

## AGENDA

### ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING

WEDNESDAY, JULY 21, 2021 - 12:00 PM

MCALLEN CITY HALL, 1300 HOUSTON AVENUE

CITY COMMISSION CHAMBERS, 3<sup>RD</sup> FLOOR

Web: <https://zoom.us/join> or phone: (346) 248-7799

Meeting ID: 672 423 1883

At any time during the course of this meeting, the Zoning Board of Adjustment and Appeals may retire to Executive Session under Texas Government Code 551.071(2) to confer with its legal counsel on any subject matter on this agenda in which the duty of the attorney to the Zoning Board of Adjustment and Appeals under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. Further, at any time during the course of this meeting, the Zoning Board of Adjustment and Appeals may retire to Executive Session to deliberate on any subject slated for discussion at this meeting, as may be permitted under one or more of the exceptions to the Open Meetings Act set forth in Title 5, Subtitle A, Chapter 551, Subchapter D of the Texas Government Code.

### CALL TO ORDER – Chairperson Erick Diaz

#### 1. MINUTES:

- a) Minutes for the meeting held on July 7, 2021.

#### 2. PUBLIC HEARINGS:

- a) Request of Riverside Development Service, LLC for the following variance to the City of McAllen Zoning Ordinance to allow a lot width less than 50 ft. with a minimum width of 29.66 ft. for lot 90 of proposed Campo de Sueños Phase II, 41.18 ft. to 49.98 ft. for Lots 58-64, 66-68, 71, 73-79, 88, 91-97, 101-103 of proposed Campo de Sueños Phase II, 24.65 ft. for Lot 139 of proposed Campo de Sueños Phase III, 26.89 ft. for Lot 138 of proposed Campo de Sueños Phase III, 34.12 ft. to 38.82 ft. for Lots 124, 125, 137, 140, 143-146, 148 of proposed Campo de Sueños Phase III, 40.22 ft. to 49.49 ft. for Lots 106, 111-113, 123, 126, 127, 130-136, 141, 147, 149, 151-160, 168-172 of proposed Campo de Sueños Phase III, For a 26.663 acre tract of land out of Lot 45 and 52, La Lomita Irrigation and Construction Company's Subdivision, Hidalgo County, Texas; 8300 North Ware Road. **(ZBA2020-0087) (TABLED: 07/07/2021) WITHDRAWN**
- b) Requests of Armando Cobos for the following special exception to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 14.33 ft. into the 25 ft. front yard setback for a proposed metal carport measuring 16 ft. by 26 ft., and **2)** an encroachment of up to 3.52 ft. into the 6 ft. side yard setback for a proposed metal carport measuring 16 ft. by 26 ft., at Lot 44, North Depot Subdivision, Hidalgo County, Texas; 2232 Nyssa Avenue. **(ZBA2021-0022)**
- c) Request of Jonathan C. Arthur, for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 15 ft. into the 25 ft. rear yard setback for **1)** A proposed pool measuring 37.19 ft. by 13.92 ft., and **2)** a proposed BBQ area measuring 13.92 ft. by 10.80 ft. at Lot 71, La Floresta Subdivision Phase I, Hidalgo County, Texas; 9500 North 17th Street. **(ZBA2021-0026)**
- d) Request of Sinai Ramirez, for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 20 ft. into the 20 ft. front yard setback for a proposed metal carport measuring 25 ft. by 20 ft., at Lot 152, Colonia McAllen Subdivision No. 6, Hidalgo County, Texas; 2201 South 31st Street. **(ZBA2021-0027)**
- e) Request of Eugenio Garcia for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10 ft. into the 25 ft. rear yard setback for a proposed single family residence at Lot 23, The Embers Subdivision (Gated Community), Hidalgo County, Texas; 8100 North 3rd Street. **(ZBA2021-0028)**

#### 3. FUTURE AGENDA ITEMS

- a) 2908 Upas Avenue
- b) 2904 Kerria Avenue
- c) 3416 Esperanza Avenue
- d) 9216 North 32nd Street
- e) 101 East Marigold Avenue

**ADJOURNMENT:**

IF ANY ACCOMMODATIONS FOR A DISABILITY ARE REQUIRED, PLEASE NOTIFY THE PLANNING DEPARTMENT (681-1250) 72 HOURS BEFORE THE MEETING DATE. WITH REGARD TO ANY ITEM, THE PLANNING & ZONING COMMISSION MAY TAKE VARIOUS ACTIONS, INCLUDING BUT NOT LIMITED TO RESCHEDULING AN ITEM IN ITS ENTIRETY FOR PARTICULAR ACTION AT A FUTURE DATE.

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

**The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Thursday, July 7, 2021 at 4:30 p.m. in the City Commission Meeting Room with the following present:**

<b>Present:</b>	<b>Erick Diaz</b>	<b>Chairperson</b>
	<b>John Millin</b>	<b>Vice-Chairperson</b>
	<b>Sylvia Hinojosa</b>	<b>Member (Zoom)</b>
	<b>Jose Gutierrez</b>	<b>Member</b>
	<b>Ann Tafel</b>	<b>Alternate</b>
	<b>Rogelio Rodriguez</b>	<b>Alternate (Zoom)</b>
	<b>Rebecca Millan</b>	<b>Alternate</b>
<b>Absent:</b>	<b>Juan F. Jimenez</b>	<b>Member</b>
	<b>Hugo Avila</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Issac Tawil</b>	<b>City Attorney</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</b>
	<b>Liliana Garza</b>	<b>Planner II</b>
	<b>Carlos Garza</b>	<b>Planner II</b>
	<b>Mario Escamilla</b>	<b>Planner I</b>
	<b>Katia Sanchez</b>	<b>Planner I</b>
	<b>Porfirio Hernandez</b>	<b>Planning Technician II</b>
	<b>Julian Hernandez</b>	<b>Planning Technician</b>
	<b>Carmen White</b>	<b>Secretary</b>

**CALL TO ORDER –Chairperson Erick Diaz**

**1. MINUTES:**

- a)** Minutes for the meeting held on June 17, 2021.

The minutes for the meeting held on June 17, 2021 were approved. The motion to approve the minutes was made by Mr. Jose Gutierrez. Vice-Chairperson John Millin seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a)** Request of Yolanda Zapata for the following Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 18.42 ft. into the 25 ft. front yard setback for an existing metal carport measuring 19 ft. by 16 ft., at Lot 204, Idela Park Unit 2 Subdivision, Hidalgo County, Texas; 3000 Melba Avenue. **(ZBA2021-0021)**

Mr. Garza stated Yolanda Zapata was requesting the following special exception to allow

an encroachment of 18.42 ft. into the 25 ft. front yard setback for an existing metal carport structure measuring 19 ft. by 16 ft. The existing carport is used to protect the applicant and her belongings from inclement weather. In addition, the applicant stated that the carport is used for health related purposes related to her daughter and father.

The subject property had 56 ft. of frontage on Melba Avenue and a depth of 90 ft. for an area of 5040 sq. ft. The property was zoned R-1 (single family residential) District. The surrounding land uses are single-family residences.

Idela Park Unit 2 Subdivision was recorded on July 25, 1978. A stop work order for building without a permit was issued on April 20, 2021. The applicant submitted an application for a building permit on May 27, 2021. The variance request was submitted on May 28, 2021.

In November 19, 2008, the Board approved a variance for an existing carport at 3017 Melba Avenue (Lot 227) for an 11.5 ft. encroachment into the 25 ft. front yard setback.

In March 03, 2010, the Board approved a variance for an existing carport at 3005 Melba Avenue (Lot 230) for a 23.8 ft. encroachment into the 25 ft. front yard setback.

In March 03, 2010, the Board approved a variance for an existing carport at 3029 Melba Avenue (Lot 224) for a 22 ft. encroachment into the 25 ft. front yard setback.

The variance request was to allow an encroachment of 18.42 ft. into the 25 ft. front yard setback. There was no utility easement near the front property line. The existing carport does not encroach into a utility easement. The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view of properties in a subdivision.

The Planning Department conducted an inspection and revealed several encroachments of carports in the front yard setback.

Accessory buildings are customarily located in the rear yard.

Staff had received one phone call in opposition to the request.

Staff recommended approval of the special exception request.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the variance request. There was no one else in favor of the variance request.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was no one in opposition of the variance request.

Vice-Chairperson John Millin moved to approve special exception according to staff's recommendation. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the special exception with five members present and voting.

**b)** Request of Melinda Garza on behalf of MDG Investment Group LLC for the



following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10 ft. into the 25 ft. rear yard setback for a proposed single family residence at Lot 4, The Embers Subdivision (Gated Community), Hidalgo County, Texas; 413 Cornell Avenue. **(ZBA2021-0023)**

Mr. Garza stated the applicant requested a variance to encroach 10 ft. into the 25 ft. rear yard setback for the construction of a single-family residence.

The subject property was located along the south side of Cornell Avenue. The irregular tract has 90 ft. of frontage along Cornell Avenue and a depth of 112.5 ft. with a tract size of approximately 11,004 sq. ft. The property is zoned R-1 (single family residential) District and is currently vacant. Surrounding land uses are single-family residences, and vacant land.

The Embers Subdivision was recorded on June 06, 2016. The applicant is proposing a new residential house on the property. An application for building permit has not been submitted. An application for a variance request was submitted on June 1, 2021.

The variance request was for a proposed single family residence that will encroach 10 ft. into the 25 ft. rear yard setback on a double frontage lot. There was a 15 ft. utility easement adjacent to rear yard setback that will not be impacted by the construction. The 15 ft. utility easement runs concurrently with the 25 ft. rear yard setback and the buildable area at the rear of the property is reduced by the 25 ft. setback requirement.

The standard rear yard setback for lots in the R-1 District is 10 ft.

The Zoning Ordinance requires the rear yard setback to be the same as the front yard setback lots for lots with double frontage. The purpose of the additional setback of the rear yard is to separate the main building from the traffic and noise from roadways.

In the past, the Board has approved variances for accessory uses, but not for living areas.

On November 06, 2019, the Board voted to approve an encroachment of 10 ft. into the 25 ft. rear yard setback for a spa and 2 ft. into the 25 ft. rear yard setback for a swimming pool at 317 Cornell Avenue (lot 31).

On July 03, 2019, the Board voted to approve an encroachment of 6.58 ft. into the 25 ft. rear yard setback for a porch and 15 ft. into the 25 ft. rear yard setback for a swimming pool at 301 Cornell Avenue (lot 27).

Staff had not received any phone calls in opposition to this variance request.

Staff recommended disapproval of the variance request.

Chairperson Diaz asked if it was a double fronting lot. Mr. Garza stated yes.

Mr. Gus Garcia, representative for MDG Investment Group. He stated the applicant wanted to build a single family home. He stated the applicant saw the model home that

he had but in that particular model home the rear setback was only 15 feet. They were trying to mimic that house but make a smaller version if they can gain those 10 feet. The lots were 100 feet wide by 113 feet about 11,300 square feet but the setbacks reduce it by 25 feet. Part of it would be the patio and would be encroaching into the setback but was a part of the home.

Chairperson Diaz asked Mr. Garcia if they tried to redesign. Mr. Garcia stated they tried different approaches but because of their age of the applicants they did not want a second story house.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the variance request. There was no one else in favor of the variance request.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was no one in opposition of the variance request.

Vice-Chairperson Millin asked staff if there were any other houses that encroached in the setback on these double fronting row of lots. Mr. Garza stated there were no other houses it was the encroaching of the accessory uses. Vice-Chairperson Millin stated this was not considered a hardship.

Ms. Sylvia Hinojosa **moved** to approve the variance request based on the footprint as presented. There was no second and the motion died.

Mr. Garcia stated it was a gated community and had concrete fence all around the subdivision. Swimming pools are a permanent construction and did not understand how pools are any more of a hardship than what they were requesting.

Vice-Chairperson John Millin **moved** to disapprove the variance request. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the variance request with four members voting aye and Ms. Sylvia Hinojosa voting nay.

- c) Request of Edwin R. Rodriguez for the following variances to the City of McAllen Zoning Ordinance to allow: 1) to encroach 7 ft. into the 10 ft. rear yard setback for a proposed wooden storage building measuring 10 ft. by 12 ft., and 2) to encroach 4 ft. into the 10 ft. rear yard setback for a proposed porch measuring 10 ft. by 11 ft., at Lot 74, Parkwood Manor Subdivision Phases 1, 2, & 3, Hidalgo County, Texas; 7108 North 23rd Lane. **(ZBA2021-0024)**

Mr. Garza stated Edwin R. Rodriguez was requesting the following variances to allow an encroachment of 7 ft. into the 10 ft. rear yard setback for a proposed wooden storage building and to encroach 4 ft. into the 10 ft. rear yard setback for a proposed porch. The applicant stated that the basis for the request is that he wants to store household goods.

The property was located at the east side of 23<sup>rd</sup> Lane. The lot has 72 ft. of frontage on 23rd Lane with a depth of 104 ft. for a lot size of 7,488 square feet. The property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District to the north, south, and west, C-3 (general business) District to the east, and R-3A (multifamily

residential apartments) District to the southeast. Surrounding land uses include single-family residences, multifamily apartments, and Affordable Attic Self Storage.

Parkwood Manor Subdivision Phases 1, 2, & 3 was recorded on September 21, 1982, a resubdivision plat for Parkwood Manor Subdivision Phases 1, 2, & 3 was recorded on July 25, 1983. A general note on the subdivision plat indicates a rear yard setback of 10 ft. and 3 ft. fence easement. The applicant submitted an application for a building permit on June 01, 2021. The variance request was submitted on June 01, 2021.

The variance request is for a wooden storage building measuring 10 ft. by 12 ft. that is encroaching 7 ft. into the 10 ft. rear yard setback along the east property line and a proposed porch measuring 10 ft. by 11 ft. that is encroaching 4 ft. into the 10 ft. rear yard setback. There is a 3 ft. fence easement that runs along the rear yard setback that will not impact the proposed storage building and porch encroachment. Storage buildings that are 200 square feet or less in size do not require a building permit, but must respect the zoning district setbacks and easements in which they are located.

Storage buildings used as an accessory to the residential use and not for living quarters are permitted in an R-1 District.

There are existing storage building that are encroaching in the rear yard setback. The applicant will be removing the existing storage buildings. The Planning Department did not find any records for approved variances along 23<sup>rd</sup> lane. An inspection around the subdivision revealed other properties with encroachments in the rear yard setback.

The Planning Department has not received any calls in opposition to the request.

Staff recommended disapproval of the variance requests.

Chairperson Diaz asked staff that they were replacing the existing storage sheds and replace them with new ones based on these new encroachments. Staff stated yes, the applicants had two storage buildings that were encroaching into the setbacks and the easements and will be moving them so that he could be away from the easements but would still be encroaching into the setbacks.

Vice-Chairperson Millin asked staff if these were the same storage sheds that were on the pictures or the new storage sheds. Staff stated they were new storage sheds. The two storage sheds that were shown on the picture that were existing would be removed and will only be one proposed shed in the area.

Mr. Edwin Rodriguez, the applicant stated he had the two storage sheds on his property for at least 20 years and were in bad shape. He wanted to replace it with one storage shed and tie it in with his roof that was already expanding.

Chairperson Diaz asked the applicant how was he going to tie it to the roof. Mr. Rodriguez stated he spoke with the builder that he would expand his roof where the shed was going to be it would extend the expansion of the roof to the big palm tree. He had 16 feet from the fence to the house roof. The shed would be 12 by 10 feet.

Chairperson Diaz asked the applicant if he could shrink it to be within the setbacks. Mr. Rodriguez stated he could not. He stated the other two existing sheds were bigger than the new proposed shed. The new shed would be higher.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the variance request. There was no one else in favor of the variance request.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was no one in opposition of the variance request.

Chairperson Diaz asked staff if they discussed other options with the applicant. Staff stated they discussed the building permit process and what the applicant needed to do but the applicant wanted to go through the variance request.

Vice-Chairperson Millin asked staff if the current the sheds were ever in compliance or nonconforming. Staff stated they did not find a building permit for this request because storage buildings do not need building permits that were 200 square feet or less in size but still needed to respect zoning ordinance.

After discussion amongst the Board, Chairperson Diaz asked staff if the applicant knew the idea of a variance what that does to the future of the property. Staff stated that was not stated to the applicant.

Vice-Chairperson Diaz stated to Mr. Rodriguez that his request was a variance. He stated that stringent process based on the hardship of the property. At this point the Board did not see a hardship on the property. He mentioned to the applicant that he could try to fit the storage shed that he needed in the space he had. Mr. Rodriguez stated he initially wanted not 12 feet to the east but north and south. With conversations with staff they decided it would be more convenient to do it this way. Chairperson Diaz since the variance ran with the land and that if granted today you have a shed attached to the house. If he sells that land that the new owner could make it a part of the house as a living unit. Chairperson Diaz asked if the applicant wanted to table it to come back with a better solution. The applicant asked to continue the process variance. Mr. Rodriguez stated he would like to proceed with the voting.

Ms. Hinojosa stated that it needed to be worked out as far as space. The applicant had plenty of room in the back.

Mr. Jose Gutierrez **moved** to disapprove the variance requests. Vice-Chairperson John Millin seconded the motion. The Board voted to disapprove the variance requests with five members present and voting.

- d) Request of Clint Hernandez for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10.67 ft. into the 25 ft. rear yard setback for a proposed swimming pool measuring 24.33 ft. by 36.33 ft., at Lot 8, Northgate Crossing Subdivision Phase II, Hidalgo County, Texas; 8915 North 22nd Lane.  
**(ZBA2021-0025)**

Mr. Escamilla stated Clint Hernandez, is requesting a variance to allow an encroachment of 10.67 ft. into the 25 ft. rear yard setback for a proposed rectangular swimming pool measuring 24.33 ft. by 36.33 ft. Compliance with the rear yard setback prevents construction of the swimming pool as proposed.

The property was located on the Westside of North 22<sup>nd</sup> Lane, approximately 480 feet south of Northgate Avenue. The property has 67 feet of frontage along North 22<sup>nd</sup> Lane with a depth of approximately 124.6 feet for a tract size of 8,348 square feet. The property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions. The subject property contains a single family residence. Surrounding land use is single family residential.

Northgate Crossing Subdivision Phase II was recorded April 11, 2006. As per plat note, Lot 8 has a 25 ft. front yard setback, a 6 ft. side yard setback, and a 25 ft. rear yard setback. The lot is a double fronting lot with frontage on North 22<sup>nd</sup> Lane and North 23<sup>rd</sup> Street. According to Hidalgo County Appraisal District records, the residential home property was built and purchased by the applicant in 2011. An application for a swimming pool permit has not yet been submitted. An application for the variance request was submitted on June 2, 2021.

The variance request was for a proposed swimming pool, which is considered an accessory structure. In the past, swimming pools were allowed to be built within setbacks; however, a subsequent determination by the City's Legal Department included swimming pools as structures which require compliance with setbacks.

The submitted site plan shows a proposed swimming pool encroaching 10.67 ft. into the 25 ft. rear yard setback. The zoning ordinance requires the rear yard to be the same as the front yard for double fronting lots. The rear yard setback for a standard lot in the R-1 District is 10 feet. The purpose of the additional setback for the rear yard is to separate the main building from the traffic and noise from roadways. The property is also separated from North 23<sup>rd</sup> street by a concrete wall.

General note #10 of the subdivision plat restricts curb cuts, access or lot frontages along North 23<sup>rd</sup> street for this subdivision.

The proposed swimming pool does not encroach into a 10 ft. utility easement that runs concurrently with the rear setback along the rear property line.

On December 03, 2014 the Board approved a variance request at 8903 North 22<sup>nd</sup> Lane (Lot 11) on an irregular shaped double fronting lot for a 20 ft. rear yard setback instead of the required 25 ft. to allow a rear yard encroachment of up to 3.91 feet for the construction of a one story residence.

On April 17, 2013 the board approved a variance request at 9006 North 22<sup>nd</sup> Lane (Lot 48) to allow an encroachment of 0.5 feet into the 6-foot side yard setback for an enclosed bathroom

In the past, the Zoning Board of Adjustments and Appeals has approved variance

requests for accessory uses, but not for living areas in rear yard setbacks for standard double fronting lots.

Staff had not received any phone calls or emails in opposition to this variance request.

Staff recommended disapproval of the variance request. If the Board grants approval of the request it should be limited to the footprint of the swimming pool as shown on the submitted site plan.

Mr. Clint Hernandez, the applicant stated he wanted to build a pool due to the existing to the double fronting setbacks in the rear of the property which takes up a good portion of his back yard. If he built the pool within the limits it would be an irregular shape and the hardship that it would be created would be too close to the house. It would be a safety hazard. There were utilities in the rear and would not be near to the 10 foot utility easement. He stated his pool contractor was present.

Mr. Mark Zachman, 1612 Redbud Avenue, stated if he built the pool within the existing limitations he would have to get engineering get it closer to the house which would present issues in the future with any type of movement or water leaks from the pool. His designer showed the applicant different options.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the variance request. There was no one else in favor of the variance request.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was no one in opposition of the variance request.

Vice-Chairperson John Millin **moved** to approve the variance request limited to the footprint as presented by staff. Ms. Ann Tafel seconded the motion. The Board voted to approve the requests with five members present and voting.

- e) Request of Riverside Development Service, LLC for the following variance to the City of McAllen Zoning Ordinance to allow a lot width less than 50 ft. with a minimum width of 29.66 ft. for lot 90 of proposed Campo de Sueños Phase II, 41.18 ft. to 49.98 ft. for Lots 58-64,66-68,71,73-79,88,91-97,101-103 of proposed Campo de Sueños Phase II, 24.65 ft. for Lot 139 of proposed Campo de Sueños Phase III, 26.89 ft. for Lot 138 of proposed Campo de Sueños Phase III, 34.12 ft. to 38.82 ft. for Lots 124,125,137,140,143-146,148 of proposed Campo de Sueños Phase III, 40.22 ft. to 49.49 ft. for Lots 106,111-113,123,126,127,130-136,141,147,149,151-160,168-172 of proposed Campo de Sueños Phase III, For a 26.663 acre tract of land out of Lot 45 and 52, La Lomita Irrigation and Construction Company's Subdivision, Hidalgo County, Texas; 8300 North Ware Road.**(ZBA2020-0087)**

Ms. Garza stated the applicant was requesting a variance requests to not comply with the 50 ft. minimum width of frontage for proposed Campo de Sueños Phase II subdivision and proposed Campo de Sueños Phase III subdivision lots to accommodate the coving design of the proposed subdivisions.

The subject property was located on the east side of North Ware Road, approximately 1,250 ft. north of Auburn Avenue. The irregularly-shaped tract in question is described by metes and bound for a lot size of 26.663 acres and is being subdivided into two proposed subdivisions under the names of Campo de Sueños Phase II and Campo de Sueños Phase III. The property zoning is R-1 (single family residential) District. The adjacent zoning is A-O (agricultural-open space) District to the south, east and west, R-1 District to the north, and ETJ (Extra-Territorial Jurisdiction) to the west. Surrounding land use include single-family residential, Texas Ranch Apartments, baseball field, elementary school and vacant land.

The Planning and Zoning Commission Board voted to approve the proposed subdivisions in revised preliminary form subject to staff recommendations and variances with conditions noted on January 19, 2021. A variance request to the block length requirement at Campo de Sueños Phase II was approved by City Commission on February 22, 2021. Annexation and initial zoning to R-1 District for the portion of the tract that was outside City limits was approved by City Commission on May 24, 2021.

The variance request #1 was to allow a lot width less than 50 ft. for proposed Campo de Sueños Phase II subdivision and proposed Campo de Sueños Phase III subdivision. Section 138-356 of the zoning ordinance shows the required minimum lot width for lots in the R-1 District is 50 ft. The lot width requirements are established to conserve and enhance the environment and character of a given use district, and to protect the health, safety, and general welfare of the residents of that district. The lot width enables residential parcels to devote a minimum 50 percent of landscape area within the front yard setback and between the property line and the extension of side yard setback line as required under Section 110-48. The applicant is requesting to allow:

- 29.66 ft. for lot 90 of proposed Campo de Sueños Phase II
- 41.18 ft. to 49.98 ft. for Lots 58-64,66-68,71,73-79,88,91-97,101-103 of proposed Campo de Sueños Phase II
- 24.65 ft. for Lot 139 of proposed Campo de Sueños Phase III
- 26.89 ft. for Lot 138 of proposed Campo de Sueños Phase III
- 34.12 ft. to 38.82 ft. for Lots 124,125,137,140,143-146,148 of proposed Campo de Sueños Phase III
- 40.22 ft. to 49.49 ft. for Lots 106,111-113,123,126,127,130-136,141,147,149,151-160,168-172 of proposed Campo de Sueños Phase III

If variance was approved, on-street parking may cause hazards and increase risk to road users; such as collision with other vehicles while darting out between two parked cars. On-street parking may also affect maneuvering areas for fire truck and public works waste truck. Both subdivisions are proposing streets to be at 32 ft. of pavement back to back; therefore, if vehicles are parked on both sides of street, there will only be 14 ft. for traffic flow.

The plight of the owner in regards to meet the 50 ft. minimum width of frontage is not unique since a reduction in the number of proposed lots may enable the property to achieve compliance.

Staff had not received any phone calls or concerns in regards to the variances requests.

Staff recommended disapproval of the variance requests subject to compliance with Zoning Ordinance Section 138-356.

Chairperson Diaz asked staff what did City Commission approve at their meeting. Planning Director, Edgar Garcia stated the Rezoning and the Annexation. They approved the R-1 District on the 26.663 tract of land as well as the Annexation. They also approve the subdivision in preliminary format. They have not finalized because they need to sort out any variances that they might need. If it gets denied, they would have to go back to Planning and Zoning and comply to change the subdivision to a different format.

Chairperson Diaz asked if staff had discussed with the engineer and property owner to figure this out. Ms. Garza stated this was the third revised subdivision they had submitted.

Vice-Chairperson Millin asked staff if the request for the variance essentially the lots that were on the curbs so to have less frontage to have more of a pie shape lot. Ms. Garza stated one of the lots had 24 feet of curb. The ones highlighted on the plat were the ones that did not meet the 50 feet of frontage.

Kelly Vela with Melden and Hunt representative for the project. They were working with Tony Aguirre on this project, Riverside Development but were partnered with Esperanza Homes. She stated they were doing the same layout as the one they did at Tres Lagos. She stated 99% of the lots are in a form of a curve and even the ones that are on straighter piece were still on a curve so the width at the front were a little bit narrower and opens back up on backside of it. The minimum square footage on all of the lots have been met so the difference on the lot fronts. And the ones that are very narrow were on a corner or a cul-de-sac where it looked like the front was 29 feet but then you turn the corner where the entrance was at it looked like another 100 type of frontage. The Tres Lagos subdivision was done as a Master Plan Community and did not have to come back to this Board for the layouts. She stated Cascada at Tres Lagos have the same type of layout.

Chairperson Diaz stated he liked the design and the cove but had concerns if the homeowners come for a variance because they cannot build their box. Ms. Vela stated they had the proposed lots and homes that were being marketed for each of the lots so that way staff could see where the planned driveways were going to be located.

Vice-Chairperson Millin asked Ms. Vela because they were concerned with a standard they had to follow whether there's a hardship posed by the property that would require a variance. His question was what is the hardship posed by the property that would require a variance. Ms. Vela stated that McAllen's development standards currently do not really allow for one to do a cove design and to do the curves and the lots to be able to meet that type of a development. She stated other cities were updating their Code to accommodate. Vice-Chairperson Millin stated the cove design wasn't of itself necessarily the issue it was the number of lots that was in the cove design. It could be reduced by 20 to 25 lots and be in compliance of providing adequate frontage on each lot. Ms. Vela stated they would reduce it out of the green areas that were being treated in between them for the families. Ms. Vela stated the engineers had gone through several layouts, three made it to staff about 10 more that did not make it. Vice-Chairperson Millin asked the applicant how many lots would have to be taken out to meet with compliance. Ms. Vela stated she was not the



main engineer working on the project and did not know the number from the previous situations. She stated because a lot of these lots that are on curves for the frontage to be wider than the back becomes significantly larger and ends up pricing it out of the people that would be looking in that type of neighborhood. It is the middle class income homes.

