

STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, May 22, 2024 at 4:30 p.m. in the McAllen Development Center, 311 North 15th Street, Executive Conference Room with the following present:

Present:	Jose Gutierrez	Chairperson
	Ann Tafel	Vice-Chairperson
	Hugo Avila	Member
	Rogelio Rodriguez	Member
	Hiram A. Gutierrez	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
Absent:	Daniel Santos	Alternate
	Pablo Garcia	Alternate
Staff Present:	Benito Alonzo	Assistant City Attorney I
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Samuel Nunez	Senior Planner
	Natalie Moreno	Planner I
	Carmen White	Administrative Assistant

CALL TO ORDER –Chairperson Jose Gutierrez

1. MINUTES:

- a) Minutes for the meeting held on May 8, 2024.

The minutes for the meeting held on May 8, 2024 were approved. The motion to approve the minutes were made by Mr. Hugo Avila. Mr. Alex Lamela seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) 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)

The applicant is 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 is 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 is requesting a variance to allow an encroachment of 10 feet into the 20-foot rear yard setback. The specific encroachment widths 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 that location. To the south of the subject property is vacant land.

The standard rear 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.

Mr. Arnold Cavazos, 2020 E. Silverbell Street, Mission. Mr. Cavazos stated the reason for the encroachment was because it was a pre-sold home on the west side. It had a patio, and was going to have a swimming pool and an outdoor kitchen. When asked for the easements they were able to work that parameter. On the garage side, they assumed the utility easement was there but wanted to separate so the cars could drive in and out. After it was designed they then proceeded with the project. Mr. Cavazos stated they showed the design to the homeowner, she liked the way it looked based on the lot itself and then signed off on it. Engineers Melden and Hunt had brought to their attention of the encroachment. Chairperson Gutierrez asked Mr. Cavazos if there was another alternative to solve the problem. Mr. Cavazos stated they did speak with the homeowner regarding it but she rejected.

Board member Avila asked staff what was the rear setback for an R-1. Staff stated it was 10 feet.

Board member Mujica agreed with Chairperson Gutierrez that there could be a better option for the situation.

Oscar Falcon, 5221 North McColl Road, McAllen, Texas. He represented Cantu Construction and the Homeowners Association at Lago Vista. He stated as an Association they had no objection to the 10 foot setback. They researched with the engineer of record to see why it was a 20 foot rear setback, they could not give him an answer. They checked with the State to see if there were any future expansion plans otherwise it would have been a right-of-way not a setback. He stated the owner bought the plan with all good intentions of meeting the City's setbacks that were standard at the time.

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.

Vice-Chairperson Tafel asked staff was this the only lot in the subdivision that had this problem or will others be coming with the same issue. Staff stated all the lots on the east side had a 20-foot setback platted but not the rest of the lots.

Board member Rodriguez asked the applicant if asphalt was going to put at 30 feet at the irrigation easement. Mr. Cavazos stated it would be a concrete driveway.

Following discussion, Mr. Hugo Avila moved to approve Variance request as presented. Mr. Hiram Gutierrez 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.

Assistant City Attorney Benito Alonzo asked Chairperson if he could have a second to consult with legal.

Subsequently, Chairperson Gutierrez stated the meeting was back in regular session and requested to have an Executive Session.

Chairperson Gutierrez asked for a motion to adjourn to Executive Session with Legal at 5:04 p.m. Vice-Chairperson moved to adjourn for Executive Session. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously with five members present and voting.

The meeting resumed and Mr. Alonzo stated that an Executive Session was not officially called because as per the Code there needs to be a sub missionary statement proposed by Mr. Alonzo as Legal Counsel or this Board prior to engaging in any discussion. Mr. Alonzo stated that for purposes of the record, there was a motion made for approval and acceptance of staff's recommendation of approval of the variance request and there was a second. There were two votes in favor of that motion. However, there were three votes against the vote. The question was if a super majority is necessary in order to move forward. Mr. Alonzo then conferred with staff and City Attorney, Isaac Tawil, stated in Section 211.009 of the Government Code Subsection C does state that the concurring vote of 75% of the members of the Board was necessary to reverse an order requirement,

decision or determination of an administrative official.

After much discussion, the Board proceeded with the regular meeting in process.

- b) Request of Walter B. Azuara for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of up to 7 feet into the 10-foot rear yard setback for a garage at Lot 1, The John Collavo Subdivision, Hidalgo County, Texas; 720 North 6th Street. **(ZBA2024-0011)**


Staff stated the item had been 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.



Carmen White, Administrative Assistant



Chairperson Jose Gutierrez