

**STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN**

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, June 5, 2024 at 4:30 p.m. in the McAllen Development Center, 311 North 15th Street, Executive Conference Room with the following present:

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|-----------------------|---------------------------|----------------------------------|
| Present: | Jose Gutierrez | Chairperson |
| | Ann Tafel | Vice-Chairperson |
| | Hugo Avila | Member |
| | Rogelio Rodriguez | Member |
| | Hiram A. Gutierrez | Member |
| | Juan Mujica | Alternate |
| | Alex Lamela | Alternate |
| | Pablo Garcia | Alternate |
|
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| Absent: | Daniel Santos | Alternate |
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| Staff Present: | Issac Tawil | City Attorney |
| | Michelle Rivera | Assistant City Attorney |
| | Benito Alonzo | Assistant City Attorney I |
| | Edgar Garcia | Planning Director |
| | Rodrigo Sanchez | Senior Planner |
| | Samantha Trevino | Planner I |
| | Natalie Moreno | Planner I |
| | Jessica Puga | Technician I |
| | Carmen White | Administrative Assistant |

CALL TO ORDER –Chairperson Jose Gutierrez

1. MINUTES:

- a) Minutes for the meeting held on May 22, 2024.

The minutes for the meeting held on May 22, 2024 were approved. The motion to approve the minutes were made by Mr. Hugo Avila. No one seconded the motion, so motion died.

The motion to table the minutes to make corrections. The motion to table the minutes were made by Vice-Chairperson Ann Tafel. Mr. Rogelio Rodriguez seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Francisco Rodriguez, for a Special Exception to the City Of McAllen Zoning Ordinance to allow: **1)** an encroachment of 17 feet into the 20-foot front yard setback, **2)** an encroachment of .5 feet into the 3½ foot east side yard setback, and **3)** an encroachment of 1.5 feet into the 3½ foot west side yard setback, for a proposed carport measuring 20 feet by 20 feet at the West ½ of Lot 19, Block 2, College Addition Subdivision, Hidalgo County, Texas; 2323 Dallas Avenue. **(ZBA2024-0017)**

Vice-Chairman Tafel asked staff for clarification on the 17 feet into the 20-foot setback. She asked there would be only 3 feet. Staff responded yes, it was from the property line. Vice-Chairperson Tafel asked if there were any easements along that area. Staff stated there was none; College Addition was an older subdivision. It was also a very narrow lot. That lot and the lot to the east of it were once one lot at one time and later were split into two lots so now they are 25-foot frontage lots.

Vice-Chairperson Tafel asked staff if they knew what type of material would be used to build the carport. Staff stated they did not know that would determine at the Building Permit Department process.

Board member Avila asked staff if the proposed carport the same size as the house. Staff stated it was a little bit wider. He asked staff if there were any other carports that had been approved in that area. Staff stated there was none that was on record, no variances, special exceptions or building permits for that area for carports in the front.

Ms. Trevino stated the request is to allow an encroachment of 14 feet into the 20 foot front yard setback, an encroachment of .5 feet into the 3½ foot east side yard setback, and an encroachment of 1.5 feet into the 3½ foot west side yard setback for a proposed carport measuring 20 feet by 20 feet. The applicant proposes to construct the carport in order to provide protection for the household and family vehicles from inclement weather.

The subject property was located along the south side of Dallas Avenue between South 23rd Street and South 25th Street.

College Addition Subdivision was recorded May 2, 1925. The plat does not indicate setbacks. The subdivision was recorded prior to 1979 and the applicable setbacks were subject to the 1945 Zoning Ordinance. The front yard setback is 20 feet per Ordinance. An application for a Building permit had not been submitted at this time. An application for a Special Exception request was submitted May 1, 2024.

The applicant is requesting to allow an encroachment of 14 feet into the 20 foot front yard setback, an encroachment of .5 feet into the 3½ foot east side yard setback, and an encroachment of 1.5 feet into the 3½ foot west side yard setback for a proposed carport measuring 20 feet by 20 feet.

There are other carports and structures in the area that appear to have been built without permits. The adjacent property to the east contains an existing carport. A review of Planning Department records did not reveal any variances/special exceptions nor a building permit for this structure.

