

STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Thursday, September 12, 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
	Hugo Avila	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
<b>Absent:</b>	Rogelio Rodriguez	Member
	Hiram A. Gutierrez	Member
	Pablo Garcia	Alternate
	Daniel Santos	Alternate
<b>Staff Present:</b>	Austin Stevenson	Deputy City Attorney
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Samuel Nunez	Senior Planner
	Alexis Martinez	Planner I
	Jessica Puga	Planning Technician II
	Carmen White	Administrative Assistant

**CALL TO ORDER –Chairperson Jose Gutierrez**

**1. MINUTES:**

- a) Minutes for the meeting held on August 21, 2024
- b) Minutes for the Special meeting held on August 30, 2024

The minutes for the meeting held on August 21, 2024 and Special meeting on August 30, 2024 were approved. The motion to approve the minutes were made by Mr. Alex Lamela. Mr. Hugo Avila seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a) Request of Michael & Iris Hines for a special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 11.4 feet into the 20 foot front yard setback for an existing metal carport measuring 24 feet by 19 feet at Lot 23, Arthur Terrace Subdivision, Hidalgo County, Texas; 5916 North 36th Lane. **(ZBA2024-0030)**

Ms. Martinez stated the applicants were requesting a Special Exception to allow an encroachment of 11.4 feet into the 20-foot front yard setback for an existing metal carport measuring 24 feet by 19 feet totaling 456 square feet in size. The reason for the request is for protection of the vehicles from severe weather elements. Vehicle protection is needed because one of the vehicles hauls a travel trailer, which is used to provide

sleeping, cooking, bathing and medical safety accommodations for a kidney transplant recipient as they travel frequently to out of town doctor appointments.

The subject property is located along the east side of North 36<sup>th</sup> Lane approximately 76 feet north of Gull Avenue. The Lot has 75 feet of frontage along North 36<sup>th</sup> Lane and a depth of 100 feet for a total Lot size of 7,500 square feet. The subject property is zoned R-1 (single family residential) District and there is R-1 District in all directions.

Arthur Terrace Subdivision was recorded on June 22, 1982. The plat states a front yard setback of 20 feet. According to Hidalgo County Appraisal District, the house was built in 1990 with a two-car garage. A building permit application was submitted on July 26, 2024 but did not receive approval since the carport was shown to be encroaching into the 20-foot front yard setback. A Special Exception request application was then submitted on August 1, 2024 to allow an encroachment of 11.4 feet into the 20-foot front yard setback for the existing metal carport.

The Special Exception request is for an existing metal carport measuring 24 feet by 19 feet totaling 456 square feet in size. It encroaches 11.4 feet into the 20 feet front yard setback. The applicants would like the carport to remain for protection of the two vehicles from adverse weather conditions. The family owns two large Dodge Ram trucks that do not fit into their built-in house garage. One of the vehicles hauls a travel trailer for a family member with a medical condition. The carport provides protection for the individual as they access the vehicle to and from doctor appointments.

The current built-in two-car garage is used in part for storage and parking for a smaller truck.

The property owner states that a contractor was hired in 2022 for the construction of the carport and assured the applicants that he would take care of obtaining the permit himself. Subsequently, the residents learned that a building permit had not been obtained.

Building Permits and Inspections Staff issued a stop work order on July 25, 2024 for the carport being built without a permit.

During a site visit of Arthur Terrace Subdivision, Staff noticed one other carport with an encroachment along North 36<sup>th</sup> Street. A review of Planning Department records revealed a Special Exception was previously requested to allow an encroachment of 20 feet into the 20-foot front yard setback for an existing carport for Lot 53. The request was disapproved at the Zoning Board of Adjustments and Appeals meeting on December 20, 2023.

Front yard setbacks help keep the character of single-family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Zoning ordinance Sec. 138-371(g) for Special Exceptions of carports states that no carport for which a Special Exception has been granted under this subsection shall exceed 400 square feet in size. The carport on the subject property is 456 square feet.

There is no alley at the rear of the property that would allow for relocation of the carport out of the front yard setback.

Staff had not received any phone calls or concerns in regards to the Special Exception request.

Special Exceptions are issued to and recorded for the present applicants only. A change in property ownership would require the new owner to apply for a new Special Exception.

Measurements provided are with the benefit of a survey.

Staff recommended disapproval of the Special Exception request since there are no other carports built with an issued building permit in this subdivision. In addition, the carport exceeds 400 square feet in size.

