% of the lot width provided the lot has a width less than 50 feet. However, no side yard shall be less than 3.5 feet (*Section 138-368 (f)*)
12. Sills up to 2 feet (*Section 138-366 (c)*)
13. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
14. Townhouses can be built up to the side property line with a firewall (*Section 138-356, Footnote 10*)

Exceptions pertaining to height measurements (*Section 138-1, Height*):

1. Chimneys
2. Cooling towers
3. Domes
4. Elevator bulkheads
5. Mechanical rooms
6. Ornamental cupolas
7. Parapet walls not exceeding four feet in height
8. Radio towers
9. Spires
10. Tanks
11. Television antennas
12. Water towers

## Exceptions as per Planning Department Policy

By policy the following are permitted:

1. AC Units
2. Clothes lines
3. Concrete slabs
4. Fire pits
5. Pergolas, arbors, and trellises as a landscape feature (legal opinion, 2009)
6. Playground equipment
7. Pool decks
8. Pool pumps
9. Portable grills

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10. Sports equipment i.e. basketball hoop
11. Swimming pools prior to 2009 (legal opinion)
12. Umbrellas and patio furniture
13. Water features and fountains

Legal opinions:

1. In 2009 Assistant City Attorney Ignacio Perez made an interpretation to allow arbors, pergolas, and trellises within the required setbacks. The definition of landscape material is stated as trees, shrubs, ground cover, vines or grass installed in planting areas in Section 110-26 of the Vegetation Ordinance. The legal interpretation was if vines were allowed by code as a planting area and they cover vertical planes such as walls then the same logic could be applied to arbors, pergolas, and trellises as a planting area. Mr. Perez also cited Section 110-56 (g) of the Vegetation Ordinance stating architectural planters may be permitted to fulfill landscape requirements.
2. Prior to 2009 swimming pools were not considered a structure due to the fact they were constructed underground and the Zoning Ordinance defines a structure as anything constructed, erected or artificially built up or composed of parts and joined together in a permanent manner. However, an interpretation was made in 2009 to consider swimming pools as a structure to abide by setback requirements.

## Unified Development Ordinance

Section 3-1-1 specifies that the Unified Development Ordinance would allow for alternative development standards for residential lots within the Neighborhood Conservation and Neighborhood Transition Districts. These alternatives would allow expansions and reconfigurations of existing building when such alterations would normally not comply with the general standards.

### Exceptions within the Front Yard Setback:

1. Enclosure of Front Porches
2. Building Cladding Upgrade
3. Front yard setbacks can be reduced to the average setback along the same side of the same street

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4. Overhangs for Solar Protection
5. 36 square feet of the overhang encroaching in the setback may be enclosed
6. Addition of a Front Porch not located closer than 10 feet from the property line
7. Front Yard Setback can be reduced by 12 feet if vehicular access is from the alley
8. Front Yard Setback can be reduced by 8 feet if the garage is behind the principal building.
9. Front Yard Setback can be reduced by 10 feet for a side loaded garage on a lot with a width of at least 85 feet.

### Exceptions within the Side Yard and Rear Yard Setback:

1. Building Cladding Upgrade
2. Wide Planting Strip
3. Subdivision Fencing

### Alternative Height Standards:

1. Height may be increased to 35 feet but not three full stories.

# ZONING BOARD OF ADJUSTMENT AND APPEALS

## RULES AND PROCEDURES

### CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals adopts the following Rules and Procedures (hereinafter “Rules”) to govern the substance of all board matters.

#### **I. ORGANIZATION AND OFFICERS**

##### **A. Members**

The McAllen City Commission created the Zoning Board of Adjustment and Appeals (hereinafter referred to as “Board”) pursuant to Chapter 211 of the Texas Local Government Code and Chapter 138, Article II, Division 3 of the City of McAllen, Texas Code of Ordinances (the “City Code”). The Commission appoints the members for that Board under Section 211.008 of the Texas Local Government Code (the “Code”).

