

STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, April 3, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

<b>Present:</b>	Jose Gutierrez	Chairperson
	Ann Tafel	Vice-Chairperson
	Rogelio Rodriguez	Member
	Hiram A. Gutierrez	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
<b>Absent:</b>	Hugo Avila	Member
	Pablo Garcia	Alternate
<b>Staff Present:</b>	Benito Alonzo	Assistant City Attorney I
	Rodrigo Sanchez	Senior Planner
	Samuel Nunez	Senior Planner
	Hilda Tovar	Planner II
	Natalie Moreno	Planner I
	Jessica Puga	Technician I
	Victor Grey	Technician I
	Carmen White	Administrative Assistant

**CALL TO ORDER –Chairperson Jose Gutierrez**

**1. MINUTES:**

- a) Minutes for the meeting held on February 7, 2024.

The minutes for the meeting held on February 7, 2024 were approved. The motion to approve the minutes were made by Mr. Hiram Gutierrez. Vice-Chairperson Ann Tafel seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a) Request of Oscar Falcon on behalf of South Villa Hermosa LTD., for the following variances to the City of McAllen Zoning Ordinance: **1)** to allow a rear yard garage setback of 5 feet instead of the required 18 feet, and **2)** to allow a north side yard setback of 0 feet instead of the required 6 feet at Lot 54, Amended Map of Fairway Grande Village Unit No.1 Subdivision, Hidalgo County, Texas; 3213 South Casa Linda Street. **(ZBA2024-0007)**

Ms. Moreno stated the applicant was requesting variances to allow a rear yard setback of five feet instead of the required 18 feet for a garage and to allow a 0-foot north side yard setback instead of the required six feet side yard setback as required by the plat note in order to build a townhouse on the property.

The subject property was located at the northeast corner of South Casa Linda Street and St. George Avenue. The property has a frontage of 30 feet along Casa Linda Avenue and a depth of 70 feet along St. George Avenue for a tract size of 2,100 square feet. The property is zoned R-3T (multifamily residential townhouse) District. Surrounding land uses

are townhomes and single-family homes.

The plat for Amended Map of Fairway Grande Village Unit No.1 Subdivision was recorded on April 18, 1977. The plat for this subdivision indicates a six feet side yard setback. The zoning for Lots 1-22 and 27 to 57 is R-3T (multifamily residential townhouse) District and for lots 23 to 26 is R-1 (single family residential) District. The standard side yard setback for Lots in the R-1 (single family residential) District is 6 feet. The standard interior side yard setback for Lots in the R-3T (multifamily residential townhouse) District is 0 feet and 6 feet where a firewall is not constructed. The plat note does not distinguish between side yard setbacks for single-family residences and townhouses. Townhomes constructed in the R-3T (multifamily residential townhouse) District of Fairway Grande Village No. 1 have been constructed to the side property line with a variance granted by the Zoning Board of Adjustment.

The applicant is requesting variances to allow a rear yard setback of 5 feet instead of the required 18 feet for a garage and to allow a 0-foot setback on the north side of the property.

No rear yard or garage setbacks were required for Townhouse zoning district areas when the plat was amended in 1977. Comprehensive rezoning approved in 1979 required a garage setback to be 18 feet. There have been other variances for garage setbacks within the subdivision between 2003 and 2012 for Lots 31, 37, 38, 49 and 55 within this subdivision. The variance granted ranged from 10.67 feet to 15 feet instead of the required 18 feet. The width of Lot 54 is 30 feet and the side yard setback of 6 feet would reduce the building width to 14 feet (10 feet side yard setback is required for corner Lots adjacent to a street).

A single-family residence with a width of 14 feet is not in character with the townhouse development of the subdivision. The zoning ordinance states, "where a townhouse is not separated from an adjacent structure by a firewall, the setback from each side lot line shall be six feet each side". Since the zoning ordinance allows for a side yard setback of 0 feet in an R-3T (multifamily residential townhouse) District with proper construction design, an approval of the request is consistent with the zoning ordinance requirement for townhouse and the development pattern of the subdivision. Between 2012 and 2017, the Board approved five variance requests for 0-side yard setback instead of 6 feet at Lots 32, 33, 39, 47 and 55.

Setbacks shown on the subdivision plat can only be changed by a "vacate and replat" process approved by the Planning and Zoning Commission.

There is a 20 feet alley in the rear of the property that provides access for the proposed garage.

Measurements provided are without benefit of a survey.

Staff had not received any phone calls, emails, or letters in opposition to the variance request.

Staff recommended approval of the variance requests since other similar variances have been approved within the same subdivision.

Chairperson Gutierrez asked staff what were the years when the five variances were approved on Lots 32, 33, 39, 47 and 55. Staff stated they were between the years 2012

through 2017 but did have the exact dates.