Construction of the carport may involve (in part or in whole) reconstruction of the driveway.

Measurements are provided without the benefit of the survey.

Special Exceptions are issued to and recorded for the present applicant/owner only. New property owners would need to apply for a new Special Exception request.

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

Staff recommended approval of the request since the character of the subdivision will not be negatively impacted, and special exceptions are issued to and recorded for the present property owner only.

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

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

Mr. Francisco Rodriguez, 2323 Dallas Avenue. The applicant stated he wanted to build the carport for his medical conditions. When it rains to get to his vehicle he's completely wet and ends up getting sick.

Board member Mujica asked the applicant what type of material was he going to use. Mr. Rodriguez stated he would use metal. He stated he had a couple of friends that he was waiting to give him some prices.

Following discussion, Mr. Hiram Gutierrez moved to approve the Special Exception as presented. Mr. Hugo Avila seconded the motion. The Board voted to approve the Special Exception with five members present and voting.

- b) Request of Irma Gonzalez, for a Special Exception to the City Of McAllen Zoning Ordinance to allow an encroachment of 14 feet into the 20-foot front yard setback for a proposed carport measuring 20 feet by 20 feet at Lot 7, Block 18, College Heights Subdivision, Hidalgo County, Texas; 2025 Newport Avenue. (ZBA2024-0019)

Ms. Trevino stated the applicant was requesting to encroach 14 feet into the 20-foot front yard setback for a proposed carport that will be used to protect her vehicles from inclement weather.

The subject property is located along the south side of Newport Avenue between South 20th Street and South 21st Street. The subject property is zoned R-2 (duplex-fourplex residential) District.

College Heights Subdivision was recorded on December 28, 1926. The plat does not indicate setbacks. The subdivision was recorded prior to 1979 and the applicable setbacks were subject to the 1945 Zoning Ordinance. The front yard setback is 20 feet as per ordinance. An application for a building permit and special exception request were submitted May 3, 2024.

The applicant is requesting to encroach 14 feet into the 20-foot front yard setback for a proposed carport that will be used to protect her vehicles from inclement weather conditions. A one-car garage may have been part of the house but was enclosed.

At the Zoning Board of Adjustments and Appeals meeting of January 25, 2024, the Board unanimously voted to approve the special exception for an encroachment of 10 feet into the 20 ft. front yard setback for a proposed carport measuring 20 feet by 20 feet at Lot 1, Block 18, College Heights Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of July 13, 2023 the Board unanimously voted to approve a special exception for an encroachment of 13.5 feet into the 20-foot front yard setback for a proposed carport measuring 20 feet by 20 feet at Lots 23 & 24, Block 11, College Heights Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of October 5, 2022 the Board unanimously voted to approve a special exception for an encroachment of 16 feet into the 20-foot front yard setback for a proposed carport measuring 20 feet by 20 feet at Lot 2, Block 18, College Heights Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of June 3, 2020 the Board unanimously voted to approve a special exception for an encroachment of 20 feet into the 20 feet front yard setback for a proposed carport measuring 18 feet by 28 feet at Lot 14, Block 11, College Heights Subdivision

Measurements are provided without the benefit of a survey.

Special exceptions are issued to and recorded for the present applicant/owner only. New property owners would need to apply for a new special exception request.

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

Staff was recommending approval of the Special Exception request since there have been other similar requests approved within the subdivision. The structure will not change the character of the neighborhood.

Ms. Irma Gonzalez, 2025 Newport Avenue. She stated she wanted a carport for protection of inclement weather. She stated her daughter bought a new vehicle and wanted to protect it. Chairperson Gutierrez asked who was going to construct the carport. Ms. Gonzalez stated her brother-in-law.

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

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

Following discussion, Mr. Hugo Avila moved to approve Special Exception as per staff's recommendation. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to approve the Special Exception with five members present and voting.

- c) Request of Juan Muniz for the following variance to the City of McAllen Zoning Ordinance to allow a Lot size of 5,250 square feet instead of the required 5,600 square feet for a duplex at Lot 17, Block 11, College Heights Subdivision, Hidalgo County, Texas; 2164 Kennedy Circle. **(ZBA2024-0014)**

Ms. Moreno the applicant was requesting a variance to allow a Lot area of 5,250 square feet instead of the minimum required Lot area of 5,600 square feet for construction of a duplex.