Ms. Hinojosa asked if these were Affordable Homes. Ms. Vela stated no they were not Affordable Homes.

Chairperson Diaz asked if this was a PUD. Ms. Vela stated it was not.

Ms. Sylvia Hinojosa **moved** to table the variance request. Vice-Chairperson John Millin seconded the motion. The Board voted to table the variance request with five members present and voting.

### **3. FUTURE AGENDA ITEMS:**

- a) 2232 Nyssa Avenue
- b) 9500 North 17<sup>th</sup> Street
- c) 2201 South 31<sup>st</sup> Street
- d) 8100 North 3<sup>rd</sup> Street

### **ADJOURNMENT**

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

---

Chairperson Erick Diaz

---

Carmen White, Secretary



TBPELS Firm # F-1435  
TBPELS # 10096900

# MELDEN & HUNT INC.

CONSULTANTS • ENGINEERS • SURVEYORS

FRED L. KURTH • ALLAN F. BOOE • KELLEY A. HELLER-VELA • ROBERTO N. TAMEZ • MARIO A. REYNA • RUBEN JAMES DE JESUS

July 15, 2021

Mr. Edgar Garcia, Planning Director  
**CITY OF MCALLEN PLANNING DEPARTMENT**  
P.O. Box 220  
McAllen, Texas 78505-0220

**Re: REQUEST TO WITHDRAW VARIANCE FOR CAMPO DE SUEÑOS PHASE II & III**

Dear Mr. Garcia:

On behalf of the developer, Riverside Development Services, LLC., Melden & Hunt, Inc. would like this letter to serve as formal written notice, that we are asking the City of McAllen to officially withdraw our request for the ZBOA variance on Campo De Suenos Phase II & III package submitted February 2, 2021 and tabled at your ZBOA Meeting of July 7, 2021.

We appreciate your consideration on this matter. If you have any questions, please feel free to call our office at 381-0981.

Respectfully,  
**MELDEN & HUNT, INC.**

Mario A. Reyna, P.E.  
Vice-President



**PROPERTY LOCATION AND VICINITY:**

The subject property is located on the east side of North Ware Road, approximately 1,250 ft. north of Auburn Avenue. The irregularly-shaped tract in question is described by metes and bound for a lot size of 26.663 acres and is being subdivided into two proposed subdivisions under the names of Campo de Sueños Phase II and Campo de Sueños Phase III. The property zoning is R-1 (single family residential) District. The adjacent zoning is A-O (agricultural-open space) District to the south, east and west, R-1 District to the north, and ETJ (Extra-Territorial Jurisdiction) to the west. Surrounding land use include single-family residential, Texas Ranch Apartments, baseball field, elementary school and vacant land.

**BACKGROUND AND HISTORY:**

The Planning and Zoning Commission Board voted to approve the proposed subdivisions in revised preliminary form subject to staff recommendations and variances with conditions noted on January 19, 2021. A variance request to the block length requirement at Campo de Sueños Phase II was approved by City Commission on February 22, 2021. Annexation and initial zoning to R-1 District for the portion of the tract that was outside City limits was approved by City Commission on May 24, 2021.

**ANALYSIS:**

The variance request #1 is to allow a lot width less than 50 ft. for proposed Campo de Sueños Phase II subdivision and proposed Campo de Sueños Phase III subdivision. Section 138-356 of the zoning ordinance shows the required minimum lot width for lots in the R-1 District is 50 ft. The lot width requirements are established to conserve and enhance the environment and character of a given use district, and to protect the health, safety, and general welfare of the residents of that district. The lot width enables residential parcels to devote a minimum 50 percent of landscape area within the front yard setback and between the property line and the extension of side yard setback line as required under Section 110-48. The applicant is requesting to allow:

- 29.66 ft. for lot 90 of proposed Campo de Sueños Phase II
- 41.18 ft. to 49.98 ft. for Lots 58-64,66-68,71,73-79,88,91-97,101-103 of proposed Campo de Sueños Phase II
- 24.65 ft. for Lot 139 of proposed Campo de Sueños Phase III
- 26.89 ft. for Lot 138 of proposed Campo de Sueños Phase III
- 34.12 ft. to 38.82 ft. for Lots 124,125,137,140,143-146,148 of proposed Campo de Sueños Phase III
- 40.22 ft. to 49.49 ft. for Lots 106,111-113,123,126,127,130-136,141,147,149,151-160,168-172 of proposed Campo de Sueños Phase III

If variance is approved, on-street parking may cause hazards and increase risk to road users; such as collision with other vehicles while darting out between two parked cars. On-street parking may also affect maneuvering areas for fire truck and public works waste truck. Both subdivisions are proposing streets to be at 32 ft. of pavement back to back; therefore, if vehicles are parked on both sides of street, there will only be 14 ft. for traffic flow.

The plight of the owner in regards to meet the 50 ft. minimum width of frontage is not unique since a reduction in the number of proposed lots may enable the property to achieve compliance.

Staff has not received any phone calls or concerns in regards to the variances requests.

**RECOMMENDATION:**

Staff recommends disapproval of the variance requests subject to compliance with Zoning Ordinance Section 138-356.



## MEMO

**TO:** Zoning Board of Adjustment & Appeals

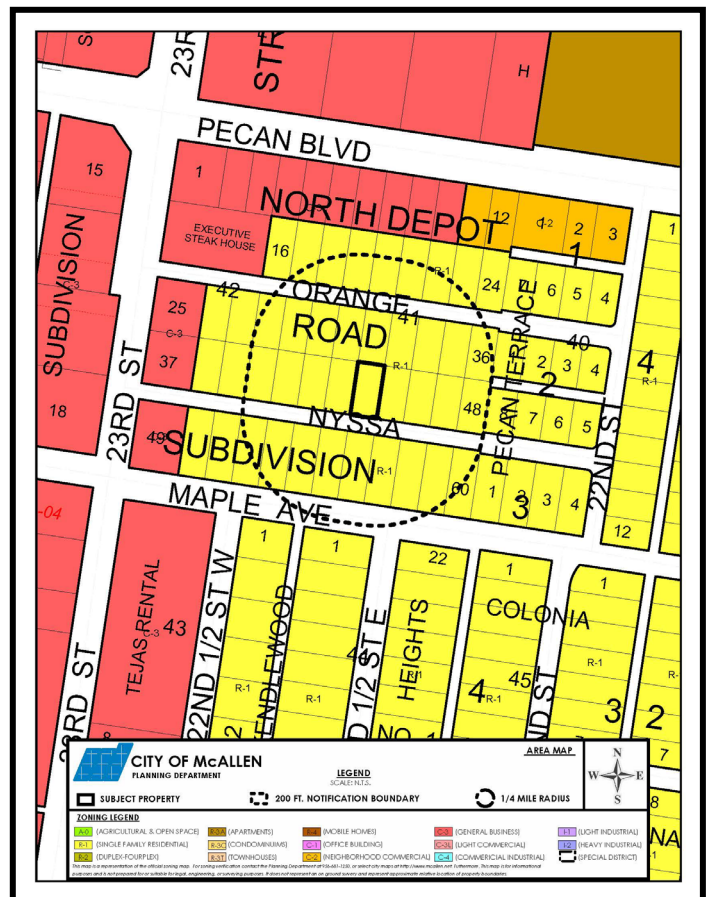
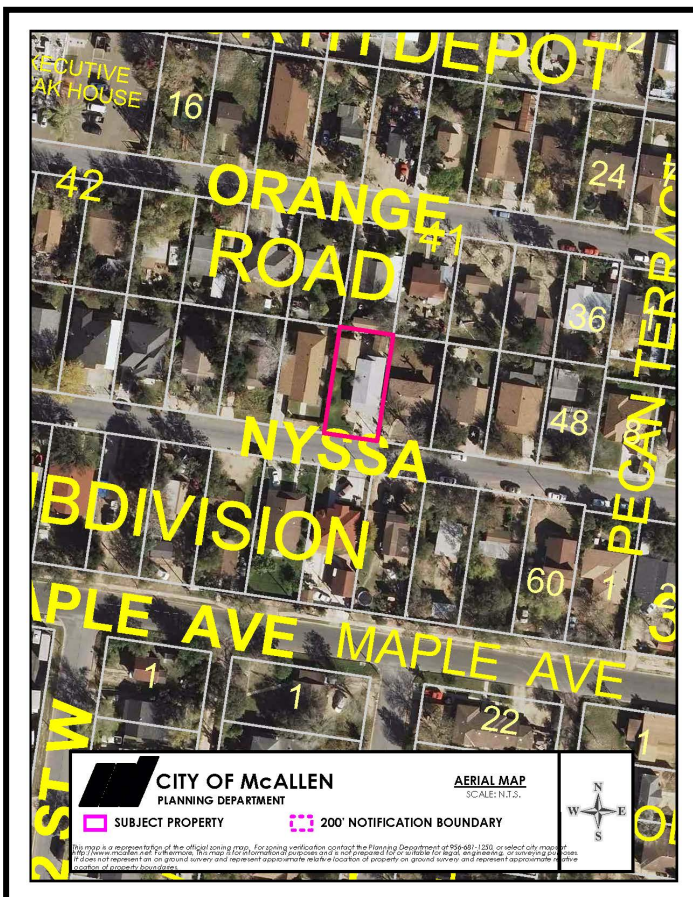
**FROM:** Planning Staff

**DATE:** July 15, 2021

**SUBJECT:** REQUESTS OF ARMANDO COBOS FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 14.33 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR A PROPOSED METAL CARPORT MEASURING 16 FT. BY 26 FT., AND 2) AN ENCROACHMENT OF UP TO 3.52 FT. INTO THE 6 FT. SIDE YARD SETBACK FOR A PROPOSED METAL CARPORT MEASURING 16 FT. BY 26 FT., AT LOT 44, NORTH DEPOT SUBDIVISION, HIDALGO COUNTY, TEXAS; 2232 NYSSA AVENUE. (ZBA2021-0022)

### REASON FOR APPEAL:

Armando Cobos, is requesting a special exception to allow: 1) an encroachment of 14.33 ft. into the 25 ft. front yard setback for a proposed metal carport measuring 16 ft. by 26 ft., and 2) an encroachment of up to 3.52 ft. into the 6 ft. side yard setback for a proposed metal carport measuring 16 ft. by 26 ft. The applicant is requesting the special exception in order to build a carport for shade to help with his medical conditions and protect his vehicles.



**PROPERTY LOCATION AND VICINITY:**

The property is located along the north side of Nyssa Avenue, approximately 390 feet east of North 23<sup>rd</sup> Street. The property has 50 feet of frontage along Nyssa Avenue with a depth of 100 feet for a total area of 5,000 square feet. There is a single family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions. The surrounding land use is single family residential.

**BACKGROUND AND HISTORY:**

The subject property is located within North Depot Road Subdivision, and is considered a de facto subdivision. The plat does not indicate setbacks. However, any new construction is required to meet current Zoning Ordinance setback requirements. The current Zoning Ordinance setbacks for the R-1 District are as followed, the front yard setback is 25 feet, the side yard setbacks are 6 feet and the rear yard setback is 10 feet. An application for the variance request was submitted on June 01, 2021. An application for a building permit for a proposed porch was submitted initially on May 29, 2012 however, the permit never received a final inspection. The applicant has submitted a revised application with a new addition for a proposed carport.

**ANALYSIS:**

The proposed 26 ft. by 16 ft. carport will be of metal construction and is proposed to be built over an existing concrete driveway. The submitted site plan shows a proposed carport attached to the house encroaching 14.33 ft. into the 25 ft. front yard setback and up to 3.52 ft. into the 6 ft. side yard setback. Front yard setbacks are important to help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Currently there is no alley access or garage on the subject property.

The applicant has been apprised of other structures that appear to be encroaching on the side and rear setbacks of the property. The applicant decided not to include those requests at this time.

The applicant can relocate the proposed carport toward the interior of the lot to be in compliance with the side yard setback, but this option would place the support structures in the current parking area and involve a re-design of the concrete driveway to accommodate the new location.

During a site visit, staff noticed other similar encroachments in the area. A review of Planning Department records did not reveal any variances granted along this street.

Staff has not received any phone calls or emails in opposition to this special exception request.

**RECOMMENDATION:**

Staff recommends disapproval of the special exception request. If the Board grants approval of the request it should be limited to the footprint shown on the submitted site plan.



ZBA2021-0022

ZBA  
7/7/2021

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

Project

Legal Description

North Depot Lot 44

Subdivision Name

North Depot

Street Address

2232 Nyssa Ave

Number of lots

1

Gross acres

N/A

Existing Zoning

Residential

Existing Land Use

Residential

Reason for Appeal (please use other side if necessary)

Health issues, cost of repairing truck

☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name Armando Cobos

Phone (956) 874-5066

Address 2232 Nyssa Ave

E-mail ACobos44@gmail.com

City McAllen

State TX

Zip 78501

Owner

Name Armand cobos

Phone (956) 874-5066

Address 2232 Nyssa Ave

E-mail ACobos44@gmail.com

City McAllen

State TX

Zip 78501

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes

☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable)  
OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature Armando Cobos

Date 06-1-2021

Print Name ARMANDO COBOS

☒ Owner

☐ Authorized Agent

Office

Accepted by H.C.

Payment received by

Date

Rev 09/20

RECEIVED  
JUN 01 2021  
By NM

55





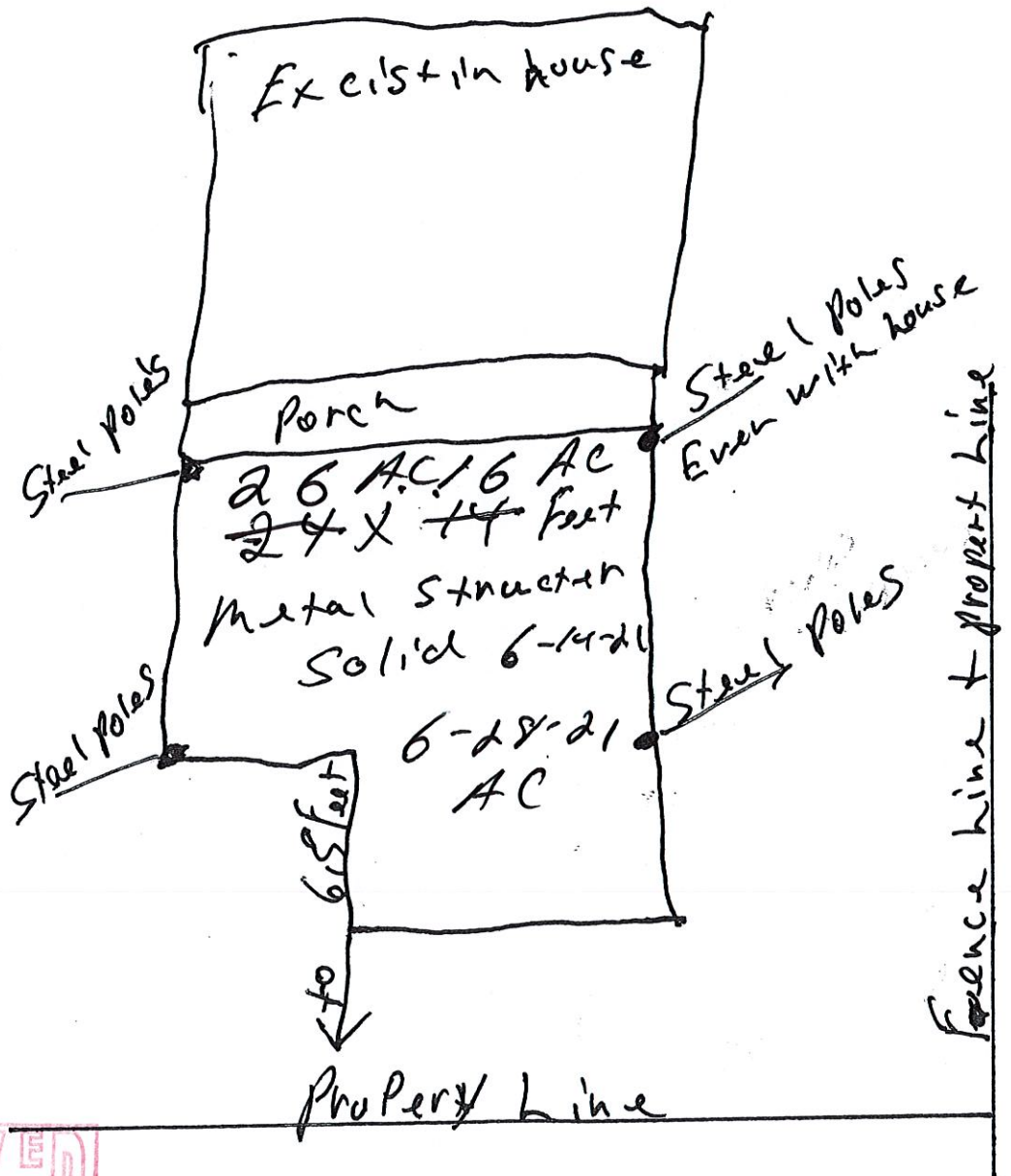
# City of McAllen

## Planning Department

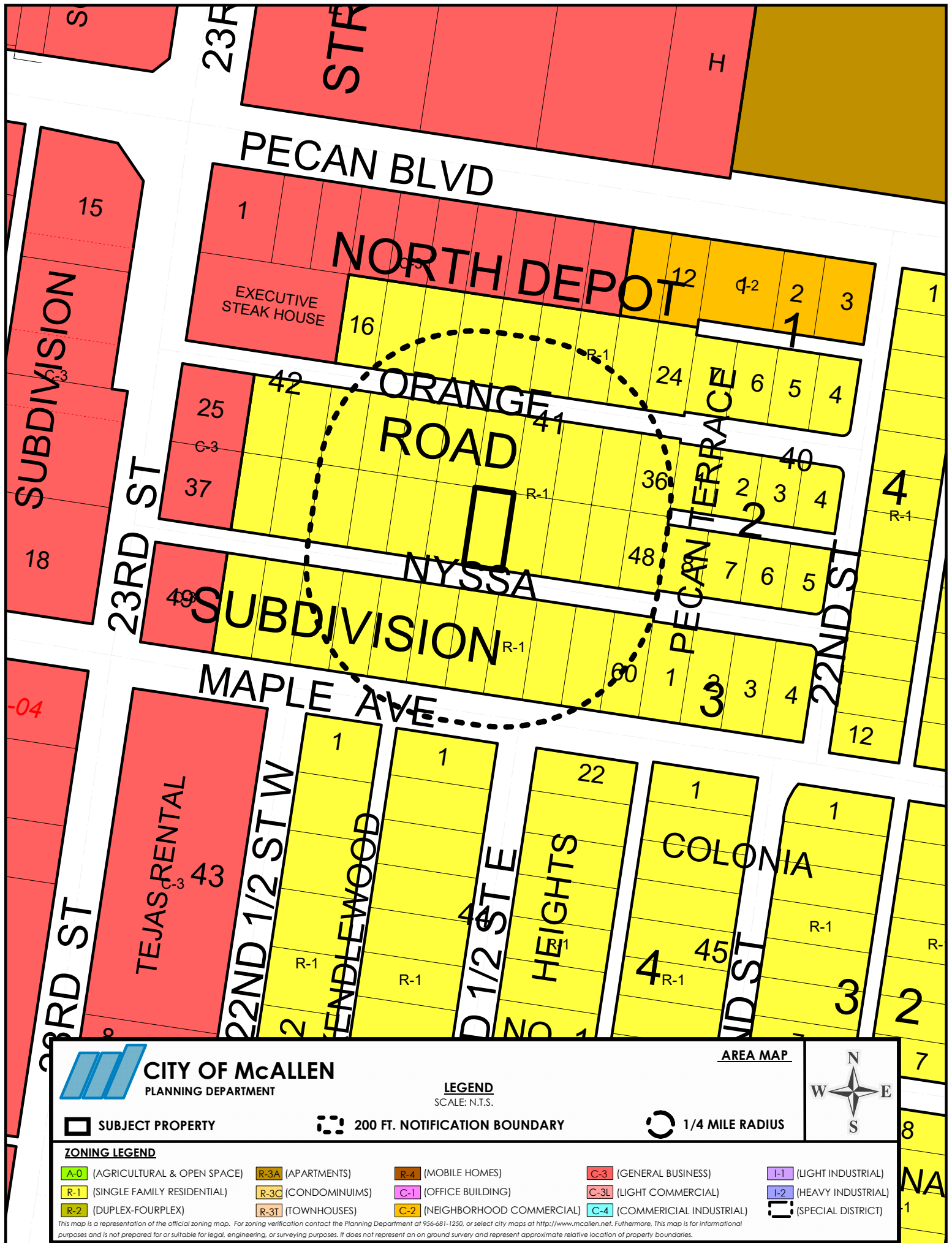
### REASON FOR APPEAL & BOARD ACTION

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider <b>any combination</b> of the following: (Please use an additional page if necessary to complete responses)</p> <p><b>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</b></p> <p><b>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</b></p>			
	<p>1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:</p>			
	<p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p>			
	<p>3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:</p> <p>Building Structure will not affect neighbors nor surroundings. To protect and enjoy my property rights</p>			
Board Action	<p>4. Describe special conditions that are unique to this applicant or property:</p> <p>Health conditions, Heart, Knee replacement, Arthritis conditions, High blood pressure, Face mask</p>			
	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">Chairman, Board of Adjustment Signature</td> <td style="width: 40%;">Date</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>	Chairman, Board of Adjustment Signature	Date	_____
Chairman, Board of Adjustment Signature	Date			
_____	_____			





RECEIVED  
JUN 28 2021  
By *ME*



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

1/4 MILE RADIUS



**ZONING LEGEND**

<b>A-0</b> (AGRICULTURAL & OPEN SPACE)	<b>R-3A</b> (APARTMENTS)	<b>R-4</b> (MOBILE HOMES)	<b>C-3</b> (GENERAL BUSINESS)	<b>I-1</b> (LIGHT INDUSTRIAL)
<b>R-1</b> (SINGLE FAMILY RESIDENTIAL)	<b>R-3C</b> (CONDOMINIUMS)	<b>C-1</b> (OFFICE BUILDING)	<b>C-3L</b> (LIGHT COMMERCIAL)	<b>I-2</b> (HEAVY INDUSTRIAL)
<b>R-2</b> (DUPLEX-FOURPLEX)	<b>R-3T</b> (TOWNHOUSES)	<b>C-2</b> (NEIGHBORHOOD COMMERCIAL)	<b>C-4</b> (COMMERCIAL INDUSTRIAL)	<b>S</b> (SPECIAL DISTRICT)

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.





**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.



**SUBJECT PROPERTY**



**200' NOTIFICATION BOUNDARY**



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NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0022

★ 2237

CHEVROLET

TEXAS  
GPN-5477





## Planning Department

### Memo

**TO:** Zoning Board of Adjustment & Appeals

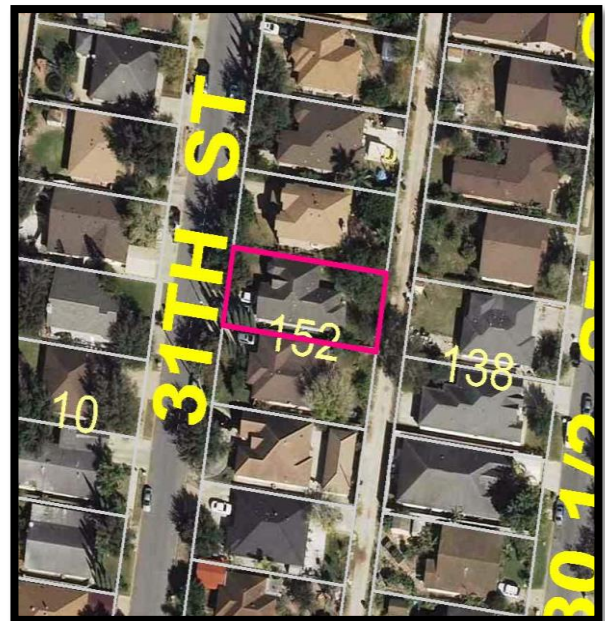
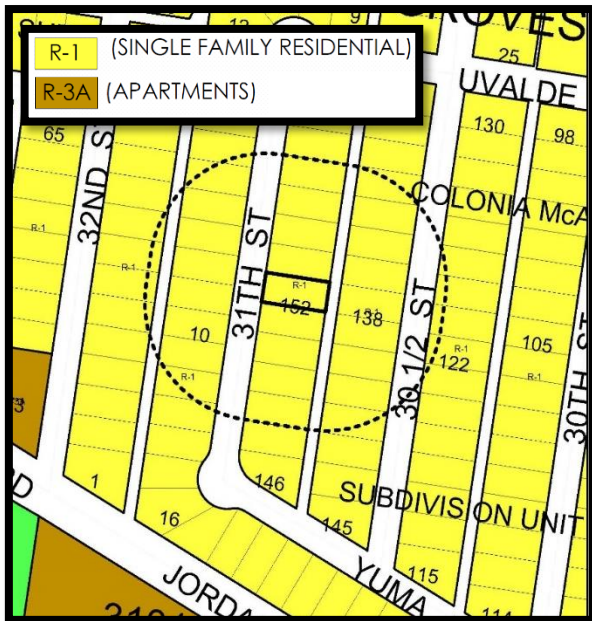
**FROM:** Planning Staff

**DATE:** July 14, 2021

**SUBJECT: REQUEST OF SINAI RAMIREZ, FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: AN ENCROACHMENT OF 20 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR A PROPOSED METAL CARPORT MEASURING OF 25 FT. BY 20 FT. AT LOT 152, COLONIA MCALLEN SUBDIVISION NO. 6, HIDALGO COUNTY, TEXAS; 2201 SOUTH 31<sup>ST</sup> STREET. (ZBA2021-0027)**

#### REASON FOR APPEAL:

The applicant is requesting a special exception to encroach 20 ft. into the 20 ft. front yard setback for a proposed metal carport that measures 20 ft. by 20 ft. The applicant is requesting to allow the carport at the proposed location, since it will protect her from the sun; the applicant had surgery on her face and she needs to limit the amount of sun exposure, additionally the carport would protect the vehicles from inclement weather and they would be able to enjoy the afternoon outside.



#### PROPERTY LOCATION AND VICINITY:

The subject property is located on the east side of North 31<sup>st</sup> Street, approximately 250 ft. north of Yuma Avenue. The property has 50 ft. of frontage along North 31<sup>st</sup> Street and a depth of 111 ft. with a lot size of 5,550 square feet. The property and adjacent zoning is R-1 (single family residential) District in all directions. Surrounding land use include single-family residential houses.

**BACKGROUND AND HISTORY:**

Colonia McAllen Subdivision No.6 was recorded on August 2, 1976. The plat specifies a 20 ft. front yard setback. A stop work order was issued by Building and Inspections Department staff on June 1, 2021 for the installation of a carport without a permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department on June 3, 2021. An application for special exception request for encroachment of an existing carport was submitted to the Planning Department on June 11, 2021.

**ANALYSIS:**

The special exception request is to allow an encroachment of 20 ft. into the 20 ft. front yard setback for proposed metal carport that measures 20 ft. by 20 ft. the construction has been initiated and the frame of the carport is already on place, however, the carport is not completed yet, The plat for the subdivision specifies a 20 ft. front yard setback. The carport is aligned with the existing house and it is not encroaching into the side setbacks.