Mr. and Mrs. Iris and Michael Hines, 5916 North 36<sup>th</sup> Lane. Mrs. Hines stated they had hired a contractor to build the carport and the contractor informed him that he would take care of getting the permit. They paid him for the constructing of the carport. While the carport was being built the applicants saw the Building Department inspector, pass by three different times. Mrs. Hines stated that she saw the inspector speaking to the contractor instructing him how far and what not to do. She stated she had pictures to show the Board members of the carport that was built back in 2022. She stated after two years they found out there was no record of a building permit. Mr. Hines stated he could get only one vehicle in the garage. Both applicants were retired and on a limited income.

Chairperson Gutierrez asked staff why the applicants came before this Board. Ms. Martinez stated because the size of the carport and no building permit.

Board member Mujica asked staff was it during the construction when the Stop Work Order was issued or after construction was done. Staff stated it was issued after the carport was built.

Planning Director Garcia stated Stop Work Orders were issued when the Building Inspections Department found out that there was no permit. The work may have been done two years ago, but still got a Stop Work Order because they need get permits for the construction.

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

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

Board member Mujica stated that in his opinion, the biggest issue was the carport exceeded 400 square feet.

Chairperson Gutierrez asked staff considering their measurements what would be the actual square footage for this construction. Staff stated for the carport itself the applicants had provided the measurements to be 456 square feet, which was the 19 feet by 24 feet for the carport.

Mrs. Hines stated the measurements they had were the latest ones from the Building

Department inspector that were given to them.

Austin Stevenson, Deputy City Attorney, advised to consider tabling the request to allow time for staff and applicants to clarify the measurements.

Following discussion, Mr. Alex Lamela moved to table the Special Exception request. Mr. Juan Mujica seconded the motion. The Board voted to table the request with five members present and voting.

- b) Request of Armando Hernandez for variances to the City of McAllen Zoning Ordinance to allow the following encroachments: **1)** 6.73 feet into the 10 foot rear yard setback for an addition; **2)** 1.98 feet into the South 7 foot side yard setback; and **3)** an encroachment of 14.73 feet into the 18 foot garage setback at Lot 13, Block 5, McAllen Heights Subdivision, Hidalgo County, Texas; 821 South 27th ½ Street. **(ZBA2024-0031)**

Ms. Martinez stated the applicant is requesting a variance to allow the above mentioned encroachments for a master bedroom, bathroom, closet, safe space, kitchen and enclosed two-car garage for the first floor. Two bedrooms, bathroom, flex space, balcony, and entertainment room for the second floor addition that will update the current residence for a more modern appearance to suit the space needed for the applicant's son who is law enforcement personnel and intends to accommodate his work equipment and necessities to the additional structures.

The subject property is located at the northeast corner of South 27<sup>th</sup> ½ Street and Ithaca Avenue. The lot has 50 feet of frontage and a depth of 90 feet for a total lot size of 4,500 square feet. The subject property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions.

The plat for McAllen Heights Subdivision was recorded in January 1959. According to the Hidalgo Country Appraisal Records, the home was constructed in 1980. The application for the variance request was submitted on August 7, 2024.

Variance #1 – the applicant proposes to construct an addition that will encroach 6.73 feet into the 10-foot rear yard setback. The portion of the addition that will encroach into the rear yard setback consists of a bathroom, walk-in closet, safe space, entertainment room, balcony and flex space. The plat for this subdivision does not indicate a utility easement along the rear of the subject property. A 20-foot alley at the rear of the subject property provides separation that serves as a buffer to the buildings to the south.

Variance #2 - The applicant has submitted a "site plan" for the existing structure that indicates a 10-foot side yard setback along Ithaca Avenue. The applicant proposes an addition to the existing two-story home that would expand 4.98 feet into the side yard setback along the south property line. The proposed construction encroachment will consist of a kitchen, master bedroom; flex space, bedrooms and bathroom areas. Section 138-368 Side Yards (a) of the Zoning Ordinance states that on a corner lot in all districts, the width of the side yard along the street shall not be less than ten feet provided that the buildable width of such a lot of record shall not be reduced to less than 38 feet. Strict application of the 10-foot setback requirement will reduce the buildable width to 35 feet. In the past, the practice to achieve compliance with the ordinance requirements has been to allow for 7-foot corner yard setbacks in cases where the buildable width is less than 38

feet. Thus, the setback requirement compliant with the ordinance is 7 feet along Ithaca Avenue. Approval of the variance request for a 1.98 foot encroachment into the 7-foot side yard setback will allow a 5.02 side yard setback to remain. A 5-foot side yard setback on corner lots may be present on properties with setbacks from the previous Zoning Ordinance. The plat for this subdivision does not indicate utility easements along the rear of sides of the property. The alley serves as a buffer to structures on the adjacent property to the south.