The vacant property was located southeast of the intersection of Jackson Avenue of Kennedy Circle. The property has a frontage of 50 feet along Kennedy Circle and a depth of 140 feet. The property was zoned R-2 (duplex-fourplex residential) District. There is R-2 District in all directions.

College Heights Subdivision was recorded on December 28, 1926. The front yard setback is 20 feet as per the R-2 Zoning District. The application for the Variance request was submitted on April 24, 2024.

The applicant submitted a feasibility plan that shows the layout of the proposed duplex on a Lot area of 5,250 square feet. The applicant has not submitted an application for a building permit with site plan for formal review.

The duplex will consist of two living units, which will include a bedroom, kitchen, bath and dining room. The feasibility plan shows compliance with parking and setback requirements.

The variance request is to allow a 5,250 square feet Lot for the duplex use instead of the 5,600 square feet required as per Section 138-356 of the Zoning Ordinance. The minimum area for a duplex use in the R-2 (duplex-fourplex residential) District is 5,600 square feet. The Lot size is deficient by 350 square feet or .0625 percent.

Development along Kennedy circle is primarily single family residential and duplex use along this neighborhood may not conform to the character of the area.

Staff had received one phone call in opposition to the variance request with concerns of a duplex not being characteristic to the neighborhood.

Staff recommended approval of the request since the deficiency is only 6% of the required Lot area.

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 one in opposition of the Variance request.

Sam Benson, 2205 West Jackson Avenue, McAllen. He stated he owned several properties around that particular area. He stated he was against the Variance request because it posed a safety hazard for traffic visibility going south there was a curve then an incline coming towards the stop sign. In addition, parking was a problem. People in front of that lot because there is nowhere else to park. He also stated the property had sinkholes that were used for outhouses.

Mr. Juan Muniz, 3000 Zenaida Avenue, McAllen. The applicant stated he was meeting all the requirements including 1.5 parking spaces and landscaping. They were two units, each one a one bedroom.

Board member Mujica asked the applicant how long he owned the property. Mr. Muniz stated almost one year.

Board member Mujica commented on the square footage requirement of an R-2 District that was established in 1973 not 1926. The parking issue that stated earlier those are people parking on the street.

Vice-Chairperson Tafel commented that a house could be built on that property. It would have plenty of Off Street parking and fit in with the neighborhood. It does not have to be a duplex.

Planning Director Garcia stated the zoning was an R-2, which it could be a duplex, triplex or a fourplex. Depending on the size of the lot, you are allowed either a duplex, triplex or a fourplex. If a variance was granted to build a duplex, they could do not anything else later. It could be a duplex or go down to a single family home.

Chairperson Gutierrez asked if it matter how much square footage for a one particular or any duplex. Mr. Garcia stated the footage of the actual building does not come into play. As long as the setbacks are met and the height requirements.

Staff recommended tabling the item due to a discrepancy with the previously provided case packet.

Following discussion, Mr. Hiram Gutierrez moved to table the Variance request to make correction on the memo. Mr. Hugo Avila seconded the motion. The Board voted to table the Variance request with five members present and voting.

- d) Request of Orlando De Jesus Valdez Rodriguez for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 5 feet into the 10-foot rear yard setback for a proposed swimming pool measuring 8.91 feet by 22.67 feet at Lot 25, Derby Downs Subdivision, Hidalgo County, Texas; 2213 North 46th Street. **(ZBA2024-0015)**

Ms. Moreno stated the applicant was requesting to allow for a proposed rectangular shaped swimming pool measuring 8.91 feet by 22.67 feet to encroach 5 feet into the 10-foot rear yard setback. The applicant states that the rear yard area is limited and the encroachment is needed to build the swimming pool.

The subject property is located along the west side of North 46th street approximately 195.72 feet of North vine Avenue. The property has 58.79 feet of frontage along North 46th street and a depth of 103.44 feet. The property is zoned R-1 (single family residential) District. There is R-1 District in all directions.

