AGENDA

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, NOVEMBER 4, 2020 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3RD 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 October 7, 2020
- b) Minutes for the meeting held on October 21, 2020

2. PUBLIC HEARINGS:

- a) Request of Raul De La Garza, on behalf of Jorge Gutierrez, for the following variances to the City of McAllen Zoning Ordinance 1) to allow an encroachment of up to 6 ft. into the 6 ft. east side yard setback for an existing irregularly shaped wooden deck measuring approximately 41 ft. by 55 ft., 2) to allow an encroachment of up to 3 feet into the 6 ft. east side yard setback for an existing circular above ground swimming pool measuring approximately 11 ft. by 20 ft., 3) to allow an encroachment of up to 10 ft. into the 10 ft. rear yard setback for an existing irregularly shaped wooden deck measuring approximately 41 ft. by 55 ft., 4) to allow an encroachment of up to 8 ft. into the 10 ft. rear yard setback for an existing above ground swimming pool measuring approximately 11 ft. by 20 ft., 5) to allow an encroachment of 10 ft. into 10 ft. rear yard setback for an existing storage room measuring 6 ft. by 5 ft. at Lot 67, Falling Water Subdivision, Hidalgo County, Texas; 4204 Worthington Avenue. (ZBA2020-0059)
- b) Request of Aurora Pena for the following variances to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 5 ft. into the 5 ft. west side yard setback for an existing covered patio measuring 6.33 ft. by 56 ft.; 2) an encroachment of 9 ft. 9 in. into the rear yard setback for an existing wooden storage shed measuring 12.20 ft. by 12.25 ft.; 3) to allow an accessory building separation from the main building of 3.75 ft. instead of the required 5 ft.; at Lot 12, Block 3, Amigo Park 1 Subdivision, Hidalgo County, Texas; 4405 West Gardenia Avenue. (ZBA2020-0067) (TABLED: 10/21/2020)
- c) Request of Juan Lopez 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 an existing carport measuring 17 ft. by 23 ft. at Lot 44, Oak Terrace Subdivision, Hidalgo County, Texas; 1916 North 35th Street. (ZBA2020-0056) (TABLED: 10/7/2020) (REMAIN TABLED: 10/21/2020)

- d) Request of Martin Hinojosa III for the following Variance to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 16 ft. into the 25 ft. front yard setback for a proposed garage addition measuring 26 ft. by 22 ft., 2) an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing irregular hexagonal gazebo with an approximate area of 62.81 square feet 3) an encroachment of 3.9 ft. into the 5 ft. side yard setback for an existing wooden storage measuring 15.9 ft. by 3.4 ft. and 4) an encroachment of 6 ft. into the 10 ft. rear yard setback for an existing wooden storage measuring 15.9 ft. by 3.4 ft., at Lot 14 Block 5, Whitewing Addition Subdivision Unit 1, Hidalgo County, Texas; 2400 North 25th Street. (ZBA2020-0066)
- e) Request of Maria Quinteros, for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10 ft. into the 10 ft. front yard setback for a proposed garage extension measuring 10 ft. by 18 ft., at Lot 73, Los Alegres Subdivision Unit No. 2, Hidalgo County, Texas; 317 Uvalde Avenue. (ZBA2020-0071)
- f) Request of Frances Rivas, for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 13 ft. into the 25 ft. front yard setback for an existing carport measuring 19 ft. by 23 ft. at Lot 16, Block 7, Westway Heights Subdivision Unit No. 2, Hidalgo County, Texas; 2108 Highland Avenue. (ZBA2020-0069)
- g) Request of Douglas and Rosalia LaRoque for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 15 ft. into the 25 ft. front yard setback for an existing gazebo measuring 10 ft. by 10 ft. at Lot 33, El Rancho Santa Cruz Subdivision Phase I, Hidalgo County, Texas; 800 East Pineridge Avenue. (ZBA2020-0070)

3. FUTURE AGENDA ITEMS

- a) 4905 Ibis Avenue
- **b)** 201 Dove Avenue
- c) 3500 and 3504 Kilgore Avenue

4. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE, SECTION 551.071 (CONSULTATION WITH ATTORNEY)

a) Consultation with Attorney regarding possible litigation related to enforcement. (Section 551.071, Tex. Gov't Code)

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 Wednesday, October 7, 2020 at 4:30 p.m. in the City Commission Meeting Room with the following present:

Present: Erick Diaz Vice-Chairperson

Sylvia Hinojosa Member
John Millin Member
Juan F. Jimenez Member
Jose Gutierrez Alternate
Rogelio Rodriguez Alternate
Rebecca Millan Alternate
Hugo Avila Alternate

Staff Present: Austin Stevenson Assistant City Attorney (teleconference)

Victor Flores Assistant City Attorney (teleconference)

Michelle Rivera Assistant City Manager

Edgar Garcia Planning Director Rodrigo Sanchez Senior Planner Omar Sotelo Senior Planner

Liliana Garza Planner II
Carlos Garza Planner I
Hebert Camacho Planner I

Iris Alvarado Planner I (teleconference)
Juan Martinez Development Coordinator

Porfirio Hernandez GIS Technician II

Carmen White Secretary

CALL TO ORDER – Acting Chairperson Erick Diaz

1. MINUTES:

a) Minutes for Regular Meeting held September 17, 2020.

2. PUBLIC HEARINGS:

a) Request of Cesar H. Sanchez for the following variance to the City of McAllen Zoning Ordinance: to allow an unattached structure in the R-2 (duplex-fourplex residential) District, at the east 6 ft. of Lot 4, Block 7 and all of Lot 5, Block 7, Larkspur Subdivision No.2, Hidalgo County, Texas; 1607 Nolana Avenue. (ZBA2020-0045)

The applicant requested this item be withdrawn.

b) Request of San Juanita San Miguel for the following variances to the City of

McAllen Zoning Ordinance to allow: 1) an encroachment of 5.17 ft. into the 6 ft. side yard setback along the north property line for an existing covered patio measuring 10 ft. by 24.33 ft., 2) an existing covered patio measuring 10 ft. by 24.33 ft. with a distance of 3.17 ft. instead of 5 ft. to the main building, and 3) an encroachment of 6 ft. into the 6 ft. side yard setback along the south property line for an existing storage building measuring 12.75 ft. by 13.33 ft., at Lot 154, Colonia McAllen Unit No. 6 Subdivision, Hidalgo County, Texas; 2121 South 31st Street. (ZBA2020-0034) (TABLED: 08/05/2020) (REMAIN TABLED: 08/19/2020)

Mr. Garza stated San Juanita San Miguel, owner and applicant requestedd the following variances: 1) to allow an encroachment of 5.17 ft. into the 6 ft. side yard setback along the north property line for an existing covered patio measuring 10 ft. by 24.33 ft., 2) to allow a building separation of 3.17 ft. instead of the required 5 ft. from the accessory building to the main building, and 3) to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the south property line for an existing storage building measuring 12.75 ft. by 13.33 ft. The applicant indicated that she is requesting the above variances to allow the existing structures to remain. The applicant would like the structures to remain because the storage buildings are used to store household items, and the existing patio serves as gathering place for the family and it provides shade, which helps her with health conditions.

The property was located on the east side of South 31st Street. The property has 50 ft. of frontage along South 31st Street and a depth of 111 ft. for a tract size of 5,550 sq. ft. The property is zoned R-1 (single family residential) District. The surrounding zoning is R-1 in all directions.

Colonia McAllen Subdivision No. 6 was recorded on August 2, 1976. The plat specifies a front yard-building setback of 20 ft., 6 ft. side yard setbacks, and a 3 ft. rear yard setback. A stop work order was issued by Buildings and Inspection Department staff for building without a permit on June 11, 2020. An application for a building permit was submitted on June 15, 2020 and a variance application was submitted on June 22, 2020. Both applications were for an existing storage room and an existing covered patio. Following a site visit to the subject property by staff, the applicant submitted a revised site plan since the encroachments were observed to be different than shown on the original submitted site plan. According to Hidalgo County Appraisal District records, the structures were built in 2017. The basis for the request was a complaint.

Variance request #1 is to allow an encroachment of 5.17 ft. into the 6 ft. side yard setback for an existing covered patio measuring 10 ft. by 24.33 ft. along the north side of the property. The construction is of wood framed with block wall along the north property line. The covered patio serves to provide shade for the applicant and helps with her health conditions. Structures are not allowed to be built within setbacks.

Variance request #2 is to allow building separation of 3.17 ft. instead of the required 5 ft. from an accessory building to the main building. This variance request could be eliminated by attaching the covered patio to the house.

Variance request #3 is to allow an encroachment of 6 ft. into the 6 ft. side yard setback for an existing wooden storage building measuring 12.75 ft. by 13.33 ft. along the south

property line. The storage building is constructed on a concrete foundation and cannot be relocated for setback compliance due to insufficient space on the property. Storage buildings that are 200 sq. ft. or less in size do not require a building permit, but must respect the setbacks of the zoning district in which they are located. Structures are not allowed to be built within setbacks.

There were no utility easements inside the property.

Planning Department staff has not received any calls in opposition to the variance requests.

Staff recommended disapproval of the variance requests. If the Board chooses to grant the variances, they should be limited to the footprint of the site plan submitted.

At the Zoning Board of Adjustment and Appeals meeting of September 17, 2020, the applicant was present. No one appeared in opposition to the variance requests. The Board unanimously voted to table the variance requests in order to allow staff time to provide additional pictures of the encroachments to help the Board in making a determination. There were seven members present and voting.

Ms. San Juanita San Miguel, the applicant stated she received a letter from the City because the neighbor said the water from her patio falls into his yard. She stated she suffers from medical conditions that prevents her from being inside her house most of the day.

Vice-Chairperson Erick Diaz asked the applicant if she had spoken with staff for other options. She stated no.

Mr. Garza asked if the applicant wanted to move her area then she would have to be in front of her garage which was in the back in the alley it would be blocking her garage.

Mr. Avila asked how much was the encroachment where the kitchen area was located. Mr. Garza stated the encroachment was 5.17 feet into the 6-foot side yard setback. They were not encroaching in the rear only the side yard setback. It was tor the kitchen area.

Mr. Millin asked what were the circumstances of this being built.

Vice-Chairperson Diaz asked who built the patio. Ms. San Miguel stated her son built it about 3 or 4 years ago. Vice-Chairperson Diaz asked her if he had obtained a building permit. Ms. San Miguel stated they did not know they needed a permit to build the patio.

Mr. Millin asked legal counsel if this variance was denied was there a period of time did she have to remove the structure.

Mr. Stevenson stated he would take it the City Manager for approval.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the variance request. There was no one to speak in favor of the variance request.

Mr. Gutierrez asked how long have the structures been there. Mr. Garza stated according

to the Hidalgo Appraisal District the record showed being there since 2017.

Ms. San Miguel stated the date of when the two structures were built was written on the concrete slab in front of her house.

Ms. Hinojosa asked staff which was the encroachment that changed. Mr. Garza stated the 3.17 encroachment which was in question was distance of the main building to the structure which was 3.17 into the 5 foot.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the variance request. There was no one spoke in opposition of the variance request.

Mr. Garza stated according to the applicant she spoke with her neighbor and that he was not the person who made the complaint. But the complaint was about the water going into his tree.

Vice-Chairperson Diaz asked if work order was for construction in process. Mr. Garza stated there was a way to see if a structure was built without a permit would be through a complaint. The Building Department or Code Enforcement would pass by and notice a construction or if someone applies for a building permit and a structure has been built.

Mr. John Millin <u>moved</u> to disapprove the variance requests with a 6-month recommendation as per legal to remove the structures. Mr. Rogelio Rodriguez seconded the motion. The board voted unanimously to disapprove the variance requests with five members present and voting.

c) Request of Robert Zamora for the following special exception and variance to the City of McAllen Zoning Ordinance 1) to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the west property line for an existing carport with an encroachment area measuring 2.9 ft. by 25 ft., 2) to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the west property line for an existing wooden storage building measuring 12.4 ft. by 19 ft., and 3) to allow an encroachment of 20 ft. into the 20 ft. front yard setback for an existing carport with an encroachment area measuring 2.9 ft. by 20 ft. at Lot 3, Block 1, Colonia McAllen Unit No. 4, Hidalgo County, Texas; 2612 Uvalde Avenue. (ZBA2020-0041) (TABLED: 09/17/2020)

Mr. Hugo Avila **moved** to remove item from the table. Mr. John Millin seconded the motion. The board voted unanimously with five board members present and voting.

Ms. Garza stated the applicant was requesting a special exception for an existing carport area that was encroaching into the front and west side setbacks. The applicant is also requesting a variance request for an existing storage on the rear of the property encroaching into the west side setback of the property.

The property was located on the north side of Uvalde Avenue, approximately 130 ft. west of South 26th ½ Street, and was zoned R-1 (single-family residential) District. The tract had a frontage along Uvalde Avenue of 50 ft. with a depth of 106 feet. Adjacent zoning is zoned was R-1 (single family residential) District to the north, west, and east, and A-O

(agricultural open space) District to the south. Surrounding land uses are single family residential and the Uvalde Park.

The property was located in Colonia McAllen Unit. No. 4 Subdivision, which was recorded on June 30, 1975. The plat indicated a 20 ft. front yard setback, a 6 ft. side yard setback, and a 3 ft. rear yard setback. The site plan indicated that an existing carport area in the front and existing storage on the rear and east side has been built encroaching into the setbacks. The encroaching area of the carport is actually part of the existing carport of the neighbor to the west. The neighbor received a citation and stop work by Building Inspection staff on June 29, 2020 for the existing carport without a permit. The neighbor applied for a building permit on July 1, 2020 and after it was determined that there was an encroachment of the existing carport, the neighbor and applicant applied for a Special Exception and Variance request on July 14, 2020.

Special Exception request #1 is to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the west property line for an existing carport with an encroachment area measuring 2.9 ft. by 25 ft. The standard side yard setback for a lot in R-1 (single family residential) District is 6 ft. The applicant allowed the neighbor to the west to build the 2.9 ft. by 25 ft. area of the existing carport into their property encroaching onto the 6 ft. side setback. The neighbor has applied for a Special Exception for the carport.

Variance request #2 is to allow an encroachment of 6 ft. into the 6 ft. side setback along the west property line for an existing storage measuring 12.4 ft. by 19 ft. The standard side yard setback for a lot in R-1 (single family residential) District is 6 ft. The site plan indicates that the existing storage extends all the way to the west property line. As per the City's ordinance, no structures are allowed to be built on any setbacks.

Special Exception request #3 is to allow an encroachment of 20 ft. into the 20 ft. front yard setback for an existing carport with an encroachment area measuring 2.9 ft. by 20 ft. Front yard setbacks help keep the character of single family residential areas by maintaining the street yard and curb approval of properties in a subdivision.

Staff received one call in opposition of the special exception (carport) request.

At the Zoning Board of Adjustment & Appeals at their meeting of September 17, 2020, voted to disapprove special exception request #1 and #3. Variance request #2 was tabled and will be heard at the next Zoning Board of Adjustment & Appeal meeting of October 7, 2020.

Staff recommended disapproval of the variance request #2 because no accessory structures nor buildings are allowed to be built on any setbacks. If the Board chooses to grant the special exception and variances, it should be limited to the foot print as shown on the site plan.

Mr. Robert Zamora, the applicant, stated he built the storage about 17 or 18 years ago. He did not know he had to have a permit to build the storage being that it was not enclosed. Mr. Zamora built the wooden storage building to keep his garden supplies and other items.

Vice-Chairperson Diaz asked the applicant if that was the only location on the property

where the storage building fits. Mr. Zamora stated yes. Vice-Chairperson Diaz asked was there a reason for that location. Mr. Zamora stated it was off to the side away from the driveway. It would have been on the east side if he had built it but he decided to put it on the west side.

Mr. John Millin asked if there were any complaints. Ms. Garza stated not with this case. Staff found about encroachment when they went to do an inspection for the portion of the neighbor's carport that was encroaching into this property. There was no stop work order or complaints on this property.

Mr. Hugo Avila had concerns that if this was approved the applicant could enclose it and go up to the property line.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the variance request. There was no one to speak in favor of the variance request.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the variance request. There was no one spoke in opposition of the variance request.

Mr. John Millin <u>moved</u> to disapprove the variance request #2 with 6 months remove the storage building. Mr. Jose Gutierrez seconded the motion. The board voted unanimously to disapprove the variance request with five members present and voting.

d) Request of Adriana Salazar, on behalf of Servikon, LLC, INC for the following special exceptions to the City of McAllen Zoning Ordinance: 1) to allow an 8 ft. separation between buildings instead of the required 12 ft., 2) to allow a 7 ft. landscaping strip along South Bentsen Road instead of the required 10ft., and 3) to allow an encroachment of 4 ft. into the 10 ft. rear yard setback for proposed apartments at a 1.55-acre tract of land out of lot 178, John H. Shary Subdivision, Hidalgo County, Texas; 1820 South Bentsen Road. (ZBA2020-0058)

Ms. Garza stated this item was withdrawn by the applicant.

e) Request of David Rutledge for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 6 ft. into the 6 ft. side yard setback for an existing carport measuring 16 ft. by 36 ft. at Lot 4, North Garden Estates Subdivision, Hidalgo County, Texas; 301 Pelican Avenue. (ZBA2020-0054) (TABLED: 09/17/2020)

Ms. Sylvia Hinojosa <u>moved</u> to remove item from the table. Mr. John Millin seconded the motion. The board voted unanimously with five board members present and voting.

Mr. Camacho stated the special exception was to allow an existing carport measuring 16 ft. by 36 ft. that encroaches 6 ft. into the 6 ft. side yard setback along the west property line. The applicant stated that the carport was constructed in order to protect his vehicles, equipment and furniture from inclement weather.

The subject property was located on the south side of Pelican Avenue, approximately 363 ft. west of North 2nd Street. The property has 120 ft. of frontage along Pelican Avenue and

a depth of 130 ft. with a lot size of 15,600 square feet. Surrounding land use are single-family houses.

North Garden Estates was recorded on April 11, 1994. A building permit was submitted on May 31 2018; however, it never got approved by all corresponding departments. Additionally, two citations have been posted for construction without a permit and inspection. The application for the variance was submitted on August 19, 2020.

The request was to allow an encroachment of 6 ft. into the 6 ft. side yard setback for an existing carport measuring 16 ft. by 36 t. ft. According to site plan notes the carport seems to be slightly sloped towards the rear, having an initial height of 10 ft. at the beginning and decreasing as the structures approaches the rear of the property to finish at a height of 9 ft.

A site inspection revealed that the columns are 2.25 ft. away from the concrete fence and the overhang is at one feet away from property line.

The subdivision has an HOA, the applicant is aware of this and has mentioned that they have spoken openly about the request but no meeting has been held for the request.

There are existing structures around the neighborhood that seem to be encroaching into the side and rear setbacks, however no variances have been requested in the area.

If the request was approved, it may encourage other property owners to apply for a special exception to encroach into the setbacks. Approval of the request will allow the construction to stay as depicted on the site plan.

Staff had received a letter of concern in regards to the location and fire hazard of the special exception.

The board had discussion with the authorized agent. The board was discussing the proximity of the structure to the concrete fence and the possible fire hazard. The board decided to table the item to let the applicant come up with an alternate location.

The applicant stated that having an alternate location for the carport would not be possible since moving the carport to an alternate location would virtually impossible without destroying it, and this would place an undue hardship to the property owner.

Staff recommended disapproval of the special exception. If the Board chooses to approve the request, the approval should be limited to the footprint as shown on the site plan

Mr. David Rutledge, the applicant stated he would like to keep the carport in the position it was in. The pillars were on the side setbacks and the inside of the pillars were about 3 feet from the wall. The overhang of the carport was about a foot before block wall. Mr. Rutledge stated he build the carport because of previous damage from the hailstorm to his vehicle. He stated he owned rental properties in the Island and having to take large home appliances down there. He stated he made sure he used the best fire protection to keep his equipment and home safe. The pillars were made of wood and covered them with cement panels screwed onto the wood and covered with cement stucco all the way up to the top. The roof was asphalt shingles which were fire resistant. Mr. Rutledge he

had conversation with a concerned neighbor who had concerns of a fire hazard. He angled the carport at 10 feet to the north side and 9 feet high to the south side. He stated he did not know he needed a permit to build the carport.

Mr. Camacho stated the columns were 2.25 feet away from the fence with a 1-foot overhang.

Vice-Chairperson Diaz asked why was it considered a 6 foot in to the 6 foot. Mr. Camacho stated that was how it was in the application and it was after a site inspection that it was actually 2.25 feet with the overhang. It would be 3.75 feet it from the column to the fence.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the special exception. There was one person to speak in opposition of the special exception.

Mr. Carlos Quintana, 1548 Dove Avenue, legal representative for the neighbor the Kozaks. They live next door to Mr. Rutledge. He understood the construction began back in September of 2017 with a driveway. Then again in May of 2018. The neighbor had concerns with a potential fire hazard. Mr. Rutledge was cited in May 31, 2018 because he did not have construction permit or an inspection done. Then he was cited 18 months later for the same reasons. Mr. Quintana stated the neighbor's other concern was a potential wind damage that could lift the roof of the carport and strike the side of the house where they sleep. Mr. Robert Kozak was disabled and does not move around well. There was a gas line on the Kozak property that would potentially be stroked by the overhang in the event that it falls over and cause an explosion.

Mr. Rutledge stated the wooden construction underneath the shingles of the carport had 2 by 4 and 2 by 6 rafters with metal joints from one side to the other.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the special exception. There was no one to speak in favor of the special exception.

Mr. Ray Ortiz, legal representative for Mr. Rutledge, stated that no one was objecting to this except the one neighbor. As Mr. Rutledge stated the structure was not going anywhere the way it was built. As far as a fire hazard that can happen to anyone of the neighbors.

Vice-Chairperson Diaz stated the reasons for the setbacks and distances were in place was the give the Fire Department enough time to address an emergency should there be an emergency. And not carry over to the neighbor's property unless it's built completely fire rated one or two hour in the code. There were rules and ordinances that dictate how that can be built.

Mr. John Millin asked Mr. Rutledge was the structure built at the time of Hurricane Hanna. Mr. Rutledge stated yes and it nothing happened to the carport.

Mr. Millin asked staff if we made a practice of approving a special exception request when you have an encroachment into a setback. Mr. Camacho stated yes, especially for the front.

Mr. Millin mentioned it was a very attractive structure, one cannot see it from the street and that it was made with sufficient excellent materials. There was a masonry wall with enough distance from the neighbor's property.

Vice-Chairperson Diaz asked staff how far was the distance was the wall from the neighbor's property. Mr. Camacho stated 6 feet.

Mr. John Millin <u>moved</u> to approve the special exception with the as built condition. Ms. Sylvia Hinojosa seconded the motion. The board voted to approve the special exception with three members voting aye and 2 members voting nay. Mr. Rogelio Rodriguez and Mr. Jose Gutierrez voted nay. Vice-Chairperson Diaz voted in favor of the special exception.

f) Request of Jose L. Salinas for the following variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 10 ft. into the 10 ft. side yard setback for an existing pergola measuring 10 ft. by 20 ft. at Lot 10, Block 1, The Courtlands Subdivision, Hidalgo County, Texas; 409 Dove Avenue. (ZBA2020-0049) (TABLED: 09/17/2020)

Mr. John Millin <u>moved</u> to remove item from the table. Ms. Sylvia Hinojosa seconded the motion. The board voted unanimously with five board members present and voting.

Mr. Camacho stated the variance was to allow an existing pergola measuring 10 ft. by 20 ft. that encroaches 10 ft. into the 10 ft. side yard setback along the east property line. The applicant stated that it was constructed in order to provide shade for their kids to play outside and enjoy family time in the afternoons. In addition, the pergola has provided the family an area for gardening.

The subject property was located on the south side of Dove Avenue, approximately 870 ft. west of North 2nd Street. The property has 48.5 ft. of frontage along Dove Avenue and a depth of 76.66 ft. with a lot size of 3718.01 square feet. Surrounding land use are single-family houses.

The Courtlands was recorded on October 10, 1983. A building permit was submitted on July 28 2020 for remodeling of the top edges of the existing pergola; however, a building permit was not submitted for the construction of the pergola itself. Additionally, a ticket was issued on August 18 for construction without a permit and inspection. The application for the variance was submitted on August 11, 2020.

The request was to allow an encroachment of 10 ft. into the 10 ft. side yard setback for an existing pergola measuring 10 ft. by 20 t. ft. According to site plan, the pergola was right at the property line with an overhang. The submitted building permit will fix the overhang of the pergola by cutting the top edges of the pergola. The applicant submitted an alternate solution, push the pergola back 2 ft. 4 inches to the west to be 2 ft. 4 inches away from Property line, for a total of 5 ft. separation from proposed pergola to the neighbor's wall. The new dimension of the pergola would be 7.67 ft. by 20 ft.

There are other existing structures (pergolas / storages) in the neighborhood that seem to be encroaching into side setbacks. Some of them show encroachment into neighbor's properties; however, no variances have been requested. Additional side structures seem to

be common in the area.

If the request is approved, it may encourage other property owners to apply for a variance to encroach into the setbacks. Approval of the request will allow the construction to stay as depicted on the site plan and be modified as stated on the building permit.

Staff had received one phone call of concern in regards to the variance request due to the encroachment of the side.

There was discussion on the location of the pergola and possible fire hazard. After some discussion, the Board decided to let the applicant go back and proposed an alternate site plan for the existing pergola. The board tabled the item.

Staff recommended disapproval of the variance request. If the Board chooses to approve the request, the approval should be limited to the footprint as shown on the revised site plan.

Mr. Jose Salinas, the applicant stated they were offered to compromise that they were to be 5 feet away from the neighbor's home. They were able to do that in order to get the pergola approved.

Vice-Chairperson Diaz asked Mr. Salinas as to the reason why he was building on this particular side. He responded it was the only place to put it because his wife had a garden.

Mr. Millin asked staff if this was a 10-foot side yard setback. Mr. Camacho stated yes. It was the regular size for the plat.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the variance request. There was no one to speak in favor of the variance request.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the variance request. There was no one spoke in opposition of the variance request.

Mr. Millin asked under the current proposal how close would this structure be from the neighbor's home. Mr. Camacho stated it would be 5 feet away. With the overhang if it has it with the structure it would be 5 feet and with the 1 ½ feet it would be 4 feet.

Ms. Sylvia Hinojosa <u>moved</u> to approve the variance request limited to the footprint as shown on the revised site plan. Mr. Jose Gutierrez seconded the motion. The board voted approve the variance request with three members voting aye and two nays, Mr. John Millan and Mr. Hugo Avila.

g) Request of Juan Lopez 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 an existing carport measuring 17 ft. by 23 ft. at Lot 44, Oak Terrace Subdivision, Hidalgo County, Texas; 1916 North 35th Street. (ZBA2020-0056)

Mr. Camacho stated the applicant was requesting a variance to encroach 20 ft. into the 20 ft. front yard setback for an existing carport measuring 17 ft. by 23 ft. The applicant is

requesting that the carport to remain there to protect his cars from hailstorms and inclement weather.

The subject property was located on the east side of North 35th Street, approximately 1,020 ft. North of Quince Avenue. The property has 50 ft. of frontage along North 35th Street and a depth of 110 ft. with a lot size of 5,500 square feet. Surrounding land use are single-family houses, Maranatha Baptist Church, Islamic Society of South Texas, Iglesia Aposento Alto and vacant land.

Oak Terrace was recorded on November 15, 1990. On August 20th, 2020 a Citation was given for a carport without a permit. On August 21, 2020 a building application was submitted for a carport. The application for the special exception was submitted on August 27th, 2020.

The request was to allow and encroachment of 20 ft. into the 20 ft. front yard setback for a carport measuring 17 ft. by 23 ft. The standard front yard setback for R-1 Lots is 20 ft.

However, the subdivision showed a 5 ft. Utility Easement at the front of the property. After talking to the applicant about the encroachment in the easement, he is willing to shorten the existing carport 5 ft. to clear the Utility Easement.

A site visit revealed that the beginning of the structure was 6 ft. away from back of the curb, structure seems to be encroaching into the ROW around 4 ft. Site plan showed a 60 ft. ROW for the street. North 35th Street has a dimension of around 40 ft. Dimensions are without the benefit of a survey.

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.

There are other existing carports and structures that appear to be encroaching into the front and side yard setback, however only one special exception (1924 N. 34th St) has been requested around the area. Special Exception was requested in 2014, the request got table for the special exception to allow the Board discuss the issue of medical conditions as special exceptions. A variance to allow a 5 ft. side yard setback instead of 6 ft. was approved at the same address.

Should the request be approved, it may encourage other property owners to request a special exception to encroach into the front setback. Approval of the request will allow the construction to be modified to clear the 5 ft. front Utility Easement.

Staff received a concern in regards to the special exception.

Staff recommended disapproval of the special exception request. If the Board chooses to approve the request, the approval should be limited to the footprint after it has been removed from the 5 ft. Utility Easement.

Mr. Alejandro Molina, representative for the applicant, stated he was wanted to make a carport the way it was now. He knew it was encroaching into the utility easement. If need to do any repairs, then they would be willing to take down the carport. And it not, they

were willing to go back the 9 feet. He stated his in-laws did not know about obtaining a permit and contractors did not inform them about a permit.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the variance request. There was no one to speak in favor of the variance request.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the variance request. There was one person to speak in opposition of the variance request.

Ms. Leticia Guerrero, 1920 N. 35TH Street, stated when they started the construction they went past the limit to the sidewalk then over to her property line. She stated she spoke with the contractors that they could not go to her property line. He then moved the poles inward to the side. She had mentioned to the contractor he could not go to the sidewalk. Mr. Guerrero stated the contractor did not know about obtaining a permit. Also, she stated the carport the roof was too high and was done vertical. The rain goes into her yard.

Mr. Molina stated he could put a gutter to prevent from water going into her yard.

Ms. Hinojosa asked staff the site plan showed 6 feet from the property line. Mr. Camacho stated yes. Ms. Hinojosa asked the carport did not go beyond the 6 feet and they have that work with. Mr. Camacho stated it shouldn't. The side yard setback was 6 feet and the property should be in those 6 feet.

Mr. Camacho could get a survey to clarify where the property line starts.

Mr. John Millin <u>moved</u> to table the variance request to allow staff to submit a survey to clarify property line. Ms. Rebecca Millan seconded the motion. The board voted unanimously to table the variance request with five members present and voting.

h) Request of Benilde 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 residential home, at Lot 2, Antigua Subdivision, Hidalgo County, Texas; 3008 Zenaida Avenue. (ZBA2020-0055)

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

The subject property was located along the south side of Zenaida Avenue. The tract has 90.11 ft. of frontage along Zenaida Avenue and a depth of 110.98 ft. with a tract size of approximately 10,000 sq. ft. The property was zoned R-1 (single family residential) District and is currently vacant. Surrounding land uses are single-family residences, FFA Farm, and vacant land.

Antigua Subdivision was recorded on July 06, 2006. The applicant was 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 August 24, 2020.

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 is a 10 ft. utility easement adjacent to rear yard setback that will not be impacted by the construction. The 10 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 was 10 ft.

The Zoning Ordinance requires the rear yard setback to be the same as the front yard setback for lots with double frontage. The purpose of the additional setback of the rear yard was 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. However, of 19 lots in the subdivision, only Lots 1, 2, 3, and 19 are double fronting lots.

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

Staff recommended approval of the variance request.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the variance request. There was no one to speak in favor of the variance request.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the variance request. There was no one spoke in opposition of the variance request.

Ms. Sylvia Hinojosa <u>moved</u> to approve the variance request to allow staff to submit pictures of subject property. Mr. John Millin seconded the motion. The board voted unanimously to approve the variance request with five members present and voting.

i) Request of Humberto F. Nunez for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 4.17 ft. into the 10 ft. rear yard setback for a proposed swimming pool, at Lot 26, Heritage Manor No. 2 Subdivision, Hidalgo County, Texas; 4508 North 5th Lane. (ZBA2020-0057)

Mr. Garza stated Humberto F. Nunez was requesting the following variance to allow an encroachment of 4.17 ft. into the 10 ft. rear yard setback for a proposed swimming pool.