Variance #3 – Is an encroachment of 14.73 into the 18-foot garage setback for a two-car garage proposed as an addition to the existing home. A proposed double-driveway is in order to comply with the required number of parking spaces for a residence. A 20-foot alley at the rear of the subject property will provide access to the proposed garage. The Zoning Ordinance requires that entrances to a garage shall be a minimum of 18 feet from alleys in the R-1 District. The site plan shows the distance from the rear property line to the proposed garage at 3.27 feet. The plat for this subdivision does not indicate a utility easement along the rear of the property. The alley serves as a buffer to structures on the adjacent property to the south. The car garage is an accessory use and not living area. An enclosed garage built close to the property line may present concerns regarding all-around sight visibility while a vehicle is maneuvering into the alley right of way.

The applicant has not provided a survey to determine the encroachments in a specific way.

Although there were other lots in the subdivision that appeared to have similar property building encroachments, a review of Planning Department records did not reveal any approved permits or variances in the immediate area.

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

Staff had received one email in favor of the variance request.

Staff recommended approval of variance request #1 since a 20-foot alley at the rear of the subject property provides separation that serves as a buffer to the buildings to the south.

Staff recommended approval of variance request #2 since 5-foot side yard setbacks on corner lots are still a practice on properties with setbacks from the previous Zoning Ordinance.

Staff recommended disapproval of variance request #3 since an enclosed garage built close to the property line may present visibility concerns as a vehicle maneuvers into the alley right of way.

Chairperson Gutierrez asked staff if they received one email and one phone call. Staff stated one email and one phone call both in favor from different people.

Mr. Armando Hernandez, 1105 South Shary Boulevard, Alton, Texas and his second residence 821 South 27<sup>th</sup> ½ Street, McAllen, Texas.

Chairperson Gutierrez asked Mr. Hernandez to clarify variance request #3 for the garage, in which staff was recommending disapproval. The applicant stated he understood the recommendation. Mr. Hernandez stated he had a son that was a DPS Trooper and was assigned to the Marine Division of the DPS Department. He stated that his son was assigned a pickup truck that was 20 foot in length, which carries high tech equipment in it. He was informed in order to keep the truck secured was to extend the garage to the 23 or 24-footmark so the vehicle can fit.

Board member Mujica asked the applicant if his son lived with him. Mr. Hernandez stated his son was assigned in Rockport, Texas and now wants to come back to the Valley. His son said the home was close to the Expressway for work.

Board member Mujica stated he had concern with the safety factor. The garage would hinder visibility for traffic in two directions. Mr. Hernandez had mentioned it his son and wanted to put circular mirrors and video monitoring on the corner to view the traffic. He stated the caliche alley was very clear.

Board member Avila explained to the applicant regarding that the variance goes with the land and not the owner. He stated visibility was important and City vehicles go through the alley on a weekly basis.

Vice-Chairperson Tafel stated she stated that from the City's point of view it was a site hazard being on the corner. She asked if it was width or the depth that was the biggest concern. Planning Director Garcia stated it was the depth, regardless if it was a one car or two-car garage.

Board member Mujica asked the applicant whoever designed the site plan was aware of all the setbacks that were required. Mr. Hernandez he paid a draft designer to accommodate the vehicle. Board member Mujica stated it was possible to redesign the layout so that it was feasible for his son.

Chairperson Gutierrez asked the applicant if the garage had to be enclosed. Mr. Hernandez stated he used to have a metal carport but removed it. He stated having an enclosed garage would be more secured for his son's work vehicle.

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

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

Following discussion, Mr. Alex Lamela **moved** to approve Variance request #1. Mr. Hugo Avila seconded the motion. The Board voted to approve Variance request #1 with five members present and voting.

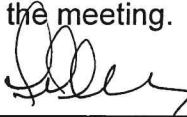
Mr. Hugo Avila **moved** to approve Variance request #2. Mr. Alex Lamela seconded the motion. The Board voted to approve Variance request #2 with five members present and voting.

Mr. Alex Lamela moved to disapprove Variance request #3. Mr. Juan Mujica seconded the motion. The Board voted to disapprove Variance request #3 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.

  
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Carmen White, Administrative Assistant

  
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Chairperson Jose Gutierrez