

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 20, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

Present:	Jose Gutierrez	Chairperson
	Hugo Avila	Member
	Hiram A. Gutierrez	Member
	Daniel Santos	Member
	Ivan Garcia	Member
	Alex Lamela	Alternate
Absent:	Juan Mujica	Alternate
	Pablo Garcia	Alternate
Staff Present:	Evaristo Garcia	Assistant City Attorney III
	Michelle Rivera	Assistant City Manager
	Luis Mora	Deputy Planning Director
	Samuel Nunez	Senior Planner
	Porfirio Hernandez	Planner I
	Victor Grey	Planning Technician I
	Carmen White	Administrative Assistant

CALL TO ORDER –Chairperson Jose Gutierrez

1. MINUTES:

- a) Minutes for the meeting held on November 6, 2024

The minutes for the meeting held on November 6, 2024. The motion to approve the minutes were made by Mr. Hiram Gutierrez. Mr. Daniel Santos seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of MCI Development, LLC for variances to the City of McAllen Zoning Ordinance to allow the following encroachments: **1)** a garage door setback of 18 feet instead of 25 feet and **2)** an encroachment of 10 feet into the 25-foot front yard setback, for a proposed single family residence at Lot 15, La Veranda Subdivision, Hidalgo County, Texas; 4709 Sweetwater Avenue. **(ZBA2024-0045)**

Mr. Nunez stated the applicant was requesting variances to allow the above-mentioned encroachments for a proposed single-family residential home. Approval of the variances will allow for a patio area as well as allow a larger size for the home.

The subject property is located along the south side of Sweetwater Avenue approximately 400 feet west of South 46th Street. The vacant lot has 92.24 ft. of frontage along Sweetwater Avenue and a depth of 85.74 ft. at its deepest point for a tract size of 6,669 sq. ft. The property is zoned R-1 (single family residential) District. The adjacent

zoning is R-1 District in all directions. The surrounding land use is single-family residential and vacant properties.

La Veranda Subdivision was recorded on January 20, 2006. Submittal of an application for a building permit is pending determination of the variance request. An application for the variance requests was submitted on October 23, 2024.

Variance #1 is to allow a garage door setback of 18 ft. instead of 25 ft. The McAllen Code of Ordinances states in Section 138-356 (footnote 2) "entrances to a garage or enclosed carport shall be a minimum of 18 feet from streets or alleys in the A-O, R-1, R-2, R-3A, R-3C and R-3T Districts unless otherwise specified by the Planning and Zoning Commission". The plat specifies a front yard building setback of 25 ft. and states 18 ft. for a garage setback "except where greater setback is required – greater setback applies". In this case, the greater setback of 25 ft. will apply. The site plan shows the proposed distance from the front property line to the proposed garage door at 18 feet. It does not show the 25 ft. front yard setback with the proposed area of encroachment.

Variance #2 is to allow construction of a proposed single-family residence with an encroachment of 10 ft. into the 25-foot front yard setback. The site plan shows the proposed distance from the front property line to the residence at 15 ft. It also shows the 25 ft. front yard setback with the proposed encroachment area.

The plat for this subdivision indicates a five-foot utility easement adjacent to the front property line and a 10-foot utility easement adjacent to the rear property line.

The subject property has partial frontage on a cul-de-sac, which gives the property an element of an irregular shape.

If the variance request is approved the applicant must comply with all other building and zoning ordinance requirements.

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

Variance request #1: Staff recommended **disapproval** since the site plan can be modified for compliance.

Variance request #2: Staff recommended **approval** since the partial frontage on the cul-de-sac makes for an irregular shaped lot. A 10-foot utility easement adjacent to the rear property line reduces the buildable area for this property.

Chairperson Gutierrez asked staff if they had discussed with the applicant regarding Variance request #1 could be modified for compliance. Staff stated they had discussion with the applicant. They originally proposed a site plan that if they complied with the 25 foot on all sides it would restrain them or not allow them to build a home similar to their neighbors. There was an option to be able to comply as other developments had in that area to have the garage at 25 feet instead of 18 feet.