The property was located on the east side of 5th Lane. The lot has 72 ft. of frontage along 5th Lane and a depth of 110 sq. ft. with a total area of 7,920 sq. ft. The property was zoned R-1 (single family residential) District. The surrounding land uses include single-family residential uses.

Heritage Manor No. 2 Subdivision was recorded on April 06, 1982. A note on the plat indicates that the rear yard setback requirement for the lot is 10 ft. An application for a swimming pool permit has not been submitted. A variance request application for the proposed swimming pool was submitted on September 01, 2020.

The variance request was for a proposed swimming pool to encroach 4.17 ft. into the 10 ft. rear yard setback, the pool is an accessory structure and not a primary building. The site plan submitted shows the proposed distance from the rear property line to the outside

wall of the swimming pool at 5.83 ft. There is a 5 ft. utility easement along the north side yard setback. The pool will not encroach into the utility easement. In the past, the Board has approved variances for accessory buildings.

A review of the site plan showed that the existing house occupies most of the buildable area not allowing much space for the proposed swimming pool to be established.

Staff had not received any phone calls from the surrounding property owners in opposition to this variance request.

The survey showed minor encroachments into the rear yard setback for an existing carport and existing vinyl storage building and in the side yard setbacks for an existing metal canopy, which the applicant decided not to include as part of this request.

Staff recommended disapproval of the variance request. If the Board chooses to grant the variance, it should be limited to the footprint of the site plan submitted.

Ms. Sylvia Hinojosa asked staff for the reason for the opposition. Mr. Garza stated they didn't feel that the City should approve a variance for 10 feet. They felt it would change the characteristic of their subdivision.

Ms. Hinojosa asked if there was a Homeowners Association. Mr. Garza stated there was no Homeowners Association presented to staff with restrictions to applying for a variance.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in favor of the variance request. There was no one to speak in favor of the variance request.

Vice-Chairperson Erick Diaz inquired if there was anyone present to speak in opposition of the variance request. There was no one spoke in opposition of the variance request.

Michael Schrock, 4509 N. 5th Street. He stated he backs up to the owner's property. He stated they built a carport that went from the garage to the end of the alley. He had concerns that they would build something bigger than a pool in this restricted area.

Vice-Chairperson Diaz asked staff if they knew anything about the carport. Mr. Garza stated the survey showed minor encroachments into the rear yard setback for an existing carport and an existing vinyl storage building. Also, in the side yard setback for an existing metal canopy which the applicant decided not to include as part of this request but will be applying for a variance in the future.

Ms. Hinojosa had concerns asking staff that this particular variance would not be affected one way or another by all the other issues that were still pending. Mr. Garza stated the swimming pool permit and the building permit would be different. They would still have to go through the Building Department to inspect the area as well.

Ms. Sylvia Hinojosa **moved** to table the variance request until the next meeting. Mr. John Millin seconded the motion. The board voted unanimously to approve the variance requests with five members present and voting.

j) Request of Gerardo Lopez for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 14.5 ft. into the 20 ft. front yard setback for an existing metal carport measuring approximately 20 ft. by 30 ft., at Lot 50, Apollo Gardens Subdivision, Hidalgo County, Texas; 2113 Hibiscus Avenue. (ZBA2020-0051) (TABLED: 09/17/2020)

Mr. John Millin <u>moved</u> to remove item from the table. Mr. Jose Gutierrez seconded the motion. The board voted unanimously with five board members present and voting.

Ms. Alvarado stated the applicant was requesting a variance to encroach 20 ft. into the 20 ft. front yard setback for an existing carport measuring 20 ft. by 30 ft. The applicant is requesting that the carport to remain there to protect his cars from hailstorms and inclement weather.

The subject property was located on the south side of Hibiscus Avenue, approximately 1,000 ft. west of Bicentennial Boulevard. The property has 70 ft. of frontage along Hibiscus Avenue and a depth of 100 ft. with a lot size of 7,000 square feet. Surrounding land use are single-family houses.

Apollo Gardens was recorded on June 14, 1976. On July 31st, 2020 a Citation was given for a construction without a permit. On August 3, 2020 an application for a building permit was submitted for a carport. The application for the variance was submitted on August 18th, 2020.

The request was to allow and encroachment of 20 ft. into the 20 ft. front yard setback for a carport measuring 20 ft. by 30 ft. A site visit revealed that the structure is encroaching on the 20 ft. front yard setback.

The front yard setbacks were 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.

There were no other existing carports and structures that appear to be encroaching into the front and side yard setback around the area.

Should the request be approved, it may encourage other property owners to request a special exception to encroach into the front setback. Approval of the request will allow the construction to remain.

Staff had not received any phone calls in opposition to the special exception.

Staff recommended disapproval of the special exception request. If the Board chooses to approve the request, the approval should be limited to the footprint as shown on the site plan.

At the Zoning Board of Adjustment meeting of September 17, 2020 no one appeared in opposition to the variance request. The Board voted unanimously to table the request in order to allow the applicant time to clarify the measurements on the submitted site plan. Vice-Chairperson Erick Diaz mentioned measurements of 20 ft. by 20 ft. but in the caption

on the agenda it stated 14.5 ft. into the 20 ft. Ms. Alvarado stated they went back out to measure and it was 20 ft. into the 20 ft. setback. She stated it was advertised as 20 ft. into the 20 ft. setback.

Legal counsel recommended to table the item until the next meeting to update the caption on the agenda.

Ms. Sylvia Hinojosa <u>moved</u> to table the special exception until he next meeting to update the caption on the agenda. Mr. John Millin seconded the motion. The board voted unanimously to approve the special exception with five members present and voting.

k) Request of Raul De La Garza, on behalf of Jorge Gutierrez, for the following variances to the City of McAllen Zoning Ordinance: 1) to allow an encroachment of up to 6 feet into the west side yard setback for an existing irregularly shaped wooden deck measuring 41 ft. by 55 ft., 2) to allow an encroachment of up to 3 feet into the west side yard setback for an existing circular above ground swimming pool measuring 11 ft. by 20 ft., 3) to allow an encroachment of up to 10 ft. on the rear setback for an existing irregularly shaped wooden deck measuring 41 ft. by 55 ft., 4) to allow an encroachment of up to 10 ft. on the rear setback for an existing above ground swimming pool measuring 11 ft. by 20 ft., 5) to allow an encroachment of up to 10 feet the rear side setback for an existing storage room measuring 6 ft. by 5 ft. at Lot 67, Falling Water Subdivision, Hidalgo County, Texas; 4204 Worthington Avenue. (ZBA2020-0059)

Ms. Alvarado stated this item was to be tabled until the next meeting per staff.

Ms. Sylvia Hinojosa <u>moved</u> to table the variance requests until the next meeting per staff. Mr. John Millin seconded the motion. The board voted unanimously to table the variance requests with five members present and voting.

I) Request of Hector Bosquez for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 3 ft. into the 6 ft. side yard setback for an proposed addition to an existing porch measuring 22 ft. by 22 ft. at Lot 25, Del Sol Subdivision Phase I, Hidalgo County, Texas; 2805 Quamasia Avenue. (ZBA2020-0060)

Ms. Alvarado stated this item was to be tabled until the next meeting per staff.

Ms. Sylvia Hinojosa <u>moved</u> to table the variance request until the next meeting per staff. Mr. John Millin seconded the motion. The board voted unanimously to table the variance requests with five members present and voting.

FUTURE AGENDA ITEMS:

- a) 3008 Zenaida Avenue
- **b)** 1916 North 35th Street
- c) 4508 North 5th Lane

- d) 1820 South Bentsen Road
- e) 2805 Quamasia Avenue
- f) 4204 Worthington Avenue

ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Ms. Sylvia Hinojosa <u>moved</u> to adjourn the meeting. Mr. John Millin seconded the motion, which carried unanimously with five members present and voting.

	Vice-Chairperson Erick Diaz
Carmen White, Secretary	

1b) Minutes for October 21, 2020 will included in the November 18th meeting.

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: October 29, 2020

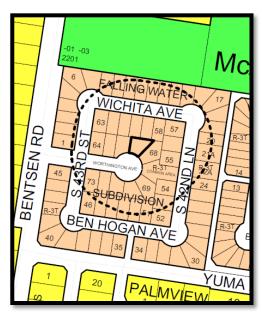
SUBJECT: REQUEST OF RAUL DE LA GARZA, ON BEHALF OF JORGE GUTIERREZ, FOR THE FOLLOWING

VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE 1) TO ALLOW AN ENCROACHMENT OF UP TO 6 FT. INTO THE 6 FT. EAST SIDE YARD SETBACK FOR AN EXISTING IRREGULARLY SHAPED WOODEN DECK MEASURING APPROXIMATELY 41 FT. BY 55 FT., 2) TO ALLOW AN ENCROACHMENT OF UP TO 3 FEET INTO THE 6 FT. EAST SIDE YARD SETBACK FOR AN EXISTING CIRCULAR ABOVE GROUND SWIMMING POOL MEASURING APPROXIMATELY 11 FT. BY 20 FT., 3) TO ALLOW AN ENCROACHMENT OF UP TO 10 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING IRREGULARLY SHAPED WOODEN DECK MEASURING APPROXIMATELY 41 FT. BY 55 FT., 4) TO ALLOW AN ENCROACHMENT OF UP TO 8 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING ABOVE GROUND SWIMMING POOL MEASURING APPROXIMATELY 11 FT. BY 20 FT., 5) TO ALLOW AN ENCROACHMENT OF 10 FT. INTO 10 FT. REAR YARD SETBACK FOR AN EXISTING STORAGE ROOM MEASURING 6 FT. BY 5 FT. AT LOT 67, FALLING WATER

SUBDIVISION, HIDALGO COUNTY, TEXAS; 4204 WORTHINGTON AVENUE. (ZBA2020-0059)

REASON FOR APPEAL:

The applicant is requesting variances to allow an irregularly shaped wooden deck, an above ground pool encroaching on the rear yard and side yard setback. In addition, the application is requesting a variance to allow a storage shed encroaching around the rear yard setback.





PROPERTY LOCATION AND VICINITY:

The property is located on a cul-de-sac on Worthington Avenue and has a total area of 3,424 sq. ft. The property is zoned R-3T (multifamily residential townhouse) District. The surrounding land uses include townhomes.

BACKGROUND AND HISTORY:

Falling Water Subdivision was recorded on September 19, 2007. A note on the plat indicates that the rear yard setback requirement for the lot is 10 ft. The Zoning Ordinance states that the setbacks on the side yard is 6 ft. on each side or up to the property line with a fire wall. The plat for the subdivision shows there is a 10 ft. utility easement that runs concurrently with the rear yard setback. On July 31, 2020 the applicant was issued a citation for construction without a permit. A variance request application for the above ground swimming pool and the irregularly shaped wooden deck was submitted on September 2, 2020.

ANALYSIS:

Variance #1: To allow an encroachment of up to 6 ft. into the 6 ft. east side yard setback for an irregularly shaped wooden deck measuring 41 ft. by 55 feet. In order to obtain compliance, the deck could be reduced in its construction.

Variance #2: To allow an encroachment of up to 3 feet into the east side yard setback for an existing circular above ground swimming pool measuring 11 ft. by 20 ft., The pool is an accessory structure and not a primary building. The site plan submitted shows the proposed distance from the east property line to the outside wall of the above ground swimming pool at approximately 3 ft. The 3 ft. encroachment comprises a 6 ft. east side setback. The above ground swimming pool can be relocated to achieve compliance.

Variance #3: To allow an encroachment of up to 10 ft. on the rear yard setback for an existing irregularly shaped wooden deck measuring 41 ft. by 55 ft., The site plan submitted shows the proposed distance from the rear property line to the outside wall of the irregularly shaped wooden deck to be approximately at the property line. This deck also encroaches into the 10 ft. rear utility easement. Structures are not allowed within the setbacks.

Variance #4: To allow an encroachment of up to 8 ft. into the 10 ft. rear yard setback for an existing above ground swimming pool measuring 11 ft. by 20 ft. The above ground swimming pool can be relocated to achieve compliance.

Variance #5: To an encroachment of up to 10 feet at the rear yard setback for an existing metal storage shed measuring 6 ft. by 5 ft. The site plan submitted shows the proposed distance from the rear property line to the outside wall of an existing metal storage shed at the property line. The storage shed also encroaches on the 10 ft. utility easement. The site plan does not show that there is an area for relocation in order to be in compliance.

A review of the site plan indicated that the existing house occupies most of the buildable area not allowing much space for the above ground swimming pool, the irregularly shaped wooden deck, and storage shed to remain without encroaching into the setbacks on the rear yard utility easement. The building department may require the construction for the irregularly shaped wooden deck to be of fire rated materials.

RECOMMENDATION:

Staff recommends disapproval of the variance requests. If the Board chooses to grant the variances, it should be limited to the footprint of the site plan submitted. The applicant will have to go through the abandonment process.

ZBA 2020-0059

City of McAllen

Planning Department APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

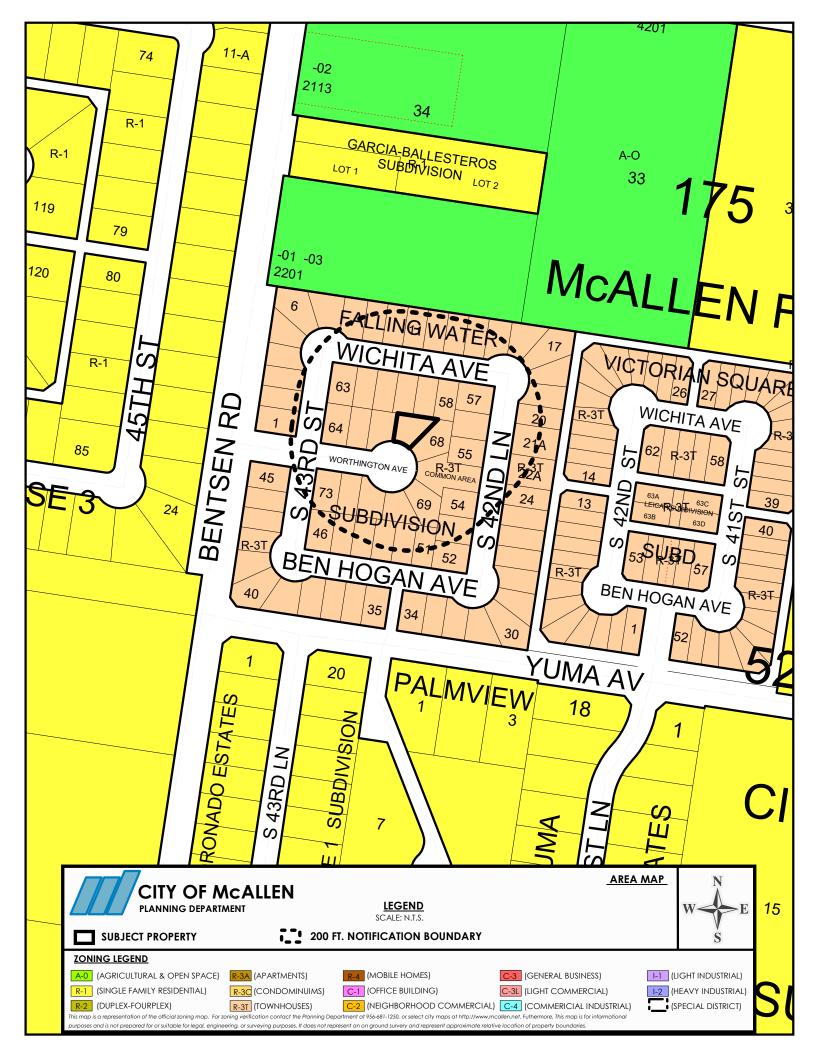
311 North 15th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)

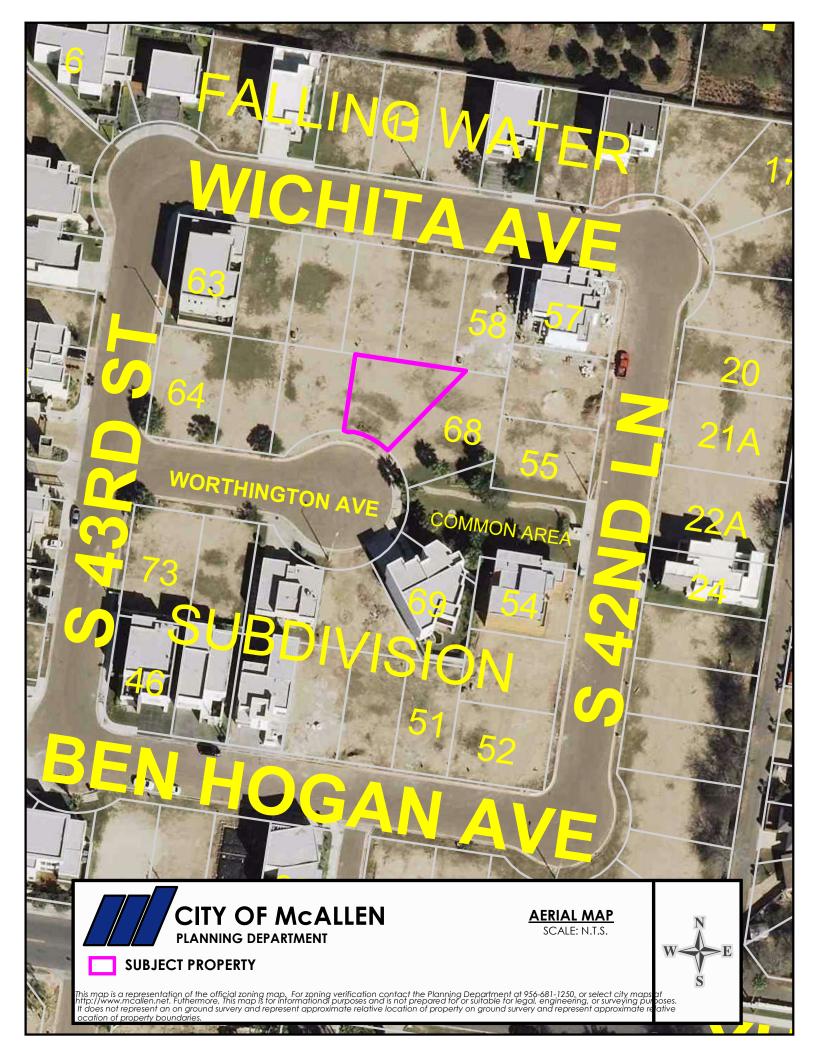
Project	Legal Description Falling water Lot 67
	Subdivision Name Falling Water at Bentsen Later Street Address Value of lots Gross acres O8
	Existing Zoning R3T Existing Land Use Residental
	Reason for Appeal (please use other side if necessary) We are reguesting a
	variance for the above-grand pool, wooden dak, + metal sted in the beakyard
	\square \$300.00 non-refundable filing fee + \square \$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 ☐ Other: \$ 300.00 fee world
Applicant	Name Baul De La Garza Phone 956-455-8388
	Address ZZO1 V. 11age Dr. E-mail rde lagarta @ rof 11p. com
Apı	City Mission State Texas Zip 78577
er	Name Jorge Gutierrez Phone 956-479-9077
Owner	Address 4204 Worthington Ave, E-mailagtzjorge & gmailo con
O	City McAllen State Texas 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.
Αſ	Signature Date 9/2/20
	Print Name Rau De La Gares Owner Mauthorized Agents
Office	Accepted by Payment received by Date SEP 0 2 2020
0	Rev 10/18
	Blto 9/2/20

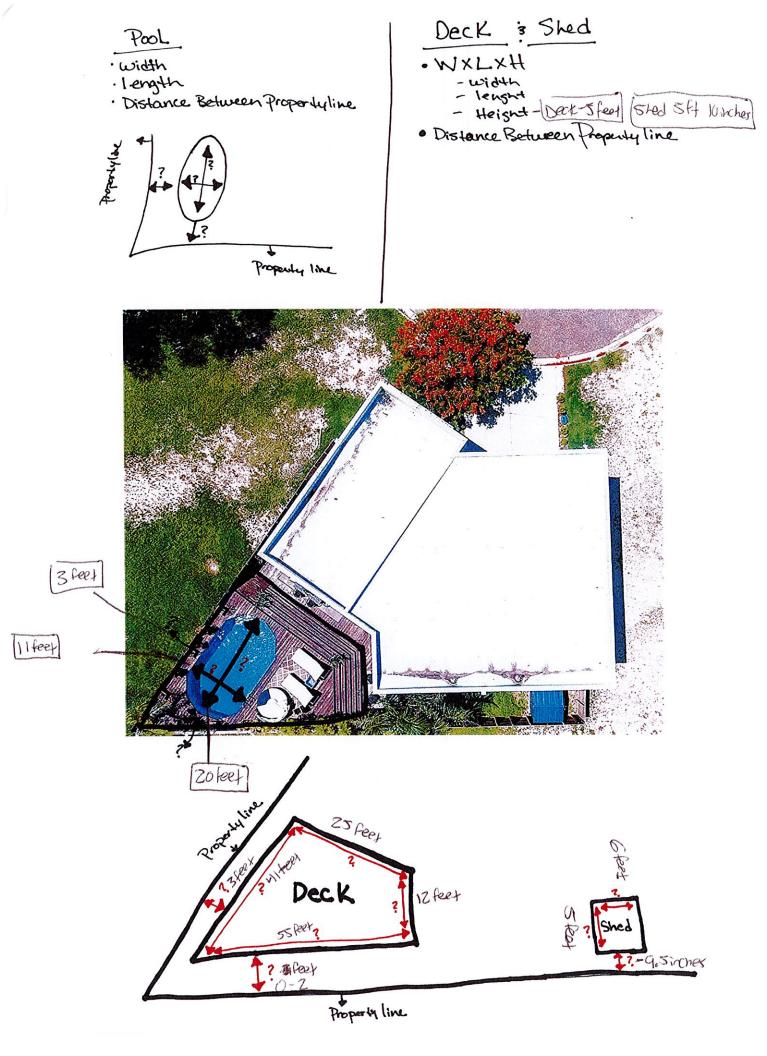
City of McAllen

Planning Department REASON FOR APPEAL & BOARD ACTION

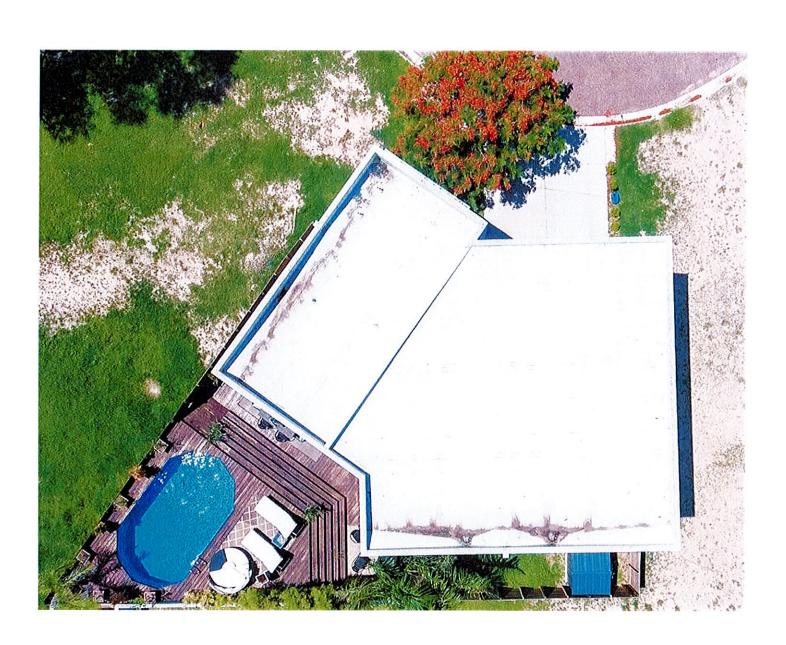
for Appeal	The above grand pool it excreaching on the Northside Utility evirement and east side setback. The wooden dock it excreaching on the Northside Utility exement and eastside setback. The make the of a encreaching on the Northside Utility easement.
Reason fo	Attachments: (DE-mail to Edgar Gazza explaining bactground (6) HOA Appeared of Sale (3) Current owner Tappear 1 for assistance with using (3) Fibral Survey do led 8/25/17
	(Doverian of down grand pool, woodendark, +sled
Board Action	
	Chairman, Board of Adjustment Date Signature Rev.10/18