The Commission composed the Board to sit five (5) members. Each member serves a two-year term. The Commission may renew a member’s term for a maximum of three total consecutive terms. The Commission also appoints four (4) alternate members to serve in the absence of a regular board member. Alternate members serve just as regular members and are subject to the same rules as regular members, unless otherwise provided in these Rules, but do not vote except in the absence of a regular member.

##### **B. Officers**

The Board shall elect a Chair and a Vice Chair from its own regular members by majority vote. The Chair and Vice Chair each serve one year. The Board shall accept an Executive Secretary appointed by the McAllen Planning Department. The Board shall adopt an attorney advisor appointed by the McAllen Legal Department. The Board shall only accept the appointment of personnel under the condition each person remains the employee and charge of the City of McAllen, with no employment relationship to the Board.

##### **C. Duties and Officers**

The Chair shall preside over the Board, hold meetings of the Board, decide points of order, and dispense the business of the Board. The Chair may administer oaths, compel the attendance of witnesses, and issue subpoenas as per Section 211.008 of the Code. The Chair shall sign the minutes of board meeting after the minutes have been approved by the Board.

In the absence of the Chair, the Vice Chair, or in both their absences the most senior member, according to the member’s appointment date, shall dispense the duties of the Chair.

## **II. POWERS OF THE BOARD**

### **A. General Powers**

The Board has those powers specified in Section 211.009 and 241.033 of the Code, and those powers granted by the City Commission under Chapter 138 (Zoning Ordinance) and Chapter 110 (Vegetation Ordinance) of the City Code, and those powers granted to the Board by ordinance.

### **B. Specified Powers**

As per city ordinance and state statute, the Board has those powers described in Section 211.009 of the Code and Section 138-43 of the City Code. Those powers described in Section 138-43 are:

1. Hear and decide appeals that allege an error in any order, requirement, decision or determination made by an administrative official or agency in the enforcement of applicable provisions of the Local Government Code, the City Ordinance;
2. Authorize variances to specific cases from the terms of the City Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of City Ordinance will result in unnecessary hardship, and so that the spirit of ordinances shall be observed and substantial justice done;
3. Grant special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot; and
4. Hear and decide any other matters authorized by the City Commission through ordinance.

## **III. DUTIES OF BOARD MEMBERS**

### **A. General Duties of Members**

1. All members of the Board should attempt to inspect the premises of each case which is under consideration at each meeting and become generally familiar with each case prior to Board meetings.
2. All members shall attend all meetings, provided, however, the member must provide 72 hours prior notice to the Executive Secretary in the event the member cannot attend.
3. All members of the Board shall arrive at a logical and fair decision on each case, except where a conflict may preclude a vote on the case.

### **B. Disqualification/Conflict of Interest**

All members of the Board of Adjustment are subject to the City of McAllen Ethics Ordinance (Chapter 2 of the City Code).

In all cases before the Board where a member of the Board has a conflict as described in the Ethics Ordinance, the member shall refrain from any discussion, deliberation or vote. When applicable, the member shall complete and submit a City Conflict of Interest form, but in all cases alert the Executive Secretary at least 72 hours prior to the meeting on which the conflict is at issue. The Executive Secretary shall submit all notices of conflict to the City's attorney.

#### **IV. A BASIS FOR ACTION**

The Board shall decide each case based on the following:

1. Facts filed with application.
2. Testimony presented at the public hearing on the appeal.
3. The Planning Department's technical report on the appeal.
4. The Board's findings in its field inspection of the property may question all witnesses to assist the Board in arriving at a correct, logical and fair decision.
5. The applicable standards of review described in Section 138-43 of the City Code and Sections II.A., II.B. and VI. of these Rules.
6. All decisions shall be made on the Basis for Action. Neither the Board nor the individual members may use personal, first hand knowledge of any facts to make a determination, if such information has not been entered into the record or made available at the public hearing.

#### **V. APPLICANTS**

##### **A. Legally Vested Interest**

The Board shall not consider an application from any applicant who does not have a vested legal or equitable interest in the property in question. Applicants may appear on their own behalf or may be represented by counsel or agent. Any representation by someone other than an applicant must be accompanied with a written designation by the applicant for the agent to act on behalf of the applicant. (For example, the representative may produce a letter from the applicant to the Planning Department to authorize the representative to speak on behalf of the applicant; or, the representative may submit an application on behalf of a verifiable power of attorney.)