Chairperson Gutierrez asked staff if the applicant was present. Staff stated the applicant was contacted to remind them of the meeting but were unable to attend.

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

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

Board member Avila suggested tabling the item to give the applicant an opportunity to present their request at the next meeting.

Board member Gutierrez asked staff if the applicant know the recommendations of City's staff. Staff stated at the time of the meeting they do contact the applicant and tell them the recommendations prior to the meeting to be prepared to answer any questions or objections.

Following discussion, Mr. Hugo Avila moved to table the Variance request until the next meeting. Mr. Hiram Gutierrez seconded the motion. The Board voted to table the Variance request with five members present and voting.

- b) Request of Juan Gomez for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 20 feet into the 20-foot front yard setback for a proposed metal carport at Lot 87, Bentsen Heights Unit Two Subdivision, Hidalgo County, Texas; 4520 Maple Avenue. (ZBA2024-0044)

Mr. Hernandez stated the applicant was requesting a Special Exception to encroach 20 feet into the 20-foot front yard setback for a proposed metal carport measuring 20 feet by 20 feet for protection of vehicles from inclement weather.

The subject property was located along the north side of Maple Avenue approximately 252.3 feet west of the intersection with North 45th Street. The lot has 60 feet of frontage along Maple Avenue and 105 feet of depth for a total size of 6,300 square feet. The property is zoned R-1 (Single Family Residential) District. The adjacent zoning includes R-1 (Single Family Residential) District to the south, east and west and R-3A (Multi-Family Residential Apartments) District to the north.

Bentsen Heights Unit Two Subdivision was recorded on January 8, 1997. The plat indicates a 20-foot front yard setback for this lot. A building permit application for the proposed metal carport has not been submitted and is awaiting the decision on this request. An application for a special exception request was submitted to the Planning Department on October 23, 2024.

The applicant is requesting a Special Exception to allow an encroachment of 20 feet into the 20-foot front yard setback for a proposed metal carport that will be used for protection of their vehicle from the sun and severe weather conditions. A submitted site plan shows that the carport will have a pitched roof and will include rain gutters. Rain gutters on a pitched roof should be able to handle the volume of water and debris that drains off the roof.

The front yard setbacks are important in keeping the character of a single-family neighborhood by maintaining the street yard and curb appeal of properties in a subdivision.

The home has a garage that is being used to park one of their vehicles.

A review of Planning Department records did not reveal any special exceptions granted within the subdivision.

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.

There has been one phone call in opposition of the Special Exception request with concerns regarding rainfall runoff.

Measurements provided are without the benefit of a survey.

Staff recommended disapproval of the Special Exception request since no special exceptions have been approved within this subdivision and it is not compatible with the character of the neighborhood.

Board member Avila asked staff if there were any carports that were built illegally in the neighborhood. Staff stated there were no other carports in the neighborhood.

Mr. Juan Gomez, 4520 Maple Avenue. He stated he purchased the house 13 years ago and the previous owners put two oak trees, one on the west and east side. When they put the water meters it was side by side with the neighbor. Mr. Gomez stated the pipes had been breaking and he had been fixing them. Therefore, he cut the tree off. He stated the last hailstorm he had two deductibles, one for the house and his vehicle. He wanted to build a carport to protect his vehicles from inclement weather and it would match the house.

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

Mr. Williard Younger, 4600 W. Maple Avenue, was in favor of the Special Exception. He stated he was the neighbor. He stated he wanted to put a carport as well for protection of the inclement weather in the future. Chairperson Gutierrez asked if he had a two-car garage. Mr. Younger stated he believed most of the houses have two car garages. Chairperson Gutierrez also asked if most residences use one side of the driveway to park their vehicles. Mr. Younger stated that it was very common in the entire neighborhood. He stated he uses half of his garage for storage and workshop.

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

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

Board member Avila stated every case is unique. Hardships were taken into consideration. Neighborhood appearance was very important to the City and they do not set precedence.