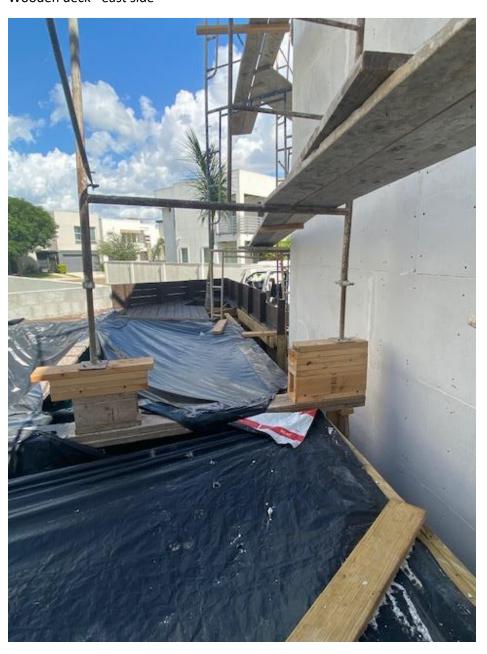




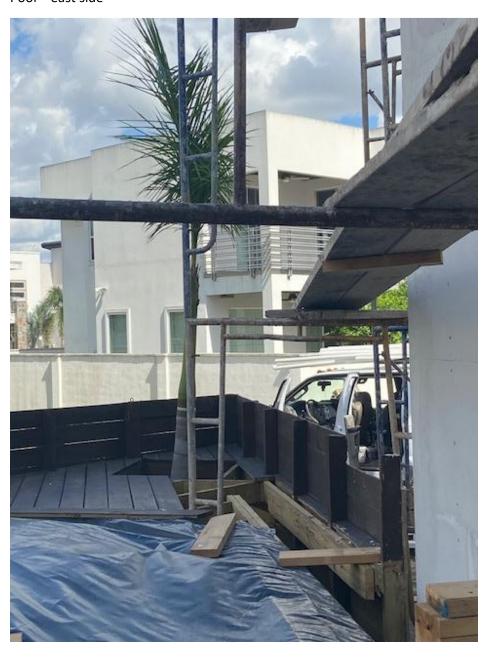




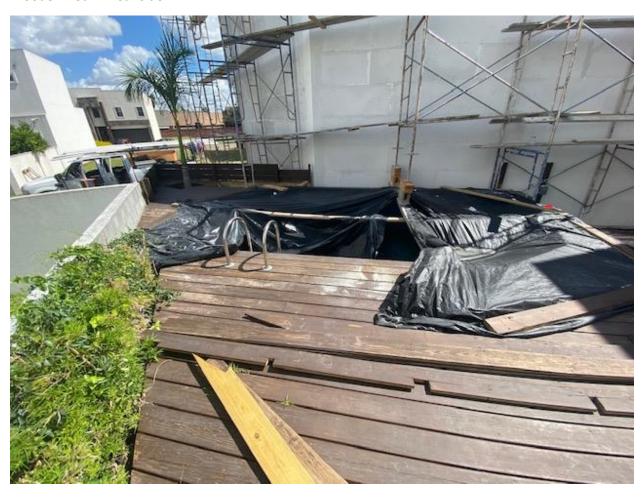
Wooden deck- east side



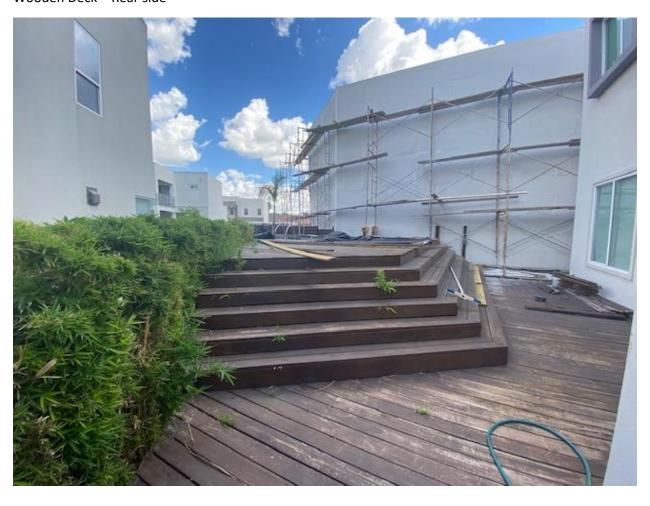
Pool – east side



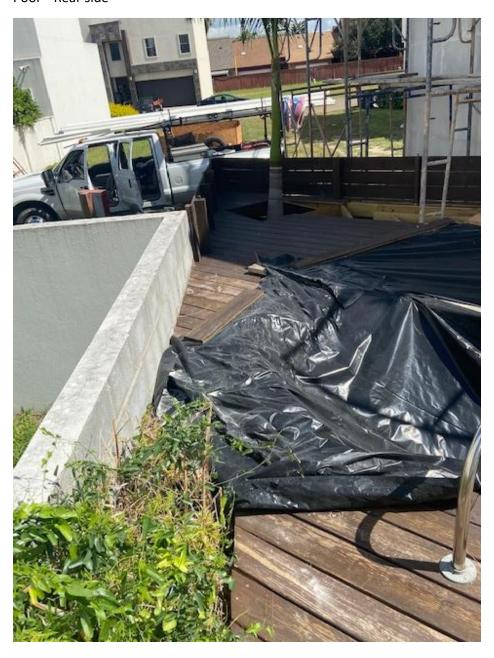
Wooden Deck – Rear side



Wooden Deck – Rear side



Pool – Rear side

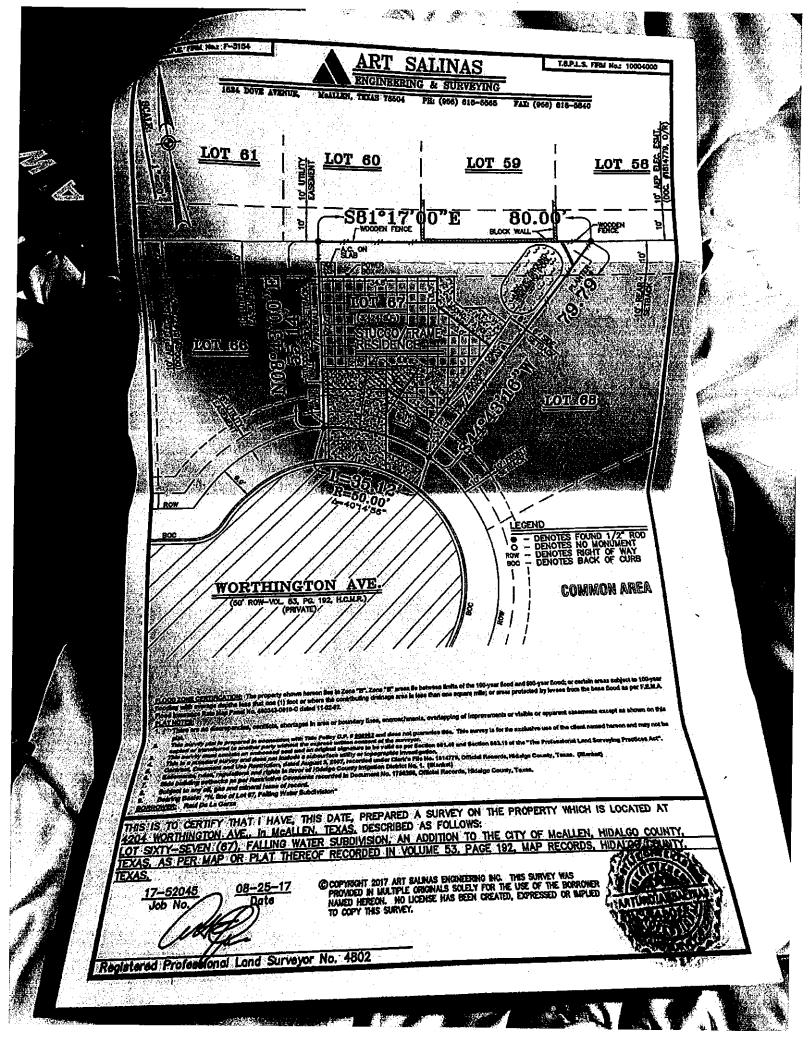


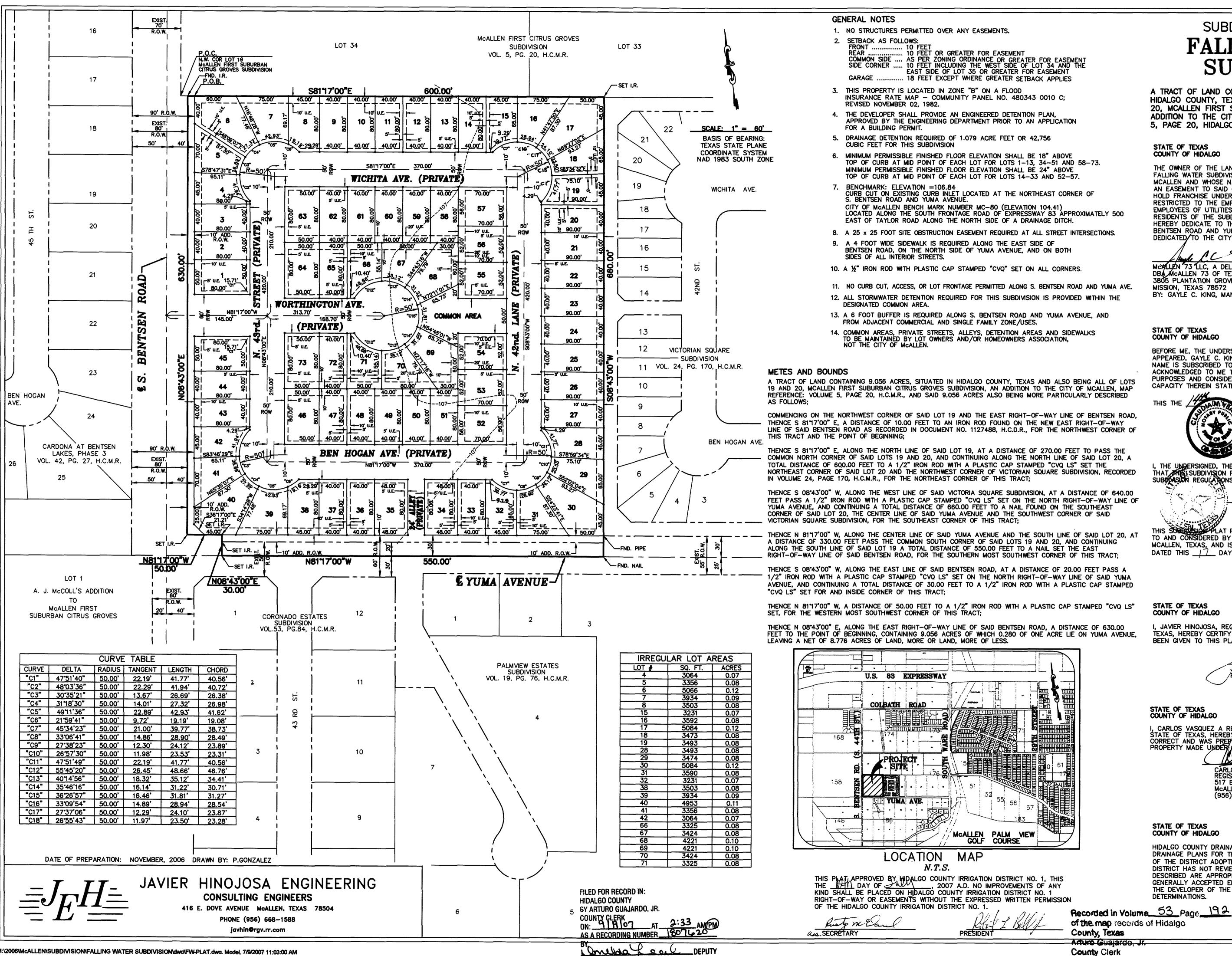
Shed – Rear side



Shed – Rear side







SUBDIVISION PLAT OF

FALLING WATER **SUBDIVISION**

A TRACT OF LAND CONTAINING 9.056 ACRES, SITUATED IN HIDALGO COUNTY, TEXAS AND ALSO BEING ALL OF LOTS 19 AND 20, MCALLEN FIRST SUBURBAN CITRUS GROVES SUBDIVISION, AN ADDITION TO THE CITY OF MCALLEN, MAP REFERENCE: VOLUME 5, PAGE 20, HIDALGO COUNTY MAP RECORDS.

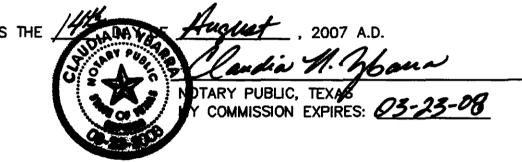
STATE OF TEXAS COUNTY OF HIDALGO

THE OWNER OF THE LAND ON THIS PLAT AND DESIGNATED HEREIN AS FALLING WATER SUBDIVISION, AN ADDITION TO THE CITY OF MCALLEN AND WHOSE NAME IS SUBSCRIBED HERETO, DO HEREBY GRANT AN EASEMENT TO SAID CITY, AND THOSE WHO MAY NOW OR HEREAFTER HOLD FRANCHISE UNDER SAID CITY, THE USE OF THE STREETS IS RESTRICTED TO THE EMPLOYEES AND AGENTS OF THE CITY OF MCALLEN, EMPLOYEES OF UTILITIES UNDER FRANCHISE TO SAID CITY, AND RESIDENTS OF THE SUBDIVISION AND THEIR GUESTS. THE OWNER DOES HEREBY DEDICATE TO THE USE OF THE PUBLIC THE PORTIONS OF BENTSEN ROAD AND YUMA AVENUE FOR USE AS STREET RIGHT-OF-WAY DEDICATED/TO THE CITY OF MCALLEN.

73 LLC, A DELAWARE LIMITED LIABILITY COMPANY. DBA MICALLEN 73 OF TEXAS, LLC 3805 PLANTATION GROVE BLVD., SUITE 27 MISSION, TEXAS 78572 BY: GAYLE C. KING, MANAGER

STATE OF TEXAS COUNTY OF HIDALGO

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



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

9/14/07 telmel CNOW MAYOR, CITY OF MCALLEN THIS SUBJECT PLAT FALLING WATER SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF MCALLEN, TEXAS, AND IS HEREBY APPROVED BY SUCH COMMISSION DATED THIS _______, 2007, A.D.

STATE OF TEXAS COUNTY OF HIDALGO

I, JAMER HINOJOSA, REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS. HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS

BEEN GIVEN TO THIS PLAT. AVIER HINOJÓSA, P.E. REGISTERED PROFESSIONAL ENGINEER NO.

CHAIRMAN, PLANNING & ZONING COMMISSION

STATE OF TEXAS COUNTY OF HIDALGO

I, CARLOS VASQUEZ A REGISTERED PUBLIC LAND SURVEYOR IN STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE CORRECT AND WAS PREPARED FROM ANY ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND CARLOS VASQUEZ REGISTERED PROFESSIONAL LAND SURVEYOR 517 BEAUMONT AVENUE McALLEN, TEXAS 78501 (956) 618-1551 DATE SURVEYED: 11-27-06

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

of the map records of Hidalgo County, Texas

Raul De La Garza

From: Raul De La Garza

Sent: Wednesday, August 05, 2020 1:54 PM

To: mcallenmunicipalcourt@mcallen.net; astevenson@mcallen.net; edgar.garcia@mcallen.net;

erendon@mcallen.net

Cc: peyton.kampas@gmail.com

Subject: Above-Ground Pool and Wooden Deck Variance for 4204 Worthington Ave., McAllen, Texas

Attachments: Final Survey.pdf; Authority to Assist.pdf; Overview of pool and deck (1).pdf; Overview of pool and

deck (2).pdf

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- 1. We are hereby requesting a variance for the above-ground pool and wooden deck for the property located at 4204 Worthington Ave. McAllen, Texas 78503.
- 2. According to the ticket issued by Ms. Norma (Ticket Number 26355), I was ordered to appear before the City of McAllen Municipal Court on or before August 10, 2020 to discuss this matter. We are kindly requesting a continuance of the hearing we have with the City of McAllen Municipal Court.

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- 3. Two (2) overview photographs of the above-ground pool and wooden deck.

I advised Ms. Norma that both my wife and I are attorneys in Hidalgo County and we have professional licenses to uphold. It was never our intent to disregard any city ordinances. We look forward to working with you all and hope to reach a prompt and fair resolution of this matter.

Best,

Raul De La Garza ROERIG, OLIVEIRA & FISHER, L.L.P. 10225 N. 10th Street McAllen, Texas 78504

Phone: (956) 393 - 6300 Fax: (956) 386 -1625 rdelagarza@rofllp.com

Raul De La Garza

From: Sent: To: Subject:	Jorge Gutierrez <agtzjorge@gmail.com> Wednesday, August 05, 2020 11:15 AM Raul De La Garza Re: Pool and Deck Variance</agtzjorge@gmail.com>
Good Morning, yes I authorize Ra deck located at 4204 Worthingto	nul and Peyton Kampas De La Garza to assist me in the variance process for the pool and n Ave Mcallen. Texas 78503. Thank you.
On Wed, Aug 5, 2020 at 10:40 AN	A Raul De La Garza < <u>rdelagarza@rofllp.com</u> > wrote:
Good morning, Jorge:	
Please advise whether you author for the pool and deck for your ho	orize my wife, Peyton Kampas De La Garza, and I to assist you in the variance process ouse located at 4204 Worthington Ave., McAllen, Texas 78503.
This assistance will be offered as assistance is not being offered in	former owners of the property and individuals with knowledge of relevant facts. This our capacity as attorneys. Please advise if you're in agreement. Thank you.
Best,	
Raul De La Garza	
ROERIG, OLIVEIRA & FISHER, L.L.	P.
10225 N. 10th Street	
McAllen, Texas 78504	
Phone: (956) 393 - 6300	
Fax: (956) 386 -1625	
rdelagarza@rofllp.com	



4228 N. MCCOLL ROAD, MCALLEN, TX 78504 PHONE: (956)682-4951 FAX: (956)631-3504 denisse.flores@edwardsabstract.com

HOMEOWNER'S ASSOCIATION INFORMATION REQUEST

TO: Javier EMAIL: javier@sam ASSOCIATION: F	sonpm.com falling Water at Bentsen Lakes Homeowner's Associa	ation
*******		***************
RE: GF No.: 92933	39 Escrow Officer: Roque Guerrero	Secretary: Denisse Flores
Property Address:	4204 Worthington Ave, McAllen, TX 78503	
Legal Description:	Lot 67, FALLING WATER SUBDIVISION, an addit Texas, as per map or plat thereof recorded in Volu County, Texas.	tion to the City of McAllen, Hidalgo County, ime 53, Page 192, Map Records, Hidalgo
Seller / Owner:	Peyton Kampas and Raul De La Garza	
Buyer / Borrower:	Jorge Gutierrez Zacarias and Astrid Gonzalez 3004 S. L. St Apt 2 McAllen, TX 78503	
********	**************************************	*************
Association Name: *Payment will be made o	Falling Water at Bentsen Lakes Homeowner's Association out to Association name written above.	Phone: (956) 202-0399
McAllen, (address w Contact Person: What are the Total I Are these payable: Are the dues paid? Contact Person: Are the Total I Are these payable: Are the dues paid? Contact Pelinquent Delinquent: This figure/total amo	monthly gearly quarterly Yes No If yes, homeowner's dues a Yes No If yes, what is the total amore months years ount due to collect is good through what date?:	unt due?: \$ 444.00 due by quarters 7/31/20 12/31/2020
00.00 Trans	ntact our office at the number above should you have shown from the number above should you have should yo	any questions. #444.00 payable to Falling Water HDF P.O.Box 6075 McAllen,TX 78503

vvarning

Ticket # 26355

1601 N. Bicentennial Blvd. McAllen, TX 78501 (956) 681-2900

Date: 7-31-2070 Time: 5:07	-	Issuer:	ivez		122/2
Location/Block/Street: 4204 Worth!	-qt-a	ave	3	License Plate	
Permits	Healt	AND DESCRIPTION OF THE PARTY OF		Zoning	
Building		Weedy Lot		Sign	Placed in ROW
Plumbing		Accumulation o	f trash	Signs	w/o Permit
Electrical		Stagnant Water		Erect	ing Signs w/o Permit
Mechanical		Illegal Dumping		Proh.	Portable Signs
Work w/o Inspection		Gross Unsanita	ry Cond.s	Front	Yard Parking
Plumbing		Deposit of Was	tes	Fail to	Obtain C.U.P.
Electrical	Food	/Retail		Expire	ed C.U.P.
Mechanical		No Certified Ma	nager	Violat	ion of C.U.P. Cond.
Construction (com res		No Food Handli	ng Cert.	Animal	
Performing Work w/o Lic.		Hazardous Food		Leash	Law
Plumbing		Selling Food w/	o Permit	No Va	ccinations
Electrical		Business on Sid		Fire	
Mechanical		Display/Sale on	St/Sidewalk	Excee	d Occupancy
		Proh. Outdoor Di	splay/Sale of Merch		
		No Garage Sale	Permit		Maintain Fire Alarm
Last Name: De la garza		First Name:		Middle:	
Street Address:			City:	State:	Zip:
4204 Worth	1-5/-	- Are	M'Allen	TX	78503
Res. Phone: 756-455-8388	Sex:	7-6-82 A	ge: D.L.#	576	State:
Occupation:		Employer:	10/201	Phone:	17
Business Address:			City:	State:	Zip:
I HEREBY PROMISE TO BEFORE: August	O APPE		0	PAL COURT	
Signature:	Way	1			
YOUR FAILURE TO API FILED AGAINST YOU A	NDAV	VARRANT F	A CRIMINAL O	COMPLAIN EST WILL	T TO BE BE ISSUED.
forwarding add					
2201 Village	Dr.	Miss:	on TX	785	72

Hidalgo CAD

Property Search > 720037 KAMPAS PEYTON SHARRON & RAUL DE LA GARZA for Year 2020

Tax Year: 2020

RS

Property

Account

Property ID: 720037

Geographic ID: F1656-00-000-0067-00

Type: Real

Property Use Code:

Property Use Description:

Location

Address: 4204 WORTHINGTON AVE

MCALLEN, TX

Neighborhood: FALLING WATER

Neighborhood CD: F165600

Owner

Name: KAMPAS PEYTON SHARRON & RAUL DE LA GARZA

Mailing Address: 4204 WORTHINGTON AVE

MCALLEN, TX 78503-8493

Owner ID:

1036362

FALLING WATER LOT 67

CML VOL 53 PG 192

% Ownership: 100.0000000000%

Exemptions: HS

Legal Description:

Zoning:

Mapsco:

Map ID:

Agent Code:

Values

(+) Improvement Homesite Value: + \$148,406

(+) Improvement Non-Homesite Value: + \$0

(+) Land Homesite Value: + \$34,240

(+) Land Non-Homesite Value: + \$0 Ag / Timber Use Value

(+) Agricultural Market Valuation: + \$0 \$0

(+) Timber Market Valuation: + \$0 \$0

(=) Market Value: = \$182,646

(–) Ag or Timber Use Value Reduction: – \$0

(=) Appraised Value: = \$182,646

(–) HS Cap: – \$2,237

(=) Assessed Value: = \$180,409

Taxing Jurisdiction

Owner: KAMPAS PEYTON SHARRON & RAUL DE LA GARZA

% Ownership: 100.000000000%

Total Value: \$182,646

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
CAD	APPRAISAL DISTRICT	0.000000	\$182,646	\$180,409	\$0.00
CML	CITY OF MCALLEN	0.495677	\$182,646	\$180,409	\$894.25
DR1	DRAINAGE DISTRICT #1	0.105100	\$182,646	\$180,409	\$189.61
GHD	HIDALGO COUNTY	0.575000	\$182,646	\$180,409	\$1,037.35
JCC	SOUTH TEXAS COLLEGE	0.173300	\$182,646	\$180,409	\$312.65
R12	ROAD DIST 12	0.000000	\$182,646	\$180,409	\$0.00
SML	MCALLEN ISD	1.152800	\$182,646	\$155,409	\$1,791.55
SST	SOUTH TEXAS SCHOOL	0.049200	\$182,646	\$180,409	\$88.76
	Total Tax Rate:	2.551077			
				Taxes w/Current Exemptions:	\$4,314.17
				Taxes w/o Exemptions:	\$4,659.44

Improvement / Building

Improvement #1:	RESIDENTIAL State Code:	A1 Livi Are		5 sqft V a	alue: \$148,406
Туре	Description	Class CD	Exterior Wall	Year Built	SQFT
MA	MAIN AREA	STUGD - 8P	DSTU	2017	823.5
MA2	MAIN 2ND FL	STUGD - 8P	DSTU	2017	736.0
MA2	MAIN 2ND FL	STUGD - 8P	DSTU	2017	430.0
UTY	UTILITY ROOM	*		2017	60.0
GAR	GARAGE	*		2017	420.0
CAN	CANOPY	*		2017	60.0
POR	PORCH (COVERED)	*		2017	42.0
HC	HIGH CEILING	STUGD - 8P		2017	434.0

Land

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	L	LOT	0.0786	3424.00	0.00	0.00	\$34,240	\$0

Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2021	N/A	N/A	N/A	N/A	N/A	N/A
2020	\$148,406	\$34,240	0	182,646	\$2,237	\$180,409
2019	\$134,562	\$29,446	0	164,008	\$0	\$164,008
2018	\$168,148	\$34,411	0	202,559	\$0	\$202,559
2017	\$0	\$34,411	0	34,411	\$0	\$34,411
2016	\$0	\$34,411	0	34,411	\$0	\$34,411
2015	\$0	\$34,411	0	34,411	\$0	\$34,411
2014	\$0	\$34,411	0	34,411	\$0	\$34,411
2013	\$0	\$34,411	0	34,411	\$0	\$34,411
2012	\$0	\$33,726	0	33,726	\$0	\$33,726

Hidalgo CAD - Property Details

2011	\$0	\$33,726	0	33,726	\$0	\$33,726
2010	\$0	\$13,490	0	13,490	\$0	\$13,490
2009	\$0	\$13,867	0	13,867	\$0	\$13,867
2008	\$0	\$13,867	0	13,867	\$0	\$13,867

Deed History - (Last 3 Deed Transactions)

#	Deed Date	Туре	Description	Grantor	Grantee	Volume	Page	Deed Number
1	7/31/2020	WDV	WARRANTY DEED/VENDORS LIEN	KAMPAS PEYTON SHARRON & RAUL DE LA GARZA	ZACARIAS JORGE G & ASTRID GONZALEZ			3135074
2	9/30/2014	SVD	SPEC WD/VEN LIEN	MCALLEN 73 LLC	KAMPAS PEYTON SHARRON & RAUL DE LA GARZA			2552097

Tax Due

Property Tax Information as of 10/01/2020

Amount Due if Paid on:



NOTE: Penalty & Interest accrues every month on the unpaid tax and is added to the balance. Attorney fees may also increase your tax liability if not paid by July 1. If you plan to submit payment on a future date, make sure you enter the date and RECALCULATE to obtain the correct total amount due.

Questions Please Call (956) 381-8466.

Website version: 1.2.2.31

Database last updated on: 9/30/2020 9:11 PM

© N. Harris Computer Corporation

Raul De La Garza

From: Raul De La Garza

Sent: Wednesday, August 05, 2020 1:54 PM

To: mcallenmunicipalcourt@mcallen.net; astevenson@mcallen.net; edgar.garcia@mcallen.net;

erendon@mcallen.net

Cc: peyton.kampas@gmail.com

Subject: Above-Ground Pool and Wooden Deck Variance for 4204 Worthington Ave., McAllen, Texas

Attachments: Final Survey.pdf; Authority to Assist.pdf; Overview of pool and deck (1).pdf; Overview of pool and

deck (2).pdf

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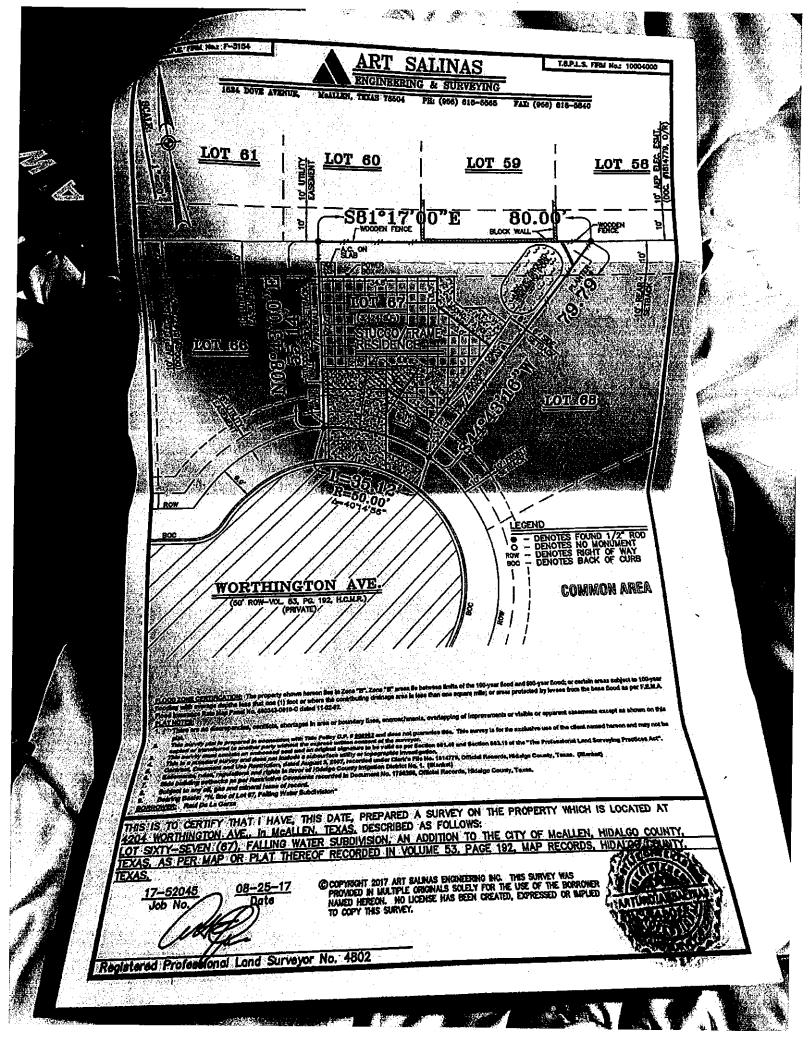
Best,

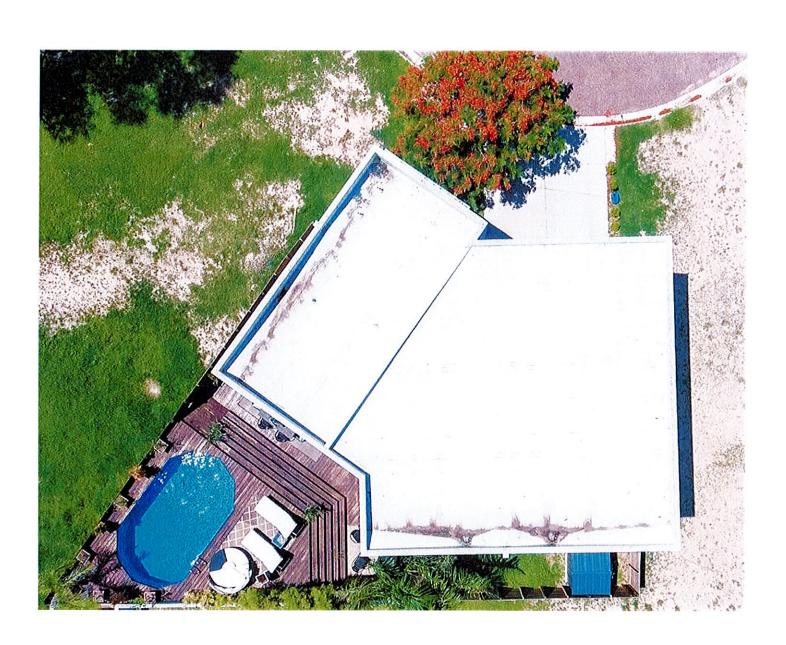
Raul De La Garza ROERIG, OLIVEIRA & FISHER, L.L.P. 10225 N. 10th Street McAllen, Texas 78504

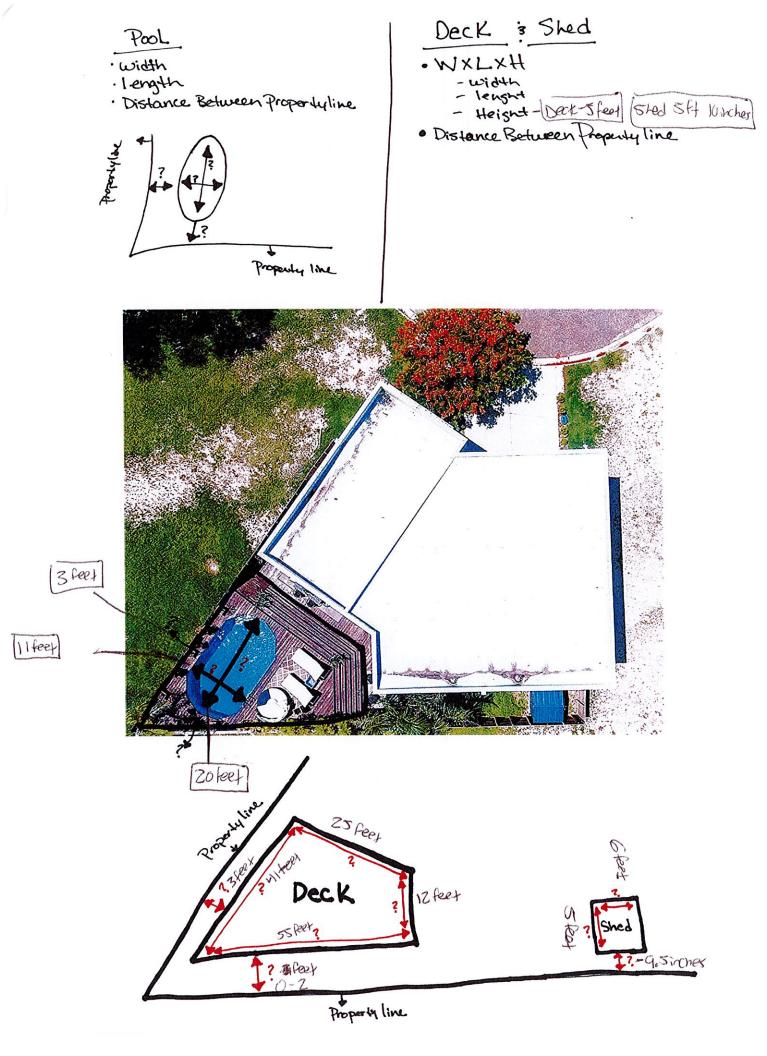
Phone: (956) 393 - 6300 Fax: (956) 386 -1625 rdelagarza@rofllp.com

Raul De La Garza

From: Sent: To:	Jorge Gutierrez <agtzjorge@gmail.com> Wednesday, August 05, 2020 11:15 AM</agtzjorge@gmail.com>
Subject:	Raul De La Garza Re: Pool and Deck Variance
	No. 1 doi and Deck Variance
Good Morning, yes I authorize Ra deck located at 4204 Worthingto	rul and Peyton Kampas De La Garza to assist me in the variance process for the pool and not not also not and not not not also not also not not not also not not not not not not not not not no
On Wed, Aug 5, 2020 at 10:40 AN	A Raul De La Garza < <u>rdelagarza@rofllp.com</u> > wrote:
Good morning, Jorge:	
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Raul De La Garza	
ROERIG, OLIVEIRA & FISHER, L.L.	.P.
10225 N. 10th Street	
McAllen, Texas 78504	
Phone: (956) 393 - 6300	
Fax: (956) 386 -1625	
rdelagarza@rofllp.com	









4228 N. MCCOLL ROAD, MCALLEN, TX 78504 PHONE: (956)682-4951 FAX: (956)631-3504 denisse.flores@edwardsabstract.com

HOMEOWNER'S ASSOCIATION INFORMATION REQUEST

TO: Javier EMAIL: javier@sam ASSOCIATION: F	sonpm.com falling Water at Bentsen Lakes Homeowner's Associa	ation
*******		***************
RE: GF No.: 92933	39 Escrow Officer: Roque Guerrero	Secretary: Denisse Flores
Property Address:	4204 Worthington Ave, McAllen, TX 78503	
Legal Description:	Lot 67, FALLING WATER SUBDIVISION, an addit Texas, as per map or plat thereof recorded in Volu County, Texas.	tion to the City of McAllen, Hidalgo County, ime 53, Page 192, Map Records, Hidalgo
Seller / Owner:	Peyton Kampas and Raul De La Garza	
Buyer / Borrower:	Jorge Gutierrez Zacarias and Astrid Gonzalez 3004 S. L. St Apt 2 McAllen, TX 78503	
********	**************************************	*************
Association Name: *Payment will be made o	Falling Water at Bentsen Lakes Homeowner's Association out to Association name written above.	Phone: (956) 202-0399
McAllen, (address w Contact Person: What are the Total I Are these payable: Are the dues paid? Contact Person: Are the Total I Are these payable: Are the dues paid? Contact Pelinquent Delinquent: This figure/total amo	monthly gearly quarterly Yes No If yes, homeowner's dues a Yes No If yes, what is the total amore months years ount due to collect is good through what date?:	unt due?: \$ 444.00 due by quarters 7/31/20 12/31/2020
00.00 Trans	ntact our office at the number above should you have shown from the number above should you have should yo	any questions. #444.00 payable to Falling Water HDF P.O.Box 6075 McAllen,TX 78503

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: October 30, 2020

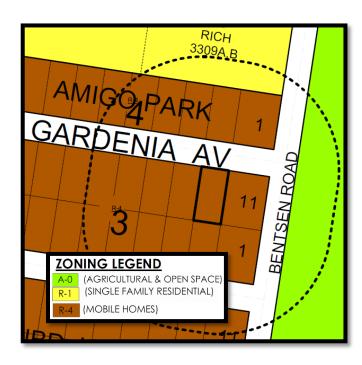
SUBJECT: REQUEST OF AURORA PENA FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING

ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 5 FT. INTO THE 5 FT. WEST SIDE YARD SETBACK FOR AN EXISTING WOODEN CANOPY MEASURING 6.33 FT. BY 56 FT.; 2) AN ENCROACHMENT OF 9.75 FT. INTO THE REAR YARD SETBACK FOR AN EXISTING WOODEN STORAGE SHED MEASURING 12.20 FT. BY 12.25 FT.; 3) TO ALLOW AN ACCESSORY BUILDING SEPARATION FROM THE MAIN BUILDING OF 3.75 FT. INSTEAD OF THE REQUIRED 5 FT.; AT LOT 12, BLOCK 3, AMIGO PARK 1 SUBDIVISION, HIDALGO COUNTY,

TEXAS; 4405 WEST GARDENIA AVENUE. (ZBA2020-0067)

REASON FOR APPEAL:

The applicant is requesting variances to allow a wooden canopy and wooden storage shed encroaching on the rear yard and side yard setback. The wooden shed will also require a variance for the distance from the main building.