There is one variance request on file for a carport encroaching into the front yard and side yard setback for this subdivision; however, the request was disapproved in 2020. A site inspection confirmed that there are existing carports built around the neighborhood without a permit. There are other structures around the area that seemed to be encroaching into rear and side setbacks.

Staff has not received any phone calls or concerns in regards to the special exception request.

**RECOMMENDATION:**

Staff recommends approval of the special exception since it complies with Section 138-371 (b) (1) of the Zoning Ordinance. If the Board chooses to approve the request, the approval should be limited to the proposed location shown on the site plan.



ZBOA  
7-21-21

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

 311 North 15<sup>th</sup> Street  
 McAllen, TX 78501  
 P. O. Box 220  
 McAllen, TX 78505-0220  
 (956) 681-1250  
 (956) 681-1279 (fax)

Project

Legal Description

Colonia McAllen, Unit 6, Lot 152

Subdivision Name

Colonia McAllen Unit 6

Street Address

2201 S. 31st St. McAllen, TX 78503

Number of lots

1

Gross acres

5550 sq. ft.

Existing Zoning

R1

Existing Land Use

Residential

Reason for Appeal (please use other side if necessary)

The carport will protect me from the sun, I had a surgery in my face 2 years ago

☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name Sinai Ramirez

Phone (956) 369-3701

Address 2201 S. 31st St.

E-mail iden-rod@live.com

City McAllen

State TX

Zip 78503

Owner

Name Sinai Ramirez

Phone (956) 369-3701

Address 2201 S. 31st St.

E-mail iden-rod@live.com

City McAllen

State TX

Zip 78503

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature

Date 06/11/2021

Print Name

Sinai Ramirez

☒ Owner☐ Authorized Agent

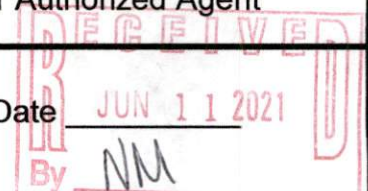
Office

Accepted by HC

Payment received by

Date

JUN 11 2021



Continue in next page.

and need to keep myself out of the sun as much as possible to prevent any other moles to grow and become cancerous.

[illegible]





# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

\*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider **any combination** of the following: (Please use an additional page if necessary to complete responses)

**\*\*Information provided here by the applicant does not guarantee that the Board will grant a variance.**

**\*\*\*Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.**

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:

It is necessary to protect our vehicles from the inclement weather and also to enjoy the afternoon outside with my family without worrying about the harmful sun rays.

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:

It's not going to be affecting my neighbors because is being build inside my property.

4. Describe special conditions that are unique to this applicant or property:

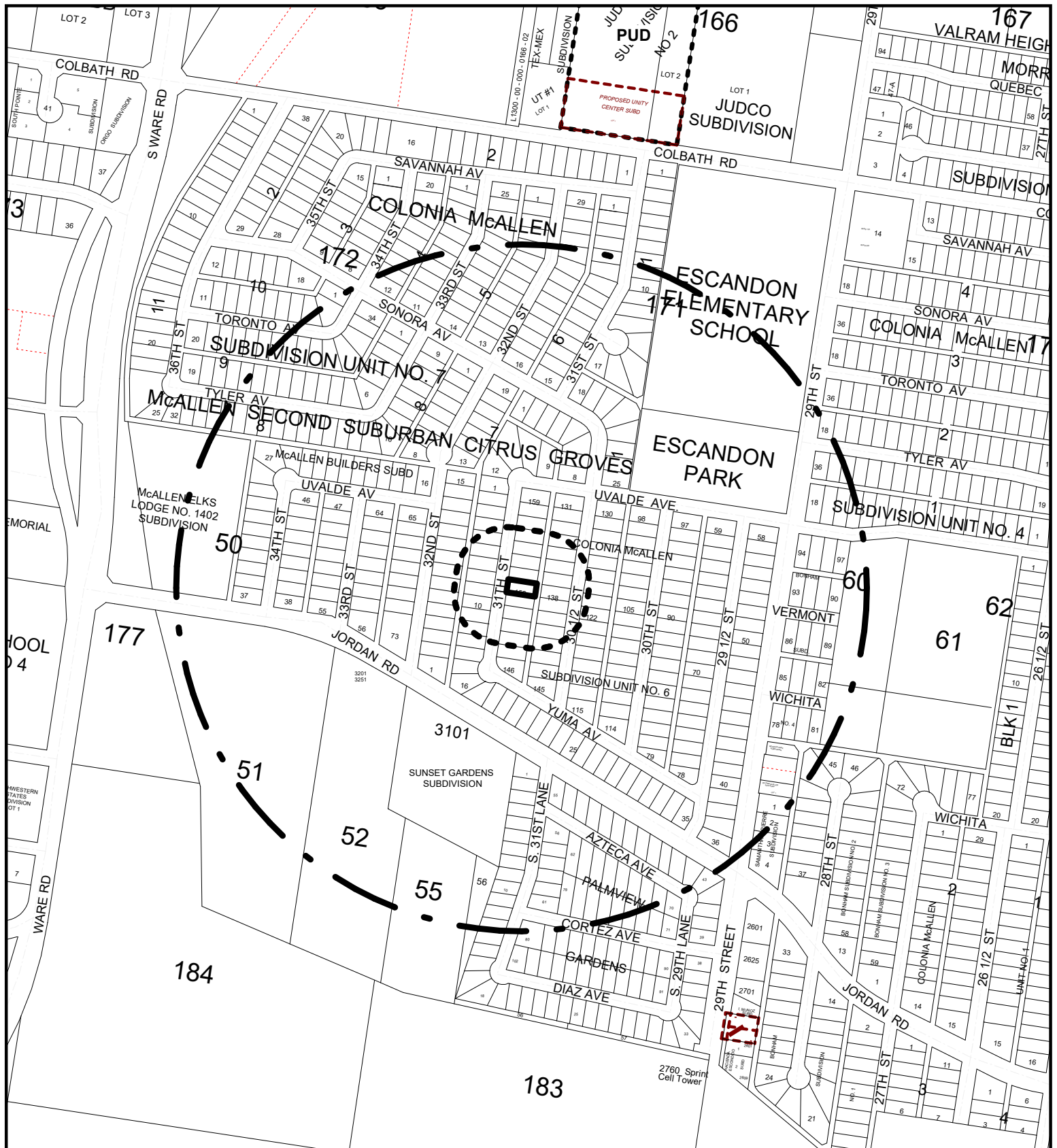
I had a surgery two years ago in my face and need to protect from the sun to prevent any cancerous tumors to grow in my face.

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

**AREA MAP**



**SUBJECT PROPERTY**

**200 FT. NOTIFICATION BOUNDARY**

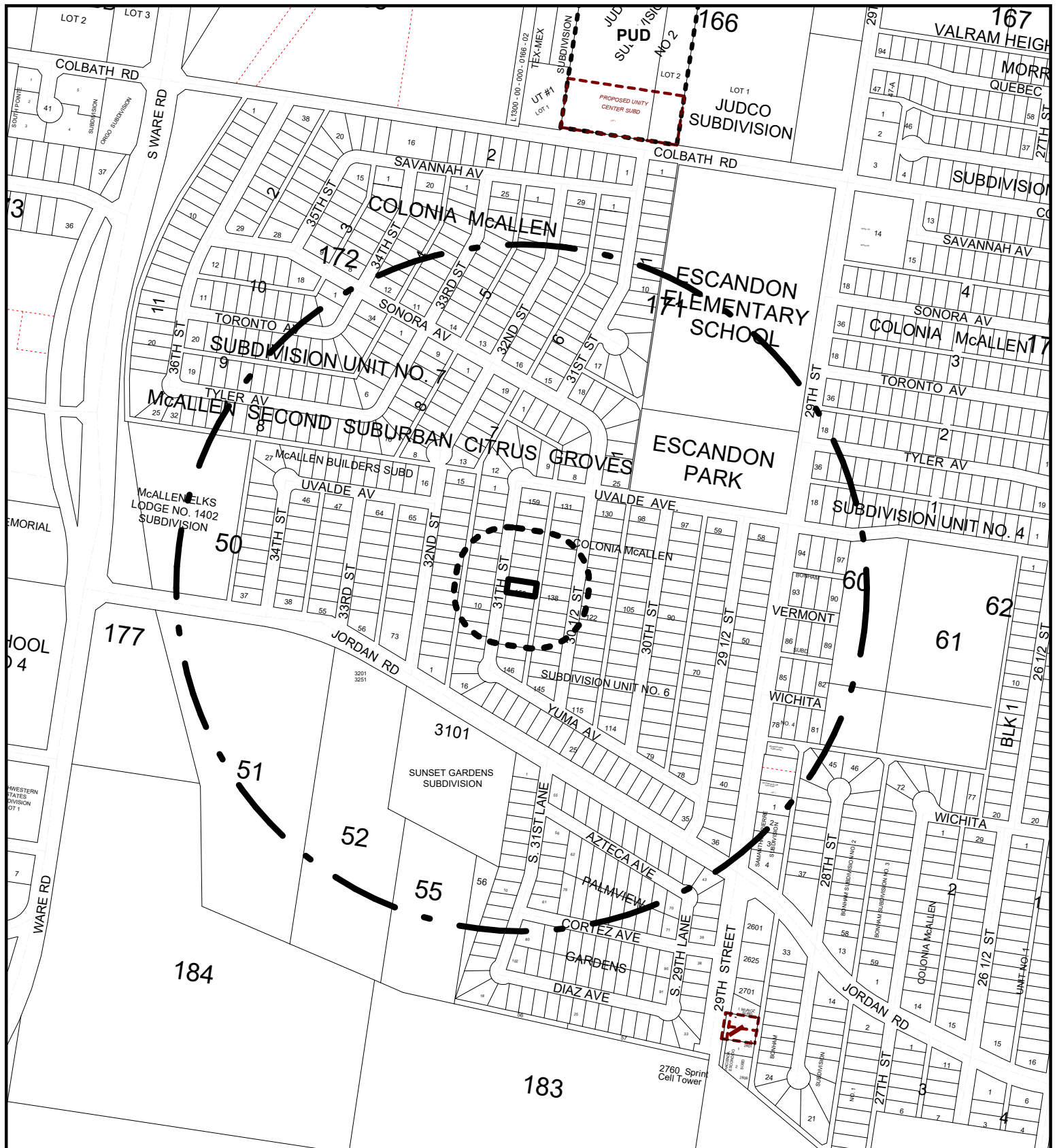
**1/4 MILE RADIUS**

**ZONING LEGEND**

A-O (AGRICULTURAL & OPEN SPACE)	R-3A (APARTMENTS)	R-4 (MOBILE HOMES)	C-3 (GENERAL BUSINESS)	I-1 (LIGHT INDUSTRIAL)
R-1 (SINGLE FAMILY RESIDENTIAL)	R-3C (CONDOMINIUMS)	C-1 (OFFICE BUILDING)	C-3L (LIGHT COMMERCIAL)	I-2 (HEAVY INDUSTRIAL)
R-2 (DUPLEX-FOURPLEX)	R-3T (TOWNHOUSES)	C-2 (NEIGHBORHOOD COMMERCIAL)	C-4 (COMMERCIAL INDUSTRIAL)	(SPECIAL DISTRICT)

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**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

**AREA MAP**




 **SUBJECT PROPERTY**

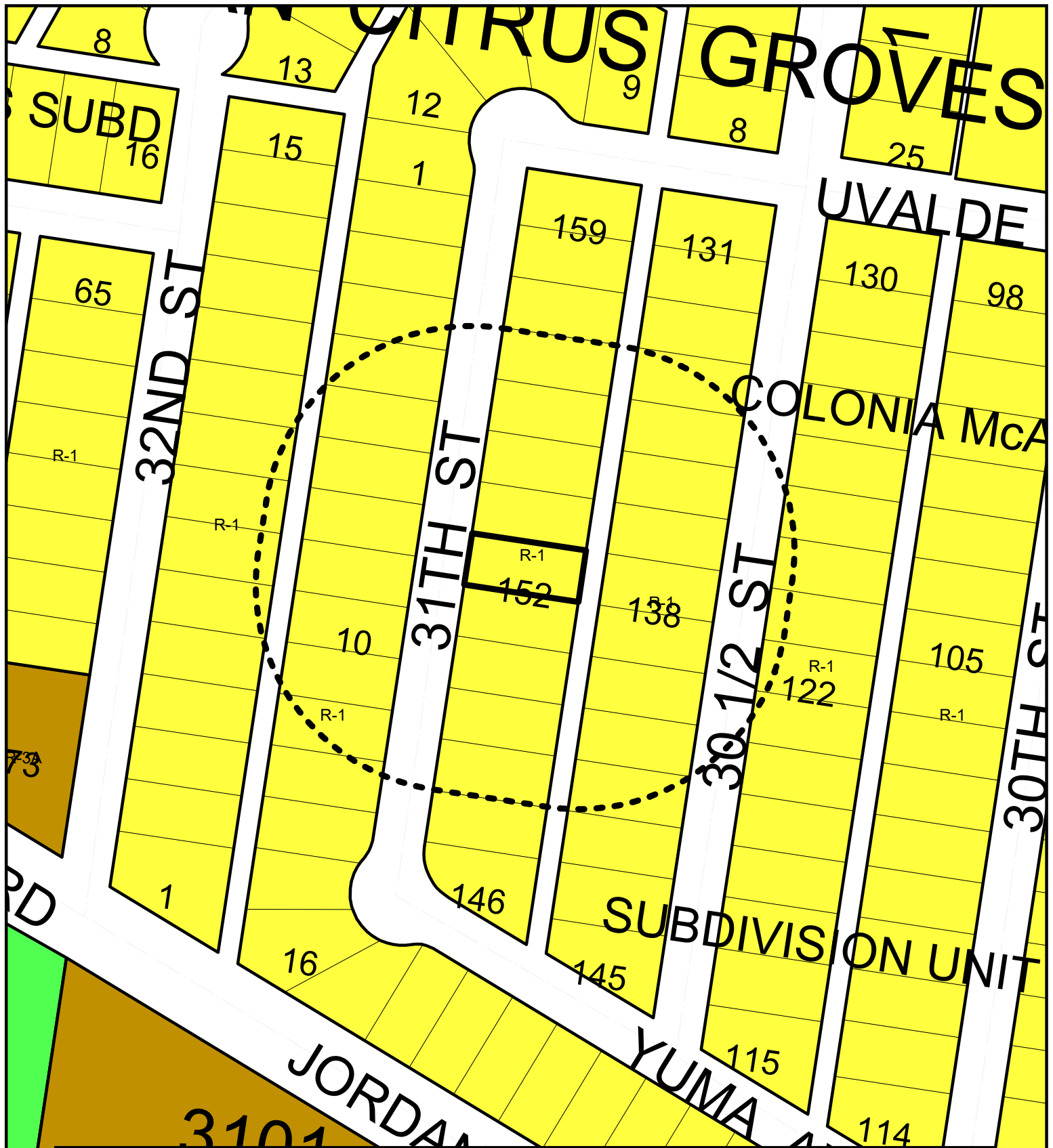
 **200 FT. NOTIFICATION BOUNDARY**

 **1/4 MILE RADIUS**

**ZONING LEGEND**

A-O (AGRICULTURAL & OPEN SPACE)	R-3A (APARTMENTS)	R-4 (MOBILE HOMES)	C-3 (GENERAL BUSINESS)	I-1 (LIGHT INDUSTRIAL)
R-1 (SINGLE FAMILY RESIDENTIAL)	R-3C (CONDOMINIUMS)	C-1 (OFFICE BUILDING)	C-3L (LIGHT COMMERCIAL)	I-2 (HEAVY INDUSTRIAL)
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**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

1/4 MILE RADIUS



**ZONING LEGEND**

(AGRICULTURAL & OPEN SPACE)	(APARTMENTS)	(MOBILE HOMES)	(GENERAL BUSINESS)	(LIGHT INDUSTRIAL)
(SINGLE FAMILY RESIDENTIAL)	(CONDOMINIUMS)	(OFFICE BUILDING)	(LIGHT COMMERCIAL)	(HEAVY INDUSTRIAL)
(DUPLEX-FOURPLEX)	(TOWNHOUSES)	(NEIGHBORHOOD COMMERCIAL)	(COMMERCIAL INDUSTRIAL)	(SPECIAL DISTRICT)

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcalen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.





**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.



**SUBJECT PROPERTY**



**200' NOTIFICATION BOUNDARY**



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# ART SALINAS

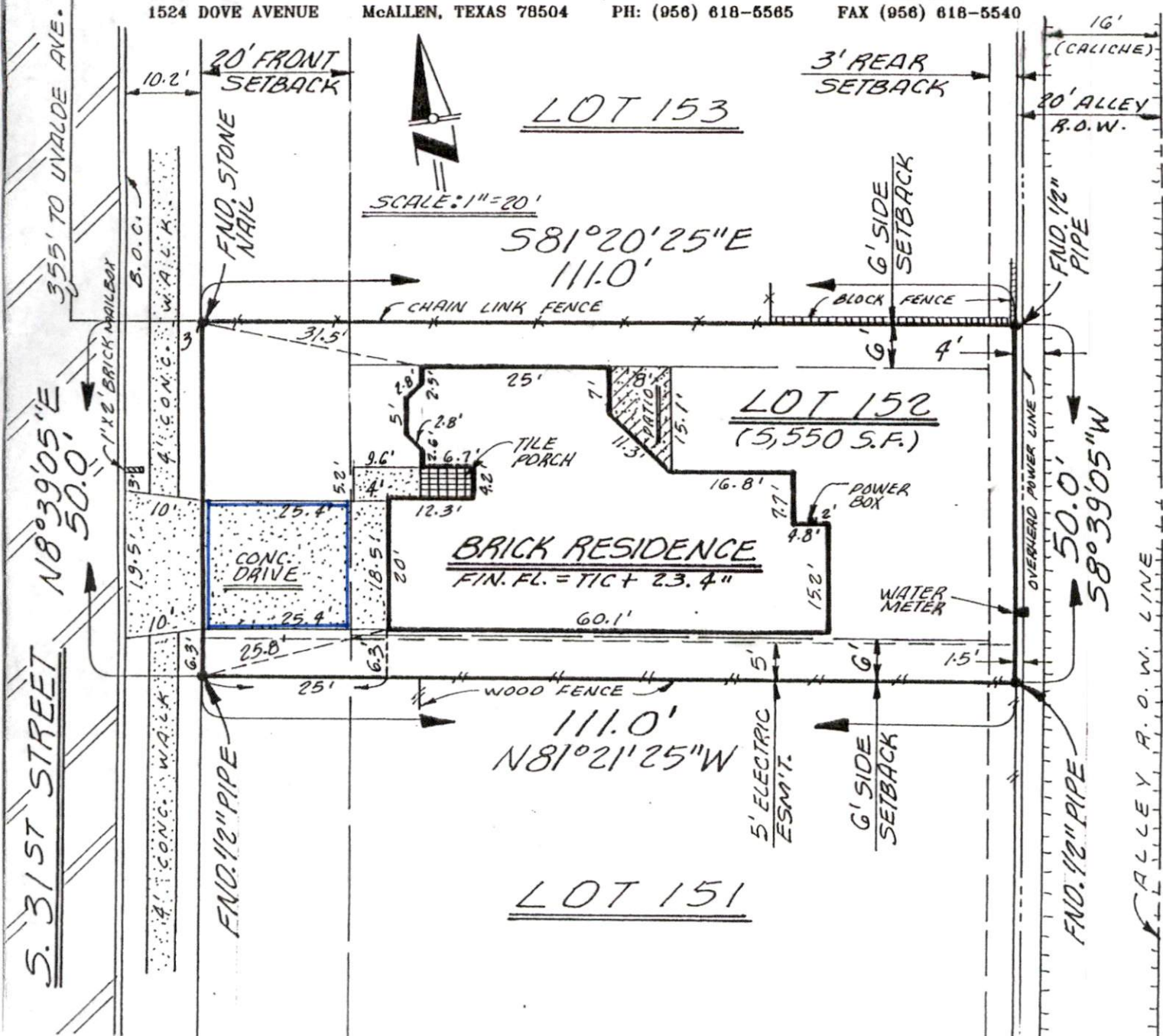
## ENGINEERING & SURVEYING

1524 DOVE AVENUE

McALLEN, TEXAS 78504

PH: (956) 618-5585

FAX (956) 618-5540



**FLOOD CERTIFICATION:** The property shown hereon lies in Zone "B". Zone "B" areas lie between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood as per F.E.M.A. Flood Insurance Rate Map Panel No. 480343-0010-C dated 11-02-82.

### PLAT NOTES:

1. There are no discrepancies, conflicts or shortages in area or boundary lines, encroachments, or any overlapping of improvements except as shown or noted hereon.
2. Easement for AVIGATION granted to THE CITY OF McALLEN, as set forth in instrument recorded in Volume 19, Page 131, Map Records, Hidalgo County Texas. (Blanket)
3. Easements, Rules, Regulations and Rights in favor of Hidalgo County Irrigation District No. 1. (Blanket)
4. BEARING BASIS: "Colonia McAllen Unit No. 6"

**BORROWERS:** Sinai Ramirez and Erika Ramirez

*Sinai Ramirez*

*Erika Ramirez*

THIS IS TO CERTIFY THAT I HAVE, THIS DATE, MADE A CAREFUL AND ACCURATE STANDARD LAND SURVEY ON THE GROUND OF PROPERTY WHICH IS LOCATED AT 2201 S. 31ST STREET IN McALLEN

Friday June 11, 2021

To whom it may concern,

I, Sinai Ramirez, authorize Iris Denisse Ramirez to make decisions and submit the Appeal to Zoning Board of Adjustment to McAllen Zoning Ordinance application relating to the property located at 2201 S. 31<sup>st</sup> St, McAllen, TX. 78503.

  
\_\_\_\_\_  
Signature

Sinai Ramirez  
Print Name

06/11/2021  
Date







## Planning Department

### Memo

**TO:** Zoning Board of Adjustment & Appeals

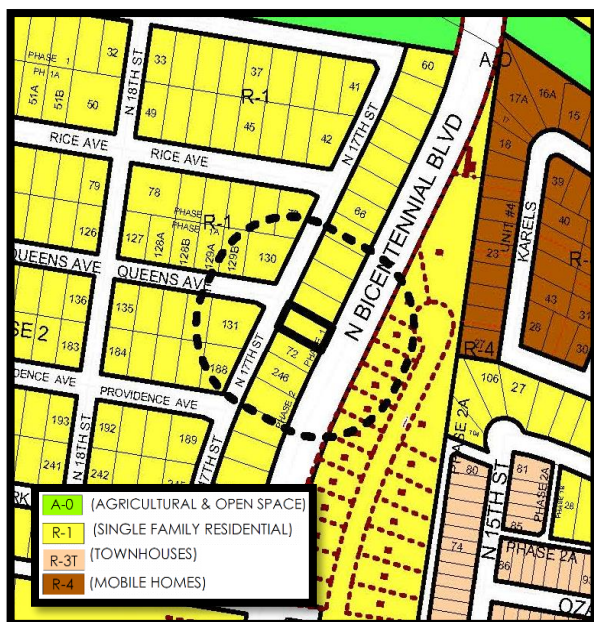
**FROM:** Planning Staff

**DATE:** July 14, 2021

**SUBJECT:** REQUEST OF JONATHAN C. ARTHUR, FOR THE FOLLOWING VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: AN ENCROACHMENT OF 15 FT. INTO THE 25 FT. REAR YARD SETBACK FOR 1.) A PROPOSED POOL MEASURING 37.19 FT. BY 13.92 FT. AND 2.) A PROPOSED BBQ AREA MEASURING 13.92 FT. BY 10.80 FT. AT LOT 71, LA FLORESTA SUBDIVISION PHASE I, HIDALGO COUNTY, TEXAS; 9500 NORTH 17<sup>TH</sup> STREET. (ZBA2021-0026)

#### REASON FOR APPEAL:

The applicant is requesting a variance to a double fronting lot to encroach 15 ft. into the 25 ft. rear yard setback for a proposed pool that measures 37.19 ft. by 13.92 ft. and for a proposed BBQ area that measures 13.92 ft. by 10.80 ft. The applicant is requesting to allow the swimming pool and BBQ area at the proposed location, since it will keep the applicant's family happy and he would be matching the character of the neighborhood.



#### PROPERTY LOCATION AND VICINITY:

The subject property is located on the east side of North 17<sup>th</sup> Street, approximately 450 ft. north of Ozark Avenue. The property has 60 ft. of frontage along North 17<sup>th</sup> Street and a depth of 120 ft. with a lot size of 7,200 square feet. The property and adjacent zoning is R-1 (single family

residential) District in all directions. Surrounding land use include single-family residential houses and vacant land.

**BACKGROUND AND HISTORY:**

La Floresta Subdivision Phase I was recorded on September 5, 2008. The plat specifies that double fronting lots (along N. Bicentennial Blvd.) have a 25 ft. rear yard setback. An application for a building permit for a swimming pool was submitted to the Building Permits & Inspections Department on May 21, 2021. An application for a variance request for encroachment for a proposed swimming pool and BBQ area was submitted to the Planning Department on June 14, 2021.

**ANALYSIS:**

The variance request is to allow an encroachment of 15 ft. into the 20 ft. rear yard setback for proposed swimming pool and BBQ Area that measures 37.19 ft. by 13.92 ft. and 13.92 ft. by 10.80 ft. respectively. The plat for the subdivision specifies a 25 ft. rear yard setback for double fronting lots along N. Bicentennial Blvd. (lots 60-72). Standard rear yard setback in R-1 Districts is 10 ft. The development of the subdivision has built an 8 ft. masonry wall along the rear of the lots and N. Bicentennial Boulevard. There is a 10 ft. Utility Easement at the rear of the lot that will not be impacted by the proposed swimming pool and BBQ Area.

There are three variance requests on file, similar to the variance request; encroachment for swimming pool and other structures into the rear yard setback that were approved in 2017-2019, along the double fronting lots. A site inspection confirmed that there are existing structures in the property (pergola and storage) that will be removed to make room for the proposed constructions. Additionally, there are existing structures that seemed to be encroaching into the rear and side setbacks around the neighborhood that are without a permit.

Staff has not received any phone calls or concerns in regards to the special exception request.

**RECOMMENDATION:**

Staff recommends disapproval of the variance request. If the Board chooses to approve the request, the approval should be limited to the proposed location shown on the site plan.



ZBA2021-0026

ZBOA  
7/21/21

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

 311 North 15<sup>th</sup> Street  
 McAllen, TX 78501  
 P. O. Box 220  
 McAllen, TX 78505-0220  
 (956) 681-1250  
 (956) 681-1279 (fax)

Project

Legal Description La Floresta Phase I Lot 71

Subdivision Name La Floresta

Street Address 9500 N 17<sup>th</sup> St.