Board member Lamela asked Chairperson Gutierrez if the applicant had a two-car garage why was he only using one side of the driveway. Chairperson Gutierrez asked the applicant what was the reason for using one side of the garage.

Mr. Juan Gomez stated he had a washer/dryer, food supplies and tools with a table. He stated it was difficult to open the vehicle doors while inside.

Chairperson Gutierrez asked staff if the person who was opposing was asked to be present. Staff stated yes but wanted just to be anonymously.

Following discussion, Mr. Hugo Avila moved to disapprove the Special Exception. Mr. Daniel Santos seconded the motion. The Board voted to disapprove the Special Exception with five members present and voting.

- c) Request of Oscar Cancino for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 5.5 feet into the seven-foot side yard setback along the south property line for an existing metal storage building at Lot 4, Block 7, North McAllen Subdivision, Hidalgo County, Texas; 709 North 16th Street. **(ZBA2024-0046)**

Mr. Nunez stated the applicant was requesting a variance for an existing metal storage building with an encroachment of 5.5 feet into the south side yard setback. The applicant states a contractor was hired to construct the building but did not obtain a building permit. The storage space is currently being used to store work equipment.

The subject property is located along the west side of North 16th Street, between Hackberry and Gumwood Avenues. The lot has 50 feet of frontage along North 16th Street and a depth of 140 feet for a lot size of 7,000 square feet. The property is zoned R-2 (duplex-fourplex residential) District. The adjacent zoning is R-2 District in all directions.

According to Hidalgo County Appraisal District records, the main residence was built in 1993. A Stop Work order was posted by Building Permits and Inspections Department on September 20, 2022 for construction work without a building permit. An application for a building permit was submitted to Building Permits and Inspections Department on November 03, 2022 and an application for a variance request was submitted to the Planning Department on January 09, 2023. The Zoning Board of Adjustments at their meeting of February 22, 2023 considered the requests and voted to approve the Special Exception request for an encroachment of 3.04 feet into the ten-foot rear yard setback for an existing metal carport measuring 23.66 feet by 24.66 feet. At the same meeting, the Board disapproved a variance request to allow an encroachment of 5.5 feet into the seven-foot south side yard setback for an existing metal storage building measuring approximately five feet by 19.2 feet. The applicant has submitted a new application for a variance request for the same existing storage building. The new application was submitted October 24, 2024.

The applicant was requesting a variance to allow an encroachment of 5.5 feet into the seven-foot south side yard setback for an existing metal storage building measuring approximately five feet by 19.2 feet. The property owner is a schoolteacher and the narrow storage space is used to store educational materials. The narrow storage building space is a component to a metal carport; however, it was constructed encroaching into

the south side yard setback.

The side yard setbacks for this property are seven feet on the south side and five feet on the north. The rear yard setback is ten feet.

The storage building had a carport component that was approved for a Special Exception on February 22, 2023. The storage building area that is the subject of the variance request is a narrow compartment that is part of a main storage area. It was disapproved as the same request at the meeting of February 22, 2023.

There have been 3 letters received in support of the variance request.

Staff recommended disapproval since variances run with the land and buildings are not permitted within setbacks. If the Board chooses to approve the request, approval should be limited to the encroachment shown on the submitted site plan.

Chairperson Gutierrez asked staff what was the reason for this Variance request coming before the Board again after being disapproved. Staff stated as mentioned before this request came last year the Special Exception was approved not the Variance that is here before the Board today. It was their understanding that their Municipal Court's staff recommended that the applicant tried once more before the Municipal Court takes more action.

Board member Gutierrez asked staff to elaborate if the Board chooses to approve the request approval should be limited to the encroachment shown on the submittal site plan. Staff stated it meant that if the Board decides to approve it, it would have limitations to the 5.5 feet that was being requested today.

Staff stated the Building Department usually do not require building permits for structures that are 200 square feet or less. However, if the structure is below 200 square feet it has to comply with the setbacks.