PROPERTY LOCATION AND VICINITY:

The property is located approximately 130 ft. west of Bentsen Road, on the south side of Gardenia Avenue and has a total area of 4,950 sq. ft. The property is zoned R-4 (residential mobile home) District. The surrounding land uses include mobile homes.

BACKGROUND AND HISTORY:

Amigo Park 1 Subdivision was recorded on March 4, 1971. A note on the plat indicates that there is a 10 ft. utility easement on rear yard setback. The Zoning Ordinance states that the setbacks on the side yard is 6 ft. on each side. On August 27, 2020 the applicant was contacted by the building department for construction without a permit. On September 16, 2020 the applicant applied for a building permit and a variance request application for the wooden canopy and wooden shed.

ANALYSIS:

Variance #1: To allow an encroachment of 5 ft. into the 5 ft. west side yard setback for an existing wooden canopy measuring 6.33 ft. by 56 feet. The canopy provides shade for the residents.

Variance #2: To allow an encroachment of 9.75 feet into the rear yard setback for an existing wooden storage shed measuring 12.20 ft. by 12.25 ft. The site plan submitted shows the proposed distance from the rear property line to the outside wall of the wooden shed is approximately 1.25 ft. The storage building encroaches into the 10 ft. rear utility easement and the rear yard setback. The storage shed is moveable and can be relocated to outside of the utility and rear yard setback since it sits on cinder blocks.

Variance #3: To allow a building separation instead of 3.75 ft. instead of the required 5 ft. separation for an accessory building to the main building for an existing wooden storage building measuring 12.20 ft. by 12.25 ft. The storage shed is moveable. The storage shed is moveable and can be relocated to outside of the utility and rear yard setback.

A review of the site plan indicated that the existing house occupies most of the buildable area not allowing much space for the wooden canopy and wooden storage shed.

Setbacks are important in establishing the character of the residential mobile home district by promoting a desirable use of the land and direction of building development. They protect the character of the district and conserve the value of the land.

The planning department did not receive any phone calls in opposition to the variance request. There was one complaint by an anonymous caller made to the Building Inspections department on August 14, 2020.

RECOMMENDATION:

Staff recommends disapproval of the variance requests. If the Board chooses to grant the variances it should be limited to the footprint of the site plan submitted. In addition, the encroachment on the rear yard 10 ft. utility easement will require the applicant to apply for an abandonment of the utility easement.

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF OCTOBER 21, 2020:

At the Zoning Board of Adjustment and Appeals meeting of October 21, 2020. No one appeared in opposition of the variance requests. Ms. Maribel Ochoa, the applicant's daughter, spoke in favor of the requests and stated that the purpose of the wooden canopy was to provide shade for the mobile home since the home gets uncomfortably hot. Board Member Hinojosa inquired if the structures had been there a long time. Ms. Ochoa replied they had been there as long as she could remember. In response to a question from Board Member Jimenez, if the applicant had applied for an abandonment, Ms. Ochoa

stated that they had not applied. Following further discussion, the Board voted to table the variance requests in order to allow time for staff to meet with the applicant regarding relocation options for the wooden storage shed and to discuss options regarding the wooden canopy.

Subsequent to the meeting staff discussed via telephone with the applicant the possibility of relocating the wooden shed from the rear yard setback. The applicant would like for the structure to remain where it is. Staff discussed with her information regarding the abandonment process. Regarding the wooden canopy, the applicant stated she would like to keep the structure its present location but is willing to install gutters on the wooden canopy to prevent water from draining onto the adjacent property.

7BA2020-0067

City of McAllen

Planning Department APPEAL TO ZONING BOARD OF

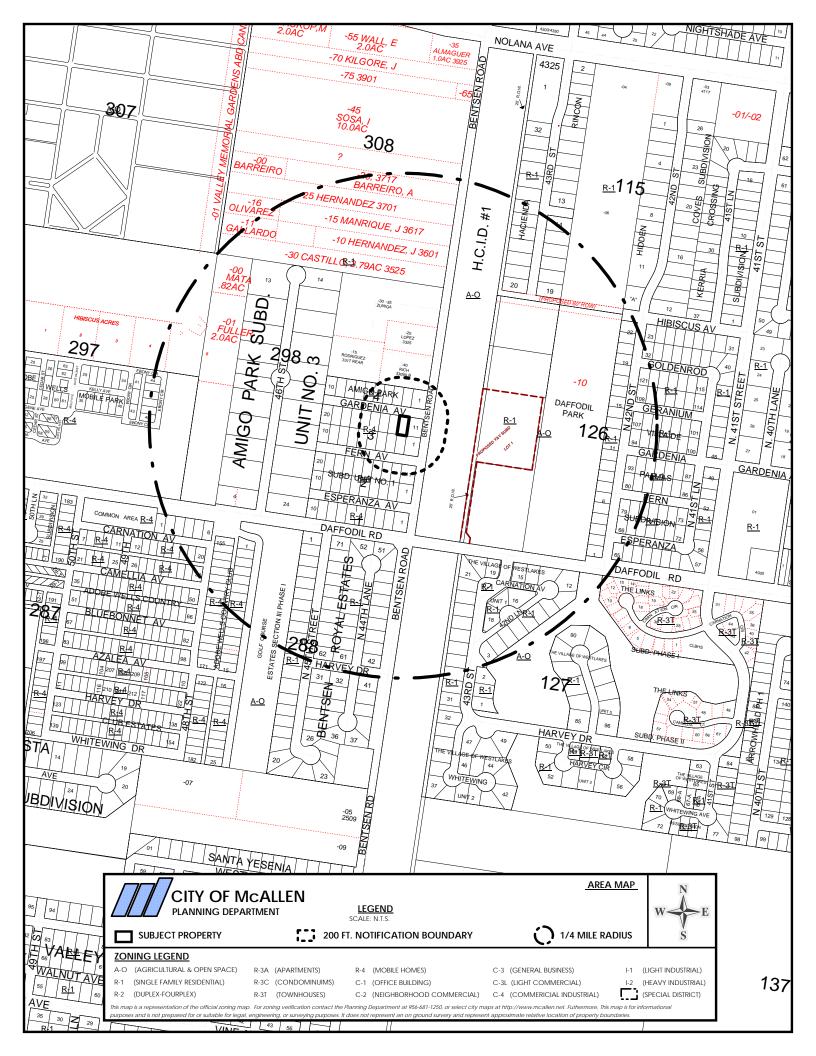
311 North 15th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)

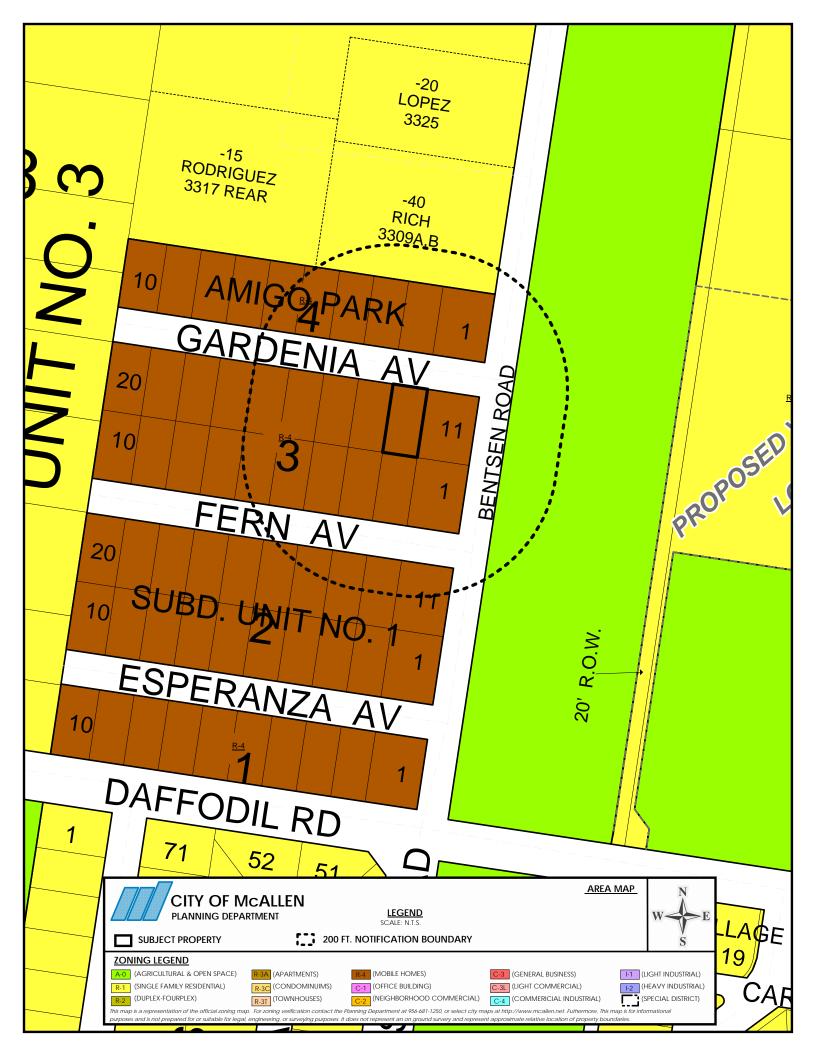
	ADJUSTMENT TO MCALLEN ZONING ORDINANCE
	Legal Description Amryo Park U+#1 10+ 12 Block 3
Project	Subdivision Name Street Address Number of lots Existing Zoning Reason for Appeal (please use other side if necessary) \$\text{Sol.} \$\text{Cordenia Ae Male.} Existing Land Use Residencial Reason for Appeal (please use other side if necessary) \$\text{Cordenia Ae Male.} Existing Land Use Residencial \$\text{Cordenia} \$Co
Applicant	Name Arrora Peña Phone 956.223.5403 Address 4405 w Gardenia E-mail City Mallen State + Zip 78501.
Owner	Name Aufora Pena Phone
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 Owner Authorized Agent
Office	Accepted by H.C. Payment received by Pate SEP 1 6 2020

City of McAllen

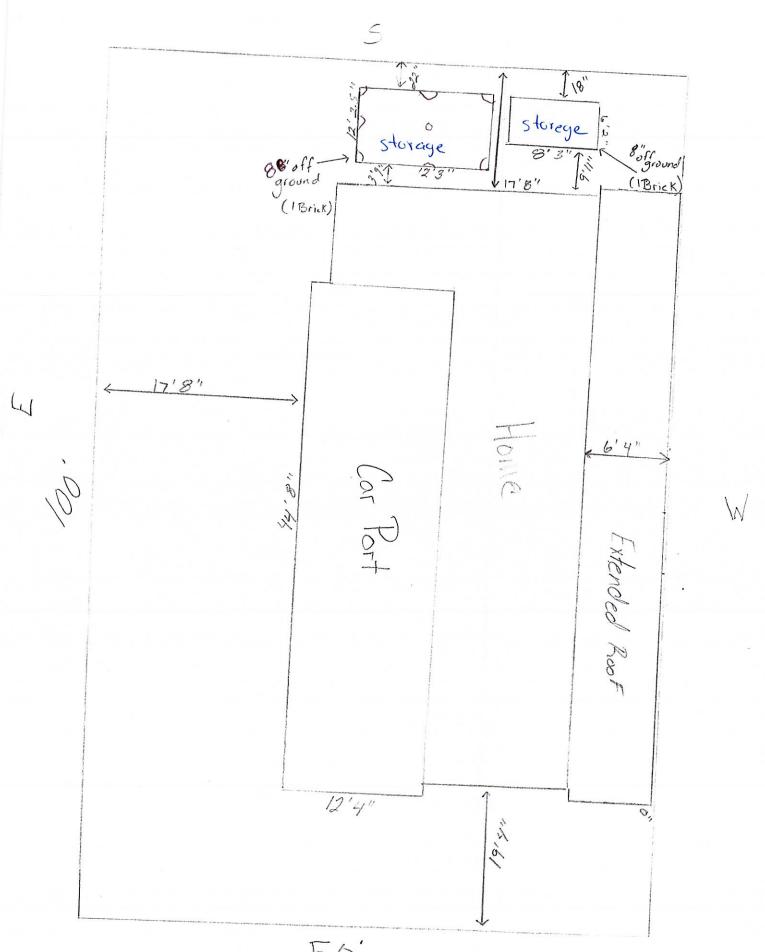
Planning Department REASON FOR APPEAL & BOARD ACTION

	Annual Design		
Reason for Appeal		en 1997 Chando do combre	
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Board Action			
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		Chairman, Board of Adjustment Date Signature	
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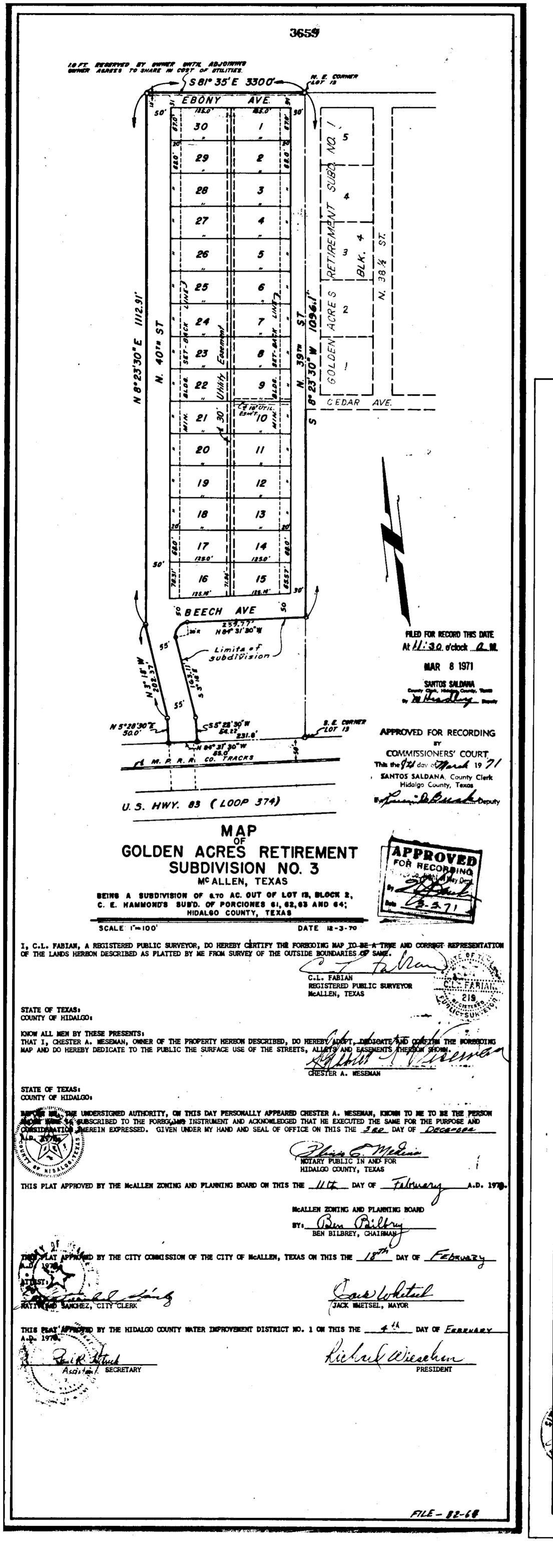


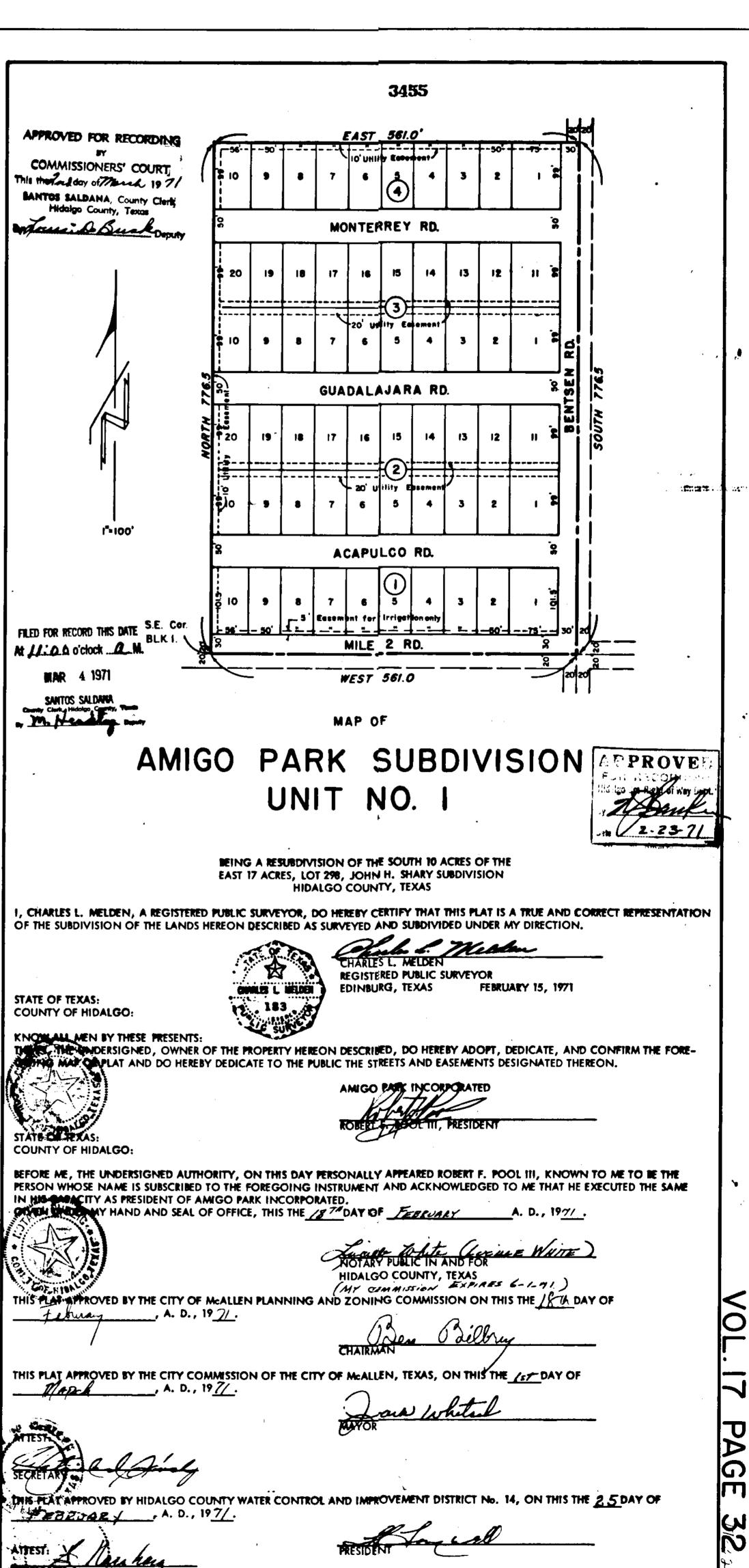






K1





CETY OF MCALLEN

RESIDENTIAL PERMIT APPLICATION

REV. 3/2020

	P.O. BOX 220 McALLEN, TEXAS 78505-0220 APPLICATION MUST BE COMPLETE PERMIT APPLICATION REFER (Please type og print in black or blue ink)	RENCE NUMBER ZE	52020-0	10656
APPLICANT	NAME AUYORA PERC	PHONE 956	-631 -	4056
	ADDRESS 4405 W Gordenia			
	arry mallan	STATE #	ZIP 78501	
	CONTACT: NAME:	PHONE	,	
	OWNER CONTRACTOR TENANT	OTHER	,	
~	NAME AUYOra Peña	PHONE		
OWNER	ADDRESS 4465 W Coardenga Ace	*EMAIL:		
ò	orry Mallen to	REQ'D STATE	ZIP	
		*OWNER INFOR	RMATION NOT PROVDIED	, INITIAL:
	NEW ADDITION REMODELING REPAIR MOVE	REMOVE	BLDG. HGT.	NO. OF FLOORS
,	BLDG NO. PARKING SQ. FT SQ. FT SPACES LOT	LOT FRONT	- A	FLOOR EL BOVE CURB
	EXISTING USE NEW			
	Oards	2 - 10-	ou alas	10
	SCOPE OF WORK TO BE DONE POICY & STENTE	. d storege	CVISTON	165
	enchaching Built woot form	art Appli		ariance
-	RESIDENTIAL NO. OF NO. NO. NEW UNITS	SQ. FT NON-LIVING	SQ. FT LIVING	
PROJECT				
PRO	FOUNDATION EXT WALL ROOF CONCRETE SLAB MASONRY VENEER WOOD SHI	NGI E	UPGRADES/OTHER ☐ GRANITE COUNT	EDTODS
	☐ CONCRETE PIER ☐ MASONRY SOLID ☐ COMPOSIT		☐ MARBLE TUBS/FL	OORS
	□ CONCRETE BLOCK □ METAL SIDING □ METAL □ CONCRETE BEAM □ COMPOSITION □ BUILD UP □ WOOD POSTS □ WOOD □ CLAY OR OR		☐ CUSTOM WINDOW ☐ POLYURETHANE	INSULATION
	□ WOOD POSTS □ WOOD □ CLAY OR C	ONGRETE TILE	OTHER UPGRADE	
			SEPTIC TANK EXI	STING OR PROPOSED NO
	LOT 2 BLOCK 3 SUBDIVISION			
	SITE ADDRESS ST. NO. 1405 ST. NAME GOLDONIA	W.		
>	Construction Cost Permit Fee \$ 88	80	Ē	ec'd by
ONL	1 1 100			all Na
CITY USE ONLY				Date 1/VA
CITY				me 1
_				
	Park Development Fee \$		Park Zone _	

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 herby 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.

PRINT (AUTHORIZED AGENT/OWNER)

SIGNATURE

EMAIL ADDRESS (required)

9-16-2020

DATE

Hidalgo CAD

Property Search Results > 118277 PENA ERNESTO & AURORA for Tax Year: 2020 Year 2020

Property

Account

Property ID: 118277

Geographic ID: A4700-01-003-0012-00

Type: Real

Property Use Code:

Property Use Description:

Legal Description: AMIGO PARK UT NO. 1 LOT 12 BLK 3

Zoning: RS

Agent Code:

Location

Address: 4403 GARDENIA AVE

TX

AMIGO PARK #1&3

Map ID:

Mapsco:

CML VOL 17 PG 32

Neighborhood CD: A470001

Owner

Neighborhood:

Mailing Address:

Name:

PENA ERNESTO & AURORA

4403 W GARDENIA AVE

MCALLEN, TX 78501-6515

Owner ID:

362174

% Ownership:

100.0000000000%

Exemptions: HS

Values

\$25,634 (+) Improvement Homesite Value:

(+) Improvement Non-Homesite Value: + \$0 (+) Land Homesite Value: + \$14,850

(+) Land Non-Homesite Value: + \$0 Ag / Timber Use Value

(+) Agricultural Market Valuation: + \$0 \$0

(+) Timber Market Valuation: + \$0 \$0

(=) Market Value: = \$40,484

(–) Ag or Timber Use Value Reduction: – \$0

(=) Appraised Value: = \$40,484

(–) HS Cap: – \$809

(=) Assessed Value: = \$39,675

Taxing Jurisdiction

Owner: PENA ERNESTO & AURORA

% Ownership: 100.000000000%

Total Value: \$40,484

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
CAD	APPRAISAL DISTRICT	0.000000	\$40,484	\$39,675	\$0.00
CML	CITY OF MCALLEN	0.495677	\$40,484	\$39,675	\$196.66
DR1	DRAINAGE DISTRICT #1	0.105100	\$40,484	\$39,675	\$41.70
GHD	HIDALGO COUNTY	0.575000	\$40,484	\$39,675	\$228.13
JCC	SOUTH TEXAS COLLEGE	0.173300	\$40,484	\$39,675	\$68.76
R12	ROAD DIST 12	0.000000	\$40,484	\$39,675	\$0.00
SSL	SHARYLAND ISD	1.298700	\$40,484	\$14,675	\$190.58
SST	SOUTH TEXAS SCHOOL	0.049200	\$40,484	\$39,675	\$19.52
W14	UNITED IRR WTR DIST	0.000000	\$40,484	\$39,675	\$0.00
	Total Tax Rate:	2.696977			
				Taxes w/Current Exemptions:	\$745.35

Improvement / Building

Improvement #1:	RESIDENTIAL	State Code:	A2 Living Area:	938.0 sqt	ft Value	\$25,634
Туре [Description		Class CD	Exterior Wall	Year Built	SQFT
MHR N	MANUFACTURE	O HOME RES	MHFA	HDB	1983	784.0
STGW V	WOOD STORAGE		MHFA - *		1983	48.0
CANW S	SLAB WOOD CAN	N	MHFA - *		1998	560.0
VSK V	/ERTICAL SKIRTI	NG	MHFA - *		1983	140.0
ADDN N	MH ADDITION		MHFA - *		1983	154.0
CANW S	SLAB WOOD CAN	N	MHFA - *		1983	518.0
STGW V	WOOD STORAGE		MHFA - *		1983	144.0

Land

#	Туре	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	L	LOT	0.1136	4950.00	50.00	99.00	\$14,850	\$0

Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2021	N/A	N/A	N/A	N/A	N/A	N/A
2020	\$25,634	\$14,850	0	40,484	\$809	\$39,675
2019	\$21,218	\$14,850	0	36,068	\$0	\$36,068
2018	\$27,301	\$8,663	0	35,964	\$2,983	\$32,981
2017	\$28,020	\$8,663	0	36,683	\$6,700	\$29,983
2016	\$28,853	\$8,663	0	37,516	\$10,259	\$27,257
2015	\$26,660	\$8,663	0	35,323	\$10,544	\$24,779

2014	\$27,495	\$8,663	0	36,158	\$13,632	\$22,526
2013	\$17,817	\$8,663	0	26,480	\$6,002	\$20,478
2012	\$9,953	\$8,663	0	18,616	\$0	\$18,616
2011	\$10,518	\$8,663	0	19,181	\$0	\$19,181
2010	\$11,124	\$8,663	0	19,787	\$0	\$19,787
2009	\$11,930	\$8,663	0	20,593	\$0	\$20,593
2008	\$12,497	\$8,663	0	21,160	\$0	\$21,160
2007	\$13,345	\$8,663	0	22,008	\$0	\$22,008

Deed History - (Last 3 Deed Transactions)

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	5/13/1997	CONV	CONVERSION	RAMONES JOSE CARLOS	PENA ERNESTO & AURORA			598252
2	5/20/1996	CONV	CONVERSION	SNYDER GERALD A W MR & MRS	RAMONES JOSE CARLOS			525088
3		CONV	CONVERSION	MYERS MAX	SNYDER GERALD A W MR & MRS	1784	312	

Tax Due

Property Tax Information as of 10/16/2020

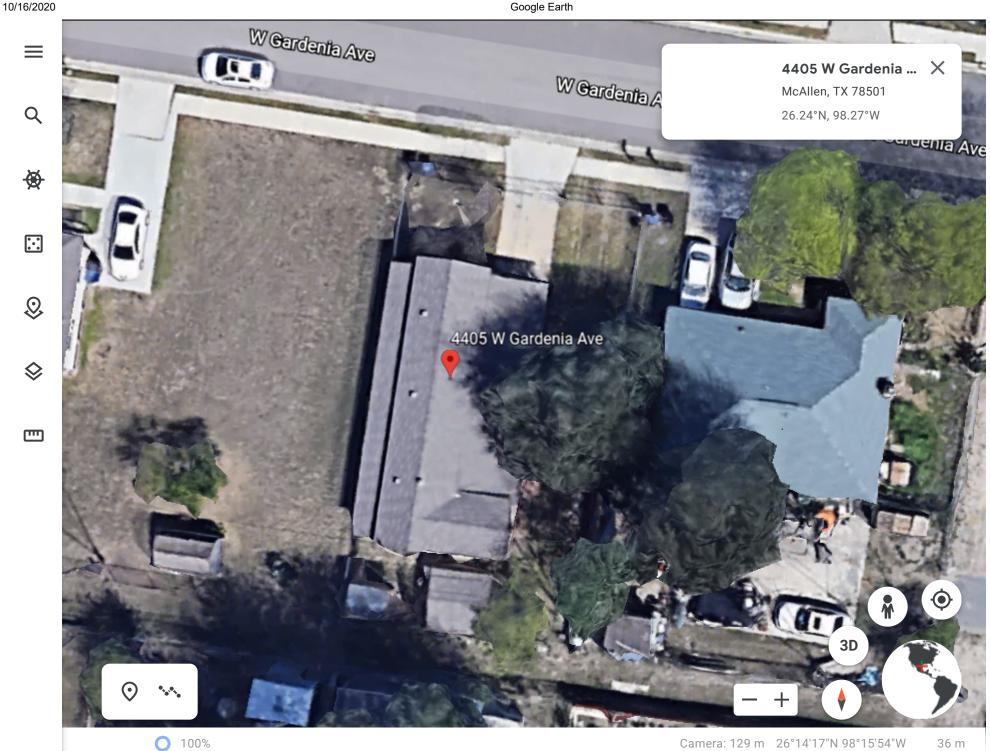
Amount Due if Paid on:

Year	Taxing Jurisdiction	Taxable Value	Base Tax	Base Taxes Paid	Base Tax Due	Discount / Penalty & Interest	Attorney Fees	Amount Due
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NOTE: Penalty & Interest accrues every month on the unpaid tax and is added to the balance. Attorney fees may also increase your tax liability if not paid by July 1. If you plan to submit payment on a future date, make sure you enter the date and RECALCULATE to obtain the correct total amount due.

Questions Please Call (956) 381-8466.

Google Earth

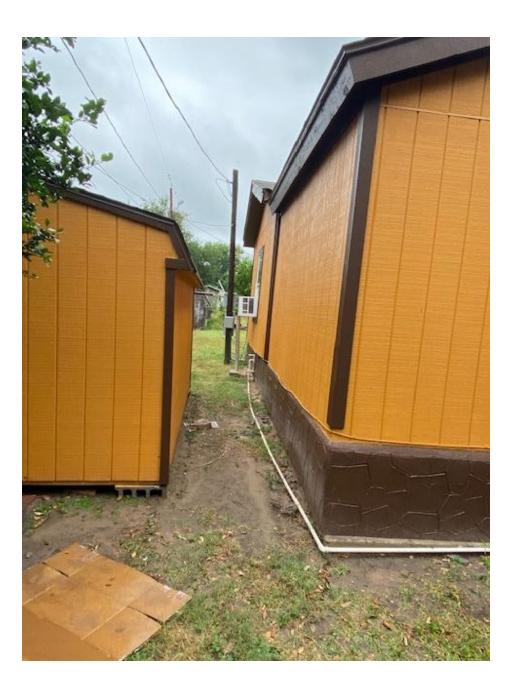


West side yard wooden canopy encroachment





Shed encroachment into the required 5 foot separation from the house and accessory building







East side yard (no encroachments)



Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: October 28, 2020

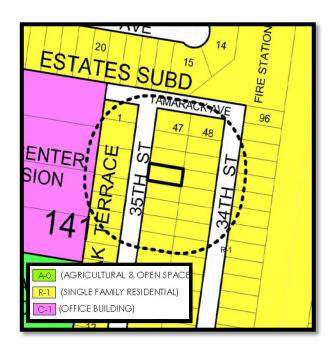
SUBJECT: REQUEST OF JUAN LOPEZ THE FOLLOWING SPECIAL EXCEPTION AND

VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 20 FT. INTO THE 20 FT. FRONT YARD SETBACK AND 2) A VARIANCE FOR AN ENCROACHMENT OF 6FT. INTO THE 6 FT. SIDE YARD SETBACK, FOR AN EXISTING CARPORT MEASURING 17 FT. BY 23 FT. AT LOT 44, OAK TERRACE SUBDIVISION, HIDALGO COUNTY, TEXAS; 1916

NORTH 35TH STREET. (ZBA2020-0056)

REASON FOR APPEAL:

The applicant is requesting a special exception to encroach 20 ft. into the 20 ft. front yard setback and a variance to encroach 6 ft. into the 6ft. side yard setback for an existing carport measuring 17 ft. by 23 ft. The applicant is requesting that the carport to remain there to protect his cars from hailstorms and inclement weather.