Number of lots 1 Gross acres .1

Existing Zoning Residential Existing Land Use Residential

Reason for Appeal (please use other side if necessary) Pool Consideration into double fronting lot, rear yard setback

☒ \$300.00 non-refundable filing fee + ☐ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name Jonathan C. Arthur Phone (956) 236-4152

Address 9500 N 17<sup>th</sup> St. E-mail gaur.jarthur@westwindhomes.com

City McAllen State TX Zip 78504

Owner

Name Jonathan C. Arthur Phone (956) 236-4152

Address 9500 N 17<sup>th</sup> St. E-mail jarthur@westwindhomes.com

City McAllen State TX Zip 78504

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable)  
 OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

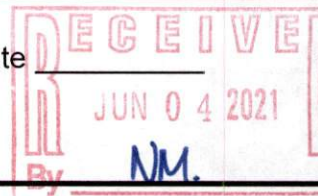
Signature Jonathan C. Arthur Date 06/04/2021

Print Name Jonathan C. Arthur ☒ Owner ☐ Authorized Agent

Office

Accepted by [Signature] Payment received by \_\_\_\_\_ Date \_\_\_\_\_

Rev 09/20

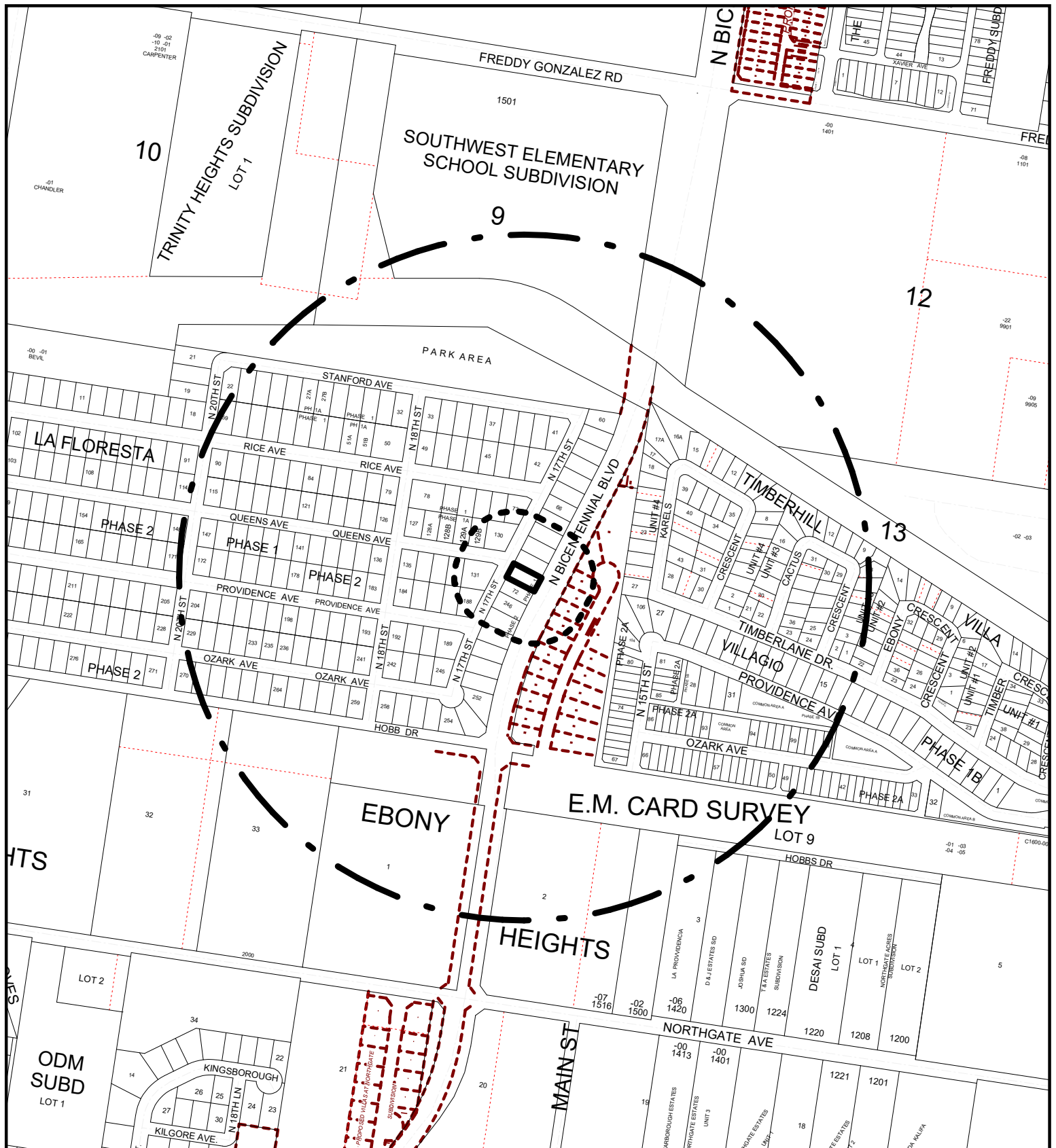






**City of McAllen**  
**Planning Department**  
**REASON FOR APPEAL & BOARD ACTION**

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider <b>any combination of</b> the following: (Please use an additional page if necessary to complete responses)</p> <p><b>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</b></p> <p><b>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</b></p>
	<p>1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:</p> <p><i>Neighbors have a pool @ same size I'm requesting.</i></p>
	<p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p><i>Keeps my family happy where they are &amp; the pool would match the appraised tax value currently associated w/ my home.</i></p>
	<p>3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:</p> <p><i>I'd be matching most every one else on my street</i></p>
	<p>4. Describe special conditions that are unique to this applicant or property:</p> <p><i>Neighbor agreed to remove our side fence for pool contractor to gain access to the rear of my property.</i></p>
Board Action	
	<div>Chairman, Board of Adjustment Signature</div> <div>Date</div>



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

**AREA MAP**




 **SUBJECT PROPERTY**

 **200 FT. NOTIFICATION BOUNDARY**

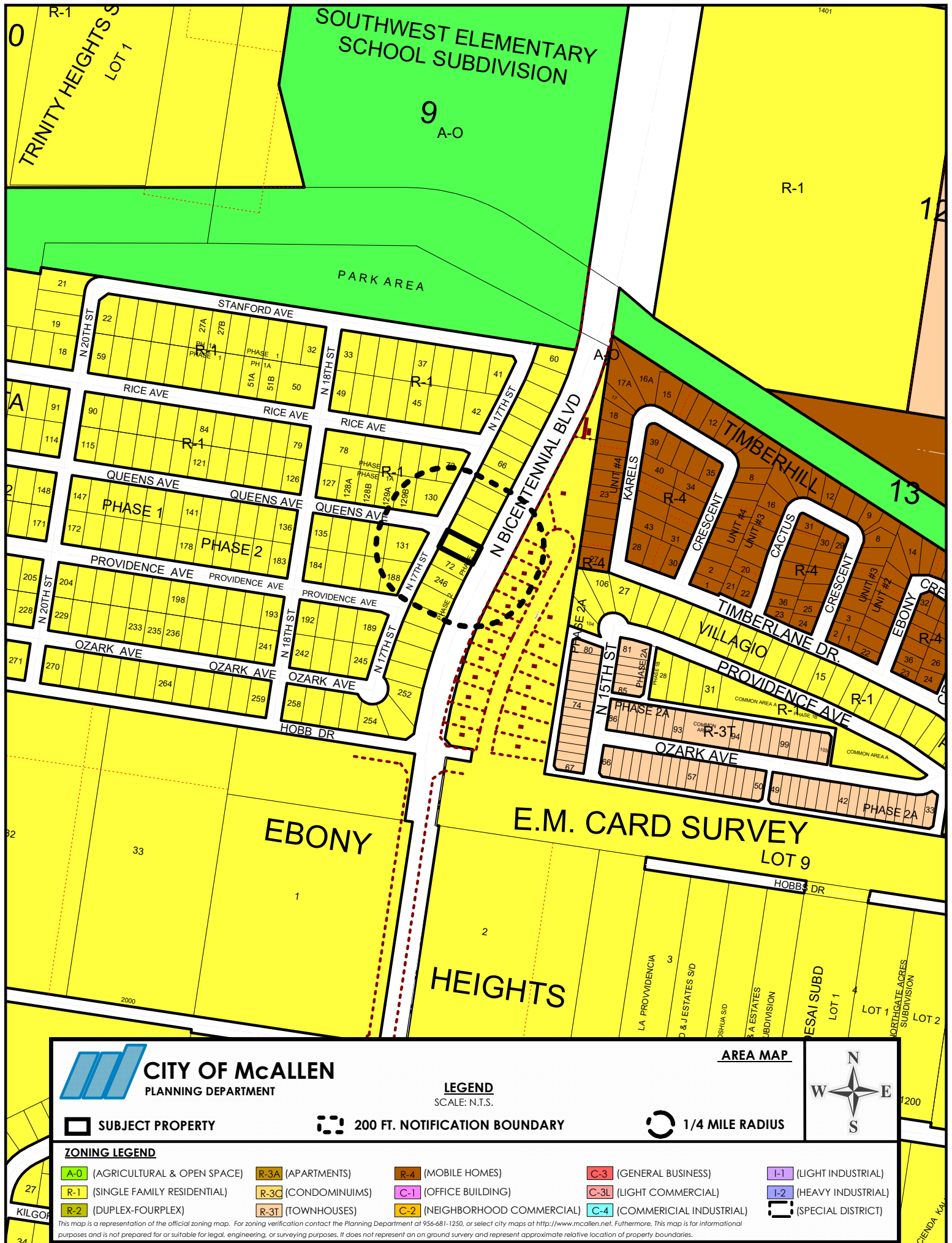
 **1/4 MILE RADIUS**

**ZONING LEGEND**

A-O (AGRICULTURAL & OPEN SPACE)	R-3A (APARTMENTS)	R-4 (MOBILE HOMES)	C-3 (GENERAL BUSINESS)	I-1 (LIGHT INDUSTRIAL)
R-1 (SINGLE FAMILY RESIDENTIAL)	R-3C (CONDOMINIUMS)	C-1 (OFFICE BUILDING)	C-3L (LIGHT COMMERCIAL)	I-2 (HEAVY INDUSTRIAL)
R-2 (DUPLEX-FOURPLEX)	R-3T (TOWNHOUSES)	C-2 (NEIGHBORHOOD COMMERCIAL)	C-4 (COMMERCIAL INDUSTRIAL)	 (SPECIAL DISTRICT)

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**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.



**SUBJECT PROPERTY**

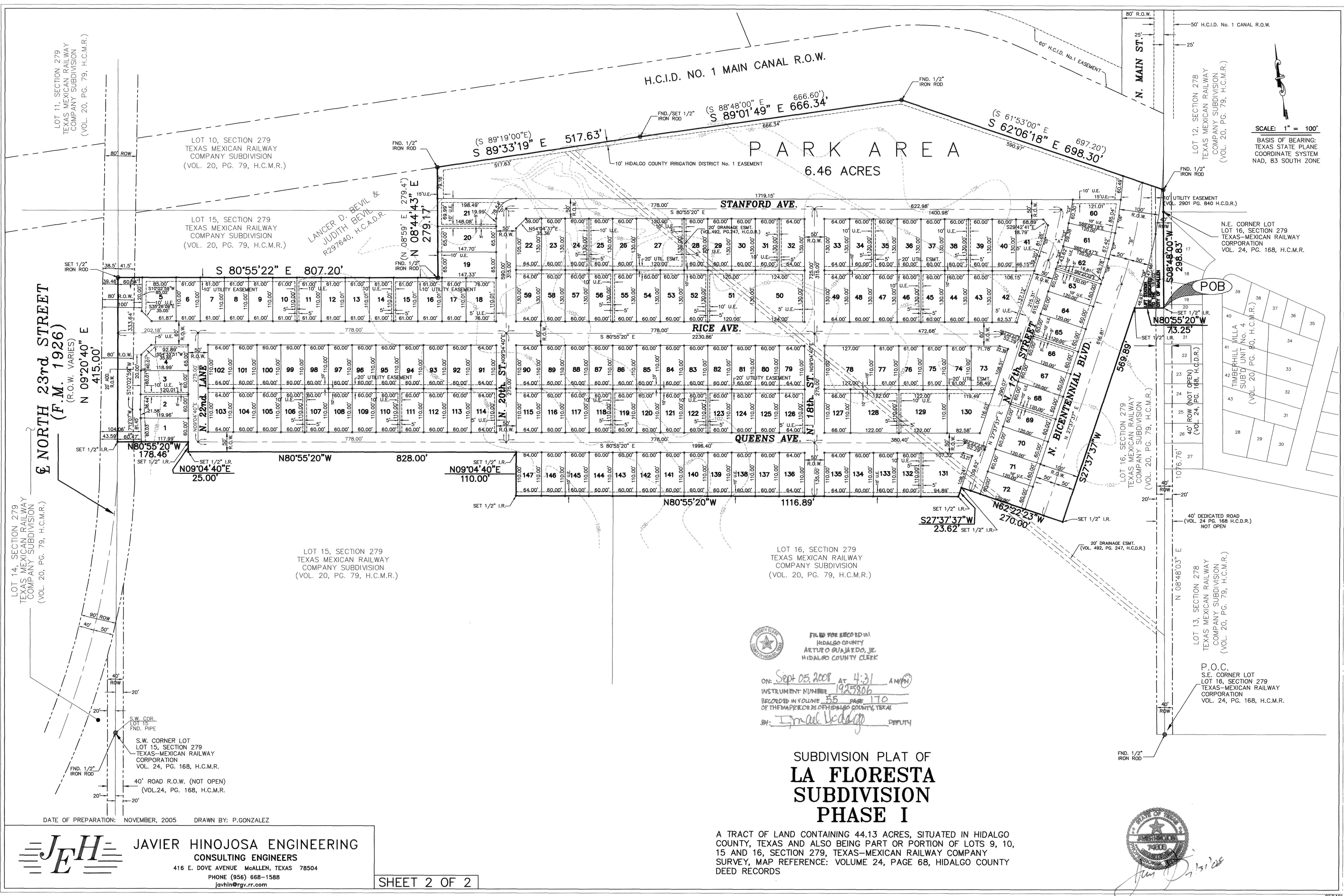


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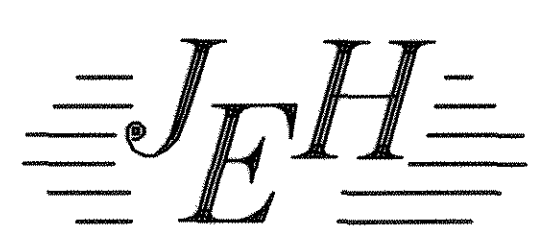
SCALE: 1" = 100'  
BASIS OF BEARING:  
TEXAS STATE PLANE  
COORDINATE SYSTEM  
NAD, 83 SOUTH ZONE

FILED FOR RECORD IN  
HIDALGO COUNTY  
ARTURO GUAYADO, JR.  
HIDALGO COUNTY CLERK

ON: Sept 05, 2008 AT 4:31 AM  
INSTRUMENT NUMBER 1925806  
RECORDED IN VOLUME 55 PAGE 170  
OF THE MAP RECORDS OF HIDALGO COUNTY, TEXAS  
BY: [Signature] DEPUTY

SUBDIVISION PLAT OF  
**LA FLORESTA**  
SUBDIVISION  
**PHASE I**

A TRACT OF LAND CONTAINING 44.13 ACRES, SITUATED IN HIDALGO COUNTY, TEXAS AND ALSO BEING PART OR PORTION OF LOTS 9, 10, 15 AND 16, SECTION 279, TEXAS-MEXICAN RAILWAY COMPANY SURVEY, MAP REFERENCE: VOLUME 24, PAGE 68, HIDALGO COUNTY DEED RECORDS



**JAVIER HINOJOSA ENGINEERING**  
CONSULTING ENGINEERS  
416 E. DOVE AVENUE McALLEN, TEXAS 78504  
PHONE (956) 668-1588  
javhino@jhe-engineers.com

DATE OF PREPARATION: NOVEMBER, 2005 DRAWN BY: P.GONZALEZ



SUBDIVISION PLAT OF  
LA FLORESTA  
SUBDIVISION  
PHASE I

A TRACT OF LAND CONTAINING 44.13 ACRES,  
SITUATED IN HIDALGO COUNTY, TEXAS AND ALSO  
BEING PART OR PORTION OF LOTS 9, 10, 15 AND  
16, SECTION 279, TEXAS-MEXICAN RAILWAY  
COMPANY SURVEY, MAP REFERENCE: VOLUME 24,  
PAGE 68, HIDALGO COUNTY DEED RECORDS

STATE OF TEXAS  
COUNTY OF HIDALGO

I, THE UNDERSIGNED OWNER OF THE LAND SHOWN ON THIS PLAT AND  
DESIGNATED HEREIN AS LA FLORESTA SUBDIVISION PHASE I, AN ADDITION TO  
THE CITY OF MCALLEN, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO,  
HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS,  
PARKS, SEWER LINES, WATER COURSES, STORM SEWERS, FIRE HYDRANTS,  
AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH I WILL CAUSE TO BE  
INSTALLED OR DEDICATED UNDER THE SUBDIVISION APPROVAL PROCESS OF  
THE CITY OF MCALLEN, ALL THE SAME FOR THE PURPOSES THEREIN  
EXPRESSED, EITHER ON THE PLAT OR ON THE OFFICIAL MINUTES OF THE  
APPLICABLE AUTHORITIES OF THE CITY OF MCALLEN.

OWNER: PECHERO FAMILY PARTNERSHIP  
1005 E. NOLANA LOOP  
MCALLEN, TX 78504  
BY: RUBEN PECHERO, PRESIDENT

R & D DEVELOPMENT, L.P.  
A TEXAS LIMITED PARTNERSHIP  
BY ITS GENERAL PARTNER: IMCOR, INC.  
BY: GUS GARCIA, PRESIDENT  
1005 E. NOLANA LOOP  
MCALLEN, TX 78504

STATE OF TEXAS  
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, RUBEN PECHERO AND  
GUS GARCIA PERSONALLY APPEARED AND PROVED, THROUGH THEIR  
DEPARTMENT OF PUBLIC SAFETY DRIVER'S LICENSE, TO BE THE  
PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING  
INSTRUMENT. FURTHERMORE, AFTER BEING DULY SWORN BY ME, THEY  
DECLARED THAT THE STATEMENTS CONTAINED THEREIN ARE TRUE AND  
CORRECT, AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME FOR  
THE PURPOSE AND CONSIDERATION THEREBY EXPRESSED. ALL GIVEN  
UNDER MY HAND AND SEAL OF OFFICE DATED

THIS THE 1 DAY OF July, 2008 A.D.

NOTARY PUBLIC FOR THE STATE OF TEXAS  
Viola Cantunmy Commission Expires On: 8/23/2009  
Notary Public, State of Texas  
My Commission Expires  
August 23, 2009

I, THE UNDERSIGNED, THE MAYOR OF THE CITY OF MCALLEN,  
HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO  
TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF  
THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

Richard Lopez  
MAYOR, CITY OF MCALLEN

DATED THIS 25 DAY OF August, 2008 A.D.

CHAIRMAN, PLANNING & ZONING COMMISSION

STATE OF TEXAS  
COUNTY OF HIDALGO

I, JAVIER HINOJOSA, REGISTERED PROFESSIONAL ENGINEER  
IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER  
ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT.

Javier Hinojosa  
JAVIER HINOJOSA, P.E.  
REGISTERED PROFESSIONAL ENGINEER NO. 74808

STATE OF TEXAS  
COUNTY OF HIDALGO

I, CARLOS VASQUEZ, A REGISTERED PROFESSIONAL LAND SURVEYOR  
IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT WAS  
PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE  
UNDER MY SUPERVISION ON THE GROUND.

Carlos Vasquez  
CARLOS VASQUEZ, R.P.L.S.  
REGISTERED PROFESSIONAL LAND SURVEYOR NO.  
CVQ LAND SURVEYORS LLC  
517 BEAUMONT  
MCALLEN, TEXAS 78501  
(956) 618-1551

DATE SURVEYED: 03-20-08

GENERAL NOTES

- THIS PROPERTY IS LOCATED IN ZONE "X" ON A FLOOD  
INSURANCE RATE MAP, COMMUNITY PANEL NO. 480334 0325 D,  
REVISED JUNE 06, 2000
- MINIMUM FINISHED FLOOR ELEVATION SHALL BE 18-INCHES ABOVE  
THE TOP OF CURB AS MEASURED FROM THE CENTER OF THE LOT.
- MINIMUM BUILDING SETBACK LINES SHALL BE AS FOLLOWS:  
FRONT: ..... 25 FEET EXCEPT  
REAR: ..... 10 FEET OR GREATER FOR EASEMENT, EXCEPT  
25' FOR DOUBLE FRONTING LOTS 1-4 ALONG 23rd ST.  
AND LOTS 60-72 ALONG N. BICENTENNIAL BLVD.  
SIDE: ..... 6 FEET OR GREATER FOR EASEMENT  
EXCEPT 10 FEET ON NORTH SIDE OF LOT 60 AND 21  
SIDE CORNER: ..... 10 FEET  
GARAGE: ..... 18 FEET EXCEPT WHERE GREATER  
SETBACK REQUIRED
- 6 FEET MINIMUM HEIGHT BUFFER IS REQUIRED FROM ADJACENT COMMERCIAL  
ZONES/USES AND ALONG N. BICENTENNIAL BLVD. AND N. 23rd STREET.
- THE DEVELOPER SHALL PROVIDE AN ENGINEERED DETENTION PLAN,  
APPROVED BY THE ENGINEERING DEPARTMENT, PRIOR TO THE  
ISSUANCE OF A BUILDING PERMIT.
- A 4 FOOT WIDE SIDEWALK IS REQUIRED ALONG BOTH SIDES OF  
ALL INTERIOR STREETS, BOTH SIDES OF N. BICENTENNIAL BLVD., AND  
THE EAST SIDE OF N. 23rd STREET.
- NO BUILDING OR BUILDING STRUCTURES SHALL BE CONSTRUCTED  
OVER ANY EASEMENT.
- BENCH MARK: GRATE INLET LOCATED ±285 FEET SOUTH OF THE NORTH WEST CORNER  
OF THIS PROPERTY ON THE EAST BACK OR CURB OF N. 23rd STREET ELEV.=111.11  
M.C. 45 - 30" ALUMINUM PIPE WITH A 3-1/4" BRASS MONUMENT CAP ON TOP.  
LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF N. 23rd STREET  
AND MILE 6 LINE ROAD ELEV.=111.59
- A TOTAL OF 9 ACRE FEET OF STORM WATER DETENTION IS  
REQUIRED FOR THIS SUBDIVISION A TOTAL OF 1350 CUBIC FEET  
OF STORM WATER DETENTION IS REQUIRED FOR EACH LOT.
- THE CITY OF MCALLEN SHALL HAVE A 25 x 25 FOOT CORNER  
CLIP EASEMENT AT ALL STREET INTERSECTIONS.
- NO CURB CUT, ACCESS, OR LOT FRONTAGE PERMITTED FOR LOTS 1-5  
ALONG N. 23rd STREET AND LOTS 60-72 ALONG N. BICENTENNIAL BLVD.
- A 1/2-INCH DIAMETER IRON ROD SHALL BE SET ON ALL LOT  
CORNERS STAMPED WITH "C.V.Q. LS" PLASTIC CAP, UNLESS  
OTHERWISE NOTED.
- TXDOT PERMIT IS REQUIRED FOR ACCESS ALONG TXDOT RIGHT-OF-WAYS  
AND MUST COMPLY WITH TXDOT ACCESS MANAGEMENT POLICY.
- ALL DRIVEWAY REQUIREMENTS INCLUDING LOCATION AND DIMENSIONS ALONG EAST  
SIDE OF F.M. 1926 (NORTH 23RD STREET) ROAD SHALL BE CONSTRUCTED  
AS PER APPROVED TXDOT PERMITTING REQUIREMENTS AND THE CITY OF MCALLEN.

THIS PLAT APPROVED BY HIDALGO COUNTY IRRIGATION DISTRICT  
NO. 1, THIS THE 26th DAY OF June, 2008 A.D.  
NO IMPROVEMENTS OF ANY KIND SHALL BE PLACED ON HIDALGO  
COUNTY IRRIGATION DISTRICT NO. 1 RIGHTS-OF-WAY OR  
EASEMENTS WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE  
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1.

SECRETARY

PRESIDENT

STATE OF TEXAS  
COUNTY OF HIDALGO

I / WE, THE UNDERSIGNED, HOLDER(S), OR DULY AUTHORIZED  
OFFICERS OF THE HOLDER(S), OF A SECURITY INTEREST IN THE  
ABOVE DESCRIBED PROPERTY, BEING THE LAND SHOWN ON THIS  
PLAT AND DESIGNATED HEREIN AS LA FLORESTA SUBDIVISION  
PHASE I, OF THE CITY OF MCALLEN, TEXAS, DO HEREBY CONSENT  
TO THE SUBDIVISION OF THE PROPERTY AS PROVIDED FOR UNDER  
THE PLAT AND DO HEREBY THAT ANY FORECLOSURE RELATING TO  
THE SECURITY INTEREST ON THE ABOVE DESCRIBED PROPERTY  
SHALL BE SUBJECT TO THE PLATTING OF THE PROPERTY AS  
PROVIDED FOR HEREIN.

Bank Name

SIGNATURE  
PRINTED NAME & TITLE

STATE OF TEXAS  
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY  
PERSONALLY APPEARED  
KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED  
TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT  
HE EXECUTED THE SAME FOR PURPOSES AND CONSIDERATION  
THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.  
GIVEN UNDER MY HAND AND SEAL OF OFFICE.

THIS THE 16 DAY OF July, 2008 A.D.