##### **B. Applications**

All applications for consideration by the Board must be on the prescribed form approved by the Planning Department and acceptable to the Board. The Board shall not consider applications for a variance or a special exception or any other Board action, if the application is not on a designated form. The Board shall approve the official application and the Chair shall implement it.

All applications for variances and special exceptions to commercial properties must be submitted with a current, valid "on the ground" survey. An applicant must submit a pauper form with their application if

they cannot proffer a valid survey; provided, however, the applicant illustrates their property with setbacks and encroachments as a survey would.

**C. Meetings**

Applicants have the right to be heard at all meetings where their applications are considered for a dispositive vote. Applicants not able to be present at the scheduled meeting to consider their application may submit to the Planning Department a written request for the Board to table the application. The Board will decide whether or not to grant the applicant's request to table. No application may be tabled at the request of applicant for more than two meetings prior to being considered for a dispositive vote. However, if the applicant requests for his/her application to be tabled because there are only four (4) board members present, such request shall not be counted against applicant's two (2) opportunities to table his/her request. Board action may proceed on any application despite the request of any applicant to table the application. The Board shall note on the record the reason(s) for the tabling of an agenda item. The reason(s) for each tabling, as well as the number of times an agenda item has been tabled, shall be reflected in an activity log in the meeting minutes at the end of each agenda item.

**D. Evidence**

Applicants should be prepared to present evidence necessary to prove their application. The burden of persuasion on seeking a remedy from the Board remains with the applicant at all times.

**VI. HARDSHIP**

A. For an "unnecessary hardship" to apply to a variance, it must relate to the very property for which the variance is sought and be a condition unique, oppressive, and uncommon to other properties. An unnecessary hardship may not be self-created, or be solely financial.

B. "Hardship" must be based on hardship resulting from sharp changes in topography or unusual terrain features. The applicant may prove the topography with a plot plan which includes topographic information related to known base points or surveys, and profiles or particular problems involved, including relationships to topographic features of adjoining properties.

C. There is no unnecessary hardship if the property is suitable and useable for the uses permitted in the district in which it lies, although there will be a loss of profit or other economic disadvantage on account of such use.

**VII. MEETINGS**

**A. Texas Public Information Act and Open Meetings Act.**

Except as permitted under the advice of the Board's attorney, all meetings of the Board are subject to the Texas Public Information Act and shall be open to the public. The minutes of the Board's meetings and records of its examination or other official actions are public records, unless excepted under law.

## **B. Quorum**

A quorum consists of seventy-five percent (75%) of the full complement of members. For a full complement of five (5) members, therefore, four (4) members present constitute a quorum. The Chair may declare a quorum does not exist fifteen (15) minutes following a posted meeting time, having found at least four (4) members and alternate members are not present; provided however, the Chair may not declare a quorum thirty (30) minutes from the posted time, should at least members and alternate members not be present.

## **C. Regular Meetings**

Regular meetings shall be held every first and third Wednesday at 5:30 P.M., or at other times as determined by the Board, in the City Commission Chambers. The Board by majority vote may change the place, day, and hour of the meetings; provided that, notice complies with the Texas Open Meetings Act (Chapter 511 of the Texas Government Code).

## **D. Special Meetings**

The Chair may call a special meeting. A special meeting shall have a lawful purpose and members and public shall be given at least seventy-two (72) hours notice prior to the meeting.

## **E. Order of Business**

The usual order of business shall be:

1. Call to Order
2. Approval of Minutes
3. Open Public Hearing
4. Other Statements
5. Introduction: New Information Recommendation
  - a) Presentation of recommendation by City Staff.
  - b) The Chair shall call the applicant or his representative(s) to present the case and answers any questions. If the applicant or representative is not present when called, the Chair may move a case to the end of the agenda.
  - c) The Chair shall then inquire if there are others who wish to address the Board in support of the case.
  - d) The Chair shall then inquire if there are those present who wish to address the Board who are opposed to the case.
  - e) The applicant or his representative may then give a rebuttal to any opposition.
  - f) If new facts are presented during this rebuttal, opposition shall be given the opportunity for rebuttal
  - g) Staff shall then have an opportunity to provide additional information, clarification or address questions from the Board.
  - h) Board discussion.
  - i) The Chair shall then declare that the discussion of the case is closed.