PROPERTY LOCATION AND VICINITY:

The subject property is located on the east side of North 35th Street, approximately 1,020 ft. North of Quince Avenue. The property has 50 ft. of frontage along North 35th Street and a depth of 110 ft. with a lot size of 5,500 square feet. Surrounding land use are single-family houses, Maranatha Baptist Church, Islamic Society of South Texas, Iglesia Aposento Alto and vacant land.

BACKGROUND AND HISTORY:

Oak Terrace was recorded on November 15, 1990. On August 20th, 2020 a Citation was given for a carport without a permit. On August 21, 2020 a building application was submitted for a carport. The application for the special exception was submitted on August 27th, 2020.

ANALYSIS:

Special Exception:

The request is to allow and encroachment of 20 ft. into the 20 ft. front yard setback for a carport measuring 17 ft. by 23 ft. The standard front yard setback for R-1 Lots is 20 ft.

A site visit revealed that the beginning of the structure is 6 ft. away from back of the curb, structure seems to be encroaching into the ROW around 4 ft. Site plan shows a 60 ft. ROW for the street. North 35th Street has a dimension of around 40 ft. Dimensions are without the benefit of a survey.

However, the subdivision shows a 5 ft. Utility Easement at the front of the property. After talking to the applicant about the encroachment in the easement, he is willing to shorten the existing carport 5 ft. to clear the Utility Easement. The dimension after the clearance of the 5 ft. Utility Easement and 4 ft. of ROW would be approximately 17 ft. by 14 ft.

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.

Variance:

The request is to allow and encroachment of 6 ft. into the 6 ft. side yard setback for a carport measuring 17ft. by 23 ft.

A site visit revealed that the existing carport is all the way to the north property line. If approved, staff recommends the addition of a gutter along the north side of the carport to prevent water going into the neighbor's property.

Side yard setbacks are important to maintain a safety separation in between structures (12 ft.) in case of a fire and slow down the spread. Having any kind of encroaching structures might speed up the fire within properties.

There are other existing carports and structures that appear to be encroaching into the front and side yard setback, however only one special exception (1924 N. 34th St) has been requested around the area. Special Exception was requested in 2014, the request got table for the special exception to allow the Board discuss the issue of medical conditions as special exceptions. A variance to allow a 5 ft. side yard setback instead of 6 ft. was approved at the same address.

Should the request be approved, it may encourage other property owners to request a special exception to encroach into the front setback. Approval of the request will allow the construction to be modified to clear the 5 ft. front Utility Easement.

Staff received a concern in regards to the special exception.

RECOMMENDATION:

Staff recommends disapproval of the special exception and variance request. If the Board chooses to approve the request, the approval should be limited to the footprint after it has been removed from the 5 ft. Utility Easement and ROW.

ZBA2020-0056

City of McAllen

Planning Department APPEAL TO ZONING BOARD OF

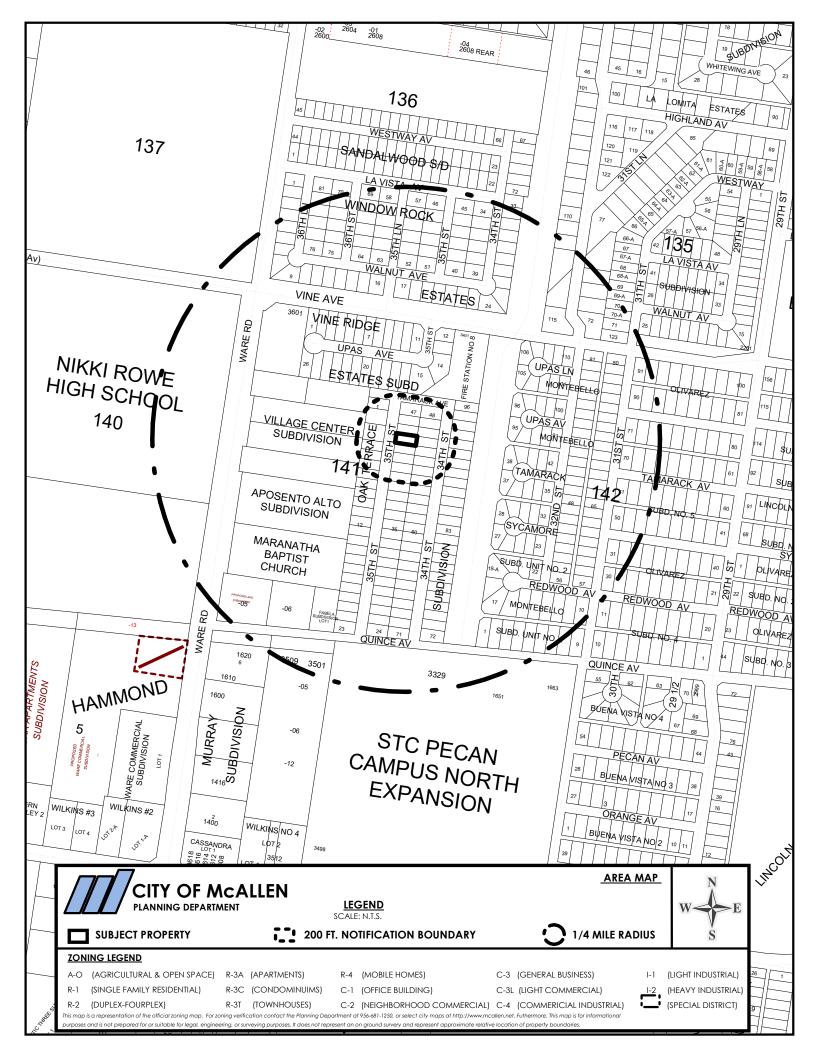
311 North 15th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)

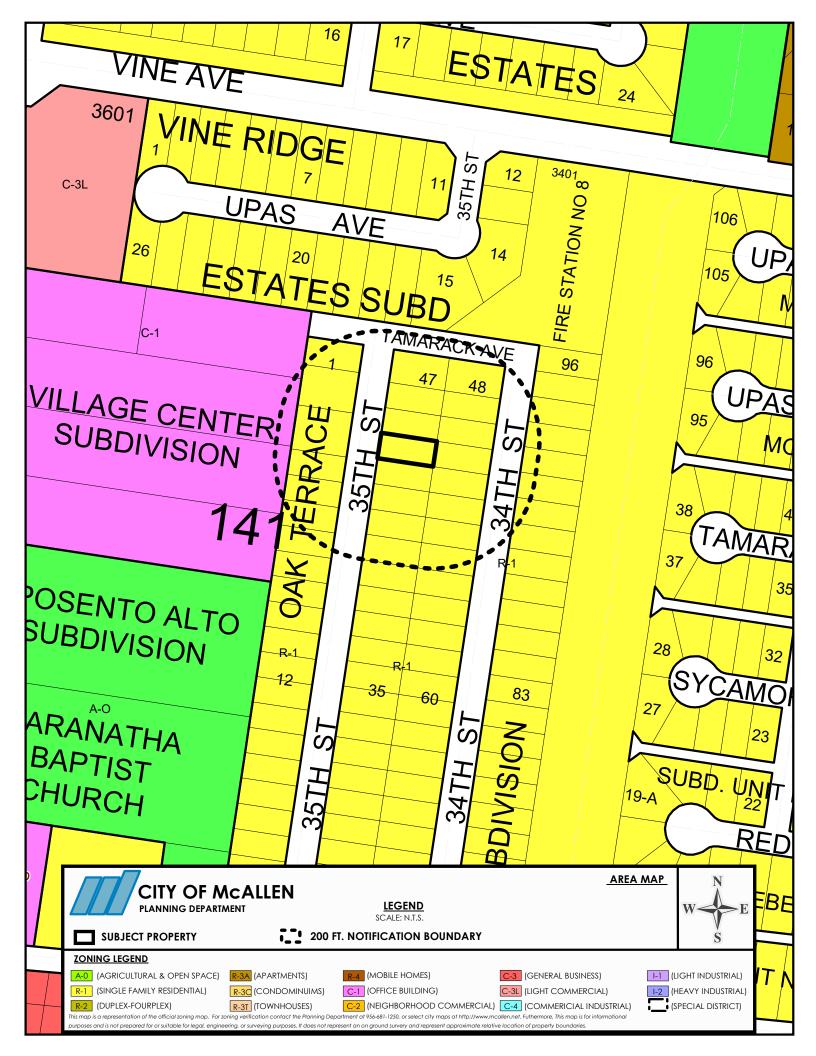
11.	ADJUSTMENT TO MICALLEN ZUNING ORDINANCE
	Legal Description 10+ #44 OAKTERRACE
Project	Subdivision Name OAK TERRACE 1916 N . 35th St. Number of lots 44 Gross acres
roj	Existing Zoning Residential Existing Land Use Residential
Ф	Reason for Appeal (please use other side if necessary) For protection of Vehicles from hail Storms and Weather related.
	\square \$300.00 non-refundable filing fee + \square \$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 Juin Lopez Phone 956) 533-7119 Address 1916 N. 35+5 E-mail City MOAILEN State Texas Zip 78501
Owner	Name <u>Juan Lopez</u> Address <u>1914 N. 3545 St.</u> E-mail
ó	City MCALIEN State Texas 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 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.
\ut	Signature Date 8/24/2020
۹	Print Name Juan Lopez 🔲 Owner 🗆 Authorized Agent
Office	Accepted by Bull Payment received by Date DECETVE Rev 10/18
	DV (DV)

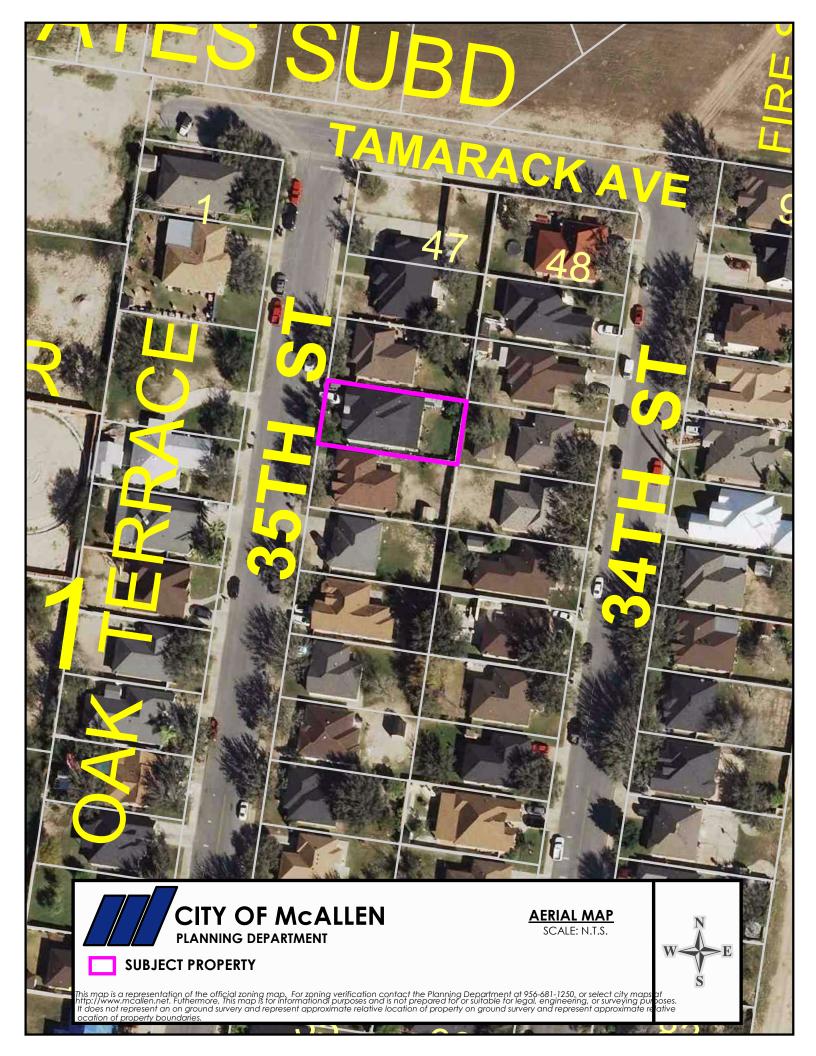
City of McAllen

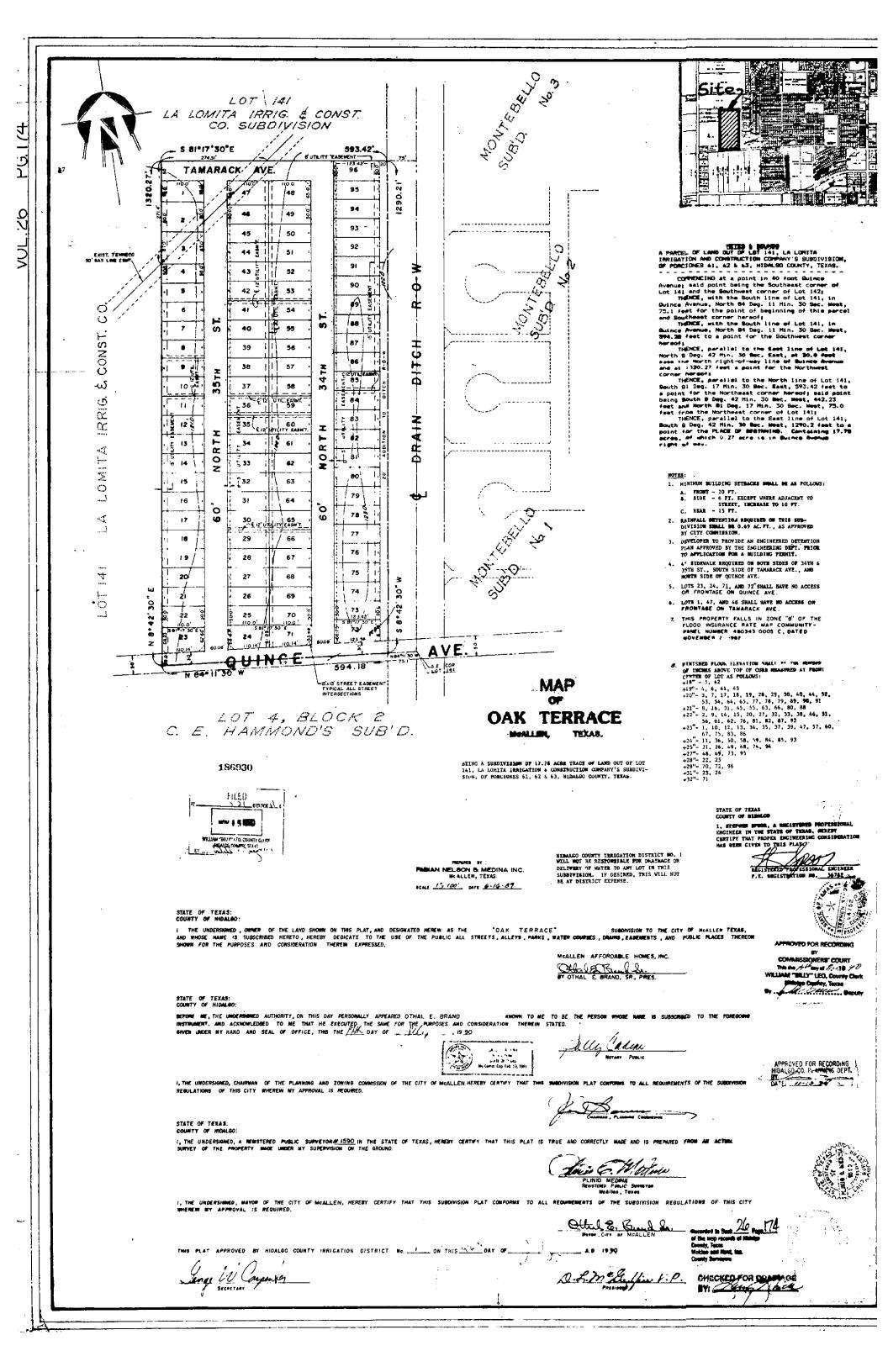
Planning Department REASON FOR APPEAL & BOARD ACTION

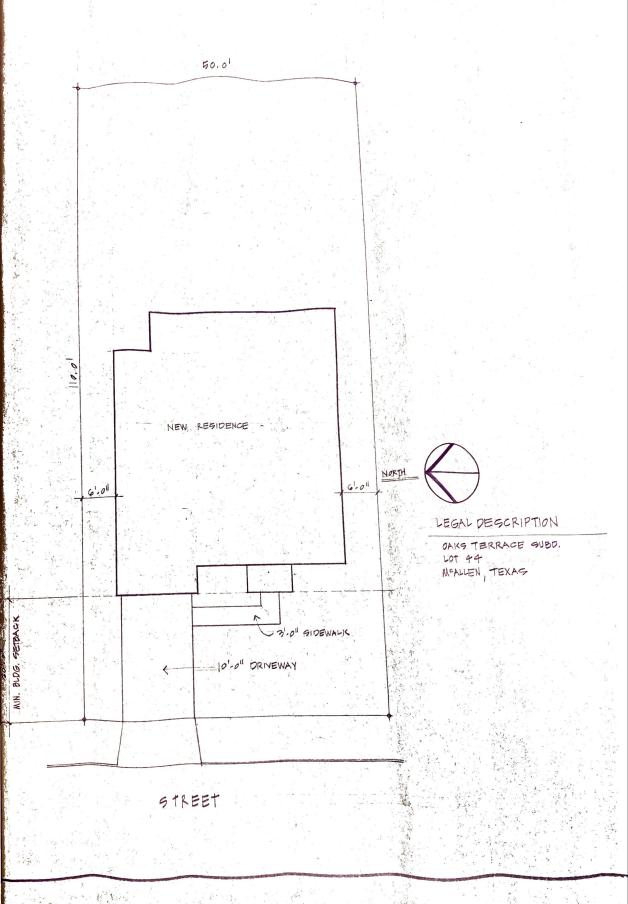
	Carport is already Built.	<u></u>
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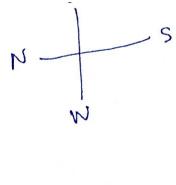








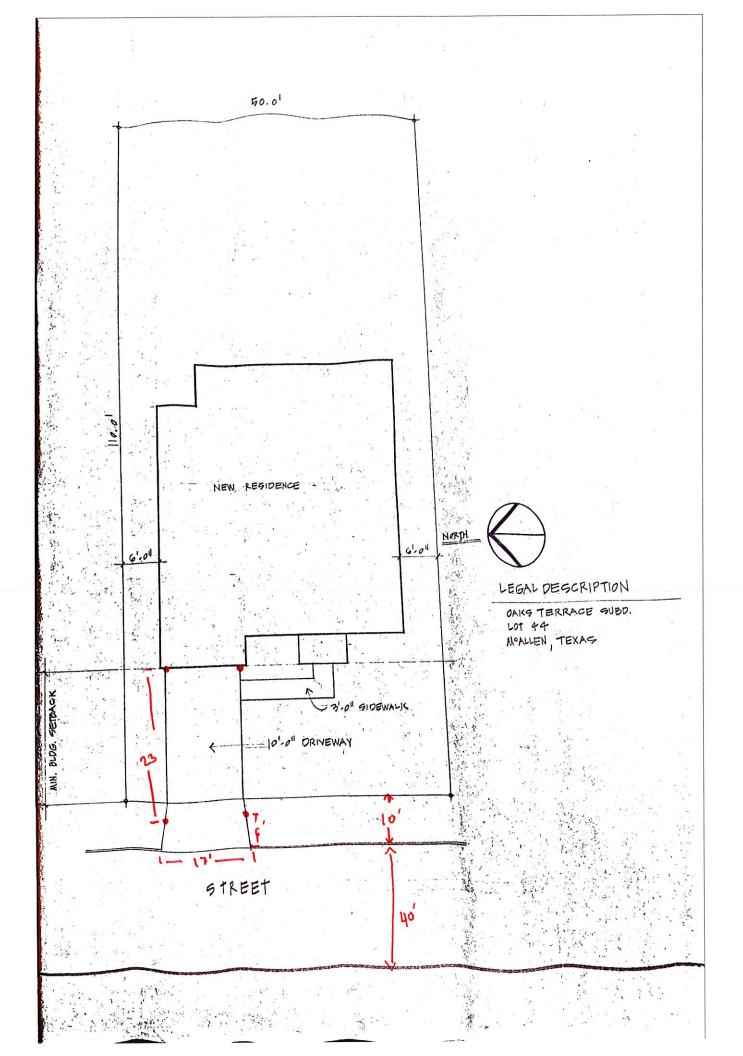




House 10 Ft Tall 23Ft Long Tift 17" side walk

35 th











Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

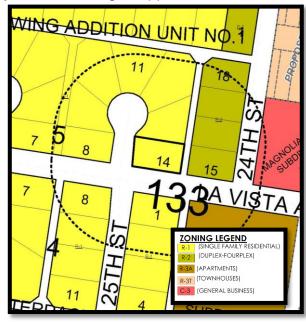
DATE: October 28, 2020

SUBJECT: REQUEST OF MARTIN HINOJOSA III FOR THE FOLLOWING VARIANCES TO

THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 16 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR A PROPOSED GARAGE ADDITION MEASURING 26 FT. BY 22 FT., 2) AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING IRREGULAR HEXAGONAL GAZEBO WITH AN APPROXIMATE AREA OF 62.81 SQUARE FEET, 3) AN ENCROACHMENT OF 3.9 FT. INTO THE 5 FT. SIDE YARD SETBACK FOR AN EXISTIG WOODEN STORAGE MEASURIN 15.9 FT. BY 3.4 FT. AND 4) AN ENCROCHMENT OF 6 FT. INTO THE 10 FT. REAR SETBACK FOR AN EXISTING WOODEN STORAGE MEASURING 15.9 FT. BY 3.4 FT. AT LOT 14, BLOCK 5, WHITEWING ADDITION SUBDIVISION UNIT 1, HIDALGO COUNTY, TEXAS: 2400 NORTH 25TH STREET. (ZBA2020-0066)

REASON FOR APPEAL:

The applicant is requesting four variances; variance #1 is to encroach into the front yard setback for a proposed garage, variance #2 through #4 is for encroachments into the side and rear setbacks for existing structures. The applicant is requesting variance #1 to have an easy access for paramedics to pick up her disabled mother in order transport her to her medical appointments. Variances #3 through #4 are for existing structures that have been on the property over a few years according to appraisal district records.





PROPERTY LOCATION AND VICINITY:

The subject property is located on the east side of North 25th Street, just north of La Vista Avenue. The property has 67.17 ft. of frontage along North 25th Street and a depth of 120 ft. along La Vista Avenue and 124.49 ft. in the interior for a lot size of approximately 8,845 square feet. Surrounding land use are single-family houses, La Vista Apartments, duplexes and vacant land.

BACKGROUND AND HISTORY:

Oak Terrace was recorded on March 4, 1969, and amended on November 4, 1969. On September 15, 2020 a building application was submitted for a residential addition of a 2 car garage. The application for the variance was submitted on September 15, 2020.

ANALYSIS:

Variance 1:

The request is to allow and encroachment of 16 ft. into the 25 ft. front yard setback for a proposed garage measuring 22 ft. by 26 ft. the proposed garage would be aligned with the existing house structure so there would be no encroachment into the side yard setback.

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.

A site visit revealed that there are two existing structures that are encroaching into the rear and side yard setbacks.

Variance 2:

The request is to allow an encroachment of 10 ft. into the 10 ft. rear setback for an existing irregular hexagonal gazebo with an approximate area of 62.81 square feet. The gazebo sits on a tile concrete slab. There a no Utility Easements shown on the plat.

Variance 3:

The request is to allow an encroachment of 3.9 ft. into the 5 ft. side yard setback for an existing wooden storage measuring 15.9 ft. by 3.4 ft. that sits on a concrete slab. There are no Utility Easements shown on the plat

Variance 4:

The request is to allow an encroachment of 6 ft. into the 10 ft. rear yard setback for an existing wooden storage measuring 15.9 ft. by 3.4 ft. that sits on a concrete slab. There are no Utility Easements shown on the plat.

Side yard setbacks are important to maintain a safety separation in between structures (12 ft.) in case of a fire and slow down the spread. Having any kind of encroaching structures might speed up the fire within properties.

There are other existing structures that appear to be encroaching into the front and rear yard setbacks, however there are no variance applications on file.

Should the request be approved, it may encourage other property owners to request a variance to encroach into the front, rear and side yard setbacks. Approval of the request will allow the construction of the proposed garage as depicted on the submitted site plan and for the existing structures to stay as depicted on the site plan.

Staff received a phone call and a letter in opposition of this request.

RECOMMENDATION:

Staff recommends disapproval of the requested variances. If the Board chooses to approve the request, the approval should be limited to the footprint of the submitted site plan.

28A2-080-0066

1000 1000

City of McAllen

Planning DepartmentAPPEAL TO ZONING BOARD OF

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

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

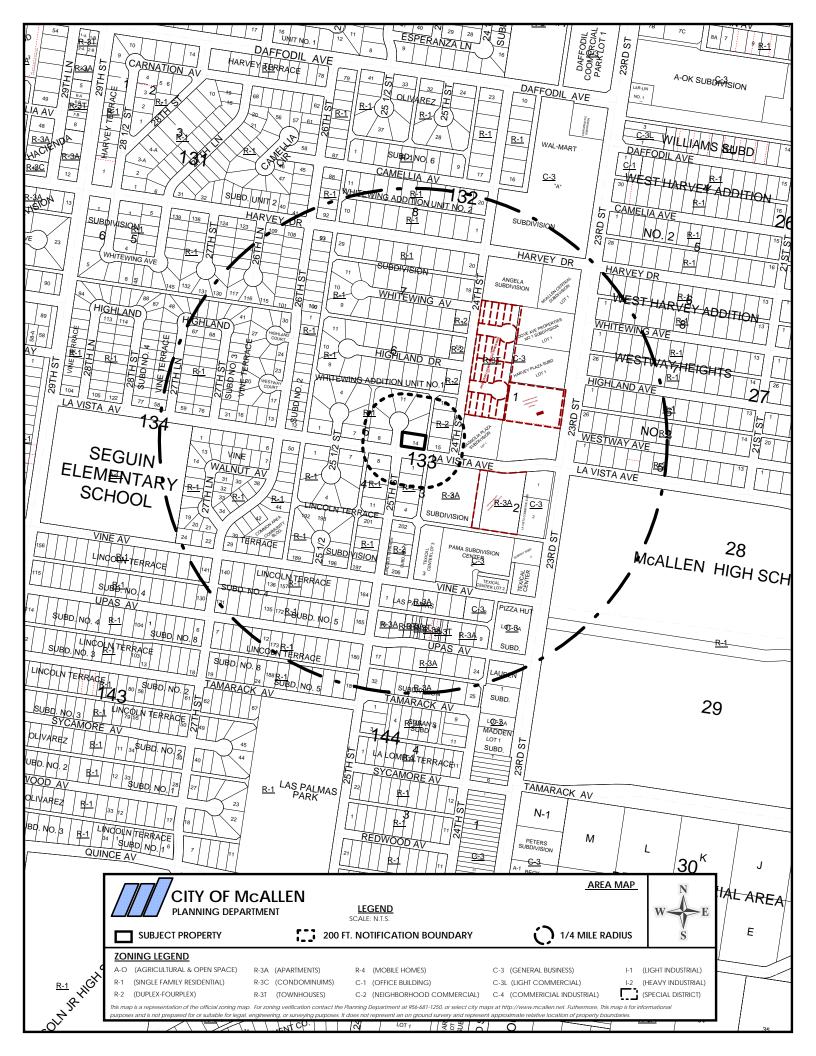
	ADJUST WENT TO WICALLEN ZONING ONDINANCE
Project	Legal Description Whitewing Addition UT NO. Lot 14 Block 5 Subdivision Name Street Address 2400 N. 25th St. McHilen, TX 78501 Number of lots Gross acres O. 2031 Existing Zoning Residential Existing Land Use Residential Reason for Appeal (please use other side if necessary) Need to make a garage addition for the ambulance to pick up my mom 3xs per week for dialysis. \$300.00 non-refundable filling 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 Martin Hinejosa III Phone 956, 225, 7358 Address 2400 N. 25th St. E-mail martinh 210 P AOL. com City Mo Allen State Tx Zip 78501
Owner	Name Martin Hingosa III Phone 956. 225. 7358 Address 2400 N. 25th St. E-mail martin h 210 P Acc. com City Mc Allen 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 Martin Hingree Owner Authorized Agent
Office	Accepted by Payment received by Pate SEP 1 5 2020
1 1 0	BY:

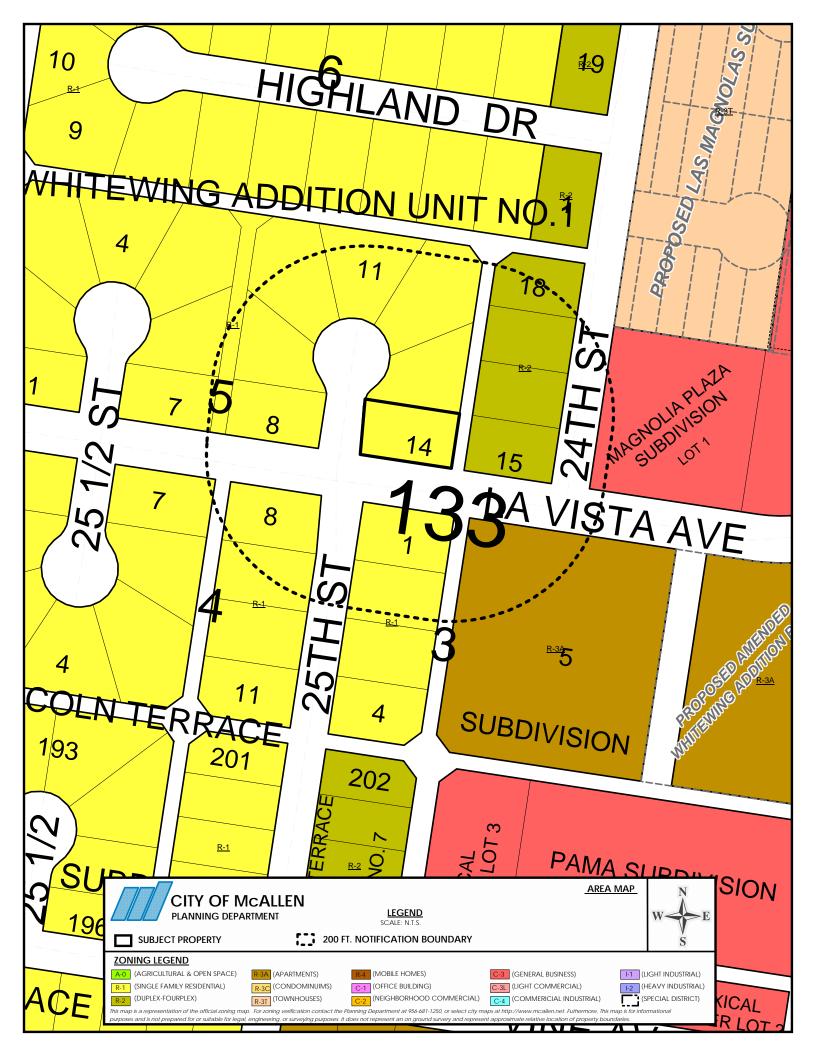
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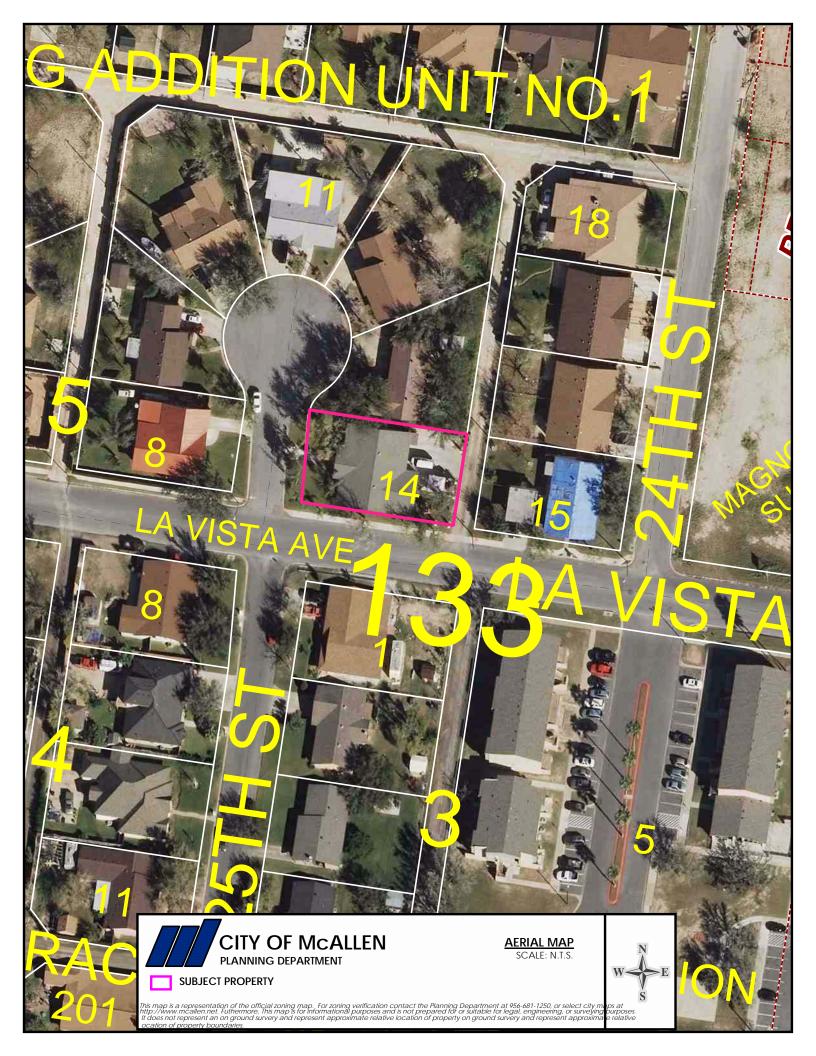
City of McAllen