Board member Rodriguez asked on Lot 54 on the 10 foot utility easement, was there going to be a sidewalk proposal. Mr. Sanchez, Senior Planner stated the 10 foot utility easement was a setback for a corner lot. The applicant volutarily wanted to do it. Board member Rodriguez asked if the townhouses not allowed to be a 0 lot line. Staff stated because of the plat stated there was a 6 feet but it didn't indicate if it was for the townhouses on the south side or for the single family on the north side in the same subdivision.

Board member Mujica asked staff if the variance was approved they would still have to submit plans for permitting and need to construct a firewall separation. Staff responded yes.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was no one in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the Variance request. There was no one in opposition of the Variance request.

Mr. Alex Lamela moved to approve the Variance request as per staff's recommendations. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to approve the Variance request with five members present and voting.

- b) Request of Oscar Falcon on behalf of South Villa Hermosa LTD., for the following variances to the City of McAllen Zoning Ordinance: **1)** to allow a rear yard garage setback of 5 feet instead of the required 18 feet, **2)** to allow a north side yard setback of 0 feet instead of the required 6 feet, and **3)** to allow a south side yard setback of 0 feet instead of 6 feet at Lot 53, Amended Map of Fairway Grande Village Unit No.1 Subdivision, Hidalgo County, Texas; 3211 South Casa Linda Street. **(ZBA2024-0008)**

Ms. Moreno stated the applicant is requesting variances to allow a rear yard setback of five feet instead of the required 18 feet for a garage and to allow a 0 foot on the north and south side yard setback instead of the required six feet side yard setbacks as required by the plat note in order to build a townhouse on the property

The subject property was located at the northeast corner of South Casa Linda Street and St. George Avenue. The property has a frontage of 30 feet along Casa Linda Avenue and a depth of 70 feet along St. George Avenue for a tract size of 2,100 square feet. The property is zoned R-3T (multifamily residential townhouse) District. Surrounding land uses are townhomes and single-family homes.

The plat for Amended Map of Fairway Grande Village Unit No.1 Subdivision was recorded on April 18, 1977. The plat for this subdivision indicates a six feet side yard setback. The zoning for Lots 1-22 and 27 to 57 is R-3T (multifamily residential townhouse) District and for Lots 23 to 26 is R-1 (single family residential) District. The standard side yard setback for lots in the R-1 (single family residential) District is 6 feet. The standard interior side yard setback for Lots in the R-3T (multifamily residential townhouse) District is 0 feet and 6 feet where a firewall is not constructed. The plat note does not distinguish between side yard setbacks for single-family residences and townhouses. Townhomes constructed in the R-3T (multifamily residential townhouse) District of Fairway Grande Village No. 1 have been constructed to the side property line with a variance granted by the Zoning Board of

Adjustment.

The applicant was requesting variances to allow a rear yard setback of 5 feet instead of the required 18 feet for a garage and to allow 0-foot setback on the north and south side of the property.

No rear yard or garage setbacks were required for Townhouse zoning district areas when the plat was amended in 1977. Comprehensive rezoning approved in 1979 required a garage setback to be 18 feet. There have been other variances for garage setbacks within the subdivision between 2003 and 2012 for Lots 31, 37, 38, 49 and 55 within this subdivision. The variance granted ranged from 10.67 feet to 15 feet instead of the required 18 feet. The width of Lot 53 is 30 feet and the side yard setbacks of 6 feet would reduce the building width to 18 feet.

A single-family residence with a width of 18 feet is not in character with the townhouse development of the subdivision. The zoning ordinance states, "where a townhouse is not separated from an adjacent structure by a firewall, the setback from each side lot line shall be six feet each side". Since the zoning ordinance allows for a side yard setback of 0 feet in an R-3T (multifamily residential townhouse) District with proper construction design, an approval of the request is consistent with the zoning ordinance requirement for townhouse and the development pattern of the subdivision. Between 2012 and 2017, the Board approved five variance requests for 0-side yard setback instead of 6 feet at Lots 32, 33, 39, 47 and 55.

Setbacks shown on the subdivision plat can only be changed by a "vacate and replat" process approved by the Planning and Zoning Commission.

There was a 20 feet alley in the rear of the property that provides access for the proposed garage.

Measurements provided are without benefit of a survey.

Staff had not received any phone calls, emails, or letters in opposition to the variance request.

Staff recommended approval of the variance requests since the similar variances have been approved within the same subdivision.

Vice-Chairperson Tafel asked staff if this would put Lot 53 equal to Lot 54 as far as setbacks and lining up with firewall separation. Staff responded yes.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was no one in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the Variance request. There was no one in opposition of the Variance request.

Mr. Juan Mujica moved to approve the Variance request as per staff's recommendations. Mr. Hiram Gutierrez seconded the motion. The Board voted to approve the Variance request with five members present and voting.

