

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 8, 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
	Hugo Avila	Member
	Hiram A. Gutierrez	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
	Daniel Santos	Alternate
Absent:	Ann Tafel	Vice-Chairperson
	Rogelio Rodriguez	Member
	Pablo Garcia	Alternate
Staff Present:	Benito Alonzo	Assistant City Attorney I
	Edgar Garcia	Planning Director
	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 April 17, 2024.

The minutes for the meeting held on April 17, 2024 were approved. The motion to approve the minutes were made by Mr. Alex Lamela. Mr. Hiram Gutierrez seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) 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)**

Mr. Hernandez stated the applicant was requesting an encroachment of up to 7 feet into the 10-foot rear yard setback for an existing unfinished structure that is proposed to be used as a garage. The garage will be used to protect the residents, family vehicles, as well as household tools and equipment.

The property was located at the southeast corner of Hackberry Avenue and North 6th Street. The property was zoned R-1 (single family residential) District. There was R-1 District in all directions.

The John Collavo Subdivision was recorded on January 10, 1948. A stop work order was issued February 27, 2024 for construction without a permit. An application for a building permit was submitted on March 1, 2024. An application for a variance request was submitted March 20, 2024.

The applicant was requesting an encroachment of up to 7 feet into the 10-foot rear yard setback for an unfinished 560 square foot structure proposed to be used as a garage.

Construction for the unfinished garage structure was started over an existing concrete foundation that previously contained a metal canopy carport. The applicant states "cement slab with metal rails on exterior and middle of slab along with metal tubes were used as part of the structural base then reinforced with additional rebar monolithic form filled. Four by four, 3/8 inch tubes were added at each corner along with existing galvanized tubes that were in original cement approximately every four feet, formed into original external walls that was all encased with block." The applicant was not aware of the requirement to maintain the required 10-foot rear yard setback nor the requirement to obtain a building permit for the new construction.

The applicant received approval for a right-of-way permit for driveway entrances from North 6th street and the alley at the rear of the property. Any driveway access to the proposed garage are required to be paved.

The applicant states that any previous structures shown with encroachments on the property survey (attached) were constructed during previous property ownership.

The existing unfinished building encroachment area measures approximately 149.3 square feet. The total rear yard setback is 860 square feet. The encroachment is 17% of the entire rear yard setback area.

The applicant has submitted a letter from the Department of Veteran Affairs that indicates that the new construction will help the applicant with mobility issues related to medical conditions.

The John Collavo Subdivision was recorded in 1948 and the plat does not indicate setbacks. Rear yard setbacks as per 1945 ordinance are three feet for accessory buildings. In 1979, the requirement changed to 10 feet. An aerial view of Lots within this subdivision shows existing encroachments into the rear yard setback. A site visit by staff confirmed the existing encroachments. A review of Planning Department records did not reveal any variances granted for encroachments. Building permits were issued for new accessory structures on Lots 11 and 12 in 2014 and 2012, respectively and the submitted site plans showed compliance with current setback requirements.

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

Staff recommended disapproval of the variance request. However, if the Board approves the request it should be limited to the footprint of the encroachment as shown on the submitted site plan.

Board member Gutierrez asked staff if there were some other homes pictured on the aerial view that showed they were encroaching. He stated there was a similar building within the three foot was that in violation of the encroachment. Staff stated there was a building permit for a remodeling for that property which was site #2 that was also a remodel for the rear structure.

Mr. Walter A. Azuara, the applicant stated in 2017 they purchased the current home they reside with the existing dilapidated and uneven cement slab/carports. He stated that their oldest neighbor stated the slab had been there since the late 1960's, early 1970's. As early 2018, they have had thieveries and trespassers onto their property. In 2019, his wife endured an attempted mugging at those carports outside exiting her vehicle. The same year, the City removed the traffic lights at their corner and some of the crashes were spilling onto their property. The traffic lights had been restored. In 2021, they added a bur around the perimeter for security to deter trespassing. In January 2022, he obtained permit and instructions on how to move their parking area to the other side for safety and security. He stated they had to remove the cement and asphalt coming in from Hackberry Avenue and move it to the other side. Mr. Azuara also asked about doing betterments to that carport for security issues. He had asked how we continue with the driveway and incasing the current carports to better them. Adding cement on top to make it safe incasing the tubes that had been there and enforcing them. In 2023, they resurfaced the cement to prevent from slipping during wet weather. He was informed that they could do 10% of betterments per year for that property, which they were doing so.