NOTARY PUBLIC, TEXAS  
EXPIRATION DATE: 5/14/12

METES AND BOUNDS

A TRACT OF LAND CONTAINING 44.13 ACRES, SITUATED IN HIDALGO COUNTY, TEXAS  
AND ALSO BEING PART OR PORTION OF LOTS 9, 10, 15 AND 16, SECTION 279,  
TEXAS-MEXICAN RAILWAY COMPANY SURVEY, MAP REFERENCE: VOLUME 24, PAGE 68,  
H.C.D.R., AND SAID 44.07 ACRES OF LAND ALSO BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

COMMENCING ON AN IRON PIPE FOUND ON THE SOUTHEAST CORNER OF SAID LOT 16,  
THENCE N 08° 48' 03" E, ALONG THE EAST LINE OF SAID LOT 16, A DISTANCE OF  
1076.76 FEET TO A 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "CVQ LS" SET,  
FOR THE EASTERN MOST SOUTHEAST CORNER OF THIS TRACT;

THENCE N 80° 55' 20" W, A DISTANCE OF 73.25 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN INSIDE CORNER OF THIS TRACT;

THENCE S 27° 37' 37" E, A DISTANCE OF 569.89 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN OUTSIDE CORNER OF THIS TRACT;

THENCE N 62° 22' 23" W, A DISTANCE OF 270.00 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN INSIDE CORNER OF THIS TRACT;

THENCE S 27° 37' 37" W, A DISTANCE OF 23.62 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN OUTSIDE CORNER OF THIS TRACT;

THENCE N 80° 55' 20" W, A DISTANCE OF 1116.89 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN OUTSIDE CORNER OF THIS TRACT;

THENCE N 09° 04' 40" E, A DISTANCE OF 110.00 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN INSIDE CORNER OF THIS TRACT;

THENCE N 80° 55' 20" W, A DISTANCE OF 828.00 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN OUTSIDE CORNER OF THIS TRACT;

THENCE N 09° 04' 40" E, A DISTANCE OF 25.00 FEET TO A 1/2" IRON ROD WITH A  
PLASTIC CAP STAMPED "CVQ LS" SET, FOR AN INSIDE CORNER OF THIS TRACT

THENCE N 80° 55' 20" W, AT A DISTANCE OF 132.33 FEET PASS A 1/2" IRON ROD  
WITH A PLASTIC CAP STAMPED "CVQ LS" SET ON THE EAST RIGHT-OF-WAY LINE OF  
23RD STREET (FM 1926), AND CONTINUING A TOTAL DISTANCE OF 178.46 FEET TO  
THE WEST LINE OF SAID LOT 15, FOR THE WESTERN MOST SOUTHWEST CORNER OF  
THIS TRACT;

THENCE N 09° 20' 40" E, ALONG THE WEST LINE OF SAID LOT 15, A DISTANCE OF  
415.00 FEET TO A COTTON PICKER SPINDLE SET ON THE SOUTHWEST CORNER OF A  
TRACT OF LAND DEEDED TO LANCER D. BEVIL AND JUDITH BEVIL RECORDED IN  
DOCUMENT NUMBER R297640, H.C.A.D.R., FOR THE MOST WESTERN NORTHWEST  
CORNER OF THIS TRACT;

THENCE S 80° 55' 22" E, ALONG THE SOUTH LINE OF SAID BEVIL TRACT, AT A  
DISTANCE OF 41.53 FEET PASS AN IRON ROD FOUND ON THE EAST RIGHT-OF-WAY  
LINE OF SAID 23RD STREET ROAD EASEMENT, CONTINUING A TOTAL DISTANCE OF  
807.16 TO A 1/2" IRON ROD FOUND ON THE SOUTHEAST CORNER OF SAID BEVIL  
TRACT, FOR AN INSIDE CORNER OF THIS TRACT;

THENCE N 08° 44' 43" E (N08°59'00"E) AT A DISTANCE OF 170.00 FEET PASS THE  
COMMON LINE OF SAID LOTS 10 AND 15, AN CONTINUING A TOTAL DISTANCE OF  
279.17 FEET TO AN IRON ROD FOUND ON THE SOUTH LINE OF HIDALGO COUNTY  
IRRIGATION DISTRICT NO. 1, CANAL RIGHT-OF-WAY, FOR THE NORTHWEST CORNER OF  
THIS TRACT;

THENCE S 89° 33' 19" E (S89°19'00"E) ALONG THE SOUTH LINE OF SAID HIDALGO  
COUNTY IRRIGATION DISTRICT NO. 1, CANAL RIGHT-OF-WAY, A DISTANCE OF 517.60  
FEET TO AN IRON ROD FOUND ON THE COMMON LINE OF SAID LOT 9 AND 10, FOR  
AN OUTSIDE CORNER OF THIS TRACT;

THENCE S 89° 01' 49" E (S88°48'00"E), CONTINUING A THE SOUTH LINE OF SAID  
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1, CANAL RIGHT-OF-WAY, A DISTANCE OF  
666.30 FEET (666.60 FEET) TO AN IRON ROD FOUND, FOR AN OUTSIDE CORNER OF  
THIS TRACT;

THENCE S 62° 08' 18" E (S61°53'00"E) CONTINUING ALONG THE SOUTH LINE OF SAID  
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1, CANAL RIGHT-OF-WAY, AT A DISTANCE  
OF 665.52 FEET PASS THE WEST LINE OF SAID 10.0 FOOT UTILITY EASEMENT, AT A  
DISTANCE OF 677.13 FEET PASS THE EAST LINE OF SAID 10.0 FOOT UTILITY  
EASEMENT AND THE WEST LINE OF SAID 20.0 UTILITY EASEMENT AND THE WEST LINE  
OF SAID 40.0 FOOT COUNTY ROAD (NOT OPEN), AND CONTINUING A TOTAL DISTANCE  
OF 698.58 FEET (697.20 FEET) TO AN IRON ROD FOUND ON THE EAST LINE OF SAID  
LOT 9, FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE S 08° 48' 03" W, ALONG THE EAST LINE OF SAID LOT 9, AT A DISTANCE OF  
55.91 FEET PASS AN IRON ROD FOUND ON THE SOUTHEAST CORNER OF SAID LOT 9  
AND THE NORTHEAST CORNER OF SAID LOT 16, AND CONTINUING A TOTAL DISTANCE  
OF 298.83 FEET TO THE POINT OF BEGINNING, CONTAINING 44.07 ACRES OF LAND  
MORE OR LESS.



FILED FOR RECORD IN  
HIDALGO COUNTY  
ARTURO GUERRERO, JR.  
HIDALGO COUNTY CLERK

ON: Sept 05, 2008 AT 4:31 AM  
INSTRUMENT NUMBER 1925806  
RECORDED IN VOLUME 55 PAGE 169  
OF THE PUBLIC RECORDS OF HIDALGO COUNTY, TEXAS  
BY: J. Small Hidalgo DEPUTY

STATE OF TEXAS  
COUNTY OF HIDALGO

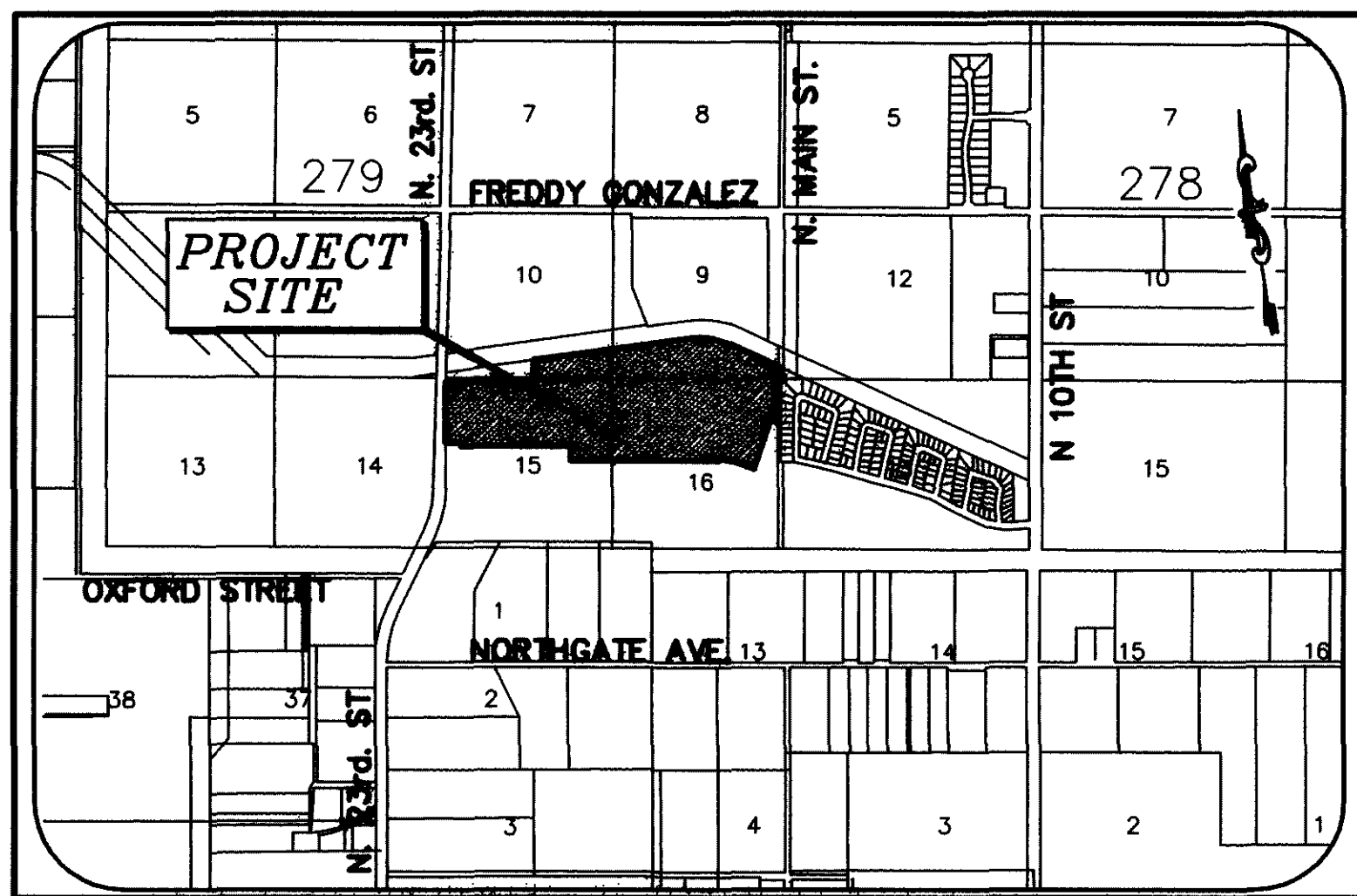
HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 HEREBY CERTIFIES  
THAT THE DRAINAGE PLANS FOR THIS SUBDIVISION COMPLY  
WITH MINIMUM STANDARDS OF THE DISTRICT ADOPTED UNDER  
TEXAS WATER CODE 49.21(c). THE DISTRICT HAS NOT REVIEWED  
AND DOES NOT CERTIFY THAT THE STRUCTURES DESCRIBED  
ARE APPROPRIATE FOR THE SPECIFIC SUBDIVISION, BASED  
ON GENERALLY ACCEPTED ENGINEERING CRITERIA. IT IS THE  
RESPONSIBILITY OF THE DEVELOPER OF THE SUBDIVISION AND  
ITS ENGINEER TO MAKE THESE DETERMINATIONS.

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

BY: 9/1/12

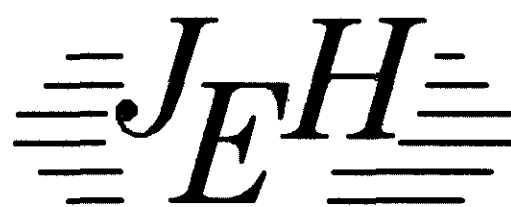
CURVE DATA					
CURVE	DELTA	RADIUS	TANGENT	LENGTH	CHORD
C1	90°00'00"	50.00'	50.00'	78.54'	70.71'
C2	3°55'35"	880.00'	30.16'	60.30'	60.29'
C3	3°51'58"	880.00'	29.70'	59.38'	59.37'
C4	2°50'25"	880.00'	21.82'	43.62'	43.62'
C5	5°36'35"	830.00'	40.66'	81.26'	81.23'
C6	4°52'20"	1000.00'	42.54'	85.04'	85.01'
C7	3°51'47"	1000.00'	33.72'	67.42'	67.41'
C8	2°51'08"	1000.00'	24.89'	49.78'	49.77'
C9	7°40'51"	1100.00'	73.84'	147.46'	147.35'
CENTER LINE CURVE					
"A"	8°43'12"	865.00'	65.95'	131.65'	131.52'
"B"	14°18'26"	1050.00'	131.78'	262.19'	261.51'

IRREGULAR LOT AREAS		
LOT #	SQ. FT.	ACRES
1	7,138	0.16
2	7,220	0.17
3	7,170	0.16
4	7,386	0.17
5	9,140	0.21
6-17	6,710	0.15
18	8,361	0.19
19	9,588	0.22
20	9,613	0.22
21	10,915	0.25
22	8,007	0.18
41	8,541	0.20
42	10,964	0.25
60	8,721	0.20
61	7,608	0.17
62	7,622	0.17
73	8,379	0.19
130	11,113	0.26
131	12,377	0.28
LIFT STATION	4,505	0.10



LOCATION MAP  
N.T.S.

DATE OF PREPARATION: NOVEMBER, 2005 DRAWN BY: P.GONZALEZ



JAVIER HINOJOSA ENGINEERING  
CONSULTING ENGINEERS  
416 E. DOVE AVENUE MCALLEN, TEXAS 78504  
PHONE (956) 688-1588  
javhin@rgv.rr.com



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**WESTWIND HOMES**  
RIO GRANDE VALLEY

ANGELICA

LA FLORESTA  
9500 N. 17TH ST.

1

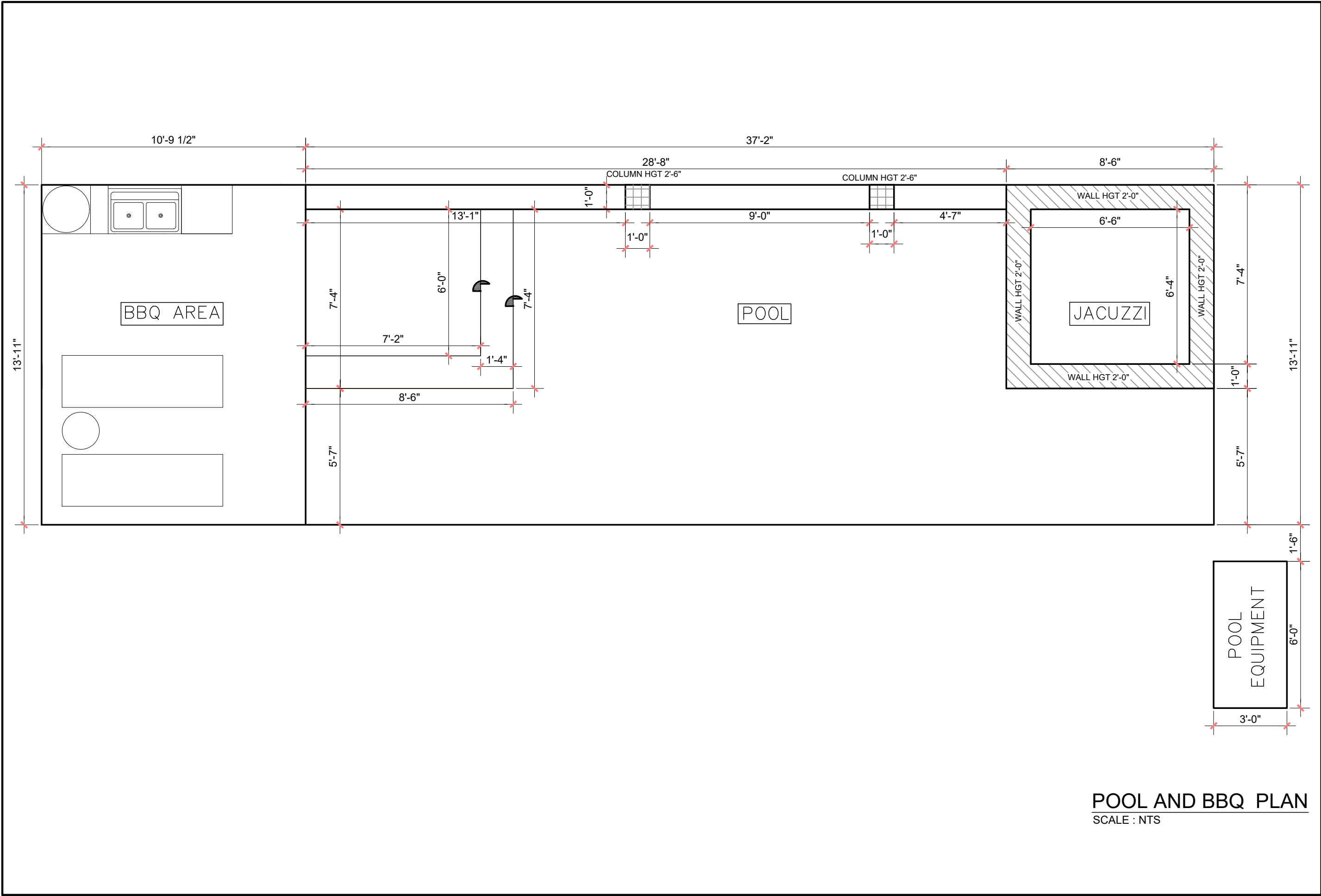
DRAWN :
DATE :
CHECKED :

MODEL

SHEET

SHEET  
**A.1**

1 1  
OF SHEETS



POOL AND BBQ PLAN  
SCALE : NTS

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APPROVED: _____	OWNER: WESTWIND HOMES RIO GRANDE VALLEY
ADDRESS LA FLORESTA 9500 N. 17TH ST.	MODEL ANGELICA

DRAWN : DATE : CHECKED : MODEL	
SHEET	
A.1	
1 OF	1 SHEETS















## **Memo**

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** July 13, 2021

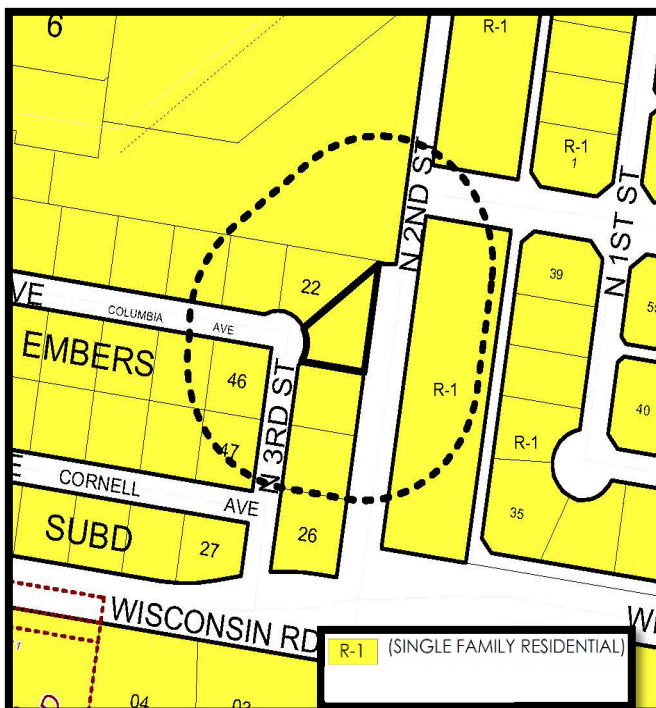
**SUBJECT: REQUEST OF EUGENIO GARCIA FOR THE FOLLOWING VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 10 FT. INTO THE 25 FT. REAR YARD SETBACK FOR A PROPOSED SINGLE FAMILY RESIDENCE AT LOT 23, THE EMBERS SUBDIVISION (GATED COMMUNITY), HIDALGO COUNTY, TEXAS; 8100 NORTH 3RD STREET. (ZBA2021-0028)**

### **REASON FOR APPEAL**

The applicant requests a variance to encroach 10 ft. into the 25 ft. front yard setback for the construction of a single-family residence.

### **PROPERTY LOCATION AND VICINITY:**

The subject property is located on the cul-de-sac along North 3<sup>rd</sup> Street and Columbia Avenue. The irregular tract has 54.45 ft. frontage along the cul-de-sac on North 3<sup>rd</sup> Street with a tract size of approximately 12,428 sq. ft. The property is zoned R-1 (single family residential) District and is currently vacant. Surrounding land uses are single-family residences, and vacant land.



**BACKGROUND AND HISTORY:**

The Embers Subdivision was recorded on June 06, 2016. The applicant is proposing a new residential house on the property. An application for building permit was submitted on June 04, 2021. An application for a variance request was submitted on June 14, 2021.

**ANALYSIS:**

The variance request is for a proposed single family residence that will encroach 10 ft. into the 25 ft. rear yard setback on a double frontage lot. There is a 15 ft. utility easement adjacent to rear yard setback that will not be impacted by the construction. The 15 ft. utility easement runs concurrently with the 25 ft. rear yard setback and the buildable area at the rear of the property is reduced by the 25 ft. setback requirement.

The standard rear yard setback for lots in the R-1 District is 10 ft.

The Zoning Ordinance requires the rear yard setback to be the same as the front yard setback lots for lots with double frontage. The purpose of the additional setback of the rear yard is to separate the main building from the traffic and noise from roadways.

In the past, the Board has approved variances for accessory uses, but not for living areas.

On November 06, 2019, the Board voted to approve an encroachment of 10 ft. into the 25 ft. rear yard setback for a spa and 2 ft. into the 25 ft. rear yard setback for a swimming pool at 317 Cornell Avenue (lot 31).

On July 03, 2019, the Board voted to approve an encroachment of 6.58 ft. into the 25 ft. rear yard setback for a porch and 15 ft. into the 25 ft. rear yard setback for a swimming pool at 301 Cornell Avenue (lot 27).

On July 07, 2021, the Board voted to disapprove an encroachment of 10 ft. into the 25 ft. rear yard setback for a single-family residence at 413 Cornell Avenue (lot 4).

Staff has not received any phone calls in opposition to this variance request.

**RECOMMENDATION:**

Staff recommends disapproval of the variance request.

ZBA 2021-0028

ZBA-7.21.21



City of McAllen

## Planning Department

## APPEAL TO ZONING BOARD OF

## ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

Project

Legal Description

EMBERS LOT # 23

Subdivision Name

THE EMBERS

Street Address

8100 N 3<sup>rd</sup> STREET

Number of lots

23 of 1

Gross acres

0.285

Existing Zoning

R-1 Single Family

Existing Land Use

RESIDENTIAL

Reason for Appeal (please use other side if necessary)

REQUEST FOR A PARTIAL ENCROACHMENT  
OF SOME AREAS OF THE PROJECT INTO THE 25 FEET REAR YARD SETBACK.
☒ \$300.00 non-refundable filing fee + ☐ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name

EUGENIO GARCIA A

Phone

956 - 821 - 8440

Address

2206 S 49<sup>th</sup> W

E-mail

eugenio@mg-dc.com

City

McAllen

State

TX

Zip

78503

Owner

Name

JOSE R. CANO

Phone

(832) 520-9222

Address

4208 WICHITA AVE.

E-mail

jose@jrcp@gmail.com

City

McAllen

State

TX

Zip

78503

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes

☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable)  
OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature

Date

06/14/2021

Print Name

JOSE R. CANO

☒ Owner

☐ Authorized Agent

Office

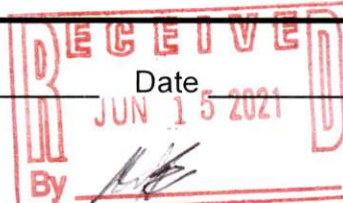
Accepted by \_\_\_\_\_

Payment received by \_\_\_\_\_

Date

JUN 15 2021

Rev 09/20



NM.





**City of McAllen**  
**Planning Department**  
**REASON FOR APPEAL & BOARD ACTION**

\*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)

\*\*Information provided here by the applicant does not guarantee that the Board will grant a variance.

\*\*\*Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:

This lot has an irregular shape. The rear property line is very large in comparison with the front. Having at the rear backyard such a large setback (25') in comparison with standard city rear setback (10') does not allow the owner to build in approx. 1/3 of the total area of the lot.

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:

The variance would not affect other neighbors in the subdivision. Existing Utility Easement remain the same (15') and it will not be affected. Areas of encroachment are not continuous, they are proposed in two separate areas and will not affect the view from the street.

4. Describe special conditions that are unique to this applicant or property: This lot (23), because of its shape, is extremely affected in comparison with other lots with same restriction in the rear setback. A total of approx. 9,250 SF, (34% of the total area) is affected in this lot. A neighbor lot (for example lot # 24) is only affected by this restriction in 2,500 SF. (approx. 21% of its total area)

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date



## BUILDING PERMIT APPLICATION

REV. 11/2013

P.O. BOX 220 McALLEN, TEXAS 78505-0220

APPLICATION MUST BE COMPLETE

PERMIT APPLICATION REFERENCE NUMBER

(Please type or print in black or blue ink)

RES2021-04643

GC/103031 APPLICANT

NAME GMG-Design and Construction PHONE 956 616 4820

ADDRESS 1320 N 10th STREET, STE 20

CITY Mc ALLEN STATE TX ZIP 78501

CONTACT NAME: EUGENIO GARCIA PHONE 956 821 8440

☐ OWNER ☒ CONTRACTOR ☐ TENANT ☐ OTHER

OWNER

NAME JOSE RAFAEL CANO PHONE 832 520 9222

ADDRESS 4208 WICHITA AVE, Falling Water Subdivision

CITY Mc ALLEN STATE TX ZIP 78504

☒ NEW ☐ ADDITION ☐ REMODELING ☐ REPAIR ☐ MOVE ☐ REMOVE 28.3 FT BLDG. HGT. 2 NO. OF FLOORS

BLDG SQ. FT. 5,472 SF NO. PARKING SPACES 2 SQ. FT LOT 12,428 SF LOT FRONT 51.80 LF FLOOR EL ABOVE CURB 18 INCHS

EXISTING USE RESIDENTIAL NEW USE RESIDENTIAL IMPROVEMENT VALUE \$ 350,000.00

SCOPE OF WORK TO BE DONE CONSTRUCTION OF A NEW RESIDENCE AND CONCRETE BLOCK FENCE AS PER DRAWINGS

PROJECT

FOR RESIDENTIAL USE ONLY NO. OF UNITS 1 NO BDRMS 4 NO BATHRMS 5 SQ. FT. NON-LIVING 1,057 SQ. FT. LIVING 4,415

FOUNDATION ☒ CONCRETE SLAB ☐ CONCRETE PIER ☐ CONCRETE BLOCK ☐ CONCRETE BEAM ☐ WOOD POSTS ☐

EXT WALL ☐ MASONRY VENEER ☐ MASONRY SOLID ☐ METAL SIDING ☐ COMPOSITION ☒ WOOD ☐ STUCCO

ROOF ☐ WOOD SHINGLE ☐ COMPOSITION ☐ METAL ☐ BUILD UP ☒ CONCRETE FLAT ROOF TILES

SPECIAL CONDITIONS ☐ FIRE SPRINKLER SYSTEM ☐ FIRE ALARM SYSTEM ☐ TYPE OF CONSTRUCTION ☐ ASBESTOS SURVEY ☐ EABPRJA/B# ☐ CONDEMNED STRUCTURE

LOT 23 BLOCK        SUBDIVISION THE EMBERS SUBDIVISIONSITE ADDRESS ST. NO. 8100 ST. NAME N 3rd ST

CITY USE ONLY

ZONING        PERMIT FEE \$ 875.52 DOUBLE FEE \$       PARK DEV. ☐PERMIT REVIEW FEE \$       TOTAL PERMIT FEE \$       ZONE #       PARK DEVELOPMENT FEE \$       RECD BY EGGDATE 10-4-21TIME 11:17

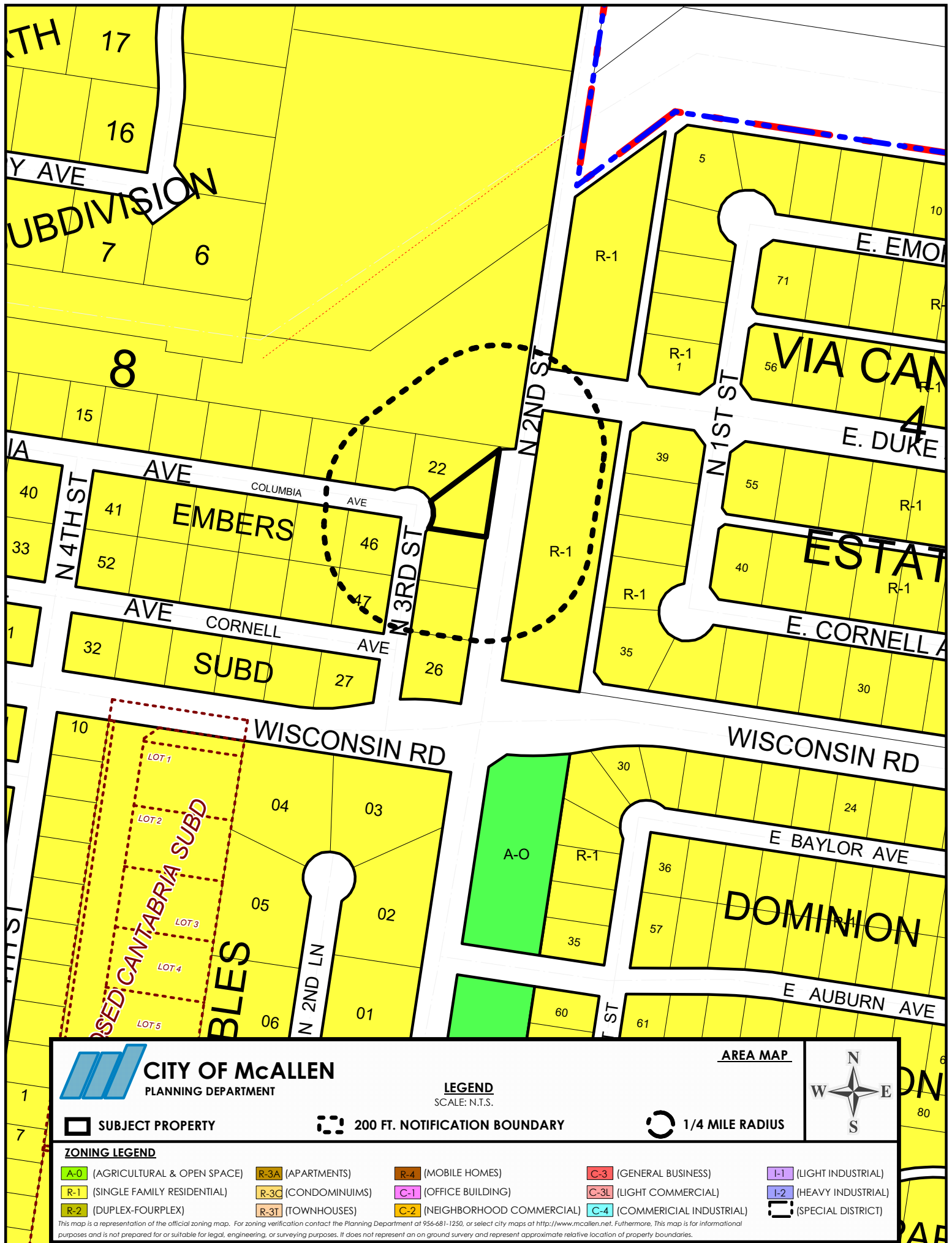
The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant hereby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the improvements shall not be occupied until a Certificate of Occupancy has been issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.