- c) Request of Juan Roberto Moreno on behalf of Ricardo Rendon for the following variances to the City of McAllen Zoning Ordinance: 1) to allow an encroachment of 7 feet into the 10 foot rear yard setback and 2) 2 feet distance to the main building instead of the required 5 feet distance for a proposed palapa measuring 30 feet by 22 feet, at Lot 42, Candleflower Subdivision No. 2, Hidalgo County, Texas; 1925 Lark Avenue. (ZBA2024-0009)

Ms. Tovar stated the applicant was requesting two variances to allow an encroachment of 7 feet into the 10 foot rear yard setback and 2 feet distance to the main building instead of the required 5 feet distance for a proposed palapa measuring 30 feet by 22 feet.

Candleflower Subdivision No.2 was recorded on April 12, 1982. The plat indicates a 10 foot rear yard setback and 6 feet side yard setback on both sides for the subdivision. The house was built in 1990. A building permit application was submitted on December 2023, for the proposed palapa and approved on January 2024. However, the project was not built to comply with permit conditions and failed inspections by the Building Department. On March 6, 2024, a variance application was submitted to resolve the encroachment of 7 feet into the 10 foot rear yard setback.

The applicant is requesting a variance to allow an encroachment of 7 feet into the 10 foot rear yard setback and 2 feet distance to the main building instead of the required 5 feet distance for a proposed palapa measuring 30 feet by 22 feet.

Applicant stated that the palapa was approved with a building permit application. According to the site plan submitted, the proposed structure size is a total of 660 square feet. The palapa will be made out of concrete and it will include a kitchen, a restroom and a chimney. Initially, the site plan submitted for the building permit application did not show an encroachment into the setbacks. However, the rear yard setback was measured from the curb instead of the property line. In addition, site visit revealed that there is no distance between the main structure and the proposed patio.

During the site visit, staff did not notice any other encroachments or similar structures along the front or rear yards within Candleflower Subdivision No.2. In addition, a review of the Planning Department records did not reveal any other similar variances or special exceptions approved in this area.

Variances are issued to the property and remain as a condition for future owners and new constructions.

Measurements provided are without benefit of a survey.

Staff had not received any phone calls, emails, or letters in opposition to the variance request.

Staff recommended disapproval of the variance requests.

Board member Rodriguez asked staff if the building permit was approved previously. Staff stated the applicant started construction but was still considered proposed because it has not been completed. Viewing the site picture, the request was for a 7 foot encroachment into the 10 foot rear yard setback. The site plan showed , it was only 3 feet to the property line. Between the main structure and the proposed palapa there was no distance in between

which was also approved on the building permit that there was going to be a two foot distance. Ms. Tovar clarified with the applicant, and he stated instead of landscaping it would be a concrete walkway.

Chairperson Gutierrez asked staff when was it noticed that there may have been an error in approving the permit. Mr. Nunez, Senior Planner stated the construction was not built according to the conditions of the permit. Planning approved the conditions with a 10 foot rear yard setback however; upon inspections it was discovered the contractor did not build it the way he had intended. Mr. Nunez stated it was one of the conditions for the permit that it would have at least a distance of two feet. However, as seen on the site plan it would appear little to no distance between the primary structure and the proposed palapa.

Chairperson Gutierrez asked staff if they noticed this during inspections. Staff stated it was the Building Department which they cited the Fire Department and saw the requirement for fire hazard to have the five foot separation between the main structure and the proposed palapa.

Board member Mujica had concerns making a decision without viewing the conditions that had been stipulated in approvals and were not upheld. Mr. Nunez stated as per Ordinance stated a required minimum distance of five foot distance between the rear yard structure and the primary structure. Mr. Nunez stated the Board could make a motion to table the item and the Planning Department could provide the actual building conditions that were given to the contractor. Once the application is reviewed by the Planning Department, they provide the conditions for the setbacks that the applicant needs to comply. Then the inspector goes out to check for the applicant requests a final inspection.

Board member Rodriguez had concerns with the actual two feet that were approved. Also, the City has an ordinance where a permit could be revoked if the applicants do not comply. Mr. Nunez stated at this point the Certificate of Occupancy would not be issued until the final inspection was passed. Staff indicated the applicants were present.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was no one in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the Variance request. There was no one in opposition of the Variance request.

Mr. Rogelio Rodriguez moved to table the Variance request to obtain more information from the Building Department. Mr. Alex Lamela seconded the motion. The Board voted to table the Variance request with five members present and voting.

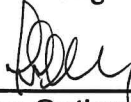
- d) Request of Jorge Vanegas on behalf of Mirna Rivas for the following variances to the City of McAllen Zoning Ordinance: **1)** to allow side yard setbacks of 0 feet instead of the required 6 feet, and **2)** to allow a rear garage setback of 10.66 feet instead of the required 18 feet for Lot 31, Amended map of Fairway Grande Village Unit No. 1 Subdivision, Hidalgo County, Texas; 3015 South Casa Linda Street. **(ZBA2024-0010) WITHDRAWN**

Staff stated the applicant requested this item to be withdrawn.

**ADJOURNMENT**

There being no further business to come before the Zoning Board of Adjustment and Appeal, Chairperson Jose Gutierrez moved to adjourn the meeting.

  
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Carmen White, Administrative Assistant

  
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Chairperson Jose Gutierrez