Ms. Marissa Cantu, 709 North 16th Street. She stated she was a schoolteacher for 24 years. She used the storage for her school supplies when the school year ends and begins again. Ms. Cantu stated when Hurricane Hannah hit they had a lot of water damage to their house and to the storage. Their insurance paid for the damage. Instead of repairing with it with plywood, they decided to use sheet metal. She stated she did not hear anything from the City but two years later, she received a letter stating there was a problem with it. She did not know about the size of the storage or obtaining a permit.

Board member Avila stated he had concerns was with fire hazard. He stated setbacks were there to protect their neighbors. The setbacks creates a buffer.

Board member Ivan Garcia asked staff on the site plan the survey of the lot is 7 feet, is it 7 feet on the opposite side of the neighbor as well. Staff stated it was 5 feet. Board member Garcia asked staff what was the minimum separation on the building code. Staff stated it was 12 feet. Board member Garcia asked if there were any type of consideration for different types of building materials, fire retardant to minimize it to 10 feet. His concerns was fire safety. Staff stated that would be up to the Building Department determine the types of materials.

Board member Avila explained to the applicants that a Variance runs with land. It does not go with the owner. The next owner could build whatever they want.

Board member Santos spoke about the hardships on the owner. He asked the applicant what was spent on the storage. Mr. Javier Cantu, 709 North 16th Street, (husband). He stated it was \$21,000-\$22,000 of value into the garage after the check received from the insurance company from the hurricane damage. He stated the contractor recommended using sheet metal. He stated it would be a hardship if they had to tear it down.

Mr. Oscar Cancino, 5111 N. 10th Street, #366, McAllen. He stated he was hired initially as a consultant for the carport which they had received a citation. When they submitted the application, the storage area was brought up to their attention. His task was to certify the building as requested by the City. Mr. Cancino brought packets for the Board to view. He stated Exhibit 1; it showed an entrance in the rear alley facing east showing a number of utilities. On the original plat, with no additions or amendments, it did not state any easements or right of ways. There were no setbacks only the ones that were set in the current Ordinance. Exhibit 2; on the plat it showed a picture of back of the entry and the utilities which is in the middle of the property entrance. Exhibit 3; has the location map. Location 1 (picture) showed the property line the structure goes up what is encroaching the north 5 feet. Location 2 (picture) showed encroaching on the lot line on the existing structures. Location 3 and Location 4; showed the neighbor's carport to the south side. Location 1; showed the front of the metal carport.

Board member Gutierrez asked staff to explain the Municipal court's process of how the Variance came before the Board to reconsider. Mr. Austin Stevenson, City Attorney stated when they went to court the announcement was made as to go and apply for a Variance. The contract prosecutor was aware that this property already went through the Variance process. Financial hardship are now something legally the Board could consider.

Board member Gutierrez asked legal if the hardship was for the removing or the amount spent on the structure. Mr. Stevenson stated the phrase was cost of compliance. What it is the cost of compliance substantial when compare to the value of the structure.

Board member Santos asked the applicant about the next-door neighbor's position. Ms. Cantu stated she was an older woman, about 79 years old. She stated she is one of the persons that signed the letter in favor. She stated the house belonged to her grandmother and aunt and bought it from her.

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

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

Following discussion, Mr. Hiram Gutierrez moved to approve the Variance request limited to the encroachment shown on the submitted site plan. Mr. Ivan Garcia seconded the motion. The Board voted to approve the Variance request with four members voting aye and one voting nay, Mr. Hugo Avila.

- d) Request of Anita Moon on behalf of Greater McAllen Association of Realtors for the following variance to the City of McAllen Zoning Ordinance to allow an accessory building with a one-foot separation to the main building instead of the required five feet for rear yard structures at Lot B1, Aim Media Subdivision, Hidalgo County, Texas; 1324 East Nolana Avenue. (ZBA2024-0036) (TABLED: 10/09/2024) (REMAIN TABLED: 10/23/2024) 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