EUGENIO GARCIA

PRINT (AUTHORIZED AGENT/OWNER)

SIGNATURE

EMAIL ADDRESS (required) egarcia@gmg-dc.comDATE 06/03/2021



# CITY OF McALLEN

PLANNING DEPARTMENT

## LEGEND

SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

1/4 MILE RADIUS

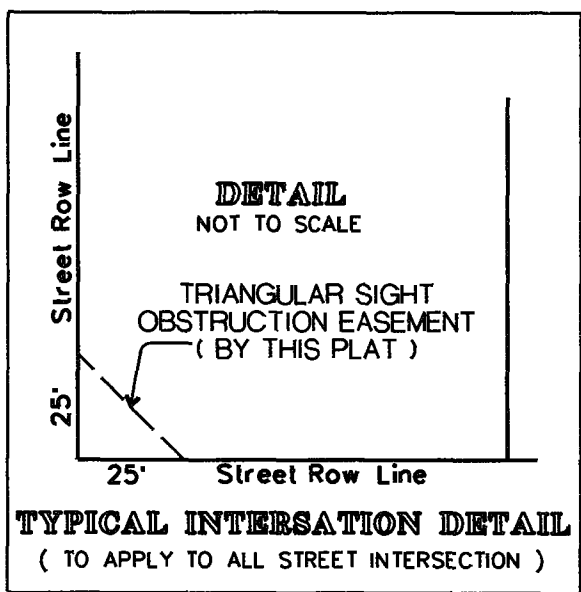


### ZONING LEGEND

(AGRICULTURAL & OPEN SPACE)	(APARTMENTS)	(MOBILE HOMES)	(GENERAL BUSINESS)	(LIGHT INDUSTRIAL)
(SINGLE FAMILY RESIDENTIAL)	(CONDOMINIUMS)	(OFFICE BUILDING)	(LIGHT COMMERCIAL)	(HEAVY INDUSTRIAL)
(DUPLEX-FOURPLEX)	(TOWNHOUSES)	(NEIGHBORHOOD COMMERCIAL)	(COMMERCIAL INDUSTRIAL)	(SPECIAL DISTRICT)

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcalien.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.





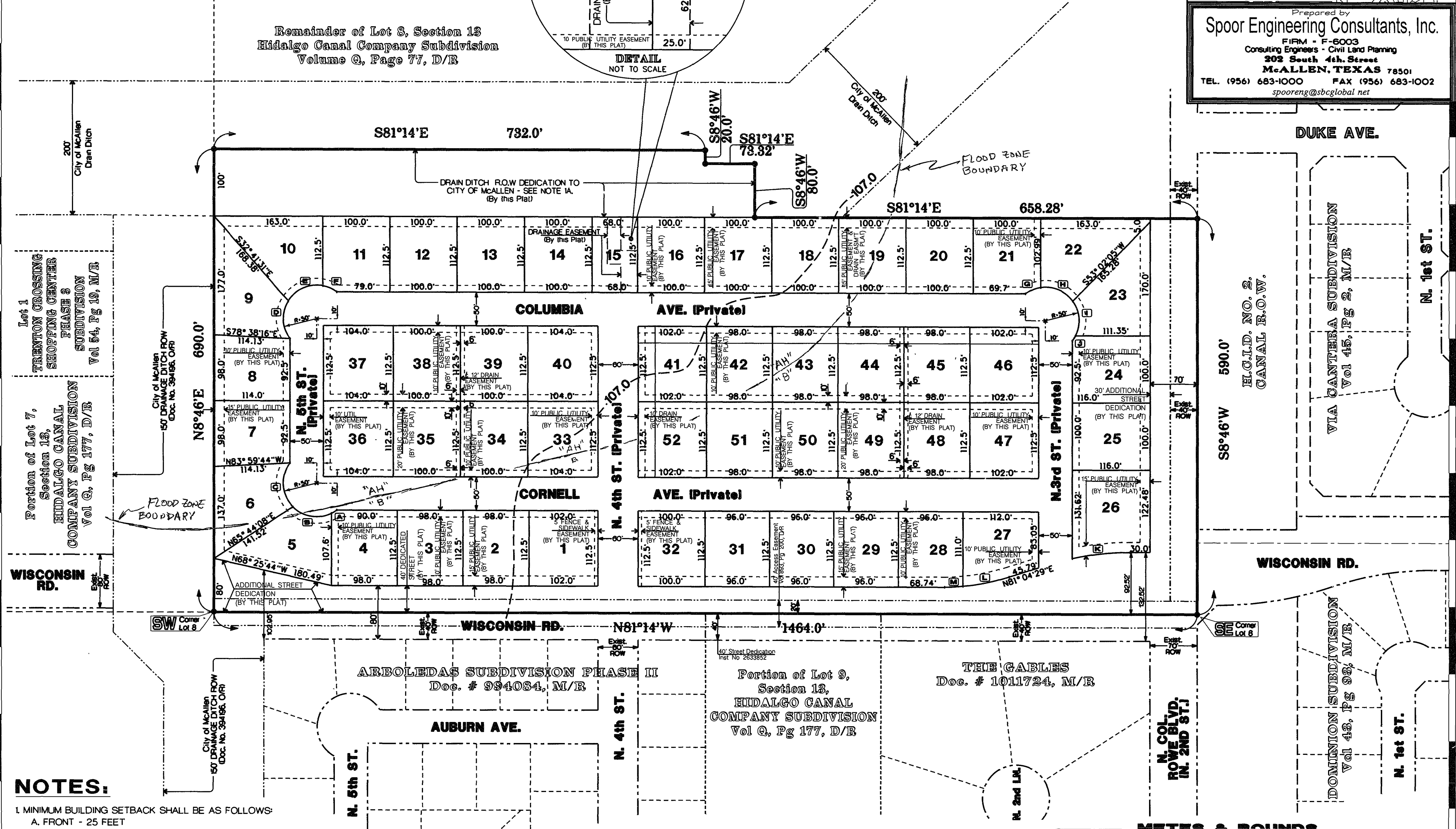
October 20, 2015  
1"=100'

# MAP OF THE EMBERS SUBDIVISION (GATED COMMUNITY)

City of McAllen, Texas

BEING A SUBDIVISION OF A 21.64 ACRES OF LAND OUT OF LOT 8, SECTION 13, HIDALGO CANAL COMPANY SUBDIVISION, of Porciones 64, 65, and 66, Hidalgo County, Texas recorded in vol. Q, page 177, Deed Records Hidalgo County, Texas.

Prepared by  
**Spoor Engineering Consultants, Inc.**  
FIRM # F-6003  
Consulting Engineers - Civil Land Planning  
302 South 4th Street  
McAllen, TEXAS 78501  
TEL. (956) 683-1000 FAX (956) 683-1002  
spooreng@sbcglobal.net



## NOTES:

- MINIMUM BUILDING SETBACK SHALL BE AS FOLLOWS:
  - FRONT - 25 FEET
  - CORNER - 10 FEET OR GREATER FOR EASEMENTS
  - GARAGE - 18 FEET EXCEPT WHERE GREATER IS REQUIRED. GREATER APPLIES
  - REAR -
    - Lots 1 through 5 and 23 through 32 - 25 feet
    - Lots 6 through 22 - 15 feet minimum
    - Lots 33 through 52 - 10 feet minimum
  - OTHERS - IN ACCORDANCE WITH ZONING ORDINANCE OR TO EASEMENT LINE, WHICHEVER IS GREATER
- MINIMUM FINISH FLOOR ELEVATION SHALL BE 18 INCHES ABOVE TOP OF CURB MEASURED AT FRONT CENTER OF LOT, OR ELEV. 107.0, WHICHEVER IS HIGHER.
- THIS PROPERTY FALLS IN ZONE "B" AND "AH" OF THE FLOOD INSURANCE RATE MAP, PANEL NO. 480 334 0425C, REVISED NOVEMBER 16, 1982.
- A 6 FT. OPAQUE BUFFER IS REQUIRED FROM ADJACENT/BETWEEN MULTI-FAMILY RESIDENTIAL AND COMMERCIAL OR INDUSTRIAL ZONEUSES, AN 8 FT. MASONRY WALL IS REQUIRED BETWEEN SINGLE FAMILY RESIDENTIAL AND COMMERCIAL, INDUSTRIAL, OR MULTI-FAMILY RESIDENTIAL ZONEUSES
- A 4 FT. SIDEWALK IS REQUIRED ALONG THE NORTH SIDE OF WISCONSIN ROAD. THE WEST SIDE OF NORTH COL. ROWE BLVD. AND ALONG BOTH SIDES OF NORTH 3RD STREET, NORTH 4TH STREET, NORTH 5TH STREET, CORNELL AVENUE, AND COLUMBIA AVENUE.
- BENCHMARK - STATION NAME: MC 51 SET BY ARANDA AND ASSOC. LOCATED AT THE NORTHWEST CORNER OF WISCONSIN RD AND DRAIN DITCH ELEV:107.56 (NAVDS8)
- OWNER IS REQUIRED TO PROVIDE AND ENGINEERED STORM WATER DETENTION PLAN APPROVED BY THE CITY OF McALLEN ENGINEERING DEPARTMENT PRIOR TO ISSUANCE OF BUILDING PERMIT. MASTER DRAINAGE AND DETENTION IS ON FILE AT THE CITY ENGINEERING DEPARTMENT.
- STORM WATER DETENTION REQUIRED IS 2.34 ACRE-Feet, TO BE PROVIDED IN CITY DRAIN DITCH - NORTH SIDE OF SUBDIVISION
- A 6.0 FT. OPAQUE BUFFER IS REQUIRED ALONG N. COL. ROWE BLVD. AND WISCONSIN RD.
- NO CURB CUT, ACCESS, OR LOT FRONTAGE PERMITTED ALONG N. 2ND ST. AND WISCONSIN RD.
- AS PER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE EMBERS SUBDIVISION, RECORDED AS DOCUMENT NO. 211,326,5, HIDALGO COUNTY, DEED RECORDS, DEVELOPER/HOMEOWNERS ASSOCIATION/OWNERS, THEIR SUCCESSORS AND/OR ASSIGNEES, AND NOT THE CITY OF McALLEN SHALL BE RESPONSIBLE FOR INSTALLATION, MAINTENANCE, AND OTHER REQUIREMENTS AS PER SECTION 134-168 OF THE CODE OF ORDINANCES OF THE CITY OF McALLEN, INCLUDING BUT NOT LIMITED TO COMMON AREAS AND PRIVATE STREETS. ANY AMENDMENT TO DECLARATIONS THAT CONFLICT WITH THE REQUIREMENTS OF SECTION 134-168 SHALL BE NULL AND VOID
- A 25 FT. BY 25 FT. SIGHT OBSTRUCTION EASEMENT IS REQUIRED AT ALL STREET RIGHTS-OF-WAY INTERSECTIONS. (SEE DETAIL AT TOP OF PAGE.)
- LOT 15 IS A COMMON AREA, OWNED BY DEVELOPER/HOMEOWNERS ASSOCIATION.

CURVE DATA					
LINE	NO.	RADIUS	LENGTH	ANGLE	CHORD
1	A	50.0'	9.40'	10°46'14"	9.89'
2	B	50.0'	62.04'	71°05'58"	68.14'
3	C	50.0'	71.45'	81°52'18"	68.82'
4	D	50.0'	59.58'	68°87'11"	66.87'
5	E	50.0'	59.58'	68°87'11"	66.87'
6	F	50.0'	28.12'	26°29'46"	28.92'
7	G	50.0'	28.12'	26°29'46"	28.92'
8	H	50.0'	54.45'	62°28'45"	51.80'
9	I	50.0'	54.45'	62°28'45"	51.80'
10	J	50.0'	8.88'	10°14'44"	8.82'
11	K	409.0'	86.65'	12°08'17"	86.48'
12	L	329.0'	69.94'	12°10'46"	69.8'
13	M	329.0'	27.8'	04°46'19"	27.8'

IRREGULAR LOT AREA	
LOT NO.	AREA
4	11,004 Sq.Ft.
5	11,878 Sq.Ft.
6	11,816 Sq.Ft.
7	10,859 Sq.Ft.
8	10,859 Sq.Ft.
9	12,796 Sq.Ft.
10	12,612 Sq.Ft.
11	11,188 Sq.Ft.
21	11,114 Sq.Ft.
22	12,541 Sq.Ft.
23	12,439 Sq.Ft.
24	11,581 Sq.Ft.
26	14,468 Sq.Ft.
27	11,128 Sq.Ft.
28	10,785 Sq.Ft.

**METES & BOUNDS**

A 21.64 ACRE TRACT OF LAND OUT OF LOT 8, NORTH-EAST 1/4 SECTION 13, HIDALGO CANAL CO. SUBDIVISION OF PORCIONES 64, 65, AND 66, HIDALGO COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME Q, PAGE 177, DEED RECORDS, HIDALGO COUNTY, TEXAS.

BEGINS at the Southwest corner of Lot 8, for the Southwest corner of the following described tract of land, said point being on the East line of City of McAllen, Drain Ditch R.O.W.,

THENCE, with the West line of Lot 8 and the East line of said drain ditch, North 08 Deg. 46 Min. East, at 590.0 feet pass the South line of Hidalgo County Drain Ditch R.O.W., and at 690.0 feet a point for the Northwest corner hereof,

THENCE, parallel to the South line of Lot 8, in said drain ditch, South 81 Deg. 14 Min. East, 732.0 feet to a point for the most northerly Northeast corner hereof,

THENCE, parallel to the West line of Lot 8, in said drain ditch, South 08 Deg. 46 Min. West, 200 feet to a point for an interior corner hereof,

THENCE, parallel to the South line of Lot 8, South 81 Deg. 14 Min. East, 733.2 feet to a point for the middle Northeast corner hereof,

THENCE, parallel to the West line of Lot 8, South 08 Deg. 46 Min. West, 800 feet to a point for an interior corner hereof, said point being on the South line of said Hidalgo County drain ditch,

THENCE, with the South line of said drain ditch and its projection, South 81 Deg. 14 Min. East, at 68.28 feet pass the West line of North 2nd Street and at 658.28 feet a point on the East line of Lot 8, for the most southerly Northeast corner hereof, said point being on the East line of North 2nd Street,

THENCE, with the East line of Lot 8, and the East line of North 2nd Street, South 08 Deg. 46 Min. West, 590.0 feet to the Southeast corner of Lot 8, for the Southeast corner hereof,

THENCE, with the South line of Lot 8, North 81 Deg. 14 Min. West, at 40.0 feet pass the West line of North 2nd Street, and at 1464.0 feet the POINT OF BEGINNING, Containing 21.64 acres of land, more or less.

## STATE OF TEXAS: COUNTY OF HIDALGO:

I, THE UNDERSIGNED, OWNER OF THE LAND SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS TO THE CITY OF McALLEN AND THOSE WHO MY NOW OR HEREFTER HOLD FRANCHISE UNDER SAID CITY, THE USE OF THE STREETS, ALLEYS AND EASEMENTS THERE ON SHOWN, SURFACE USE OF THE STREETS AND ALLEYS IS RESTRICTED TO THE EMPLOYEES OR AGENTS OF THE CITY OF McALLEN EMPLOYEES OF UTILITIES OPERATING UNDER FRANCHISE TO THE CITY OF McALLEN AND RESIDENTS OF THE SUBDIVISION AND THEIR GUESTS, EXCEPT WISCONSIN ROAD AND N. COL. ROWE BLVD., WHICH ARE BEING DEDICATED FOR PUBLIC USE BY THIS PLAT.

FILED FOR RECORDING  
HIDALGO COUNTY  
ARTURO GUERRA  
HIDALGO COUNTY CLERK

DN: 6/6/16 AT 4:33 AM (PM)  
INSTRUMENT NUMBER  
OF THE MAP RECORDS OF HIDALGO COUNTY, TEXAS  
BY: Arturo Guerra DEPUTY

## THE EMBERS SUBDIVISION (GATED COMMUNITY)

SUBDIVISION DO HEREBY GRANT AN EASEMENT TO THE CITY OF McALLEN AND THOSE WHO MY NOW OR HEREFTER HOLD FRANCHISE UNDER SAID CITY, THE USE OF THE STREETS, ALLEYS AND EASEMENTS THERE ON SHOWN, SURFACE USE OF THE STREETS AND ALLEYS IS RESTRICTED TO THE EMPLOYEES OR AGENTS OF THE CITY OF McALLEN EMPLOYEES OF UTILITIES OPERATING UNDER FRANCHISE TO THE CITY OF McALLEN AND RESIDENTS OF THE SUBDIVISION AND THEIR GUESTS, EXCEPT WISCONSIN ROAD AND N. COL. ROWE BLVD., WHICH ARE BEING DEDICATED FOR PUBLIC USE BY THIS PLAT.

RGV Grande Homes, LLC,  
a Texas Limited Liability Company

By: Marco Garcia, Manager/Pres.  
4801 N. 10th St.  
McAllen, Texas 78504

## STATE OF TEXAS: COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED CHAD TOLAR, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE (SHE) EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 15th DAY OF FEBRUARY, 2016.

## STATE OF TEXAS: COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED MARCO GARCIA, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE (SHE) EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 14th DAY OF February, 2016.

JORGE LUIS AMBRANO  
Notary Public, State of Texas  
Comm. Expires 01-21-2019  
Notary ID: 130084148

Jose Zulo  
NOTARY PUBLIC

Nikola Penson  
NOTARY PUBLIC

I, THE UNDERSIGNED, CHAIRMAN OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF McALLEN, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

## STATE OF TEXAS: COUNTY OF HIDALGO:

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR # 4608 IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

## STATE OF TEXAS: COUNTY OF HIDALGO:

I, STEPHEN SPOOR, REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT.

SPOOR ENGINEERING CONSULTANTS, INC.  
Registration # F-6003

REGISTERED PROFESSIONAL ENGINEER  
P. E. REGISTRATION No. 56752

I, THE UNDERSIGNED MAYOR OF THE CITY OF McALLEN, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

James E. Darling  
MAYOR, CITY OF McALLEN

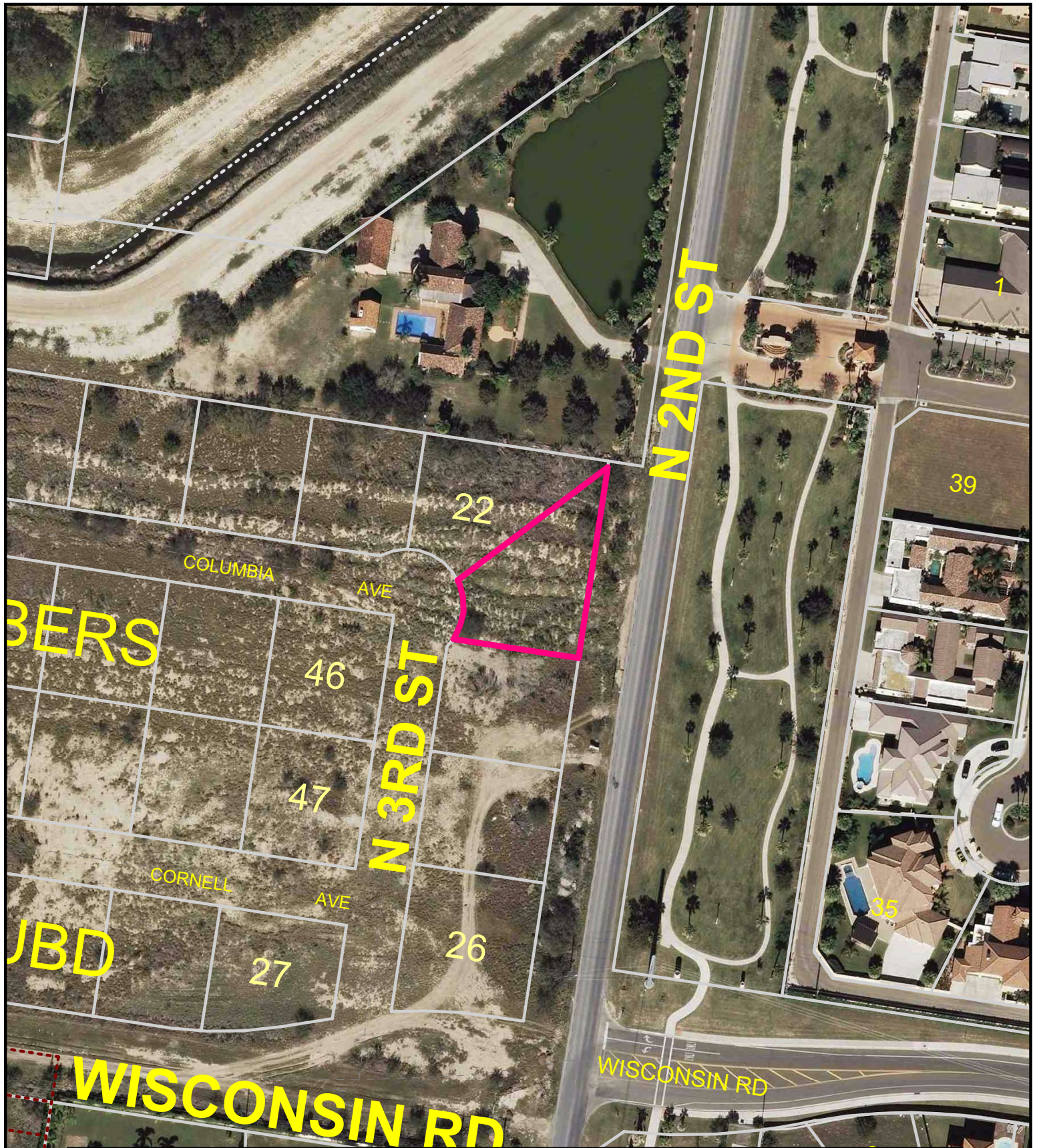
4/8/16  
DATE

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 HEREBY CERTIFIES THAT THE DRAINAGE PLANS FOR THIS SUBDIVISION COMPLY WITH THE MINIMUM STANDARDS OF THE DISTRICT. UNDER TEX. WATER CODE 49.21(c) THE DISTRICT HAS NOT REVIEWED AND DOES NOT CERTIFY THAT THE DRAINAGE STRUCTURES DESCRIBED ARE APPROPRIATE FOR THE SPECIFIC SUBDIVISION, BASED ON GENERALLY ACCEPTED ENGINEERING CRITERIA. IT IS THE RESPONSIBILITY OF THE DEVELOPER OF THE SUBDIVISION AND ITS ENGINEER TO MAKE THESE DETERMINATIONS.

Raul E. Sesni, P.E., C.F.M.  
GENERAL MANAGER

4/27/16  
DATE





**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.



**SUBJECT PROPERTY**

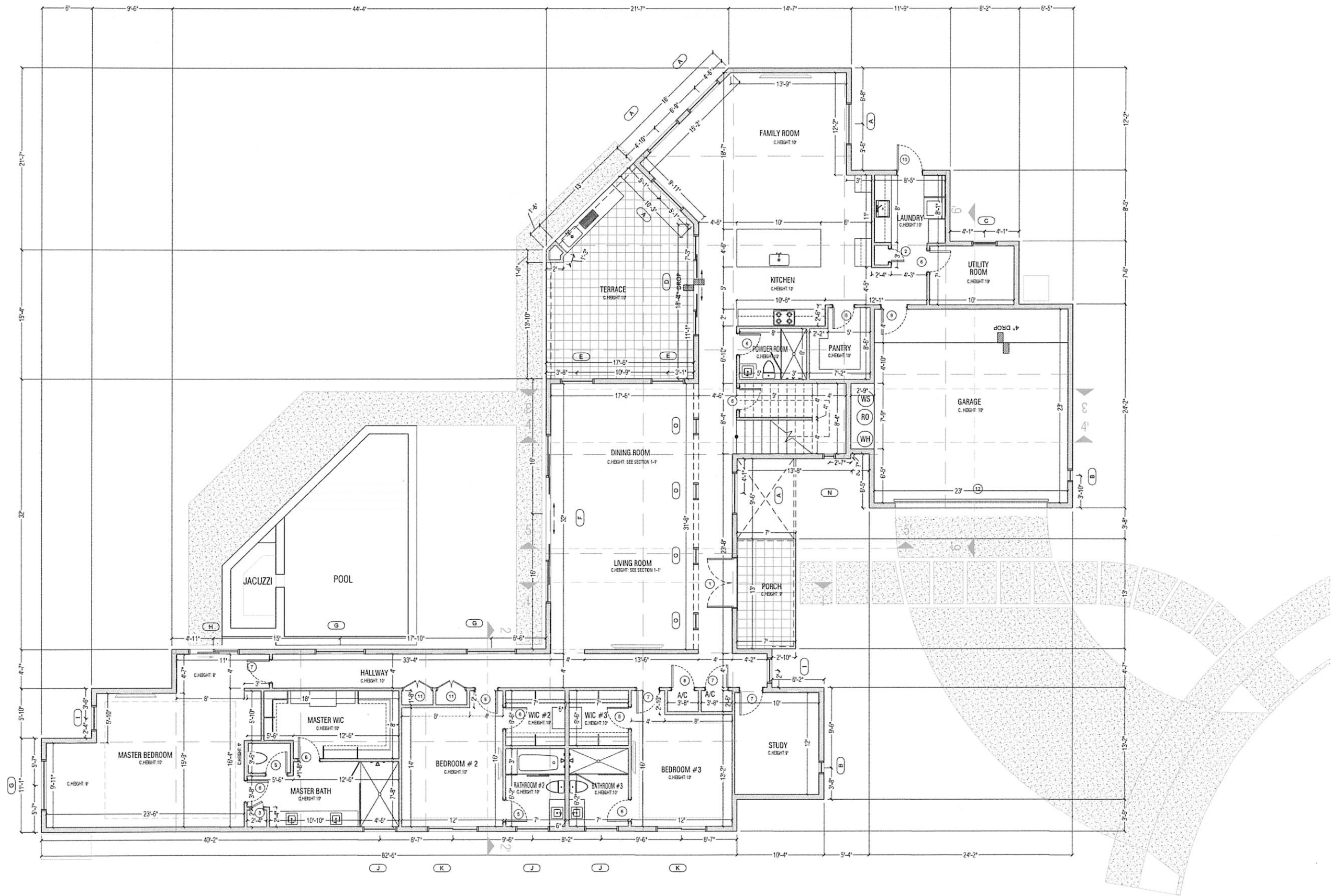


**200' NOTIFICATION BOUNDARY**



This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property on ground survey and represent approximate relative location of property boundaries.