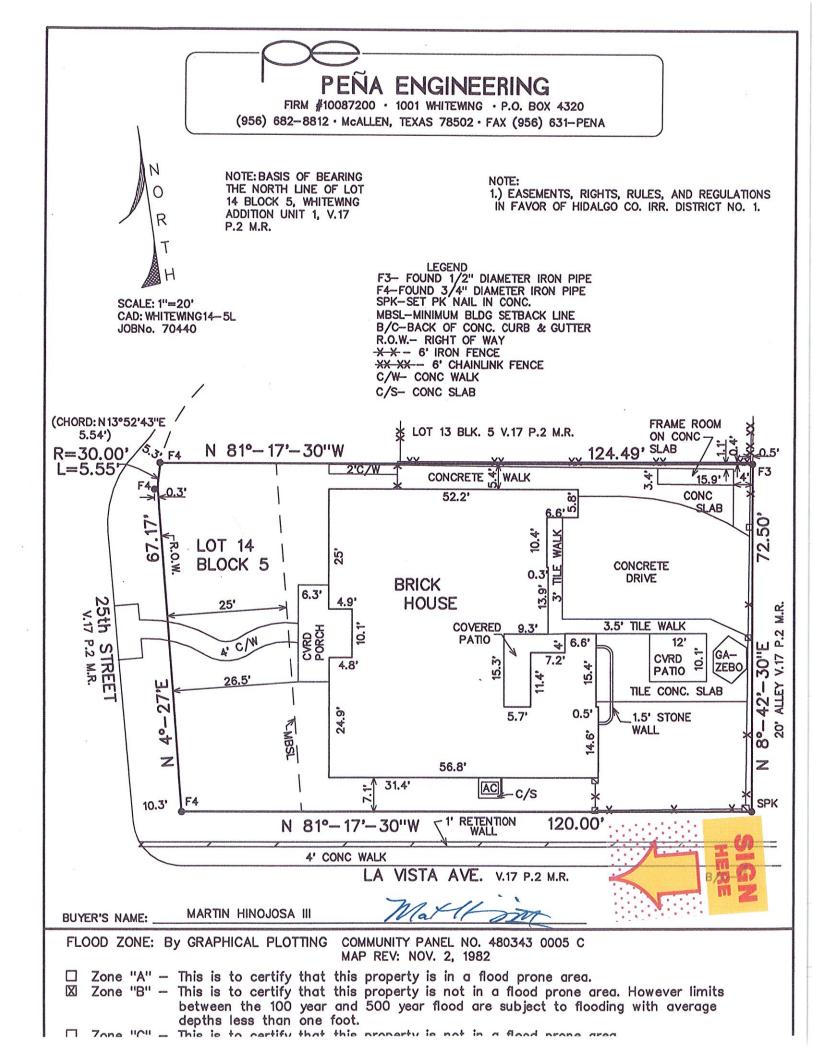
Planning Department REASON FOR APPEAL & BOARD ACTION

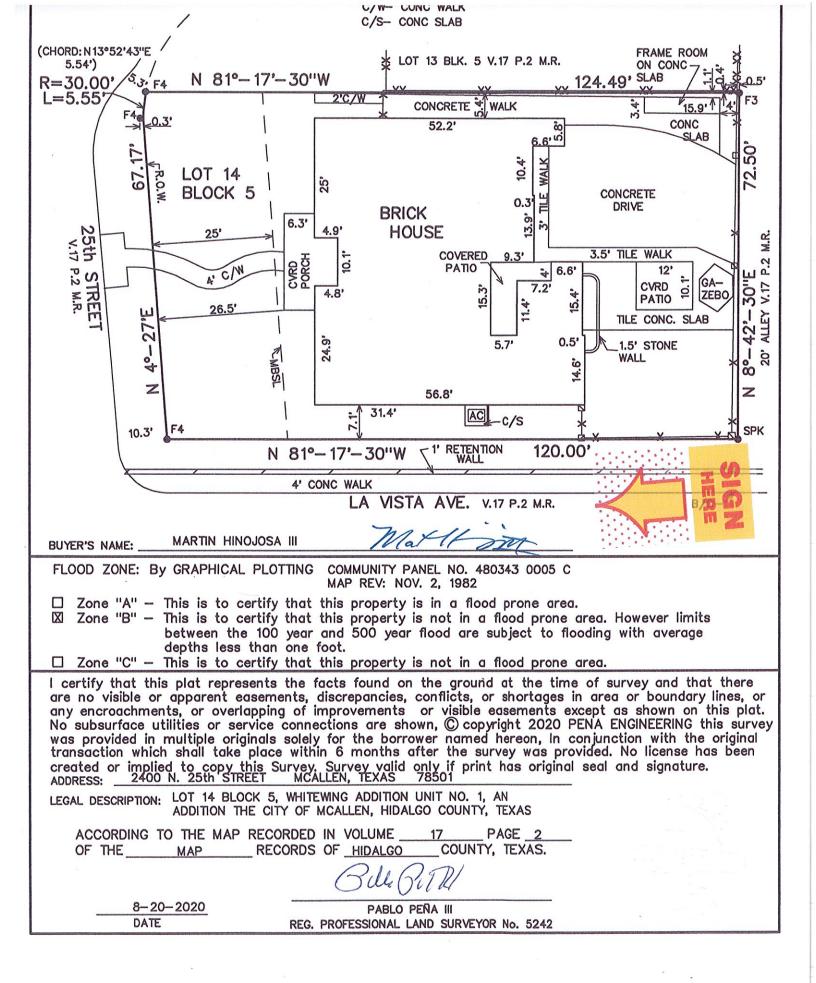
	My nother is disabled and I am trying to add a garage
	for easy access for the paramedics to pick her up and
eal	transport her on the stretcher. I just purchased this house
dd	on 9-9-20 and my agent dida & laform me about this
r A	process.
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Board Action	A State of the Common will be a sense of the
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	e Autorist by M.C., Paymant received by
	Rev.10/18

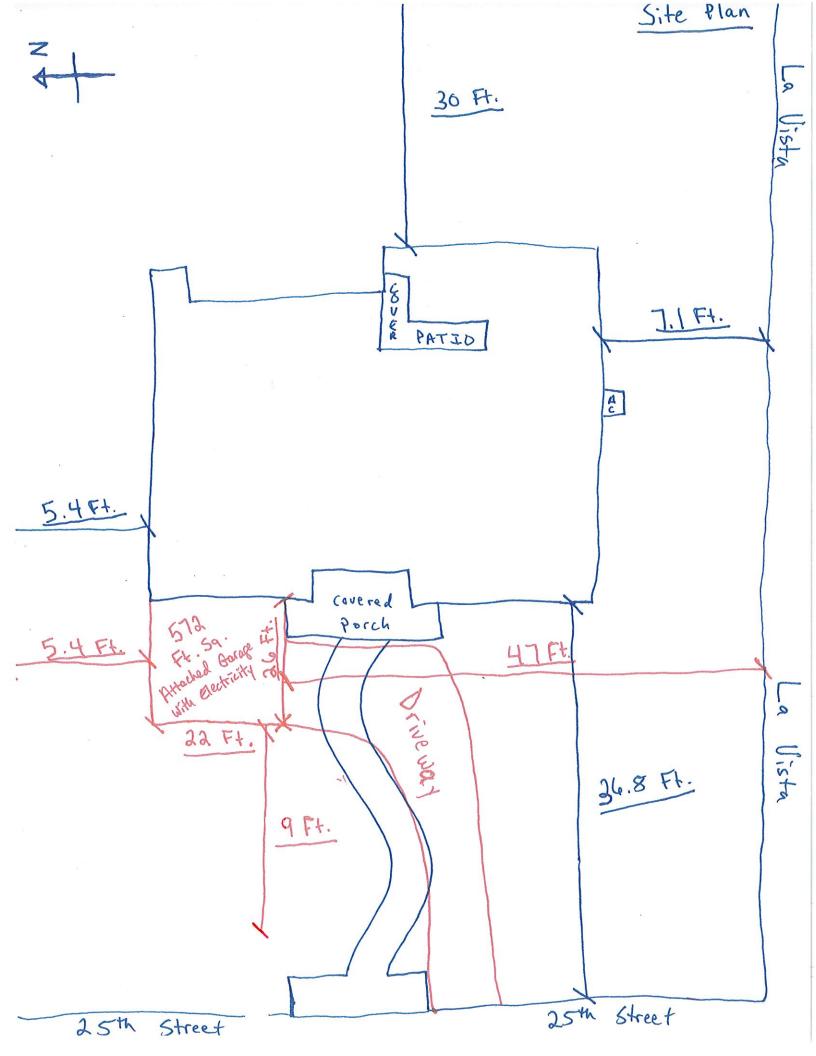


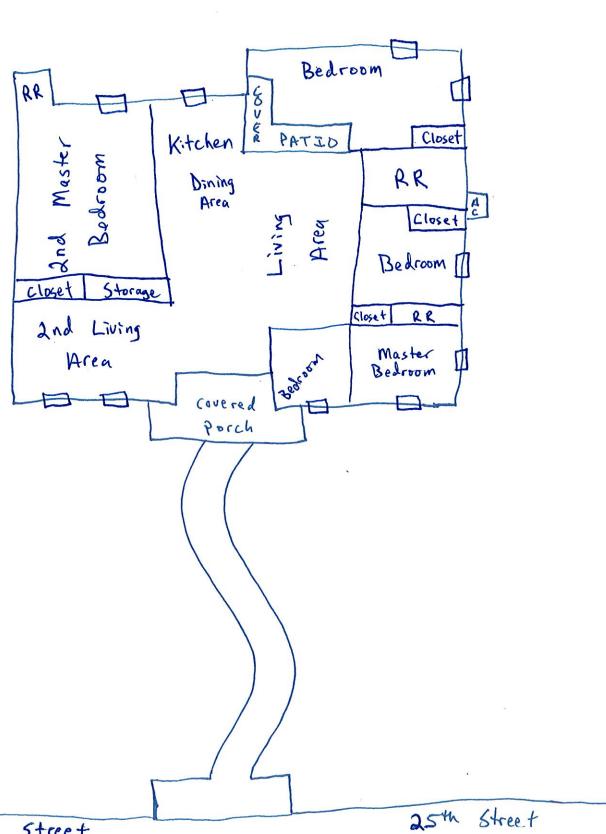












25th Street

October 30, 2020

To: City of Mcallen Planning and Zoning Case #ZBA2020-0066 Hebert Camacho Planner I

From: Roel A Gonzalez 2404 N. 25th St. McAllen 956-789-6489

Dear Mr. Camacho, this letter is a follow up to our phone conversation regarding a petition filed by Mr. Martin Hinojosa III requesting the city of McAllen Zoning Dept. to allow him an encroachment of 16 feet from the 25 feet front yard setback for a proposed garage. Again, I would like to express my opposition to such encroachments that will disrupt the symmetry of the subdivision and create more clutter. My house which sits on the north side of Mr. Hinojosa's property would be out of view and would create a security disadvantage If the City of McAllen allows for such variance. The encroachment of the front setbacks would also destroy the uniformity of the subdivision and that can have a negative affect on property values. Mr. Hinojosa has already built a shed in the backyard that was not permitted and that it is encroaching on the established setback, these actions are a disregard to the rules that everyone else abides by. I would suggest find space in his backyard to build his garage and not disturb the front views of our homes.

Thank you, Roel Gonzalez







Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: October 30, 2020

SUBJECT: REQUEST OF MARIA QUINTEROS, FOR THE FOLLOWING VARIANCE TO THE CITY

OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. FRONT YARD SETBACK FOR A PROPOSED GARAGE EXTENSION MEASURING 10 FT. BY 18 FT., AT LOT 73, LOS ALEGRES SUBDIVISION UNIT NO. 2, HIDALGO COUNTY, TEXAS; 317 UVALDE AVENUE.

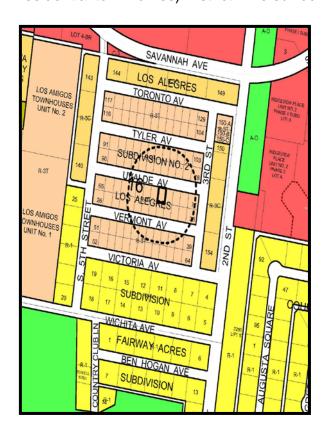
(ZBA2020-0071)

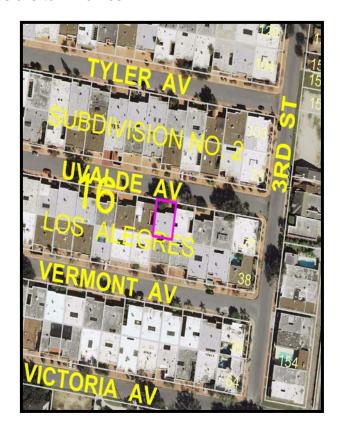
REASON FOR APPEAL:

Maria Quinteros is requesting the following variance to allow an encroachment of 10 ft. into the 10 ft. front yard setback for an for an proposed garage extension measuring 10 ft. by 10 ft. The existing proposed garage extension will be used for the applicant's cars because she enclosed her garage.

PROPERTY LOCATION AND VICINITY:

The subject property has frontage on Uvalde Avenue and is 274 ft. away from 3rd Street. The lot has 50 ft. of frontage on Uvalde Avenue and a depth of 75 ft. The property is zoned R-3T (multifamily residential townhomes) District. The surrounding land uses are townhomes.





BACKGROUND AND HISTORY:

Los Alegres Subdivisión Unit No.2 was recorded on January 23, 1978. The variance request was submitted on October 06, 2020.

ANALYSIS:

The variance request is to allow an encroachment of 10 ft. into the 10 ft. front yard setback. 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.

There are other existing structures that appear to be encroaching into the front yard setbacks within the subdivision. The properties along Uvalde and Tyler have a 3 ft. setback and utility easement that allowed residences to be built with their setbacks. The plat does not specifically show setbacks for properties along the front side of Uvalde Avenue therefore the required setbacks are as per ordinance. A review of Planning Department records did not reveal any other variances or special exceptions granted along this block.

Staff has received two phone calls in opposition to the request.

RECOMMENDATION:

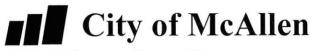
Staff recommends disapproval of the variance requests. If the Board chooses to approve the variance request, the approval should be limited to the encorachment as shown on the site plan.

City of McAllen

Planning Department APPEAL TO ZONING BOARD OF

	LUM AU AU UU
USA	City of McAllen Planning Department APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE 311 North 15th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)
Project	Legal Description The Bleares of No. 2 hof 73 Subdivision Name Street Address Number of lots No. 2 hof 73 Number of lots Number of lots No. 2 hof 73 Existing Zoning Reason for Appeal (please use other side if necessary) Reason for Appeal (please use other side if necessary) Street Address Existing Zoning Reason for Appeal (please use other side if necessary) Street Address N/A Existing Land Use Reason for Appeal (please use other side if necessary) Street Address N/A Existing Land Use Reason for Appeal (please use other side if necessary) Street Address N/A Existing Land Use Reason for Appeal (please use other side if necessary) Street Address N/A Existing Land Use Reason for Appeal (please use other side if necessary) Street Address N/A Existing Land Use Reason for Appeal (please use other side if necessary) Street Address N/A Existing Land Use Reason for Appeal (please use other side if necessary) Street Address Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required
Applicant	Name Maria OsiNteros Phone (956) 341-8314 Address 317 Uvalde AVE. E-mail Marine Quintero Collothail. Co City MOR/len State TX Zip 78503 Chessani Remodeling (950) 907-9776
Owner	Name Maria Quinteros Phone (956) 341-8314 Address 317 Uvalde AVL. E-mail City MCAller State TX Zip 7850 3
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 Mana Quinty Date Downer Authorized Agent
Office	Accepted by Payment received by DateCEIVE OCT 0 5 2020 Rev 10/18

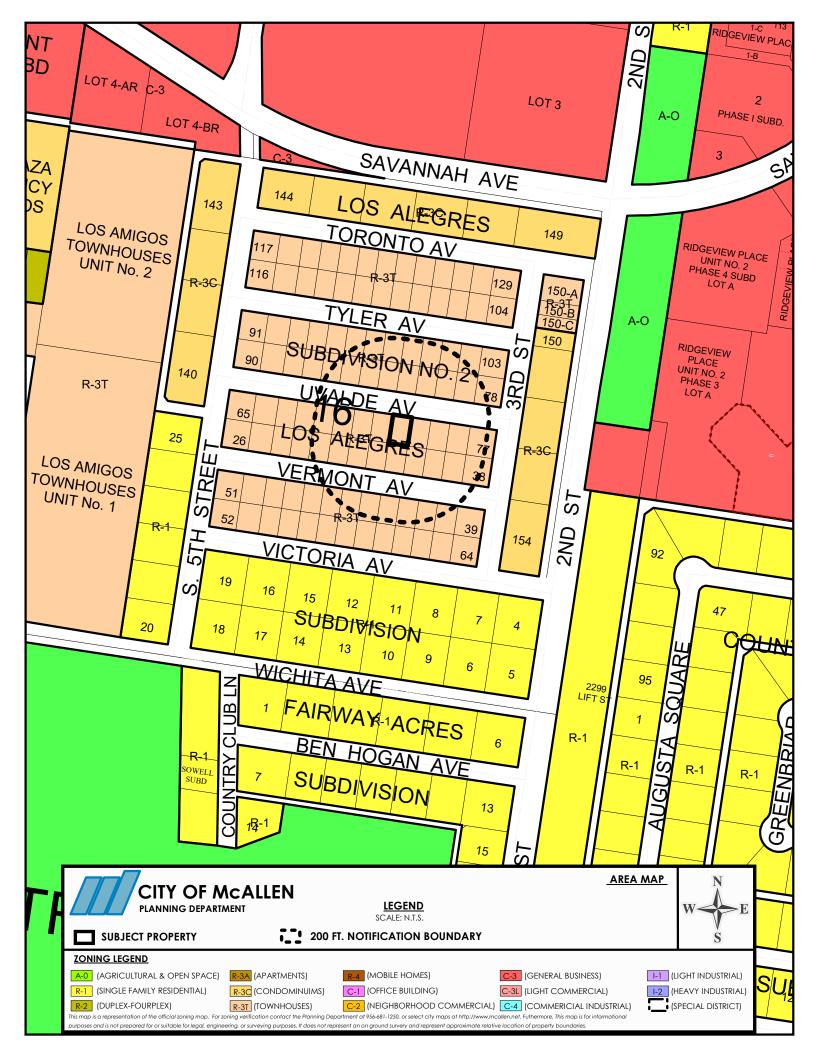
Board Action

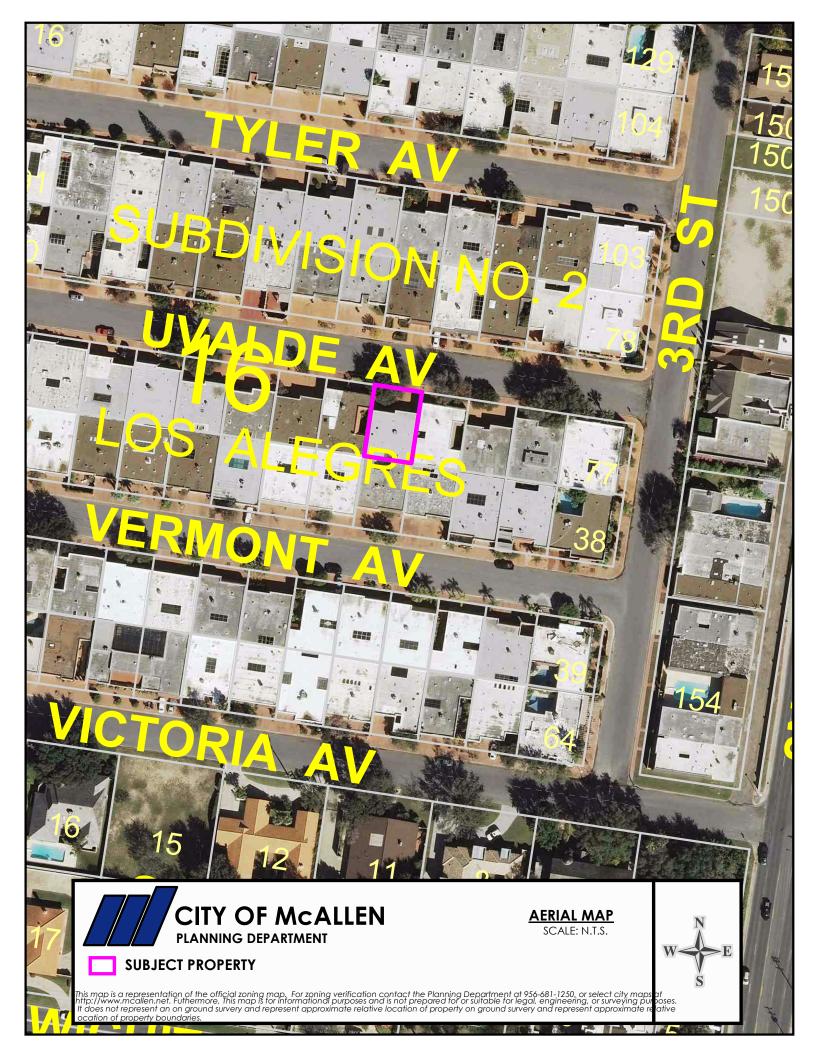


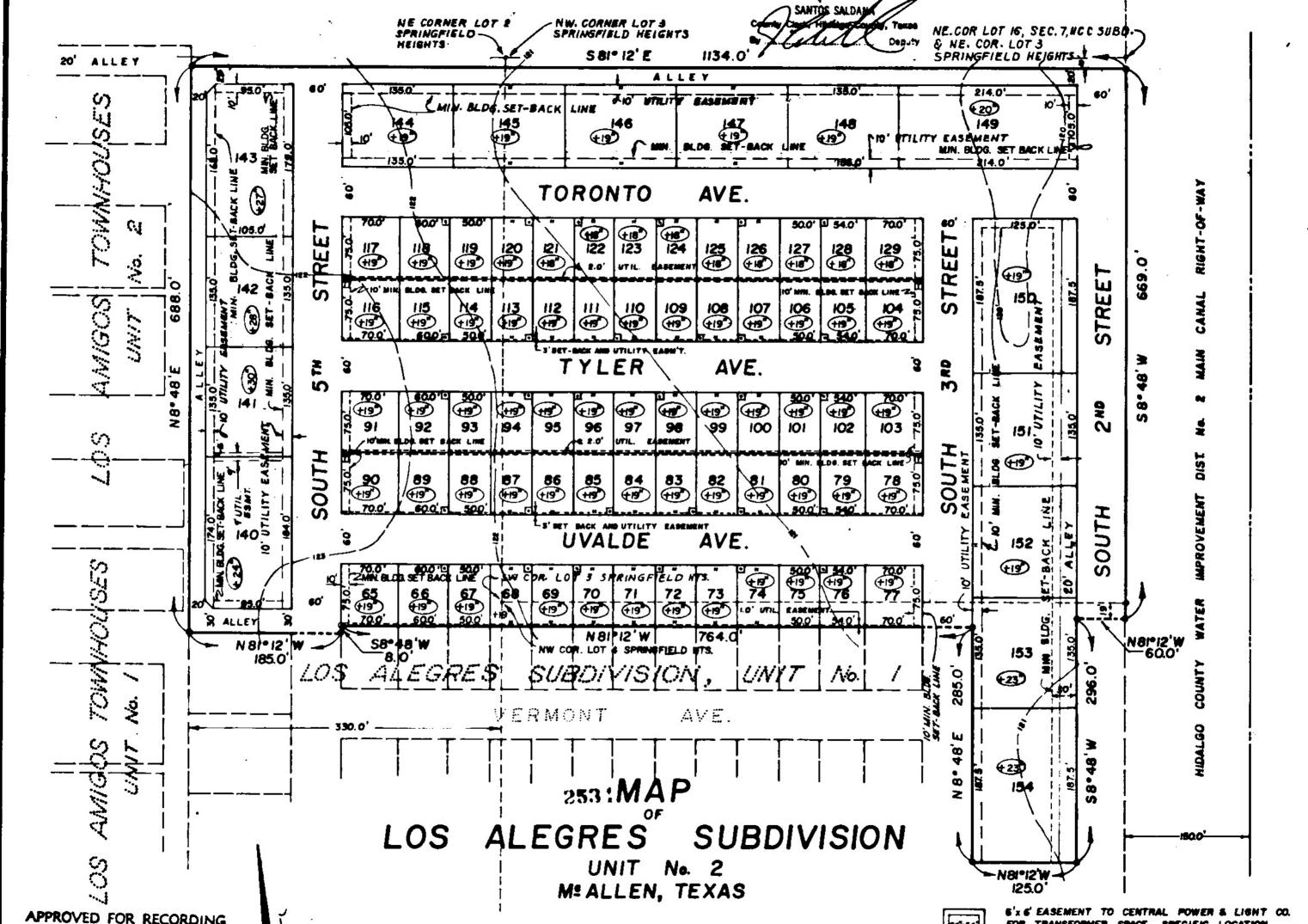
Planning Department REASON FOR APPEAL & BOARD ACTION

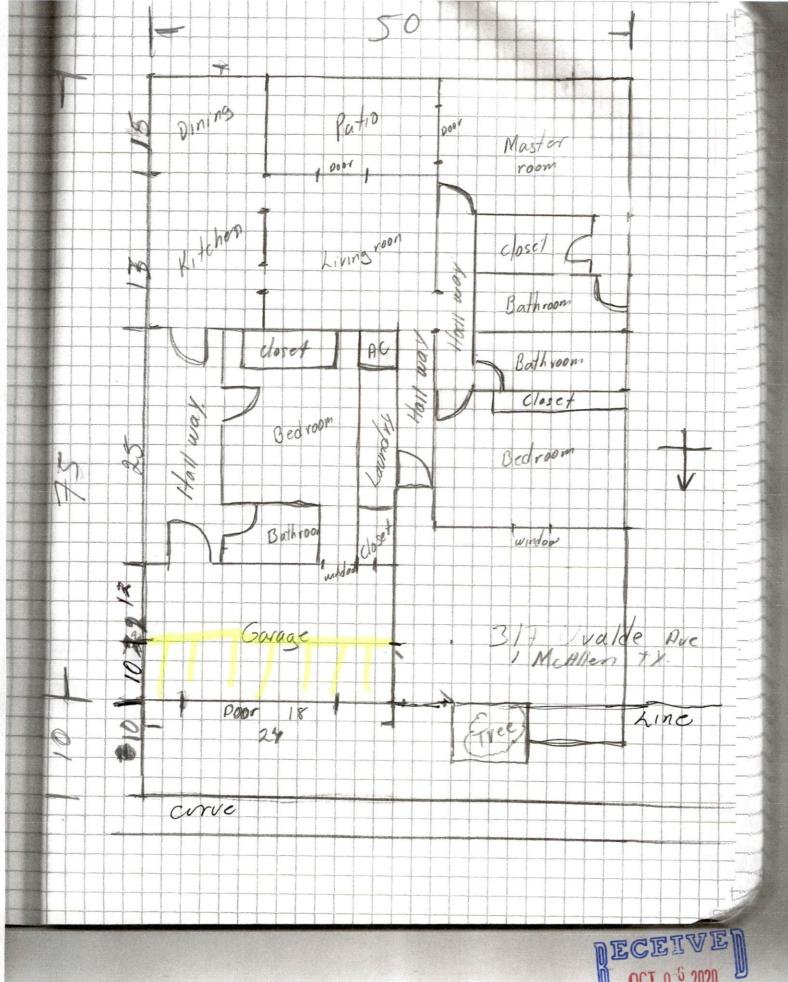
	REASON FOR APPEAL & BOARD ACTION
	*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (<i>Please use an additional page if necessary to complete responses</i>)
	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.
	 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:
	the subdivision Moude an assisment in 1978 prior
	to the ordinance of 18 feet. elplat has no note of
	Set back in front of the lots, the front has 3 feet of 5et 2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the
	owner:
	we are leaving 10 feet for the side welf
	 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 construction is not obstructing the vision
	for the street or traffic. the same as my neighbor the built it one already
	4. Describe special conditions that are unique to this applicant or property:
	the lot is town house/patio home and the
	othe reason because my garage was a converted in
_	another Bedroom. I still need a gazage for
	Chairman, Board of Adjustment Date Signature
	Rev. 9/20