Derby Downs Subdivision was recorded on October 29, 2004. The plat states a rear yard setback of 10 feet. A variance request application was submitted on April 29, 2024.

The applicant is requesting to allow an encroachment of 5 feet into the 10-foot rear yard setback for a proposed swimming pool. A 5-foot utility easement run concurrently with the rear yard setback adjacent to the rear property lines and the proposed construction will not encroach into the utility easement.

A review of Planning Department records, staff revealed two variances that have been granted for a proposed swimming pool and storage building within this subdivision.

At the Zoning Board of Adjustments and Appeals meeting of June 3, 2020 the Board voted to approve a variance request to allow an encroachment of 5 feet into the 10-foot rear yard setback for a proposed swimming pool that measured 20 feet by 8 feet at Lot 23, Derby Downs Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of August 5, 2015 the Board voted to approve variances requests to allow an encroachment of 1 foot into the 10 foot rear yard setback and 2 feet into the 6 foot side yard setback for a storage building that measured 7 feet by 11 feet at Lot 4, Derby Downs Subdivision.

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 request since two variance requests have been previously approved within this subdivision. If the Board approves this request, it should be limited to the encroachment shown on the submitted site plan.

Board member Avila asked staff if there was an alley. Staff stated there was no alley.

Board member Mujica asked staff a note on the site plan drawing said 10-foot R.S.B.L. Staff stated it stood for rear setback back line.

Mr. Orlando Valdez, 2213 North 46th Street. He stated he wanted to build a pool for his family. Chairperson Gutierrez explained to Mr. Valdez (translating in Spanish) the definition of a variance that it goes with the land and not with the owner.

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 one in opposition of the Variance request.

Board member Rodriguez asked staff that they base their recommendation on the fact that two other previous approvals. Staff stated yes but they also see if it going to affect the neighborhood as well or any negativity towards the neighborhood. Senior Planner Sanchez stated staff including the history was for information purposes. Board member Gutierrez stated some of the homes have structures built further back into the 10 feet setback. Mr. Sanchez stated there might be if you look at an aerial.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove Variance request as presented. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the Variance request with five members present and voting.

Chairperson Gutierrez asked for a motion to adjourn to Executive Session with Legal counsel at 5:24 p.m.

Vice-Chairperson Ann Tafel moved to adjourn for Executive Session. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously with five members present and voting.

The Board reconvened after Executive Session at 5:55 p.m. and proceeded with the regular meeting in process.

City Attorney Isaac Tawil stated no action needed to be taken at this time but the Board did recess to Executive Session to consult with Counsel regarding legal issues related to Chapter 211.009 specifically its applicability. There was no action on the advice that was given by counsel.

- e) Request of Arnold Cavazos on behalf of Gabriel Alanis for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 20-foot rear yard setback on the East Rear and South Rear portion for a proposed residence at Lot 19, Lago Vista Subdivision, Hidalgo County, Texas; 4501 South "M" Street. **(ZBA2024-0018)**

Ms. Moreno stated the applicant was requesting variances to allow an encroachment of 10 feet into the 20-foot rear yard setback into the east rear yard and into the south rear yard for a proposed single-family residence with garage.

The subject property was located on a partial cul-de-sac at the intersection of South "M" Street and Helena Avenue. The irregular shaped property is vacant and is zoned R-1 (single family residential) District. Adjacent zoning is R-1 District to the north and west. There is A-O (agricultural and open space) District to the south. The area to the east across South Jackson Road is in the city limits of Pharr.

Lago Vista Subdivision was recorded on October 31, 2006. The plat indicates a front setback of 25 feet and 20 feet for a rear yard setback. Due to an oversight during the site plan, review process the building permit was issued stating a rear yard setback of 10 feet, instead of the required 20 feet for the rear yard setback. A variance request was submitted on May 2, 2024.

The applicant was requesting a variance to allow an encroachment of 10 feet into the 20-foot rear yard setback. The specific encroachment width are approximately 34.4 feet for the garage, 74.25 for the outdoor kitchen and extends 27.16 feet along the south portion of the rear yard setback. The plat shows an irrigation easement that was abandoned by the Hidalgo County irrigation District.