**FIRST FLOOR**  
SCALE: 3/16"=1'-0"

DRAWN BY:	L.J.	REVISED DATE:	4-23-21
CHECKED BY:	E.G.		
COMPUTER:	MAIN		

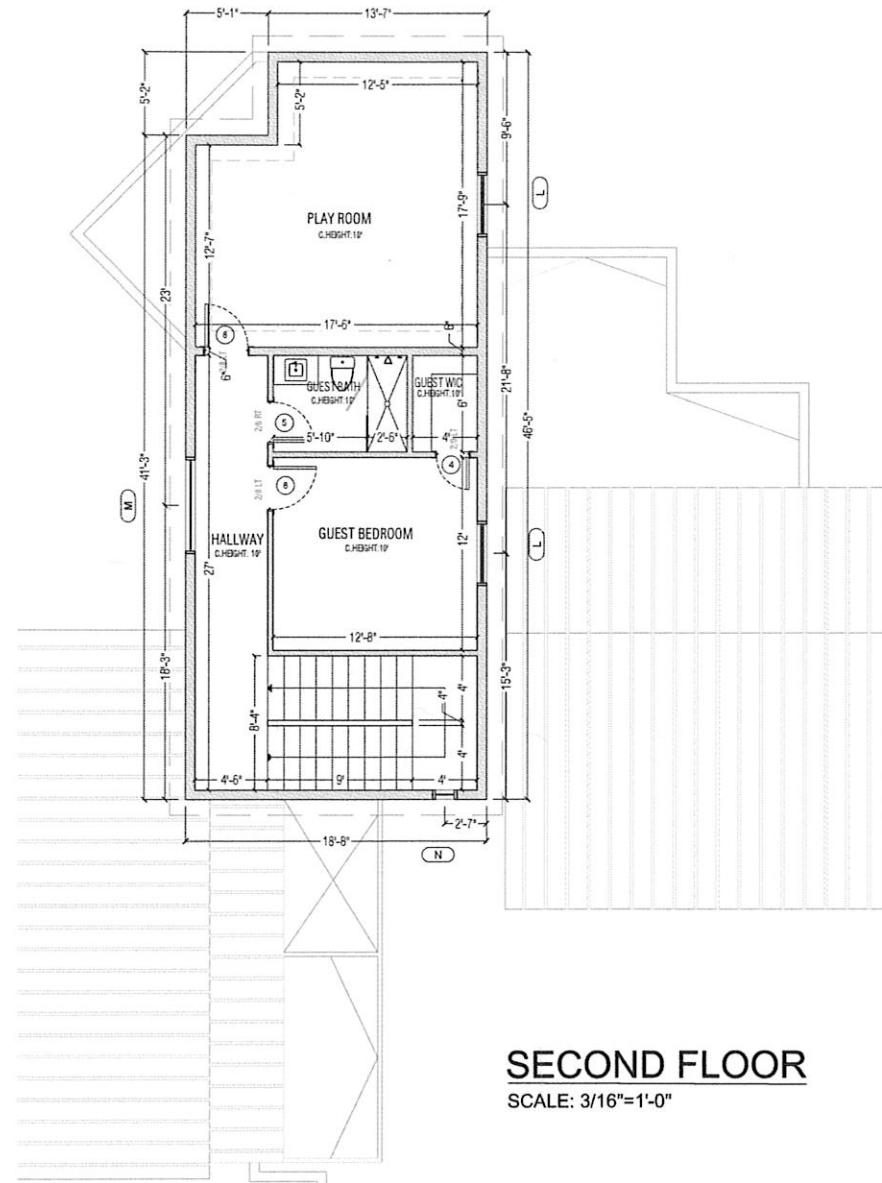
**FLOOR PLAN**  
FIRST FLOOR  
SCALE: 3/16"=1'-0"

SHEET NO.  
**5-8**

**PROPOSED PROJECT**  
Cano-Prado Residence  
8100 N. 3rd Street Lot #23  
THE EMBERS SUBDIVISION  
McAllen, TX, 78504

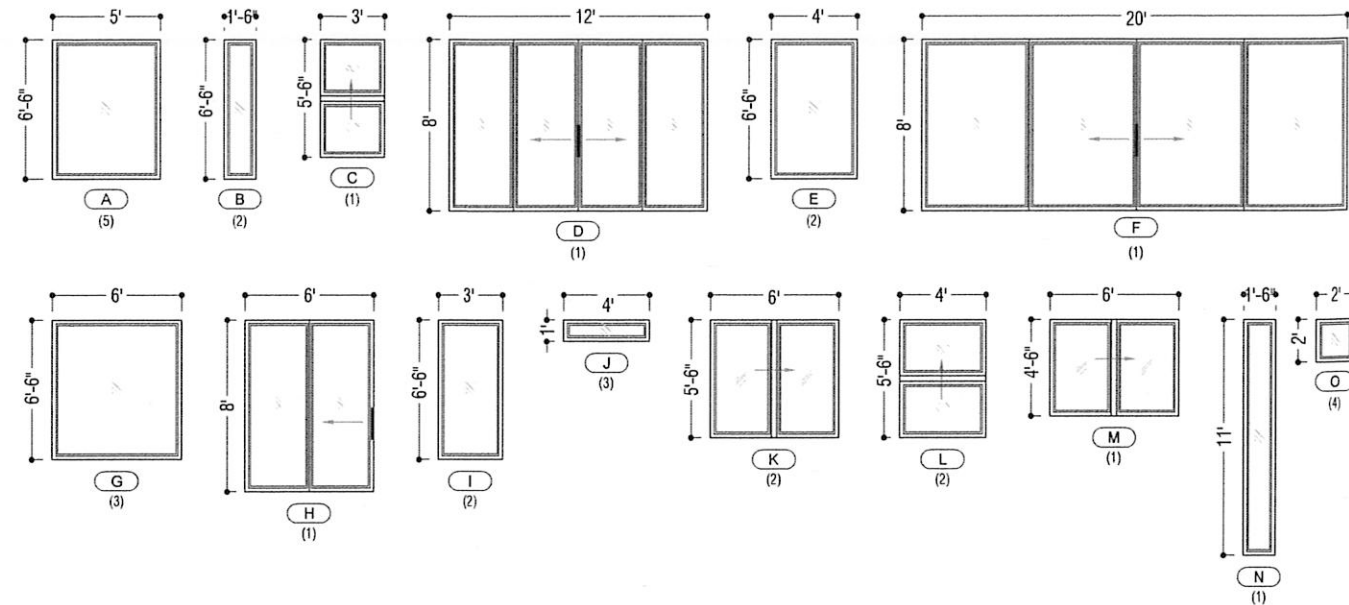
**GMG**  
DESIGN AND CONSTRUCTION  
1320 N. 10 St. Ste. #20, McAllen, TX, 78501  
Phone: 956-803-0029  
P.O. BOX: 1237, McAllen, TX, 78505





SECOND FLOOR  
SCALE: 3/16"=1'-0"

LIVING AREA 2ND FLOOR	732
	4,415
TOTAL LIVING AREA	
GARAGE	597
PORCH	91
TERRACE	369
TOTAL NO LIVING AREA	1,057
TOTAL AREA	5,472



WINDOWS SCHEDULE							
#	QUANT	SIZE	TYPE	ROOM	HEADER HEIGHT	WINDOW SILL	NOTES
A	5	5/0 6/6	FIXED	Foyer, Family Room, Nook Breakfr	8'0"	1'6"	
B	2	1/6 6/6	FIXED	Garage, Study Room	8'0"	1'6"	
C	1	3/0 5/6	Single Hung	Utility Room	8'0"	2'6"	
D	1	12/0 8/0	Patio Door	Kitchen	8'0"	-	Four Panels, Two Fixed and Two Sliding
E	2	4/0 6/6	FIXED	Dining Room	8'0"	1'6"	
F	1	20/0 8/0	Patio Door	Dining/Living Room	8'0"	-	Four Panels, Two Fixed and Two Sliding
G	3	6/0 6/6	FIXED	Hallway, Master Bedroom	8'0"	1'6"	
H	1	6/0 8/0	Patio Door	Master Bedroom	8'0"	-	Two Panels, One Fixed and One Sliding
I	2	3/0 6/6	FIXED	Master Bedroom' Hallway	8'0"	1'6"	
J	3	4/0 1/0	FIXED	Master Bath, Bath #2, Bath #3	8'0"	7'0"	
K	2	6/0 5/6	Sliding	Bedroom #2, Bedroom #3	8'0"	2'6"	
L	2	4/0 5/6	Single Hung	Guest Bedroom' Play Room	8'0"	2'6"	
M	1	6/0 4/6	Sliding	Hallway 2nd Floor	8'0"	3'6"	
N	1	1/6 11/	FIXED	Stair Area	19'6"	8'6"	
O	4	2/0 2/0	FIXED	Dining-Living	18'0"	16'0"	

DOOR SCHEDULE						
#	QUANT	SIZE	TYPE	ROOM	MODEL	NOTES
1	1	6/0 8/0	Custom	Main Entrance		
2	1	1/6	RT	Laundry		
3	1	1/6	LT	Master Bathroom		
4	1	2/0	LT	WIC Guest Bedroom		
5	5	2/6	RT	Master Toilet, Bathroom #2, WIC #3, Pantry, Guest Bathroom		
6	6	2/6	LT	Master WIC, Master Bathroom, WIC #2, Bathroom #3, Stair Storage, Powder Room		
7	4	2/8	RT	Master Bedroom, A/C1, Study, Bedroom #3		
8	4	2/8	LT	Bedroom #2, Guest Bedroom, Play Room, A/C2		
9	1	3/0	RT	Garage to Hallway	Solido	
10	1	3/0	LT	Laundry to Exit	Solido	
11	2	3/4	Twin	Hallway		
12	1	18/0 8/0	Owerhang	Garage		



SCALE: 1/8"=1'-0"



NOT TO SCALE



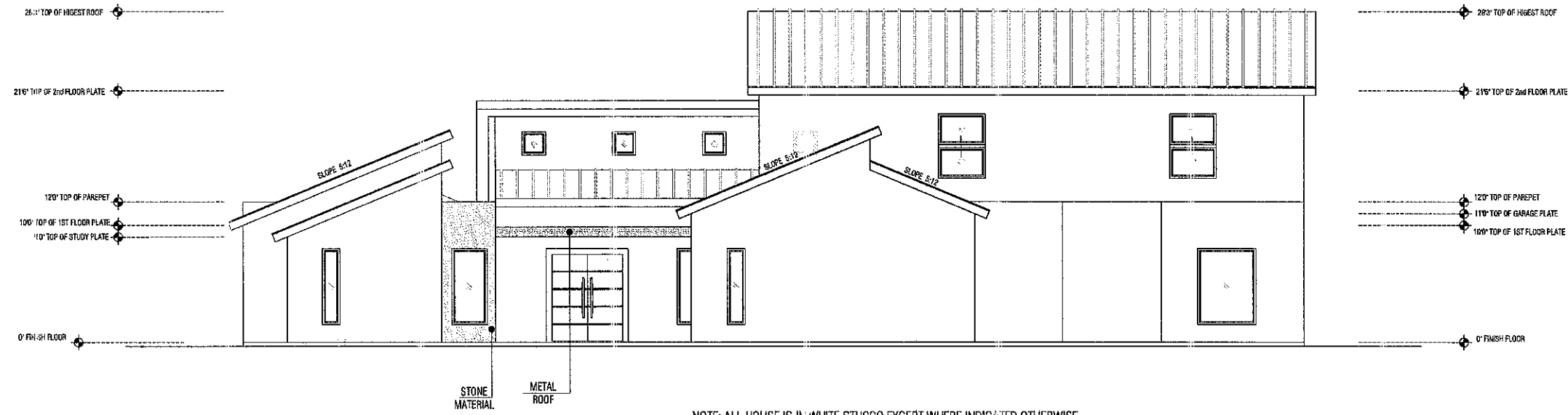
NOT TO SCALE



DRAWN BY: L.J.	REVISED DATE:
CHECKED BY: E.G.	4-23-21
COMPUTED: MAN.	

SCALE: VARIOUS

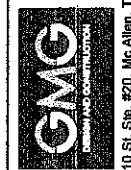




**FRONT ELEVATION**  
SCALE: 3/16"=1'-0"



**REAR ELEVATION**  
SCALE: 3/16"=1'-0"



1320 N 10 St, Ste. #20, McAllen, TX, 78501  
Phone: 361-833-0023  
P.O. BOX 1237, McAllen, TX, 78505

PROPOSED PROJECT  
Cano-Prado Residence  
8100 N. 3rd Street Lot #23  
THE EMBERS SUBDIVISION  
McAllen, TX, 78504

DRAWN BY:	L.J.	REVISED DATE	
CHECKED BY:	E.G.		4-23-21
COMPUTER:	MAIN		

**FRONT & REAR  
ELEVATIONS**  
SCALE: 3/16"=1'-0"





**GMG**  
DESIGN AND CONSTRUCTION  
*By Eugenio Garcia*  
CALL 956-616-4820  
**SOLD**

NOTICE  
VARIANCE  
FOR  
THIS PROPERTY  
ZBA2021-0028

**GMG**  
DESIGN AND CONSTRUCTION  
*By Eugenio Garcia*  
CALL 956-616-4820  
**SOLD**



## CRITERIA FOR ZBOA DETERMINATIONS

### APPEALS

1. ZBOA may hear and decide appeals **where it is alleged there is error** in any order, requirement, decision or determination made by an administrative official **in the enforcement of Chapter 138** of the Code of Ordinances ("Zoning").
2. In conformity with the provisions of V.T.C.A., Local Government Code § 211.009 et seq. and Chapter 138 of the Code of Ordinances, the **ZBOA may reverse or affirm, wholly or partly, or may modify** the order, requirement, decision or determination appealed from.

### SPECIAL EXCEPTIONS

Authorized under Ord. Sec. 138-43 ("Powers") in the following instances:

1. Where the **street layout** actually on the ground varies from the street layout as shown on such maps.
2. To permit the **reconstruction of a nonconforming building** which has been damaged to the extent of more than 50 percent of its replacement cost.
3. To **waive or reduce the parking and loading requirements** whenever:
  - a. The character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities, OR
  - b. Where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
4. To allow a change **from an existing nonconforming use to another nonconforming use** of a structure, or a structure and premises in combination, if:
  - a. No structural alterations are made, AND
  - b. The Board finds that the proposed nonconforming use is not more nonconforming in the district as the existing nonconforming use.

#### **Ord. Sec. 138-86. – GENERAL POLICY.**

The general public, the board of commissioners, and the planning board are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, wherever and whenever possible, except:

- (1) When necessary to preserve property rights established prior to the date the ordinance from which this article is derived became effective as to the property in question, and
- (2) When necessary to promote the general welfare and to protect the character of the surrounding property.



## **VARIANCES**

Authorized only when ALL of the following applies:

1. Owing to special conditions, a literal enforcement of Zoning Ordinance provisions would result in **unnecessary hardship**.
2. **Applicant proves** to the Board the following:
  - a. Land in question cannot yield a reasonable return if used only for a purpose allowed in that zone,
  - b. **Plight is unique** and not shared in general by others in the neighborhood, and
  - c. Variance will **not alter the essential character of the locality**.
3. Variance would **not merely serve as a convenience** to the applicant.
4. Variance must be in **harmony with purpose and intent of Zoning Ordinance**.
5. Variance would **not be contrary to the public interest**.
6. **Surrounding property is be properly protected**.
7. **The spirit of this Zoning Ordinance is observed and substantial justice done**.



Definitions

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## Chapter 138-Zoning

### Sec. 138-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory building* means a subordinate building, located on the same lot as the main building, the use of which is clearly incidental to and customarily found in connection with the main building or principal use of the property.

*Accessory use* means a use which is clearly incidental to and customarily found in connection with the principal use of the premises and which is located on the same lot as the principal use.

*Accessory use of building* means a subordinate use or structure customarily incident to and located on the lot occupied by the main use or structure and conforming with setback and other regulations concerning location.

*Alley* means a minor public right-of-way which is used primarily for vehicular and utility service access to the backs or sides of properties otherwise abutting on a public street.

*Apartment* means a room or suite of rooms located in a building with other such rooms or suites arranged, designed, or to be occupied as a residence by a family. (See Dwelling unit.)

*Associated recreation* means recreational uses which are an integral part of a common ownership or associated or high density residential development (example: homeowners' association with a private club or facility).

*Authorized agent* means an architect, builder, developer or other person empowered to act on behalf of such persons.

*Base station.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new base stations that are not eligible for Section 6409, need not be existing at the time of the application, nor does subsection 138-1.A(a)1.c. apply to a new base station.

*Boardinghouse* means a building other than a hotel where lodging and meals are provided for compensation.

*Building* means any structure designed to be built for the support, enclosure, shelter or protection of persons, animals, chattel or property of any kind. The word "building" includes the word "structure."

*Carrier on wheels or cell on wheels ("COW").* A portable self-contained mobile facility moved to a location and set up to provide wireless services on a temporary or emergency basis.

*Concealed or stealth design elements.* A design elements of any tower, base station or transmission equipment that allows it to be integrated as an architectural feature of a tower or base station or so that it is not readily apparent to a casual observer. It may be screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure so that it is not easily recognizable from other natural structures.

*Conditional use* means a use which may be suitable in certain locations in a zoning district if developed and operated under specific conditions and/or for a limited period of time.

*Depth of lot* means the mean horizontal distance between the front and rear lot lines. (See definitions of Front and Rear lot lines.)

*District* means a section of the city for which the regulations governing the areas, heights or uses of buildings are uniform.

*Dwelling unit* means any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boardinghouses or mobile homes.

- (1) *Single-family* means a building designed for and/or occupied exclusively by one family as a separate dwelling unit.



- (2) *Duplex* means a building designed for and/or occupied exclusively by two families living independently of each other.
- (3) *Triplex* means a building designed for and/or occupied exclusively by three families living independently of each other.
- (4) *Fourplex* means a building designed for and/or occupied exclusively by four families living independently of each other.
- (5) *Multiple* means a building designed for and/or occupied exclusively by five or more families living independently of each other.

The determination of whether one family is living independent of another is based on one or more of the following criteria: separate sanitary facilities; separate kitchen facilities; separate entrances; or separate utilities.

*Eligible facilities request.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Eligible support structure.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Existing.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Family* means one or more persons living together as a single housekeeping unit with common sanitary and kitchen facilities.

*Garage, commercial* means a building or premises used for storage, repair, rental or servicing of motor vehicles.

*Garage, private* means an accessory building, attached or detached, designed or used for the storage of motor-driven vehicles owned and used only by the occupants of the building to which it is accessory.

*Guesthouse* means an accessory building designed for the temporary occupancy of guests of the primary dwelling for which there is no remuneration. "Maids' quarters" means a portion of a dwelling unit, within the same enclosure and not a separate accessory building attached to the primary building, that may contain separate sanitary and/or kitchen facilities which is designed for or used for residential occupancy by an employee of the primary residence.

*Height* means, for a building or portion of a building, the vertical distance from grade to the highest point of the coping of a flat roof, the deck line of a mansard roof, and the mean height level between eaves and ridge for hip, gable or gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator bulkheads, mechanical rooms, tanks, water towers, radio towers, television antennas, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height. Heights authorized in this chapter are subordinate to the airport zoning ordinance, appendix A.

*Loading space* means a space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks and having a minimum dimension of 12 by 35 feet and a vertical clearance of at least 14 feet.

*Lot* means an undivided tract or parcel of land having frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record. The word "lot" includes the word "plot."

- (1) *Corner lot* means a lot abutting upon two or more public streets at their intersection.
- (2) *Building coverage* means percentage of the lot that is occupied by the ground area of a building and its accessory buildings.
- (3) *Lot, double frontage* means a lot abutting on two nonintersecting public streets as distinguished from a corner lot.



- (4) *Lot lines* means the lines bounding a lot as defined in this section.
- a. *Front lot line* means the property line between the front yard and the contiguous street right-of-way boundary.
  - b. *Rear lot line* means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
  - c. *Side lot line* means the property between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.

*Lot of record* means a parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the county clerk; or a tract of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the county clerk prior to October 15, 1973, which has not been divided since recording.

*Maneuvering space* means the space entirely on private property required for maneuvering vehicles in such a manner as to preclude the backing of any vehicle into any street right-of-way.

*Mobile home* means a movable or portable dwelling originally constructed to be towed, on its own chassis, by a motor vehicle over public roads.

*Mobile home and modular home park* means a unified development of five acres or more for mobile homes arranged on a tract of land owned by an individual or a single business entity for the purpose of renting or leasing lots, and meeting the requirements of chapter 122, article II of this Code.

*Mobile home and modular home subdivision* means a unified development of five acres or more for mobile homes arranged on a tract of land in such a manner as to provide an individual lot (see definition of Lot) for each of the mobile homes.

*Modular home* means a dwelling unit in which more than 50 percent of the structure is constructed at other than the construction site, brought to the site in modules, and set on a permanent foundation.

*Ornamental feature* means an addition to a structure designed to enhance the appearance of the structure, in compliance with all of the following criteria:

- (1) Any space occupied by or enclosed by the ornamental feature should not be included in or made a part of the air conditioned, heated, or enclosed portion of the structure;
- (2) The feature should serve no purpose or function for the structure other than ornamentation. The building should be equally functional without the feature as with the feature; and
- (3) The feature shall extend no further than 24 inches into a required yard.

*Parking area* means a space used exclusively for the parking of vehicles and where no other business is conducted.

*Parking space* means an area, not closer than six feet from the back edge of the curb, the width and length of which shall exceed by a minimum of two feet the dimensions of the type of vehicle normally to be parked in the space, and connected with a street or alley by a driveway affording satisfactory ingress and egress. The minimum dimension of a parking space shall be in accordance with the city off-street parking requirements in article VII of this chapter.

*Planned unit development (PUD)* means and includes a combination of different dwelling types and/or a variety of land uses which creatively complement each other and harmonize with existing and proposed land uses in the vicinity, and which comply with the Planned Unit Development provisions of chapter 134, article IV of this Code.

*Portable building* means a temporary building that does not have a foundation and is transportable.

*Recreational vehicle or travel trailer* means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified as a travel trailer by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight feet and a body length not exceeding state maximums.



*Residential storage building* means any building, either portable or constructed onsite, utilized for storage purposes and not requiring plumbing and electrical wiring, and not used for living quarters.

*Restaurant* means a building or portion of a building where the primary business is the on-premises sale of prepared food, with adequate kitchen facilities for the preparation of the food to be sold, the adequacy of such kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered, and where alcoholic beverages may be sold under the following conditions:

- (1) At least 51 percent of the gross income shall be derived from the sale of prepared food.
- (2) Any outside entrances, outside separate identification, outside signs or other separate advertising for lounge or bar areas shall be permitted only as an accessory or secondary feature of the restaurant.
- (3) Live entertainment may be permitted.
- (4) Whenever the director of planning on the basis of a sworn complaint from any person determines that a violation of this section exists, he may require any person serving alcoholic beverages as an incidental use to provide the city, within 30 days of notification, a verified audit for each quarter of the calendar year, showing the gross income derived from the sale of food.

*Retail* means the sale of goods directly to a consumer; engaged in, pertaining to or relating to the sale of merchandise at retail; or selling by individual items, or by the piece, directly to a consumer.

*Right-of-way line* means a dividing line between a lot, tract or parcel of land and the public right-of-way.

*Street* means a public or private thoroughfare which affords the principal means of access to abutting property, excluding alleys.

*Structural alteration* means any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

*Structure* means anything constructed, erected or artificially built up; or composed of parts and joined together in a permanent manner.

*Substantial change.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Tower.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new towers that are not eligible for Section 6409, they need not be existing at the time of the application.

*Townhouse* means a single-family dwelling unit constructed in a series or a group of units having common walls, each on a separate lot.

*Transmission equipment.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Yard* means an open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the definitions of "yard" set out in this section. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

- (1) *Front yard* means a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the right-of-way line and wall of the main building or any projections thereof other than projections of the usual uncovered steps, uncovered balconies or uncovered porches. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension, except where corner lots may be square in dimension and/or have double frontage, in which case the front yard shall correspond to the lot's side adjacent to the longest block face in which it occurs and to which the majority of the existing structures front.



- (2) *Rear yard* means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than projections of uncovered steps, uncovered balconies or uncovered porches. On all lots, the rear yard shall be in the rear of the front yard.
- (3) *Side yard* means a yard between the main building and the side line of the lot, and being the minimum horizontal distance between a side lot line and the sides of the main buildings or any projections thereof.

(Code 1966, § 32-2; Ord. No. 1996-8, § I, 1-22-96; Ord. No. 1996-70, § I, 11-18-96; Ord. No. 1998-68, § 1, 2-27-98; Ord. No. 1999-69, § 1, 8-9-99; Ord. No. 2004-15, § 5, 2-9-04; Ord. No. 2015-38, § II, 5-11-15)

**Cross reference—** Definitions and rules of construction generally, § 1-2.

Footnotes:

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**Note—** 47 U.S.C. § 332(c)(7)(C) Definitions. For purposes of this paragraph—(i) the term "personal wireless services" means commercial mobile services [cellular service], unlicensed wireless services, and common carrier wireless exchange access services..."; 47 U.S.C. § 332(d) ....(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;..."

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**Note—** 47 U.S.C. § 332(c)(7)(C) Definitions for purposes of this paragraph... (ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services..."

## Chapter 110-Vegetation

### Sec. 110-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Buffer* means a screen constructed of wood, concrete block, masonry, a combination of wood and masonry, or landscape material with a chain link fence in such a manner that adjacent property is visually screened, and so that noise, solid waste or other objectionable influences will be avoided. Such buffer shall be perpendicular to the ground, a minimum of six feet in height, continuous and uninterrupted, and 100 percent opaque except where extraordinary circumstances exist where additional height will more adequately accomplish the desired end.

*Caliper* means the diameter of a tree measured 12 inches above the ground for trees up to and including eight inches in diameter and four and one-half feet above the ground for trees having a diameter of more the eight inches. The diameter of a multi-stem tree shall be measured at the point below branching or the sum of the two largest stems measured at four and one-half feet above the ground which ever is greater.



*Contiguous* means adjacent property whose property lines are shared, or are separated by only a street, alley, easement or right-of-way.

*Developed property* means that portion of a lot or parcel upon which a building, structure, pavement, or other improvements have been or are proposed to be placed.

*Diameter-at-breast-height (DBH)* means the tree trunk diameter measured in inches at a height of four and one-half feet (54 inches) above natural grade or the DBH measurement according to the latest edition of the Guide for Plant Appraisal as published by the Council of Tree and Landscape Appraisers, when the tree trunk branches out at a point lower than four and one-half feet.

*Frontage* means lineal distance measured along abutting street rights-of-way.

*Ground cover* means low growing plants planted in such a manner as to form a continuous cover over the ground, typical horizontal growth form with a maximum height of 24 inches, such as liriopse, low growing varieties of honeysuckle, confederate jasmine, English ivy or others.

*Landscape material* means trees, shrubs, ground cover, vines or grass installed in planting areas, including but not limited to those installed for the purpose of fulfilling the requirements of this article.

*Landscape strip area* means a planting area within the property lines of specified width and parallel to a public street, excluding driveways for ingress and egress.

*Paved ground surface area* (also referred to in this article as paved area or paved ground area) means any paved ground surface area (excepting public rights-of-way) used for the purpose of driving, parking, storing or displaying of vehicles, boats, trailers and mobile homes, including new and used car lots and other open lot uses. Parking structures, covered drive-in parking areas to the drip line of the covering or garages shall not be considered as paved ground surface areas.