Chairperson Gutierrez mentioned to Mr. Azuara that the variance runs with the land and anyone in the future could build anything once granted.

Board member Mujica mentioned to the applicant he was looking at the garage but did not see an opening for a vehicle. Mr. Azuara stated they did not have the money at the time since they are keeping to the 10% betterments. He had a garage vendor in mind. Board member Mujica asked who was constructing the garage. Mr. Azuara stated he was constructing it himself.

Veronica Azuara, 720 North 6th Street stated that when they came to ask for the clarification, they were informed that they were grandfathered and because the building structure was already existing. They thought they were following the process.

Board member Lamela asked the applicant if the entrance would be off Hackberry Avenue. Mr. Azuara stated there was an entrance from Hackberry Avenue going in and the turn would be into the garage where the garage door would be open.

Staff mentioned to the Board that he was approved from Right-of-Way to enter from two entrances, Hackberry Avenue and 6th Street.

Chairperson Gutierrez asked staff if the applicant decided to do a carport instead of a garage. Planning Director Garcia stated a carport would be eligible for a Special Exception. Explaining that Special Exceptions do not go with the land but with the owner. If the owner decides to sell the property then the new owners would have to tear it down

or reply for a Special Exception. Mr. Azuara asked if they could enclose it. A Board member stated it would have to be open and it would have to be up 400 square feet.

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.

Chairperson Gutierrez asked Mr. Garcia if the applicant could change on this same request to a Special Exception or would they have to apply for a different one. Mr. Garcia stated they could but some reducing would have to be made. If the applicant would like to table the item to see, where he would like to reduce it. Chairperson Gutierrez explained to Mr. Azuara if he would like to reconsider a change from a Variance request to a Special Exception, he could table the item as long as the carport was no more than 400 square feet.

Legal counsel, Mr. Alonzo stated a request could be made to table. The position for the Board should be limited to what was on the agenda. If there was a request that was being made by the individual that could happen.

Mr. Azuara stated he requested the item to be tabled in order to discuss with staff to be in compliance and to be within the period.

Following discussion, Mr. Alex Lamela moved to table the item to allow the applicant an opportunity to consider modification of the Variance request to a Special Exception. Mr. Hiram Gutierrez seconded the motion. The Board voted to table the request with five members present and voting.

- b) 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 feet 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) (TABLED: 04/03/2024) (04/17/2024)

Mr. Alex Lamela moved to remove the item from the table. Mr. Hiram Gutierrez seconded the motion. The Board voted to remove the item from the table with five members present and voting.

Ms. Tovar stated the applicant is requesting two variances to allow an encroachment of 7 feet into the 10 feet 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.

The subject property was located on the south side of Lark Avenue in between Lark Boulevard and Martin Avenue. Property has a frontage of 60 feet along Lark Avenue and a depth of 107 feet. The property is zoned R-1 (single family residential) District. There are single-family residences in all directions.

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 was 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 states 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.

At the meeting on April 3, 2024, the item was tabled by the board.

The board requested the building permit conditions and construction plans approved by staff to further discuss the variance requests. The applicant would also have the opportunity to provide additional pictures of the proposed palapa.

At the last meeting on April 17, 2024, the item was tabled by the board to further discuss other options with staff.

The board reviewed the building permit conditions and construction plans approved by staff and Mr. Moreno spoke with the board to explain the reasons of the variance requests. In addition, he provided letters from the neighbors in favor with the requests as well as additional pictures of the palapa. During the discussion, Mr. Moreno mentioned that he could propose an alternative layout of the palapa.

After discussion, the board recommended that the variance requests should be tabled for the next meeting.

Staff recommended disapproval of the variance requests.

Ms. Tovar stated that instead of having the two feet distance from the main structure to the palapa, he's having 5 feet and less encroachment into the rear yard setback. Instead of 7 feet it would be 4 feet.

Mr. Garcia stated that would eliminate Variance request #2.

Mr. Moreno, the applicant stated they reduced the rear yard encroachment. Instead of 7 feet he brought it back to 4 feet.

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.

Following discussion, Mr. Alex Lamela moved to approve Variance request #1 subject to the revised site plan. Mr. Hugo Avila seconded the motion. The Board voted to approve 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 José Gutierrez