To the east side of the property there is a ROW easement. As per discussion with Engineering Department, there are no plans of future expansion to Jackson Road at their location. To the south of the subject, property is vacant land.

The standard setbacks for an R-1 district is 10 feet. Lots 8 through 18, just west of Lot 19 show a rear setback of 10 feet.

A review of the Planning Department records did not reveal any other similar variances approved in this area.

Variances run with the land and remain as a condition for future owners and new constructions.

Measurements provided on the site plan 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 request since the irregular shape of the Lot affects the construction design.

At the Zoning Board of Adjustments and Appeals meeting of May 22, 2024, no one appeared in opposition to the variance request. There were five Board members present and voting. Following discussion, Board member Hugo Avila made a motion to approve the request. The motion was seconded by Board member Hiram H. Gutierrez. Two members voted ay and three members voted nay.

Chairman Gutierrez adjourned the meeting at 5:18 p.m.

Chairperson Gutierrez asked staff if they had met with the applicant to discuss the changing of the design of the proposed construction to comply with all the requirements and setbacks. Staff stated yes, two weeks ago they did but that was the design that would stay.

Board member Mujica wanted to clarify that the property was platted with a 20 foot rear yard setback. There was a 10 foot utility easement on the rear yard setback, there were two. They were along Jackson adjacent to Jackson Road. The proposal from the applicant would be to have the structure within or at a 10 foot setback which 10 feet is the common rear setback in the City of McAllen. Staff responded yes.

Board member Avila asked if the applicant could replat. Planning Director Garcia stated they would need a vacate to replat. The reason for that was that if they just replat it would be moving lines but not removing setbacks, easements or any other restrictions. To change setbacks, easements or other restrictions you would have to vacate and replat. You must get signatures of all the owners of that same subdivision.

Mr. Ronnie Cavazos, 2604 West Chesterfield, Edinburg. He stated he was designer for the proposed construction. Looking at the property there was a gas line running through it. It was located between the garage and the house. Board member Mujica stated he had understood that the gas line had been abandoned. Mr. Cavazos stated what he had received from the City those were the parameters that were given and so they designed based on that information. They had gone through a lending process which was approved by the bank. He stated it was not impacting anybody negatively. He also stated the Home Owners Association was not opposed to it.

Chairperson Gutierrez asked Mr. Cavazos when the present owner decided to purchase this particular lot was he or she aware of the setbacks, limitations and easements. Mr. Cavazos stated no, they were not. Chairperson Gutierrez asked Mr. when he designed this property was he aware of the setbacks. Mr. Cavazos stated the first thing they do when they're designing they call the City and ask for the setbacks. Chairperson Gutierrez asked Mr. Cavazos if they informed the owners of this particular setbacks. Mr. Cavazos stated yes, as soon as they asked the engineers to do a prepor survey when they're on site, they called the City. It was incorrect the first time. Board member Mujica asked how was it incorrect. Mr. Cavazos stated they were given a 10 foot setback for the rear. Mr. Mujica stated on the document from Melden & Hunt showed a 20 foot setback.

Planning Director Garcia stated the applicant came in to apply for a building permit and was approved with conditions set as a 10 foot rear yard setback which was done in error.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was one in favor of the Variance request.

Ms. Gabriela Alanis, (owner) 3100 S. Colonel Rowe Boulevard. She bought the property for her son. She stated when she purchased the property she knew about the gas lines. She had the plat and gave it to Mr. Cavazos. Mr. Cavazos then applied for the building permit and it was approved. He proceeded with the plan from the survey and noticed the setbacks were different.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was someone in favor of the Variance request.

Mr. Oscar Falcon, 5221 N. McColl Road. He stated there might have been a mistake one the setbacks that was made somewhere along the line. He stated there was a setback that was approved by the City. There was no eminent issue with any easements or utilities that would be obstructing the structure.

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

Following discussion, Mr. Hiram Gutierrez moved to approve Variance request as presented. Mr. Hugo Avila seconded the motion. The Board voted to approve the Variance request with two members voting aye and three members, Vice-Chairperson Ann Tafel, Rogelio Rodriguez and Chairperson Jose Gutierrez voting nay.

The motion dies with no super majority.