- j) In order to achieve an unambiguous decision, motions should be made in affirmative manner when possible.
  - k) Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussion shall terminate whenever a member shall call for a vote upon the question or whenever the Chair shall so rule.
  - l) Vote on a motion.
6. The Chair may move a case out of regular agenda order.
  7. Staff Report
  8. Other Business posted on the Agenda
  9. Adjournment

**F. Staff Recommendations**

City staff shall provide recommendations on each case before the Board.

**G. Action by the Board**

The super-majority concurring vote of seventy-five percent of the full board compliment, i.e., four affirming members of the Board, shall be necessary to reverse an order, requirement, decision or determination of an administrative official or agency; to decide in favor of an applicant on a matter upon which the Board is required to pass under any such ordinance or regulation; to authorize a variation; or to recommend to the Director of Planning to uphold or modify the interpretation of the City Code. All other matters shall be decided by a majority vote, unless otherwise specified in the City Code. The Board on its own motion may table an application when an applicant does not appear; provided however, in no case may the board table an application, for failure of the applicant to appear, more than twice without taking a dispositive vote.

**H. Minutes of the Board**

The Board, through its designated appointee, shall keep minutes of all meetings that indicate the vote of each member on every question on which it is required to act, or the fact that a member is absent or fails to vote. The minutes shall be filed in the office of the Planning Department and are public record.

**VIII. DECISIONS OF THE BOARD**

**A. Precedent**

There is not precedent. Any one case does not set a precedent for any future case. Each case shall be decided on its own merits and upon the circumstances of the case.

**B. Public Statements**

No Board member shall release any official statement to the public or the press. Only the Director of the Planning Department or her designated representative may make official statements on behalf of the Board.

**B. Parliamentary Procedure**

Any question regarding parliamentary procedure not covered by these rules shall be decided according to the latest edition of Robert's Rules of Order.

**IX. WITHDRAWAL OF APPEAL**

Any appeal or application may be withdrawn by the applicant upon written notice to the Director of Planning.

**X. ATTENDANCE**

Excessive absences cannot be tolerated, as the Board depends on a super majority of attendance in order to exercise decisions on applications for a variance. Three absences or more in a six-month period are excessive. If a Board member is excessively absent from regularly scheduled meetings, the Board may recommend to City Commission, by majority vote, that the Commission appoint an immediate replacement.

**XI. AMENDEMENT PROCEDURE**

Amendment to these rules and procedures may be made by the Board at any meeting, upon the affirmative vote of five (5) members, provided any such amendment is proposed at a preceding meeting and entered into the minutes of such meeting. However, board members may adopt through unanimous consent of all members an amendment at the meeting at which it was introduced; provided, however, the amendment shall not become effective until the next regular meeting.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014 as affirmed by the designated Executive Secretary assigned by the Planning Department of the City of McAllen.