OCT 0 6 2020





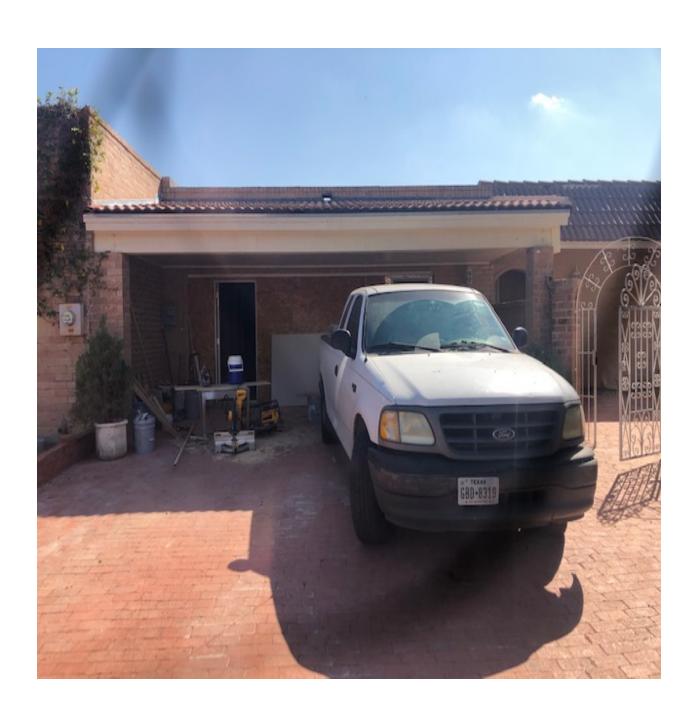




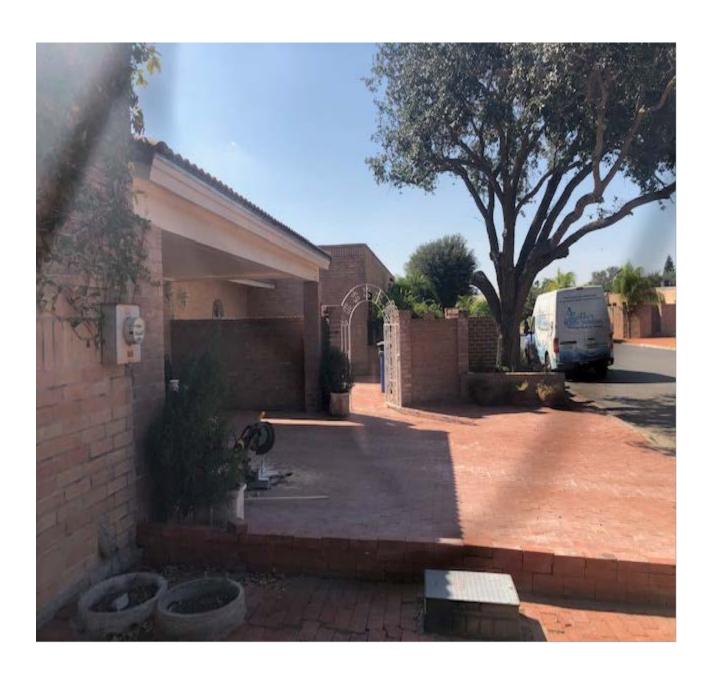
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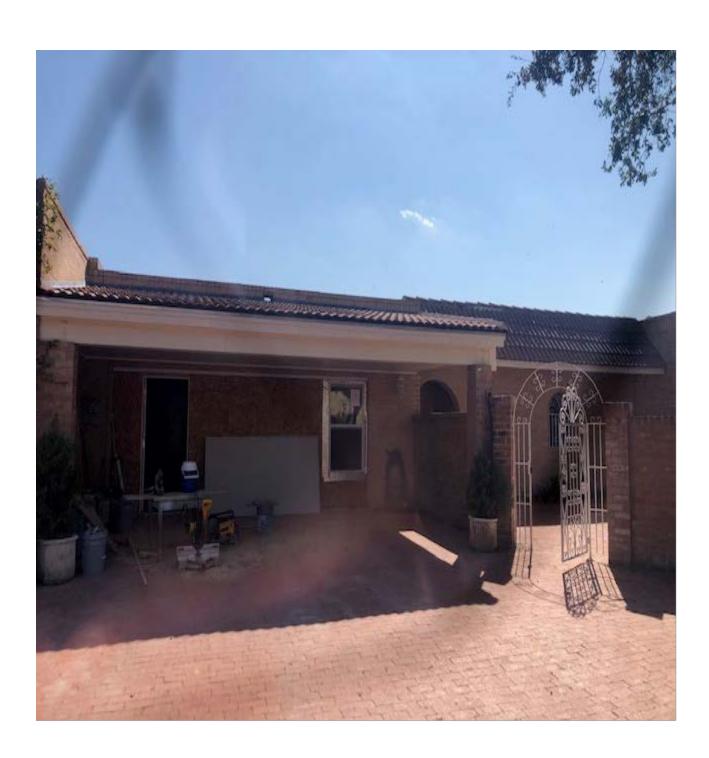
OCT 0-5 2020

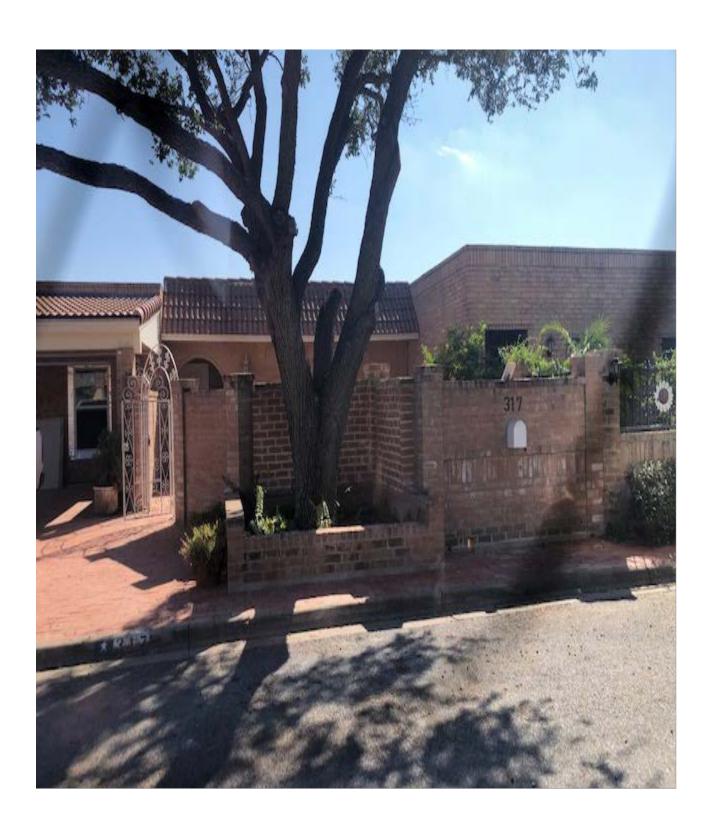
BY:











EXHIBITS OF OPPONENT TO REQUEST

Opposition Made by: Anne Walker Cragg

ZBA2020-0071

Request of Maria Quinteros to allow a 10 foot encroachment into the 10 foot required front yard setback for a proposed garage extension measuring 10 feet by 18 feet at Lot 73, Los Alegres Subdivision, Unit No. 2, Hidalgo County, Texas (317 Uvalde)

Exhibit No.	Description	
1	Photo of Home of Opponent, Anne Walker Cragg (316 Uvalde Ave., McAllen, Texas)	
2	Photo of Home of Appellant (317 Uvalde Ave., McAllen, Texas	
3	View of Uvalde Ave. looking West from 317 Uvalde	
4	Recorded Plat of Subdivision	
5	Analysis of Board Authority	

Anne Walker Cragg requests to make a brief presentation in opposition to the request at the November 4, 2020 hearing through her undersigned attorney.

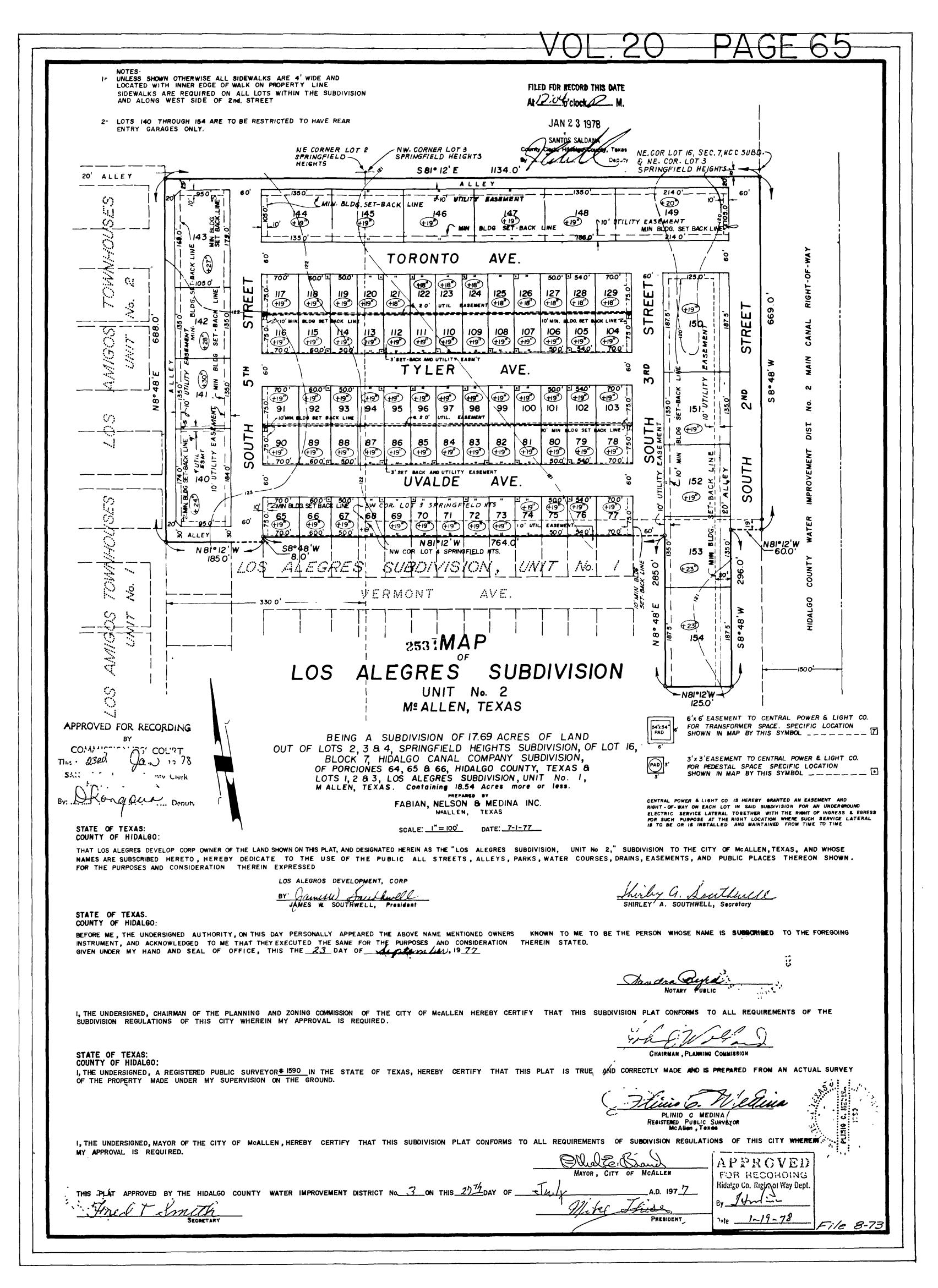
Submitted October 29, 2020

/s/ Mark W. Walker /s/
Mark W. Walker
Texas Bar No. 20717350
Attorney at law for Anne Walker Cragg
1400 N. McColl, Suite 205
McAllen, Texas 78501
(956) 803-0092
Email: Mark@MWalkerLegal.com









BOARD AUTHORITY

Sec. 138-43. - Powers.

The board of adjustment shall have the following powers, and it shall be its duty:

- (1) To hear and decide appeals where it is alleged there is <u>error in any order</u>, requirement, decision or determination made by an administrative official <u>in the enforcement of this chapter</u>. **NOT APPLICABLE.**
- (2) In hearing and deciding appeals, to grant special exceptions in the following instances:
 - a. Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the chapter, <u>as shown on the maps fixing the several districts</u>, <u>accompanying and made a part of this chapter</u>, <u>where the street layout actually on the ground varies from the street layout as shown on such maps</u>. **NOT APPLICABLE**.
 - b. Permit the reconstruction of a nonconforming building which has been damaged to the extent of more than 50 percent of its replacement cost. **NOT APPLICABLE.**
 - c. Waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities, or where such regulations would impose an <u>unreasonable hardship</u> upon the use of the lot, as contrasted with merely granting an advantage or a convenience. **NOT APPLICABLE.**It's not a hardship for there to be a setback requirement like every other home in the subdivision.
 - d. <u>If no structural alterations are made</u>, any nonconforming use of structure, or structure and premises in combination, may, as a special exception, be changed to another nonconforming use, provided the board of adjustment shall find that the proposed nonconforming use is not more nonconforming in the district as the previously existing nonconforming use. **NOT APPLICABLE.**
- (3) In permitting such exceptions, the board of adjustment may require any conditions and safeguards as it shall deem appropriate to see that the purpose and intent of this chapter are met, and the violation of any such conditions or safeguards shall constitute a violation of this chapter.
- (4) The board shall have the power to authorize upon appeal in specific cases such variances from the terms of this chapter <u>as will not be contrary to the public interest</u>, where, <u>owing to special conditions</u>, a literal enforcement of the <u>provisions of this chapter will result in unnecessary hardship</u>, and so that the spirit of this chapter shall be observed and substantial justice done. Such

variances from the strict application of the terms of this chapter must be in harmony with its purpose and intent, and shall be authorized only when the <u>board</u> is satisfied that a granting of such variation will not merely serve as a <u>convenience to the applicant</u>. At the same time, the surrounding property must be properly protected. In making its determination, the board must be assured that the applicant has proved the following: **NOT APPLICABLE**.

- a. That the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; *IT IS A HOME*.
- b. That the plight of the owner is unique and not shared in general by others in the neighborhood also as a result of this chapter and thus perhaps requiring rezoning; and THE CURRENT CONDITION IS THE SAME AS EVERY OTHER HOME IN THE NEIGHBORHOOD AND AS THEY BOUGHT IT.
- c. That the use to be authorized by the variance will not alter the essential character of the locality. *IT WILL MAKE A HUGE CHANGE IT WILL BE THE ONLY HOUSE WITH NO SETBACK.*
- (5) In exercising the abovementioned powers, the board may, in conformity with the provisions of V.T.C.A., Local Government Code § 211.009 et seq. and this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- (6) The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it its required to pass under this chapter or to effect any variation in such chapter.

(Code 1966, § 32-17; Ord. No. 2008-83; § I, 12-8-08; Ord. No. 2017-10, § I, 1-23-17)

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: October 30, 2020

SUBJECT: REQUEST OF FRANCES RIVAS, FOR THE FOLLOWING SPECIAL EXCEPTION

TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 13 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR AN EXISTING CARPORT MEASURING 19 FT. BY 23 FT. AT LOT 16, BLOCK 7, WESTWAY HEIGHTS SUBDIVISION UNIT NO. 2, HIDALGO COUNTY, TEXAS;

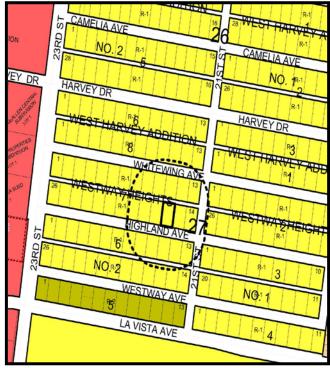
2108 HIGHLAND AVENUE. (ZBA2020-0069)

REASON FOR APPEAL:

Frances Rivas is requesting a special exception to encroach 13 ft. into the 25 ft. front yard setback for a proposed carport measuring 19 ft. by 23 ft. As per a phone conversation, the applicant is requesting a carport because the inclement weather is not good for her health and the applicant states the structure was built over 15 years ago with proper permits; however building Department records do not show permit information.

PROPERTY LOCATION AND VICINITY:

The subject property is located on the north side of Highland Avenue, 140 ft. west of North 21st Street. The property has 70 ft. of frontage along Highland Avenue and a depth of 112.5 ft. with a lot size of 7,875 sq. ft. Surrounding land use are single-family houses.





BACKGROUND AND HISTORY:

Westway Heights Subdivision, Unit No. 2 was recorded on May 21, 1963. A stop work order was issued by Building Inspection staff on August 07, 2020 for construction without a permit. An application for a special exception was submitted on September 29, 2020. According to an aerial view on Google Earth the carport was built between the date of March 2003 and August 2006. The applicant stated that construction was permitted, but the Building Department did not find any records on file of any building permits issued for the work.

ANALYSIS:

The request is to allow an encroachment of 13 ft. into the 25 ft. front yard setback for a wooden carport with brick columns measuring 19 ft. by 23 ft. An aerial photo from 2002 does not appear to show the existing carport structure encroaching into the front yard. An aerial photo from 2006 show a roof structure closer to the street.

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 applicant stated in her application an observation that the carport addition construction resembles the original overall construction of the residence. The materials used in construction of the carport are compatible with the existing residence and compatible with the character of the neighborhood.

There are other existing carports and structures that appear to be encroaching into the front yard setbacks. A review of Planning Department records did not reveal any other variances or special exceptions granted along this block

The carport was built over 15 years ago and in the past no concern has been raised to the best of the applicant's knowledge. The applicant states that part of the reason for the carport is her health. The residence has a two-car garage that is used for the storage of household items.

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

Measurements provided are without the benefit of a survey.

RECOMMENDATION:

Staff recommends approval of the special exception request. Approval should be limited to the encroachment shown on the submitted site plan.

ZbA 2020-0069

200A 2020

City of McAllen

Planning Department APPEAL TO ZONING BOARD OF

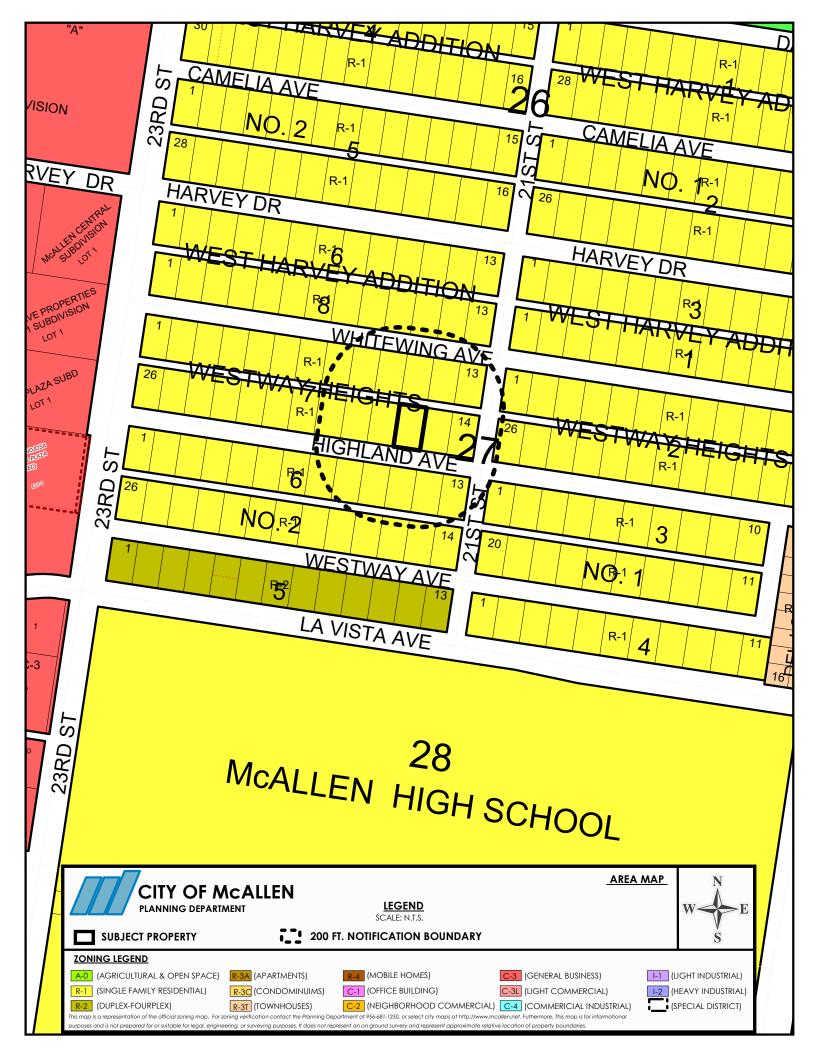
311 North 15th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)

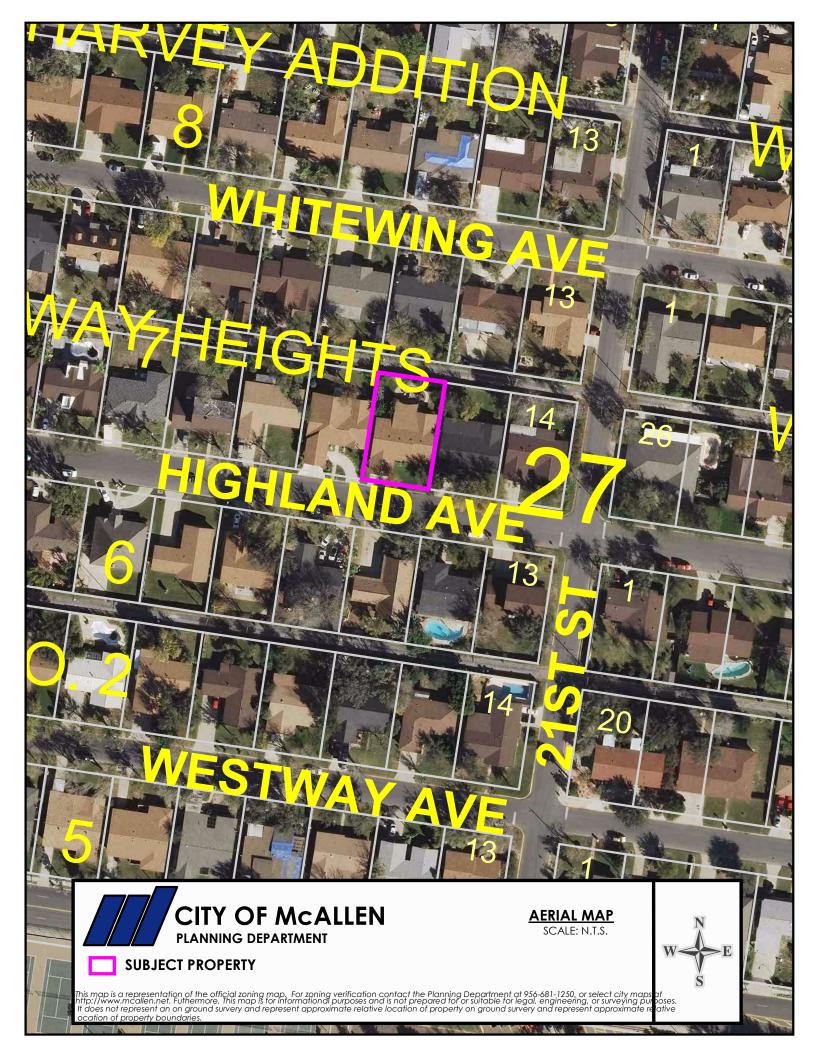
ADJUSTMENT TO MCALLEN ZONING ORDINANCE		
L Of	Legal Description Westway Heights UT NO 2 LOT 16 BIKL7	
Project	Subdivision Name Destway Heights	
Applicant	Name Frances Rivas Phone (956)686-8528 Address 1625 Whitewing E-mail Manyroduguze donnaisdi City McAllen State TV Zip 78501	
Owner	Name Frances RIVAS Phone (956) 686-8528 Address 1625 Whitewins E-mail Manyvodriguez Edonmais City MCAICA State TV Zip 7850 1	
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 Print Name Yames Pavas Owner	
Office	Accepted by Payment received by Date Rev 10/18 SEP 2 9 2020	
J		

City of McAllen

Planning Department REASON FOR APPEAL & BOARD ACTION

	have no record, at this time - carport built to
	allowable permit specs at the time of
eal	construction. Permit was obtained prior to built-
u L	even though none are on record. At the time
	of building the green permit was located on the
	garage door and inspection was done and passed
	the recuirements at the time Over 15 years
7 e8	ago. As over 15 years has passed of the built,
-	this case has passed "the Statue of limitations"
(60) (no one has said anything in the last 15 years.
572	No one has said anything about the front
We will	set back of the Structure as mentioned by
	Michelle Rivera Assistant City Manager "being as
	she inspected it recently, thought at first sight
	was part of the original build."
<u></u>	- We were directed to complete form online - was
Action	an outdated form - What else is outdated that is not
Ac	current - they holds citizens occountable.
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	Chairman, Board of Adjustment Date
	Signature
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	Rev.10/18





HOME

Carport

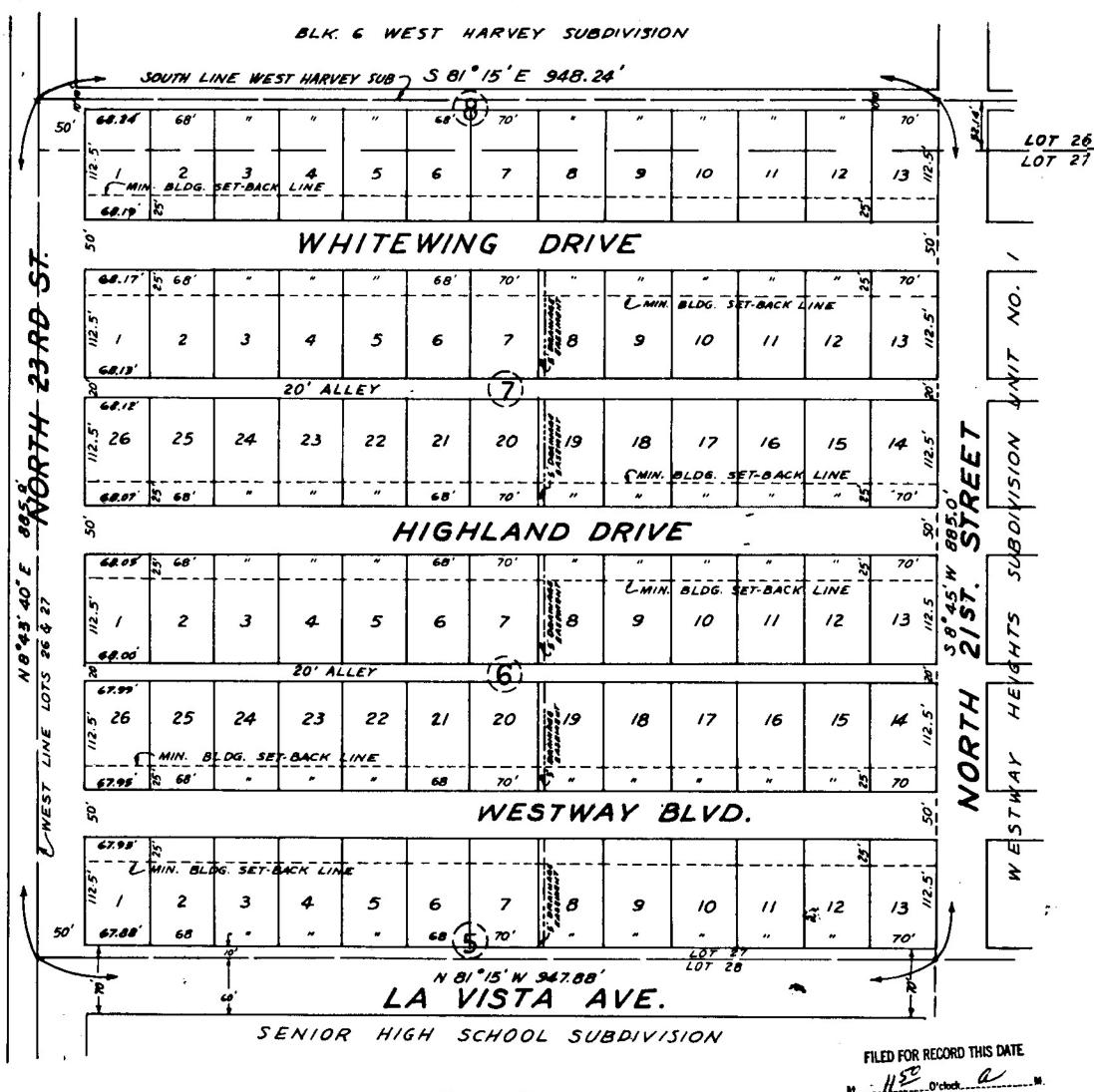
a3

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32

Alos highland

T-Z.



MAP

WESTWAY HEIGHTS SUBDIVISION, UNIT NO. 2 MEALLEN, TEXAS MAY 2 1 1963

JULIO GUZMAN

County Dunity Hudeston County, Texas

APPROVED FOR RECORDING

Ewers, Toolbaker, Ewer





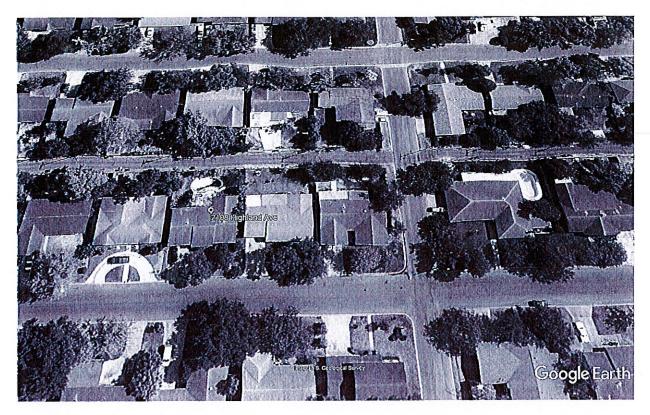








2002



2108 Hishland



Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: October 30, 2020

SUBJECT: REQUEST OF DOUGLAS AND ROSALIA LAROQUE FOR THE FOLLOWING

VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 15 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR AN EXISTING GAZEBO MEASURING 10 FT. BY 10 FT. AT LOT 33, EL RANCHO SANTA CRUZ SUBDIVISION PHASE I, HIDALGO COUNTY, TEXAS; 800 EAST PINERIDGE

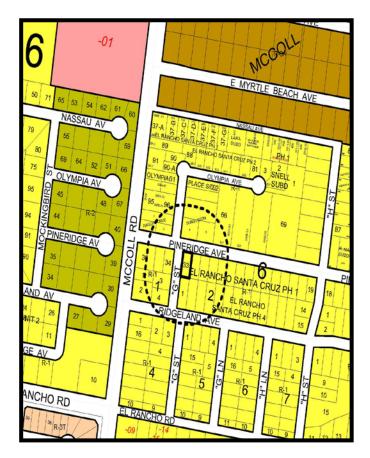
AVENUE.(ZBA2020-0070)

REASON FOR APPEAL:

Douglas and Rosalia LaRoque are requesting the following variance to allow an encroachment of 15 ft. into the 25 ft. front yard setback for an for an existing gazebo structure measuring 10 ft. by 10 ft. The existing gazebo is used as a sitting area that helps the applicant spend time outdoors in order to cope with a medical condtion.

PROPERTY LOCATION AND VICINITY:

The subject property has 50.81 of frontage on Pineridge Avenue and a depth of 109 ft. for an area of 5,538 sq. ft. The property is zoned R-1 (single family residential) District. The surrounding land uses are single-family residences.





BACKGROUND AND HISTORY:

El Rancho Santa Cruz Subdivision was recorded on January 06, 1986. A stop work order for building without a permit was issued on September 29, 2020. The applicant submitted an application for a building permit on October 06, 2020. The variance request was submitted on October 07, 2020.

ANALYSIS:

The variance request is to allow an encroachment of 15 ft. into the 25 ft. front yard setback. There is a 5 ft. utility easement adjacent to the front property line. The existing gazebo does not encroach into the 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.

Accessory buildings are customarily located in the rear yard.

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

RECOMMENDATION:

Staff recommends disapproval of the variance requests. If the Board chooses to approve the variance requests, the approval should be limited to the footprint as shown on the site plan.