Vice-Chairperson Ann Tafel moved to disapprove the Variance request. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the Variance request with three members voting nay and two members Mr. Hiram Gutierrez and Mr. Hugo Avila voted aye.

The motion dies again with no super majority of neither approval nor disapproval. Chairperson Gutierrez asked for one final motion.

Mr. Hugo Avila moved to approve the Variance request as per staff's recommendation. Mr. Hiram Gutierrez seconded the motion. The Board voted to approve the Variance request with two members voting aye and three members voting nay, Vice-Chairperson Ann Tafel, Rogelio Rodriguez and Chairperson Jose Gutierrez.

After some discussion, the Board decided to table the item until the next meeting.

Mr. Rogelio Rodriguez moved the table item for the applicant to modify the design. Mr. Hugo Avila seconded the motion. The Board voted to table the item with five members present and voting.

- f) Request of Juan A. Rodriguez on behalf of Laura A. Rios for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 6 feet into the 6-foot side yard setback for an existing covered patio measuring 17.5 feet by 22 feet at Lot 61, Saddle Creek Unit 1 Subdivision, Hidalgo County, Texas; 9216 North 30th Street. **(ZBA2024-0016)**

Ms. Moreno stated the applicant was requesting a variance to encroach 6 feet into the 6-foot south side yard setback for an existing covered patio measuring 17.5 by 22 feet. The applicant was not aware about setbacks when he built the patio.

The subject property was located at the southeast corner of Northwestern Avenue and North 30th Street. The property had a frontage of 58 feet along North 30th Street and a depth of 100 feet for a total Lot size of 5,800 square feet. The property is zoned R-1 (single family residential) District. There are single-family residences in all directions.

Saddle Creek Unit 1 Subdivision was recorded on September 11, 2001. The plat indicates a 6-foot side yard setback for interior property lines. On November 8, 2022 a stop work order was issued by the Building Permit and Inspections Department for construction without a permit. On April 25, 2024 during a follow up inspection, a citation was issued. An application for a building permit and a variance request were submitted on April 26, 2024.

The applicant was requesting to encroach 6 feet into the 6-foot south side yard setback for an existing covered patio. The applicant stated that the covered patio is for family gatherings in the afternoons and weekends to enjoy the outdoors. The covered patio contains a small kitchenette, a fire pit, and outdoor couches.

The submitted site plan shows an existing shed encroaching into the rear and side yard setbacks and utility easement. The applicant has decided not to include the encroachment as part of this request at this time.

During the site visit, staff noticed what appeared to be other existing encroachments into the rear and side yard setbacks for existing storage sheds and covered patios for Lots 2, 10, 16, 17, 32, 41, 57, 64, 68, 71, 75 and 82 . A review of Planning Department records did not reveal any variances approved within Saddle Creek Unit 1 Subdivision.

Variances issued run with the land 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 request. If the Board chooses to approve the variance, it should be limited to the encroachment for the covered patio shown on the submitted site plan.

Chairperson Gutierrez mentioned to staff showed on the site plan a shed encroaching into the rear and side yard setbacks and utility easements. Staff stated the applicant would take care of that later.

Vice-Chairperson Tafel asked staff what type of material was used on the structure. Staff stated they did not have the information as to type of material was used.

Mr. Juan Rodriguez, 9216 North 30th Street. The applicant stated he wanted to build a patio for his family. He stated he was unaware of any setbacks. Once he received the citation, he came to the City to comply with the ordinance.

Board member Avila explained to the applicant how setbacks work. He stated it helps protect them and their neighbors. The setbacks are there for fire protection. Mr. Avila pointed out that his structure was built up to the property line, which imposes a fire hazard. Once the variance is granted anything could be built there because it runs with the land not the owner. Mr. Rodriguez stated the heating lamp and the pit could be moved outside.

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 one in opposition of the Variance request.

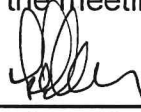
Following discussion, Vice-Chairperson Ann Tafel **moved** to disapprove Variance request as presented. Mr. Hugo Avila seconded the motion. The Board voted to disapprove the Variance request with five members present and voting.

ADJOURNMENT

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



Carmen White, Administrative Assistant



Chairperson Jose Gutierrez