\_\_\_\_\_  
**Executive Secretary**

## 2015 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/07/15	01/21/15	02/04/15	02/18/15	03/04/15	03/18/15	04/01/15	04/15/15	05/06/15	05/20/15	06/03/15	06/17/15	07/01/15	07/15/15	08/05/15	08/19/15	09/02/15	09/17/15	10/07/15	10/21/15	11/04/15	11/18/15	12/02/15	12/17/15
JOSE GONZALEZ	P	A	P	A	A																			
ROBERT MOREHEAD	P	A	P	P	P	P	P	P	A	P	P	P	A	A	P	P	P	A	P	P	P			
MIKE HOVAR	P	A	P	P	P	A	P	P	A	P	P	P	P	A	P	P	P	P	P	P	A			
MIKE HARMS	P	P	A	P	P	A	P	A	P	A	P	P	P	A	P	P	A	P	A	P	A			
ROLANDO AYALA	P	P	A	A	P	P	A	A	P	A	P	A	A	P	P	P	P	P	P	A	P			
JORGE SALINAS						P	P	P	P	P	P	A	P	P	P	A	P	P	A	P	P			
SYLVIA HINOJOSA (ALTERNATE 3)	P	P	P	P	P	P	P	P	A	A	A	P	A	A	P	P	A	P	A	A	P			
JOSE R. GUTIERREZ (ALTERNATE 1)	P	P	P	P	P	P	P	P	P	P	P	P	A	A	P	P	P	P	P	P	P			
SHAVI MAHTANI (ALTERNATE 2)	A	P	A	P	P	A	A	A	A	A	A	P	P	A	P	A	A	A	P	P	A			
TERRY L. PEREZ (ALTERNATE 4)	A	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	A	P	P	P			

P - PRESENT

A - ABSENT

■ NEW APPOINTMENT

MC - MEETING CANCELLED

NRM - NO REGULAR MEETING

LOQ - LACK OF QUORUM

RS - RESIGNATION

## 2015 CALENDAR

<b>Meetings:</b>  City Commission  Public Utility Board  Planning & Zoning Board  Zoning Board of Adjustment HPC - Historical Preservation Council							<b>Deadlines:</b> D- Zoning/CUP Application N - Public Notification						
JULY 2015							AUGUST 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 N - 7/21 P&Z	2	3 HOLIDAY	4							1
5	6	7 D - 8/4 & 8/5	8	9	10	11	2	3	4 D - 9/1 & 9/2	5 N - 9/1 & 9/2	6	7	8
12	13	14 AD - 8/4 & 8/5	15 N - 8/4 & 8/5	16	17	18	9	10	11 AD - 9/1 & 9/2	12 N - 9/1 & 9/2	13	14	15
19	20	21 D - 8/18 & 8/19	22 HPC	23	24	25	16	17	18 D - 9/16 & 9/17	19 N - 9/16 & 9/17	20	21	22
26	27	28 AD - 8/18 & 8/19	29 N - 8/18 & 8/19	30	31		23	24 AD - 9/16 & 9/17	25 D - 9/16 & 9/17	26 HPC	27	28	29
							30	31					
SEPTEMBER 2015							OCTOBER 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 D - 10/6 & 10/7	2 N - 10/6 & 10/7	3	4 AD 10/6 & 10/7	5					1	2	3
5	7 HOLIDAY	8	9	10	11	12	4	5	6 D - 11/3 & 11/4	7 N 11/3&11/4	8	9	10
13	14	15 AD 10/20&10/21	16 N 10/20&10/21	17	18	19	11	12	13 AD 11/3 & 11/4	14 N 11/3&11/4	15	16	17
20	21	22	23 HPC	24	25	26	18	19	20 D - 11/17&11/18	21 N 11/17&11/18	22	23	24
27	28	29	30				25	26	27 AD 11/17 & 11/18	28 HPC	29	30	31
NOVEMBER 2015							DECEMBER 2015						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 D 12/1 & 12/2	4 N 12/1 & 12/2	5	6	7			1 D - 1/5 & 1/6	2 HPC	3	4	5
8	9	10 AD 12/1 & 12/2	11 N 12/1 & 12/2	12	13	14	6	7	8 AD - 1/5 & 1/6	9 N - 1/5 & 1/6	10	11	12
15	16	17 D 12/16 & 12/17	18 N 12/16 & 12/17	19	20	21	13	14	15 AD 1/19 & 1/20	16 N - 1/19 & 1/20	17	18	19
22	23	24 AD - 12/16 & 12/17	25 N 12/16 & 12/17	26 HOLIDAY	27	28	20	21	22	23	24 HOLIDAY	25 HOLIDAY	26
29	30						27	28	29	30	31		

Deadlines and Meeting Dates are subject to change at any time. Please contact the Planning Department at (956) 681-1250 if you have any questions.