*Planting area* means an area intended or used for landscaping that has a minimum of 40 square feet of actual plantable area and an inside dimension on any side of at least 36 inches.

*Reconstruction* means rehabilitation or replacement of structures on nonresidential or multifamily property to an extent exceeding 50 percent of the assessed valuation of such structures as shown on the most recent tax roll of the city.

*Shrub* means any woody plant of relatively low height, having several stems arising from the base and lacking a single trunk.

*Stormwater detention facility* means an impoundment on a lot or parcel reserved for detaining and controlling the release of stormwater runoff as required by City of McAllen Drainage Policy.

*Street line* means that line separating the right-of-way from any adjacent property.

*Tree* means any self-supporting woody plant of a single trunk and of a species which normally grows to an overall mature height of a minimum of 15 feet in the lower Rio Grande Valley of the state.

*Vine* means any of a group of woody or herbaceous plants which may climb by twining, by means of aerial rootlets or tendrils, or which may simply sprawl over the ground or other plants.

*Xeriscape* means landscape methods which conserve water through the use of drought-tolerant plants and planting techniques.

(Code 1966, § 17 3/8 -4; Ord. No. 1993-88, § I, 12-13-93; Ord. No. 2006-118, § 1, 11-13-06; Ord. No. 2007-28, § 1, 3-26-07)

**Cross reference**— Definitions and rules of construction generally, § 1-2.



## Exceptions Cited within the Zoning Ordinance

### Exceptions pertaining to front yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Balconies, uncovered (*Section 138-1, Yard (1)*)
3. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
4. Cornices up to 2 feet (*Section 138-366 (c)*)
5. Eaves up to 2 feet (*Section 138-366 (c)*)
6. Fence not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)
7. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
8. Flues not to exceed 5 feet (*Section 138-366 (d)*)
9. Ornamental features up to 2 feet (*Section 138-366 (c)*)
10. Planting not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)
11. Porches, uncovered (*Section 138-1, Yard (1)*)
12. Projections up to 2 feet (*Section 138-366 (c)*)
13. Pumps, filling station not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d)*)
14. Pumps, gas and canopies not less than 9 feet from the property line or 10 feet from the curb, whichever greater (*Section 138-259*)
15. Pumps, islands not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d)*)
16. Sills up to 2 feet (*Section 138-366 (c)*)
17. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
18. Steps, uncovered (*Section 138-1, Yard (1)*)
19. Structure not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)

### Exceptions pertaining to rear yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Balconies, uncovered (*Section 138-1, Yard (1)*)
3. Buildings, accessory may occupy no more than 30% (*Section 138-369*)
4. Carports, unenclosed abutting an alley may be built up to the rear property line within the R-3A and R-3C Districts (*Section 138-356, Footnote 5*)
5. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
6. Cornices up to 2 feet (*Section 138-366 (c)*)
7. Eaves up to 2 feet (*Section 138-366 (c)*)
8. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
9. Flues not to exceed 5 feet (*Section 138-366 (d)*)
10. Ornamental features up to 2 feet (*Section 138-366 (c)*)
11. Parking, unenclosed may occupy no more than 90% (*Section 138-369*)
12. Porches, uncovered (*Section 138-1, Yard (1)*)
13. Projections up to 2 feet (*Section 138-366 (c)*)
14. Sills up to 2 feet (*Section 138-366 (c)*)
15. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
16. Steps, uncovered (*Section 138-1, Yard (1)*)



Exceptions pertaining to side yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Canopy, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d)*)
3. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
4. Cornices up to 2 feet (*Section 138-366 (c)*)
5. Eaves up to 2 feet (*Section 138-366 (c)*)
6. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
7. Flues not to exceed 5 feet (*Section 138-366 (d)*)
8. Ornamental features up to 2 feet (*Section 138-366 (c)*)
9. Porte-cochere, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d)*)
10. Projections up to 2 feet (*Section 138-366 (c)*)
11. Side yards can be reduced to 10% of the lot width provided the lot has a width less than 50 feet. However, no side yard shall be less than 3.5 feet (*Section 138-368 (f)*)
12. Sills up to 2 feet (*Section 138-366 (c)*)
13. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
14. Townhouses can be built up to the side property line with a firewall (*Section 138-356, Footnote 10*)

Exceptions pertaining to height measurements (*Section 138-1, Height*):

1. Chimneys
2. Cooling towers
3. Domes
4. Elevator bulkheads
5. Mechanical rooms
6. Ornamental cupolas
7. Parapet walls not exceeding four feet in height
8. Radio towers
9. Spires
10. Tanks
11. Television antennas
12. Water towers



## Exceptions as per Planning Department Policy

By policy the following are permitted:

1. AC Units
2. Clothes lines
3. Concrete slabs
4. Fire pits
5. Pergolas, arbors, and trellises as a landscape feature (legal opinion, 2009)
6. Playground equipment
7. Pool decks
8. Pool pumps
9. Portable grills
10. Sports equipment i.e. basketball hoop
11. Swimming pools prior to 2009 (legal opinion)
12. Umbrellas and patio furniture
13. Water features and fountains

Legal opinions:

1. In 2009 Assistant City Attorney Ignacio Perez made an interpretation to allow arbors, pergolas, and trellises within the required setbacks. The definition of landscape material is stated as trees, shrubs, ground cover, vines or grass installed in planting areas in Section 110-26 of the Vegetation Ordinance. The legal interpretation was if vines were allowed by code as a planting area and they cover vertical planes such as walls then the same logic could be applied to arbors, pergolas, and trellises as a planting area. Mr. Perez also cited Section 110-56 (g) of the Vegetation Ordinance stating architectural planters may be permitted to fulfill landscape requirements.
2. Prior to 2009 swimming pools were not considered a structure due to the fact they were constructed underground and the Zoning Ordinance defines a structure as anything constructed, erected or artificially built up or composed of parts and joined together in a permanent manner. However, an interpretation was made in 2009 to consider swimming pools as a structure to abide by setback requirements.



# **ZONING BOARD OF ADJUSTMENT AND APPEALS**

## **RULES AND PROCEDURES**

### **CITY OF MCALLEN**

**The McAllen Zoning Board of Adjustment and Appeals adopts the following Rules and Procedures (hereinafter “Rules”) to govern the substance of all board matters.**

#### **I. ORGANIZATION AND OFFICERS**

##### **A. Members**

The McAllen City Commission created the Zoning Board of Adjustment and Appeals (hereinafter referred to as “Board”) pursuant to Chapter 211 of the Texas Local Government Code and Chapter 138, Article II, Division 3 of the City of McAllen, Texas Code of Ordinances (the “City Code”). The Commission appoints the members for that Board under Section 211.008 of the Texas Local Government Code (the “Code”).

The Commission composed the Board to sit five (5) members. Each member serves a two-year term. The Commission may renew a member’s term for a maximum of three total consecutive terms. The Commission also appoints four (4) alternate members to serve in the absence of a regular board member. Alternate members serve just as regular members and are subject to the same rules as regular members, unless otherwise provided in these Rules, but do not vote except in the absence of a regular member.

##### **B. Officers**

The Board shall elect a Chair and a Vice Chair from its own regular members by majority vote. The Chair and Vice Chair each serve one year. The Board shall accept an Executive Secretary appointed by the McAllen Planning Department. The Board shall adopt an attorney advisor appointed by the McAllen Legal Department. The Board shall only accept the appointment of personnel under the condition each person remains the employee and charge of the City of McAllen, with no employment relationship to the Board.

##### **C. Duties and Officers**

The Chair shall preside over the Board, hold meetings of the Board, decide points of order, and dispense the business of the Board. The Chair may administer oaths, compel the attendance of witnesses, and issue subpoenas as per Section 211.008 of the Code. The Chair shall sign the minutes of board meeting after the minutes have been approved by the Board.

In the absence of the Chair, the Vice Chair, or in both their absences the most senior member, according to the member’s appointment date, shall dispense the duties of the Chair.



## **II. POWERS OF THE BOARD**

### **A. General Powers**

The Board has those powers specified in Section 211.009 and 241.033 of the Code, and those powers granted by the City Commission under Chapter 138 (Zoning Ordinance) and Chapter 110 (Vegetation Ordinance) of the City Code, and those powers granted to the Board by ordinance.

### **B. Specified Powers**

As per city ordinance and state statute, the Board has those powers described in Section 211.009 of the Code and Section 138-43 of the City Code. Those powers described in Section 138-43 are:

1. Hear and decide appeals that allege an error in any order, requirement, decision or determination made by an administrative official or agency in the enforcement of applicable provisions of the Local Government Code, the City Ordinance;
2. Authorize variances to specific cases from the terms of the City Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of City Ordinance will result in unnecessary hardship, and so that the spirit of ordinances shall be observed and substantial justice done;
3. Grant special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot; and
4. Hear and decide any other matters authorized by the City Commission through ordinance.

## **III. DUTIES OF BOARD MEMBERS**

### **A. General Duties of Members**

1. All members of the Board should attempt to inspect the premises of each case which is under consideration at each meeting and become generally familiar with each case prior to Board meetings.
2. All members shall attend all meetings, provided, however, the member must provide 72 hours prior notice to the Executive Secretary in the event the member cannot attend.
3. All members of the Board shall arrive at a logical and fair decision on each case, except where a conflict may preclude a vote on the case.

### **B. Disqualification/Conflict of Interest**

All members of the Board of Adjustment are subject to the City of McAllen Ethics Ordinance (Chapter 2 of the City Code).



In all cases before the Board where a member of the Board has a conflict as described in the Ethics Ordinance, the member shall refrain from any discussion, deliberation or vote. When applicable, the member shall complete and submit a City Conflict of Interest form, but in all cases alert the Executive Secretary at least 72 hours prior to the meeting on which the conflict is at issue. The Executive Secretary shall submit all notices of conflict to the City's attorney.

#### **IV. A BASIS FOR ACTION**

The Board shall decide each case based on the following:

1. Facts filed with application.
2. Testimony presented at the public hearing on the appeal.
3. The Planning Department's technical report on the appeal.
4. The Board's findings in its field inspection of the property may question all witnesses to assist the Board in arriving at a correct, logical and fair decision.
5. The applicable standards of review described in Section 138-43 of the City Code and Sections II.A., II.B. and VI. of these Rules.
6. All decisions shall be made on the Basis for Action. Neither the Board nor the individual members may use personal, first hand knowledge of any facts to make a determination, if such information has not been entered into the record or made available at the public hearing.

#### **V. APPLICANTS**

##### **A. Legally Vested Interest**

The Board shall not consider an application from any applicant who does not have a vested legal or equitable interest in the property in question. Applicants may appear on their own behalf or may be represented by counsel or agent. Any representation by someone other than an applicant must be accompanied with a written designation by the applicant for the agent to act on behalf of the applicant. (For example, the representative may produce a letter from the applicant to the Planning Department to authorize the representative to speak on behalf of the applicant; or, the representative may submit an application on behalf of a verifiable power of attorney.)

##### **B. Applications**

All applications for consideration by the Board must be on the prescribed form approved by the Planning Department and acceptable to the Board. The Board shall not consider applications for a variance or a special exception or any other Board action, if the application is not on a designated form. The Board shall approve the official application and the Chair shall implement it.

All applications for variances and special exceptions to commercial properties must be submitted with a current, valid "on the ground" survey. An applicant must submit a pauper form with their application if



they cannot proffer a valid survey; provided, however, the applicant illustrates their property with setbacks and encroachments as a survey would.

#### **C. Meetings**

Applicants have the right to be heard at all meetings where their applications are considered for a dispositive vote. Applicants not able to be present at the scheduled meeting to consider their application may submit to the Planning Department a written request for the Board to table the application. The Board will decide whether or not to grant the applicant's request to table. No application may be tabled at the request of applicant for more than two meetings prior to being considered for a dispositive vote. However, if the applicant requests for his/her application to be tabled because there are only four (4) board members present, such request shall not be counted against applicant's two (2) opportunities to table his/her request. Board action may proceed on any application despite the request of any applicant to table the application. The Board shall note on the record the reason(s) for the tabling of an agenda item. The reason(s) for each tabling, as well as the number of times an agenda item has been tabled, shall be reflected in an activity log in the meeting minutes at the end of each agenda item.

#### **D. Evidence**

Applicants should be prepared to present evidence necessary to prove their application. The burden of persuasion on seeking a remedy from the Board remains with the applicant at all times.

### **VI. HARDSHIP**

A. For an "unnecessary hardship" to apply to a variance, it must relate to the very property for which the variance is sought and be a condition unique, oppressive, and uncommon to other properties. An unnecessary hardship may not be self-created, or be solely financial.

B. "Hardship" must be based on hardship resulting from sharp changes in topography or unusual terrain features. The applicant may prove the topography with a plot plan which includes topographic information related to known base points or surveys, and profiles or particular problems involved, including relationships to topographic features of adjoining properties.

C. There is no unnecessary hardship if the property is suitable and useable for the uses permitted in the district in which it lies, although there will be a loss of profit or other economic disadvantage on account of such use.

### **VII. MEETINGS**

#### **A. Texas Public Information Act and Open Meetings Act.**

Except as permitted under the advice of the Board's attorney, all meetings of the Board are subject to the Texas Public Information Act and shall be open to the public. The minutes of the Board's meetings and records of its examination or other official actions are public records, unless excepted under law.



## **B. Quorum**

A quorum consists of seventy-five percent (75%) of the full complement of members. For a full complement of five (5) members, therefore, four (4) members present constitute a quorum. The Chair may declare a quorum does not exist fifteen (15) minutes following a posted meeting time, having found at least four (4) members and alternate members are not present; provided however, the Chair may not declare a quorum thirty (30) minutes from the posted time, should at least members and alternate members not be present.

## **C. Regular Meetings**

Regular meetings shall be held every first and third Wednesday at 5:30 P.M., or at other times as determined by the Board, in the City Commission Chambers. The Board by majority vote may change the place, day, and hour of the meetings; provided that, notice complies with the Texas Open Meetings Act (Chapter 511 of the Texas Government Code).

## **D. Special Meetings**

The Chair may call a special meeting. A special meeting shall have a lawful purpose and members and public shall be given at least seventy-two (72) hours notice prior to the meeting.

## **E. Order of Business**

The usual order of business shall be:

1. Call to Order
2. Approval of Minutes
3. Open Public Hearing
4. Other Statements
5. Introduction: New Information Recommendation
  - a) Presentation of recommendation by City Staff.
  - b) The Chair shall call the applicant or his representative(s) to present the case and answers any questions. If the applicant or representative is not present when called, the Chair may move a case to the end of the agenda.
  - c) The Chair shall then inquire if there are others who wish to address the Board in support of the case.
  - d) The Chair shall then inquire if there are those present who wish to address the Board who are opposed to the case.
  - e) The applicant or his representative may then give a rebuttal to any opposition.
  - f) If new facts are presented during this rebuttal, opposition shall be given the opportunity for rebuttal
  - g) Staff shall then have an opportunity to provide additional information, clarification or address questions from the Board.
  - h) Board discussion.
  - i) The Chair shall then declare that the discussion of the case is closed.



- j) In order to achieve an unambiguous decision, motions should be made in affirmative manner when possible.
- k) Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussion shall terminate whenever a member shall call for a vote upon the question or whenever the Chair shall so rule.
- l) Vote on a motion.
- 6. The Chair may move a case out of regular agenda order.
- 7. Staff Report
- 8. Other Business posted on the Agenda
- 9. Adjournment

#### **F. Staff Recommendations**

City staff shall provide recommendations on each case before the Board.

#### **G. Action by the Board**

The super-majority concurring vote of seventy-five percent of the full board compliment, i.e., four affirming members of the Board, shall be necessary to reverse an order, requirement, decision or determination of an administrative official or agency; to decide in favor of an applicant on a matter upon which the Board is required to pass under any such ordinance or regulation; to authorize a variation; or to recommend to the Director of Planning to uphold or modify the interpretation of the City Code. All other matters shall be decided by a majority vote, unless otherwise specified in the City Code. The Board on its own motion may table an application when an applicant does not appear; provided however, in no case may the board table an application, for failure of the applicant to appear, more than twice without taking a dispositive vote.

#### **H. Minutes of the Board**

The Board, through its designated appointee, shall keep minutes of all meetings that indicate the vote of each member on every question on which it is required to act, or the fact that a member is absent or fails to vote. The minutes shall be filed in the office of the Planning Department and are public record.

### **VIII. DECISIONS OF THE BOARD**

#### **A. Precedent**

There is not precedent. Any one case does not set a precedent for any future case. Each case shall be decided on its own merits and upon the circumstances of the case.

#### **B. Public Statements**

No Board member shall release any official statement to the public or the press. Only the Director of the Planning Department or her designated representative may make official statements on behalf of the Board.



**B. Parliamentary Procedure**

Any question regarding parliamentary procedure not covered by these rules shall be decided according to the latest edition of Robert's Rules of Order.

**IX. WITHDRAWAL OF APPEAL**

Any appeal or application may be withdrawn by the applicant upon written notice to the Director of Planning.

**X. ATTENDANCE**

Excessive absences cannot be tolerated, as the Board depends on a super majority of attendance in order to exercise decisions on applications for a variance. Three absences or more in a six-month period are excessive. If a Board member is excessively absent from regularly scheduled meetings, the Board may recommend to City Commission, by majority vote, that the Commission appoint an immediate replacement.

**XI. AMENDEMENT PROCEDURE**

Amendment to these rules and procedures may be made by the Board at any meeting, upon the affirmative vote of five (5) members, provided any such amendment is proposed at a preceding meeting and entered into the minutes of such meeting. However, board members may adopt through unanimous consent of all members an amendment at the meeting at which it was introduced; provided, however, the amendment shall not become effective until the next regular meeting.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014 as affirmed by the designated Executive Secretary assigned by the Planning Department of the City of McAllen.

\_\_\_\_\_  
**Executive Secretary**



**ORDINANCE NO. 2018- 70**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCALLEN AT CHAPTER 138 ("ZONING"), ARTICLE VI ("SUPPLEMENTARY DISTRICT REGULATIONS"), DIVISION 3 ("LOTS AND YARDS"), BY ADDING PROVISIONS REGULATING CARPORTS AND GRANTING THE ZONING BOARD OF ADJUSTMENTS TO GRANT SPECIAL EXCEPTIONS THERETO; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

**WHEREAS**, the City of McAllen desires to establish rules and regulations relating to the construction and maintenance of carports within the City,

**WHEREAS**, the City Commission finds that it is in the public interest to delegate the authority to regulate carports to the Zoning Board of Adjustments,

**WHEREAS**, the City of McAllen seeks to protect the value of property located within the corporal limits of the City,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MCALLEN, TEXAS, THAT:**

**SECTION I:** The Code of Ordinances, City of McAllen, Chapter 138 ("Zoning"), Article VI ("Supplementary District Regulations"), Division 3 ("Lots and Yards") is hereby amended to read as follows:

**Sec. 138-371. – Special Exception for carports.**

- (a) The Zoning Board of Adjustment may grant a special exception to the minimum setback requirements for a carport when, in the opinion of the board:
  - (1) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and



- (2) the carport will not have a detrimental impact on surrounding properties.
- (b) In determining whether to grant this special exception, the board shall consider the following factors:
  - (1) Whether the requested special exception is compatible with the character of the neighborhood.
  - (2) Whether the value of surrounding properties will be adversely affected.
  - (3) The suitability of the size and location of the carport
  - (4) The materials to be used in construction of the carport
- (c) Storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.
- (d) If the Zoning Board of Adjustmnet Grants a special exception as provided in this section, the site plan and the minutes of the Zoning Board of Adjustment meeting shall be officially recorded with Hidalgo County.
- (e) Any special exception granted under this chapter is granted solely to the applicant and may not be transferred, sold, inherited, bequeathed, or devised.
- (f) A new special exception shall be required upon any change or transfer in ownership of the underlying tract; a special exception granted to a previous applicant does not confer any right to any other individual or corporation to maintain the carport without approval from the Zoning Board of Adjustment.

**SECTION II:** The City Secretary of the City of McAllen is hereby authorized and directed to cause the caption of this ordinance to be published in a newspaper having general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of Ordinances of the City of McAllen, Section 2-56. Publication of ordinances.

**SECTION III:** The City Secretary of the City of McAllen is hereby authorized and directed to cause the language in Chapter 38, Article VI, Division 3, the McAllen Code of Ordinances, as amended by Section I, hereinabove, to be published in the appropriate location in the said Code of Ordinances.

**SECTION IV:** This Ordinance shall be and remain in full force and effect from and



after its passage by the Board of Commissioners, and execution by the Mayor.

**SECTION V:** If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

**CONSIDERED, PASSED and APPROVED** this 8<sup>th</sup> day of October, 2018, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code.

**SIGNED** this 9<sup>th</sup> day October, 2018.

**CITY OF McALLEN**

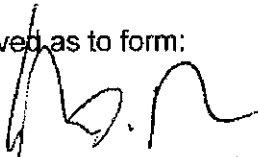
John Ingram, City Commissioner

Attest:



Perla Lara, TRMC/CMC, CPM  
City Secretary

Approved as to form:



Austin W. Stevenson, Assistant City Attorney





## 2021 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/06/21	01/20/21	02/03/21	02/17/21	03/03/21	03/17/21	04/07/21	04/21/21	05/05/21	05/19/21	06/02/21	06/17/21	07/07/21	07/21/21	08/04/21	08/18/21	09/01/21	09/15/21	10/06/21	10/20/21	11/03/21	11/17/21	12/01/21	
ERICK DIAZ- <b>CHAIRPERSON</b>	P	P	P	P	P	P	A	P	A	P	P	P	P											
JOHN MILLIN- <b>VICECHAIRPERSON</b>	P	A	P	P	P	P	P	P	P	P	A	P	P											
SYLVIA HINOJOSA	P	P	P	A	P	P	P	P	P	P	P	P	P											
JOSE GUTIERREZ	P	P	P	P	P	P	P	P	P	P	P	P	P											
JUAN F. JIMENEZ	P	A	P	P	P	A	P	P	P	P	A	A	A											
ANN TAFEL (ALT 1)	P	P	P	P	P	P	P	P	P	A	A	P	P											
HUGO AVILA (ALT 2)	P	P	P	P	P	A	P	P	P	A	P	P	A											
REBECCA MILLAN (ALT 3)	P	P	P	P	P	P	P	P	P	P	P	P	P											
ROGELIO RODRIGUEZ (ALT 4)	A	P	P	P	P	P	A	P	P	P	P	P	P											

P - PRESENT

A - ABSENT

 NEW APPOINTMENT

MC - MEETING CANCELLED

NRM - NO MEETING

LOQ - LACK OF QUORUM

RS - RESIGNATION









# PLANNING DEPARTMENT

311 N 15th Street McAllen, TX 78501  
Phone: 956-681-1250 Fax: 956-681-1279



## 2021 CALENDAR

### Meetings:

-  City Commission
-  Public Utility Board
-  Planning & Zoning Board
-  Zoning Board of Adjustment

HPC - Historic Preservation Council

### Deadlines:

D- Zoning/CUP Application      N - Public Notification

\* **Holiday** - Office is closed

### JANUARY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1 <b>HOLIDAY</b>	2
3	4 A-1/19 & 1/20	5	6 N-1/19 & 1/20 D-2/2 & 2/3	7	8	9
10	11	12	13	14	15	16
17	18 A-2/2 & 2/3	19	20 <b>HPC</b> N-2/2 & 2/3 D-2/16 & 2/17	21	22	23
24	25	26	27	28	29	30
31						

### FEBRUARY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 A- 2/16 & 2/17	2	3 N- 2/16 & 2/17 D- 3/2 & 3/3	4	5	6
7	8	9	10	11	12	13
14	15 A-3/2 & 3/3	16	17 N-3/2 & 3/3 D-3/16 & 3/17	18	19	20
21	22	23	24 <b>HPC</b>	25	26	27
28						

### MARCH 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 A-3/16 & 3/17	2	3 N-3/16 & 3/17 D-4/6 & 4/7	4	5	6
7	8	9	10	11	12	13
14	15	16	17 D-4/20 & 4/21	18	19	20
21	22 A-4/6 & 4/7	23	24 <b>HPC</b> N-4/6 & 4/7	25	26	27
28	29	30	31			

### APRIL 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2 <b>HOLIDAY</b>	3
4	5 A-4/20 & 4/21	6	7 N-4/20 & 4/21 D-5/4 & 5/5	8	9	10
11	12	13	14	15	16	17
18	19 A- 5/4 & 5/5	20	21 <b>HPC</b> N- 5/4 & 5/5 D-5/18 & 5/19	22	23	24
25	26	27	28	29	30	

### MAY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3 A- 5/18 & 5/19	4	5 D: 6/1 & 6/2 N-5/18 & 5/19	6	7	8
9	10	11	12	13	14	15
16	17 A-6/1 & 6/2	18	19 N-6/1 & 6/2 D-6/16 & 6/17	20	21	22
23	24	25	26 <b>HPC</b>	27	28	29
30	31 <b>HOLIDAY</b>					

### JUNE 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 N-6/16 & 6/17 D-7/6 & 7/7	3	4	5
6	7	8	9	10	11	12
13	14	15	16 D-7/20 & 7/21	17	18	19
20	21 A-7/6 & 7/7	22	23 <b>HPC</b> N-7/6 & 7/7	24	25	26
27	28	29	30			

Deadlines and Meeting Dates are subject to change at any time. Please contact the Planning Department at (956) 681-1250 if you have any questions.





# PLANNING DEPARTMENT

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## 2021 CALENDAR

### Meetings:

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-  Planning & Zoning Board
-  Public Utility Board
-  Zoning Board of Adjustment
- HPC - Historic Pres Council

### Deadlines:

- D- Zoning/CUP Application
- N - Public Notification

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### JULY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
					A-7/20 & 7/21	
4	5 <b>HOLIDAY</b>	6	7 N-7/20 & 7/21 D-8/3 & 8/4	8	9	10
11	12	13	14	15	16	17
18	19	20	21 <b>HPC</b> N-8/3 & 8/4 D-8/17 & 8/18	22	23	24
25	26	27	28	29	30	31

### AUGUST 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 Las Palmas Community	4 Exec Room N- 8/17 & 8/18 D-9/1 & 9/7	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Exec Room N-ZBA 9/1 D-9/15 & 9/21	19	20	21
22	23	24	25 <b>HPC</b> N-PZ 9/7	26	27	28
29	30	31				

### SEPTEMBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 N-ZBA 9/15 D-10/5 & 10/6	2	3	4
5	6 <b>HOLIDAY</b>	7	8 N-PZ 9/21	9	10	11
12	13	14	15 D-10/19 & 10/20	16	17	18
19	20	21	22 <b>HPC</b> N-10/5 & 10/6	23	24	25
26	27	28	29	30		

### OCTOBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6 N-10/19 & 10/20 D-11/2 & 11/3	7	8	9
10	11	12	13	14	15	16
17	18	19 PZ moved to 21st	20 N- 11/2 & 11/3 D-11/16 & 11/17	21 <b>PZ MIG</b>	22	23
24	25	26	27 <b>HPC</b>	28	29	30

### NOVEMBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3 N-11/16 & 11/17 D-12/1 & 12/7	4	5	6
7	8	9	10	11	12	13
14	15	16	17 N-ZBA 12/1 D-PZ-12/21	18	19	20
21	22	23	24 N-PZ 12/7	25 <b>HOLIDAY</b>	26	27
28	29	30				

### DECEMBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 <b>HPC</b> N-ZBA 12/15 D-1/4 & 1/5	2	3	4
5	6	7	8	9	10	11
12	13	14	15 D-1/18 & 1/19	16	17	18
19	20	21	22	23 <b>HOLIDAY</b>	24 <b>HOLIDAY</b>	25
26	27	28	29	30	31 <b>HOLIDAY</b>	

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