2BD 2020-0070

City of McAllen

Planning Department APPEAL TO ZONING BOARD OF

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

ADJUSTMENT	TO MCALL	LEN ZONING	ORDINANCE
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ADJUSTMENT TO MCALLEN ZONING ORDINANCE									
Project	El Brincho Sonta Cruz Ph I Lot 33 BOD E Pineridese AVE Subdivision Name Street Address Number of lots Gross acres Existing Zoning Residental Existing Land Use Single family Reason for Appeal (please use other side if necessary) An existing gazebo ### ### ############################								
Applicant	Name Dougles & Bosalia Lakey Phone 996 1048-9854 Address 800 E. Arresidege AND E-mail LAROUSE 690 Years City MCAllen State TX Zip 78503								
Owner	Name Douglas & Rosalia La Roy Phone (950) W48-9854 Address 800 & Pineridge AVE-mail LAROQUE GG Bychin City Manlen 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 Rocker Date Owner Authorized Agent								
Office	Accepted by H.C. Payment received by								
1# 71	BY:								

City of McAllen

Planning Department REASON FOR APPEAL & BOARD ACTION

Reason for Appeal	Oue to my service connected dissabilities from Serving in the Vietnam wax suffering from PTSD, Self isolation, anxiety, depression. The majority of the time I sit active and this was recommed by my doctors.
	Fortugen en dict of a nothing 2000 MAN I Child None Manager I and I and A and A compared to the compared to t
11.0	
ard Action	The legislation of the legislati
Boal	Chairman, Board of Adjustment Date
1	Signature Rev.10/18

City of McAllen Planning Department REASON FOR APPEAL & BOARD ACTION

Reason for Appeal	A variance will not be granted to relieve a self-created or personal natuship, in Stall it be decided to relieve a self-created or personal natuship, in Stall it be Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses) "Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below. 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: Since property is an a concert of were giving up more space than the other residents lots. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner: Due to my service concerted disabilities from serving and other medical problems. 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: Variance is not blocking anyones view it sets backs enough and does not interfere with entering and back sets. Out to my medical issued that are unique to this applicant or property: Oue to my medical issued laws and page and page and page and page and the property and page
Board Action	Chairman, Board of Adjustment Signature Rev. 9/20

McALLEN

RESIDENTIAL PERMIT APPLICATION

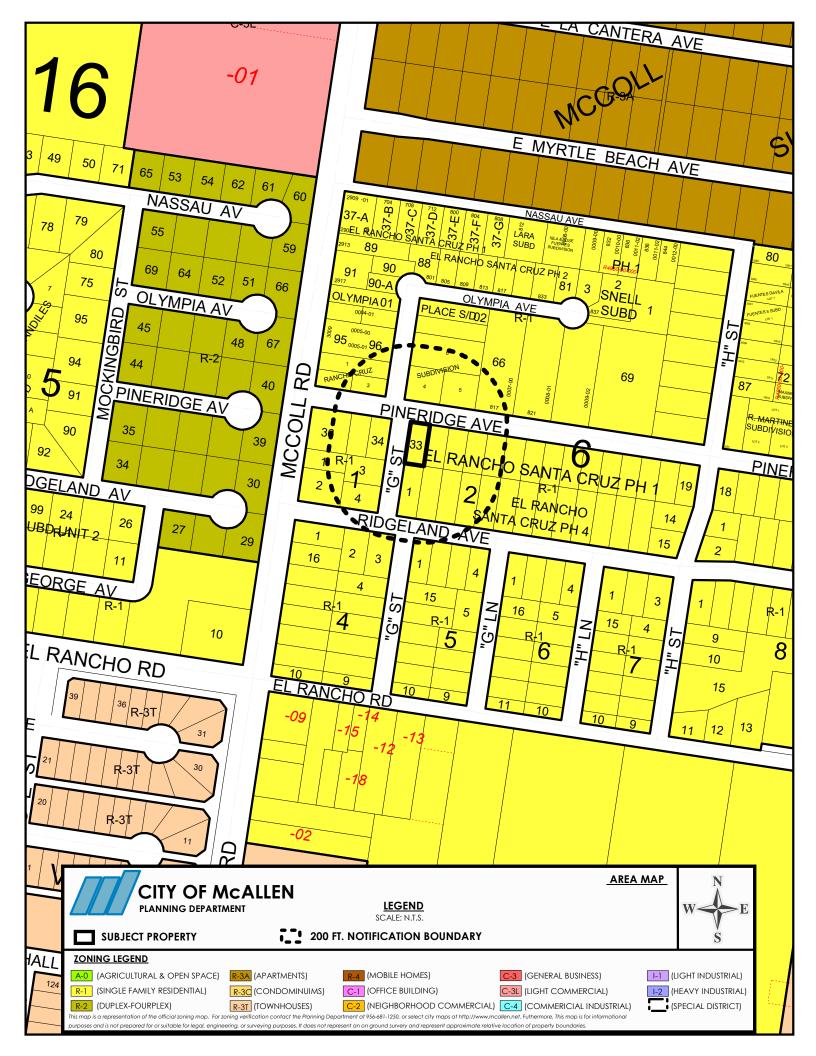
REV. 3/2020

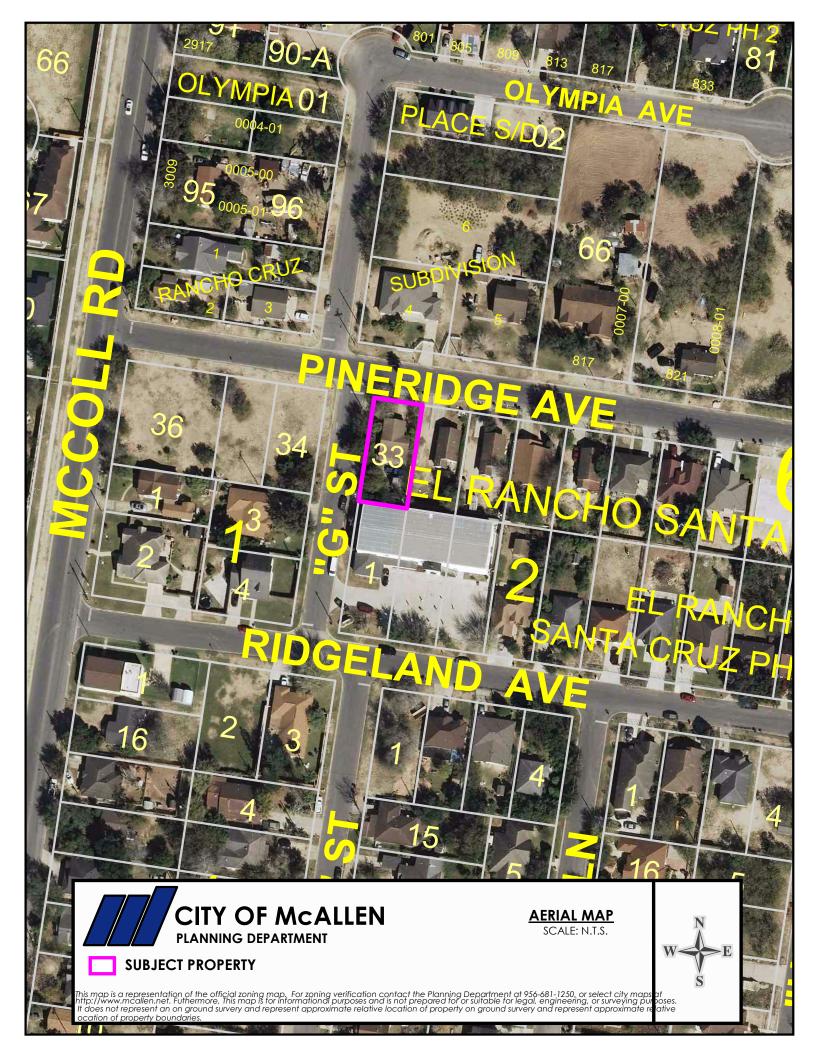
APPLICANT	P.O. BOX 220 McALLEN, TEXAS 78505-0220 APPLICATION MUST BE COMPLETE (Please type or print in black or blue ink) NAME ROSALIA LAROQUE PHONE (956) - 648 - 0341 ADDRESS CITY CONTACT: NAME: ROSALIA LAROQUE PHONE (956) - 648 - 0341 STATE TX ZIP 78503 PHONE (956) - 648 - 0341 TOWNER CONTACTOR TENANT OTHER
OWNER	NAME Douglas & Rosalia Laloque PHONE GOL 648 9854 ADDRESS BOO E. Pinaridge AUE *EMAIL: LAROQUE 690 gas CITY MUHLEN STATE TX ZIP 78503 *OWNER INFORMATION NOT PROVDIED, INITIAL:
CT	MNEW ADDITION REMODELING REPAIR MOVE REMOVE DATE BLDG. HGT. DO NO. OF FLOORS BLDG OD NO. PARKING SQ. FT LOT FRONT ABOVE CURB EXISTING USE OF LOT USE SCOPE OF WORK TO BE DONE GAZEDO COME AS A KIT TO BE DATE OSCENDIO RESIDENTIAL NO. OF NO. NO. SQ. FT SQ. FT NON-LIVING LIVING
-	FOUNDATION EXT WALL ROOF UPGRADES/OTHER CONCRETE SLAB MASONRY VENEER WOOD SHINGLE GRANITE COUNTERTOPS CONCRETE PIER MASONRY SOLID OMPOSITION MARBLE TUBS/FLOORS NONCRETE BLOCK METAL SIDING METAL CUSTOM WINDOWS ONCRETE BEAM COMPOSITION BUILD UP POLYURETHANE INSULATION WOOD POSTS WOOD CLAY OR CONCRETE TILE OTHER UPGRADES LOT 33 BLOCK SUBDIVISION EI RONCHOO SOCIAL CUZ Ph I SITE ADDRESS ST. NO. 800 ST. NAME PINEY CLAYER AUE
CITY USE ONLY	Construction Cost Permit Fee \$

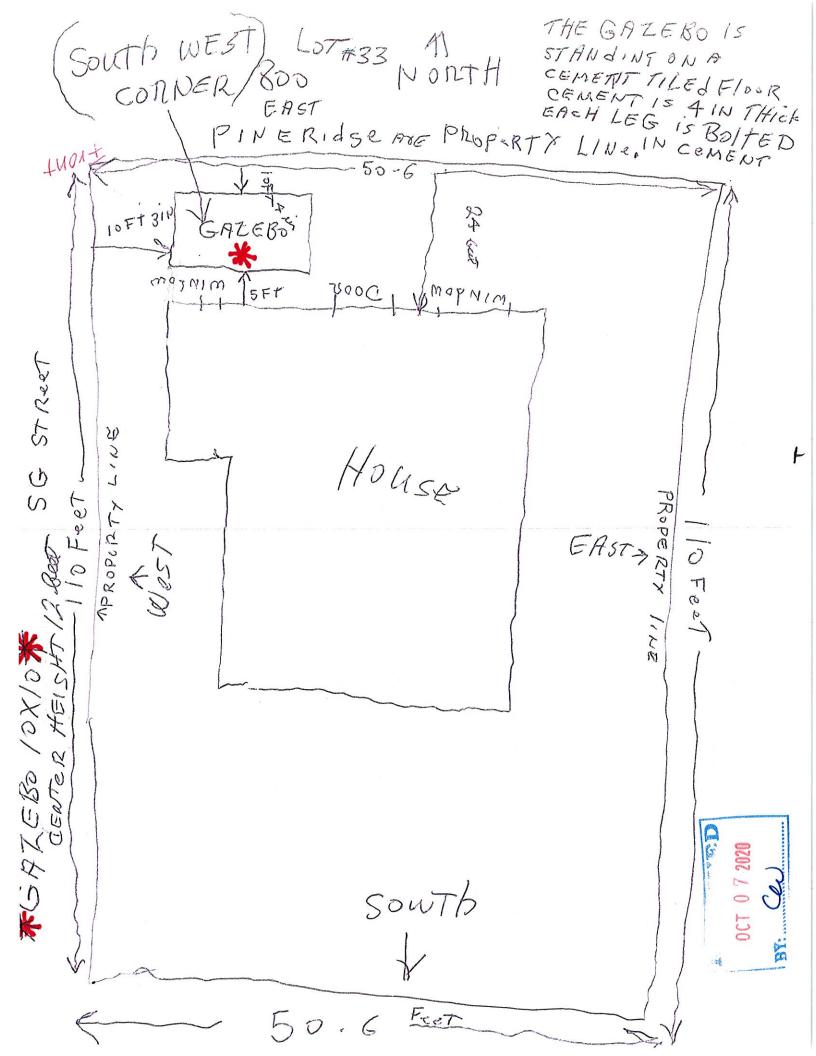
The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions 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 herby 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 is commenced within six months after its issuance or if the work authorized by such permit is commenced or abandoned for six months after the time of work is commenced. This permit is good for one year only.

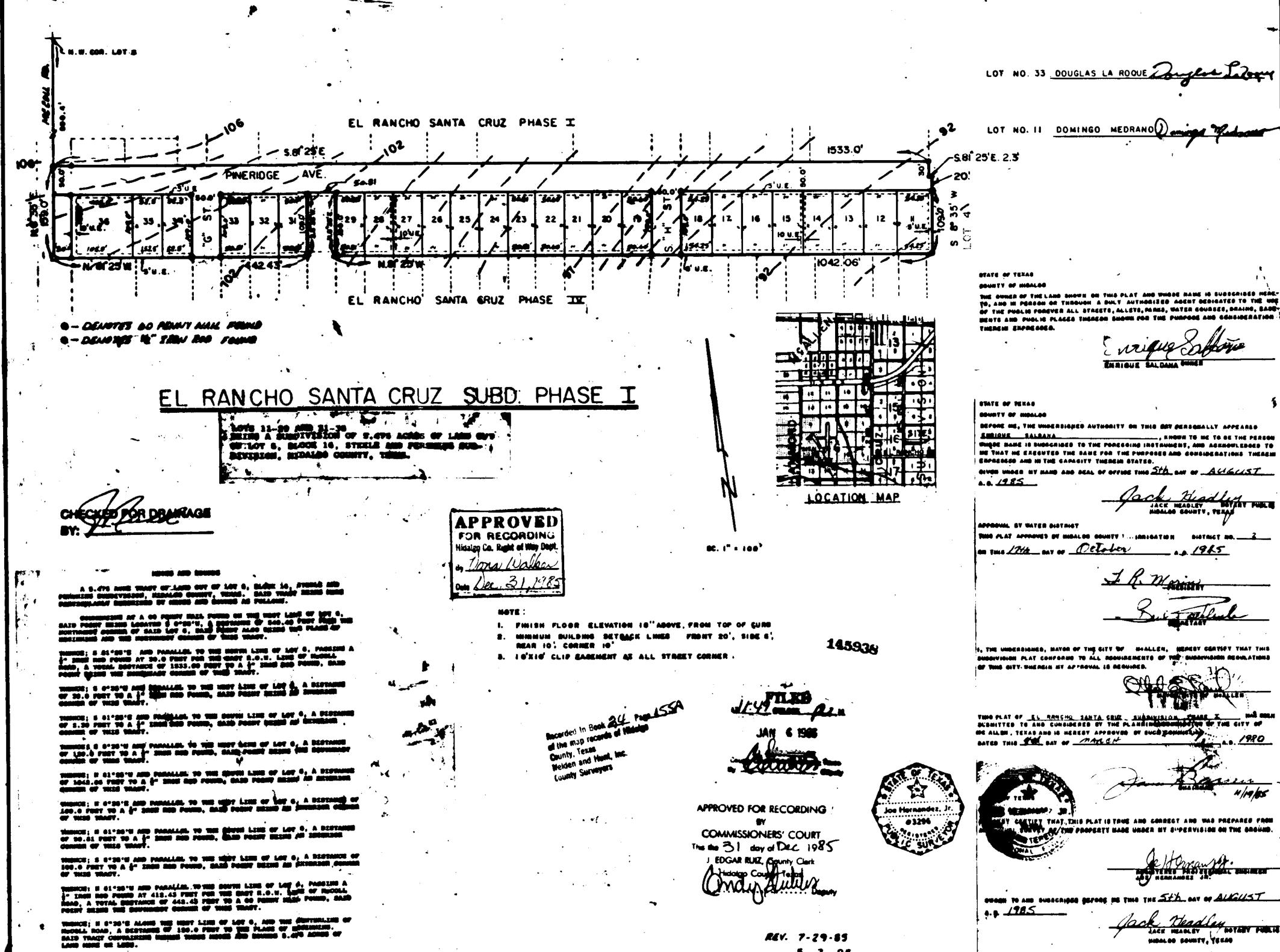
PRINT (AUTHORIZED AGENT/OWNER) Royaling Jakogus

LaRoque 69@ yanco.com.





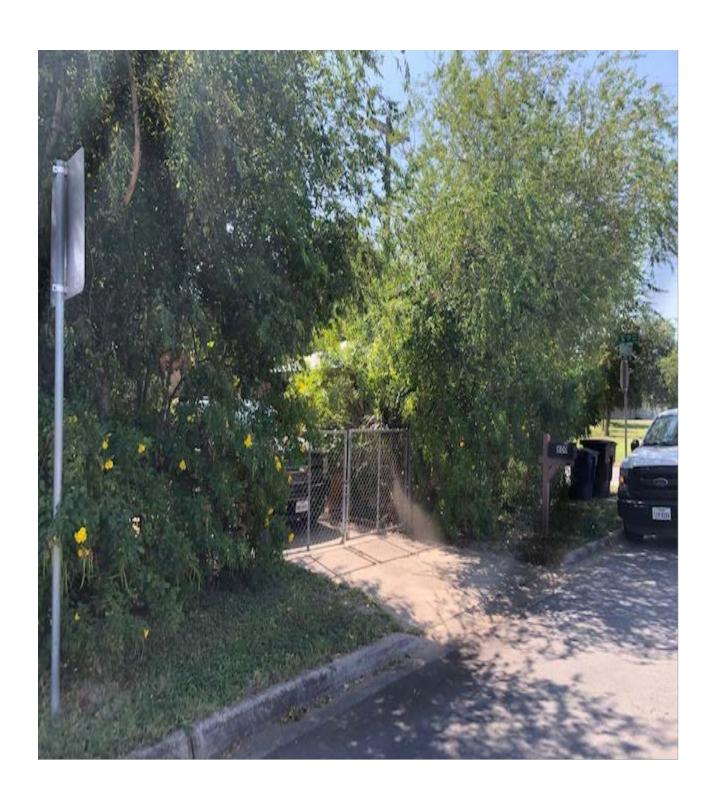


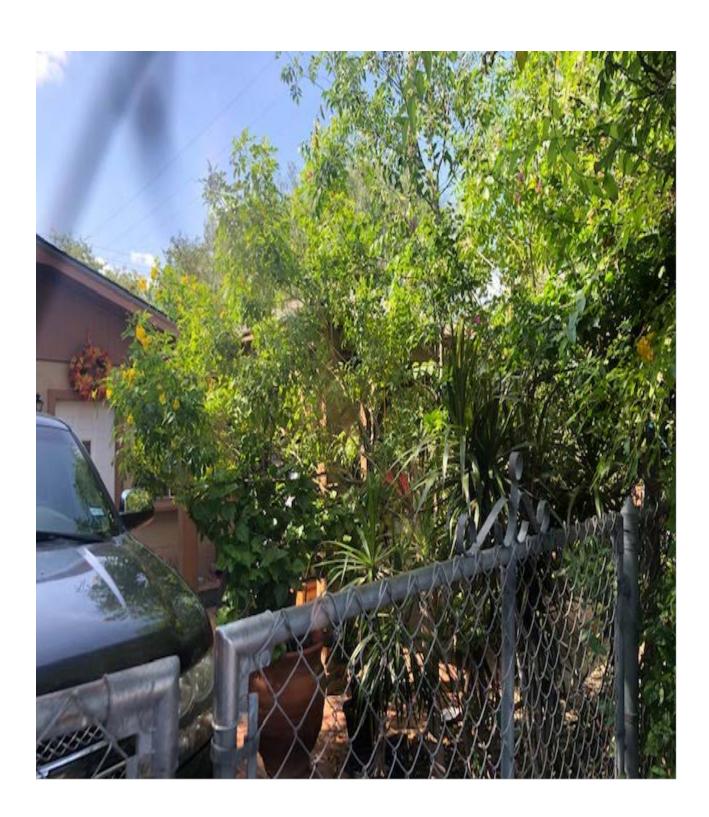


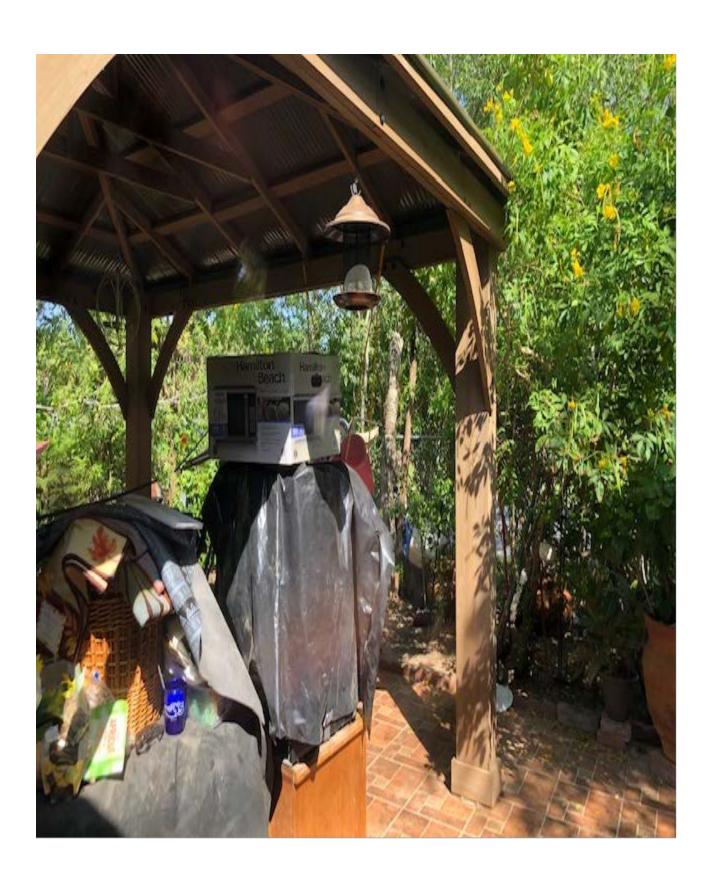
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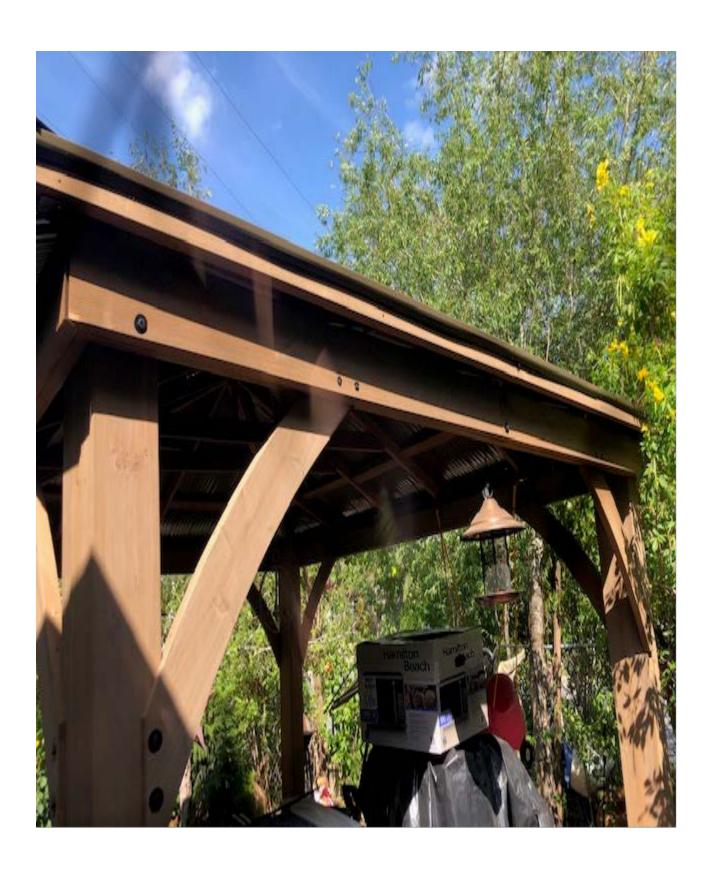
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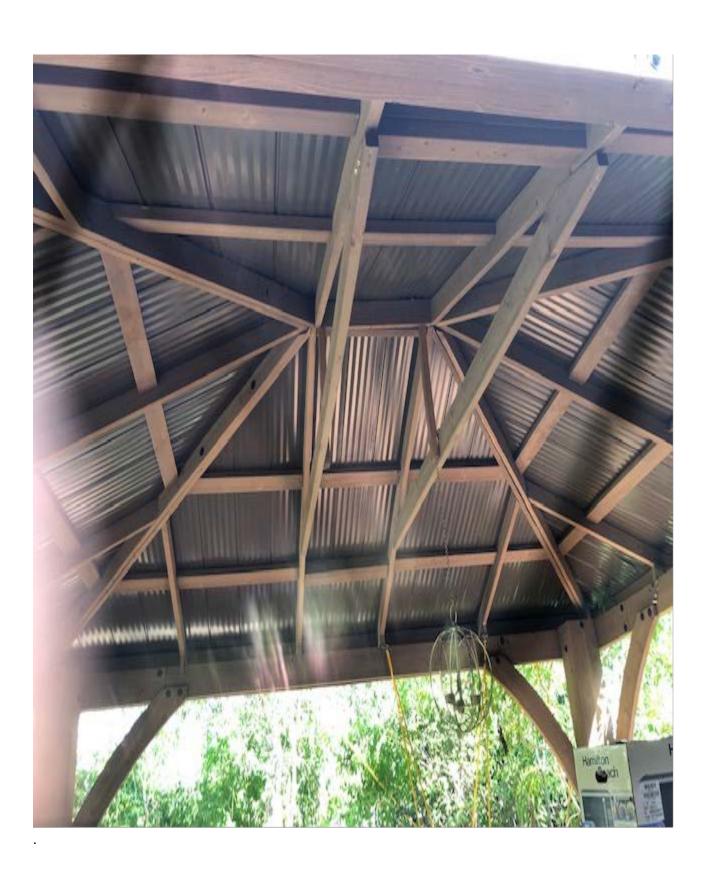


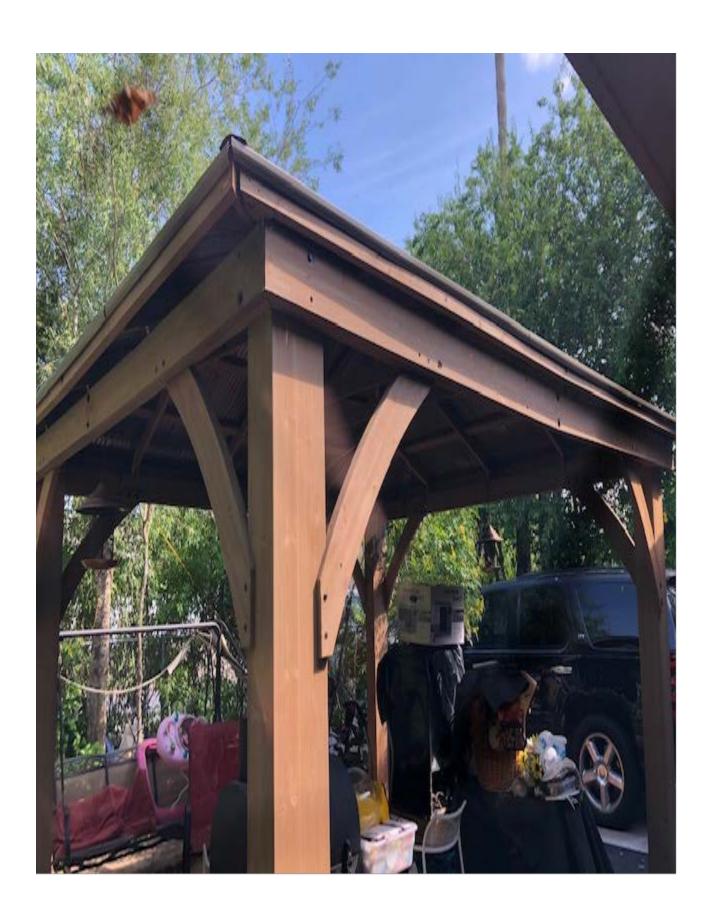


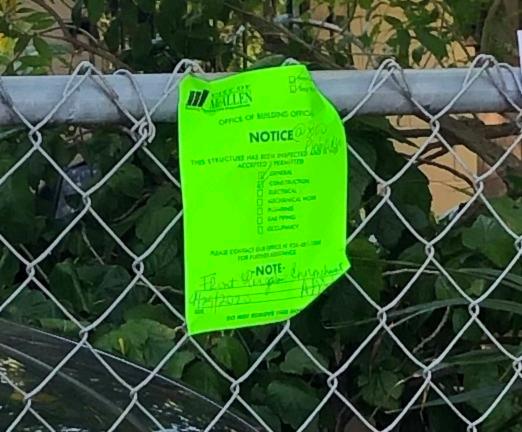












2020 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/15/20	02/02/20	02/19/20	03/04/20	03/18/20	04/01/20	04/15/20	02/00/50	05/20/20	06/03/20	06/17/20	07/01/20	02/11/20	08/02/20	08/19/20	09/05/20	09/17/20	10/07/20	10/21/20	11/04/20	11/18/20	12/02/20	12/17/20
ERICK DIAZ-VICE-CHAIRPERSON	Р	Ρ	NM	Р	NM	Р	Р	МИ	Α	Р	Р	Р	Р	Р	Р	loq	Ъ	Р	Р				
SYLVIA HINOJOSA	Р	Р	NM	Р	NM	Α	Α	NM	Α	Р	Р	Α	Р	Α	Р	loq	Р	Р	Р				
DAVID SALINAS-CHAIRPERSON	Р	Р	NM	Р	NM	Р	Р	NM	Р	Р	Р	Р	Р	Р	Р								
JOHN MILLIN, III	Α	Α	NM	Р	NM	Р	Р	NM	Р	Α	Р	Р	Р	Р	Р	loq	Р	Р	Р				
SONIA FALCON	Α	Р	NM	Α	NM	Α	Α	NM	Α	Р	Α	Α	Р	Р	Α	loq	Р						
JOSE R. GUTIERREZ	Р	Р	NM	Р	NM	Р	Р	NM	Р	Р	Р	Р	Р	Р	Р	loq	Р	Р	Р				
JUAN F. JIMENEZ	Р	Р	NM	Р	NM	Р	Α	NM	Р	Α	Р	Α	Р	Α	Р	loq	Α	Р	Р				
HUGO AVILA (ALT 1)																	Р	Р	Р				
ROGELIO RODRIGUEZ(ALT 2)																	Р	Р	Р				
REBECCA MILLAN (ALT 3)																	Р	Р	Р				

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

2020 CALENDAR

Meetings:								Deadlines:								
C	ity Commis	ssion		Planning	& Zoning	Board	D- Zoning/CUP Application N - Public Notification									
A Pu	ublic Utility I	Board		_	oard of Adju	stment										
HPC -	Historic Pre	es Counci					* Holiday - Office is closed									
		Л	JLY 202				AUGUST 2020									
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat			
			1 D-8/4 & 8/5	CENSUS	3 HOLIDAY	4							1			
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12	A-8/4 & 8/5	14	N-8/4 & 8/5 15	16	17	18	9	10	11	D-9/1 & 9/2	13	14	15			
			D-8/18 & 8/19					A-9/1 & 9/2		N-9/1 & 9/2						
19	20	21	HPC	23	24	25	16	17	18	19	20	21	22			
26	A-8/18 & 8/19 27	28	N-8/18 & 8/19 29	30	31		23	24	25	D-9/16 & 9/17 26	27	28	29			
							30	A-9/16 & 9/17		HPC N-9/16 & 9/17						
		SEPTI	DMBDR	2020					OCT	OBER 2	2020					
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat			
		1	2 D-10/6 & 10/7	3 CENSUS	4	5					1 CENSUS	2	3			
6	7 HOLIDAY	8	9	10	11	12	4	5	6	7	8	9	10			
13	14	15	N-10/6 & 10/7 16	17	18	19	11	12	13	D-11/3 & 11/4 14	15	16	17			
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			D-12/16 & 12/17							D-1/19 & 1/20						
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	A-12/16 & 12/17		N-12/16 & 12/17	HOLIDAY				A-1/19 & 1/20		N-1/19 & 1/20	HOLIDAY	HOLIDAY				
29	30						27	28	29	30	31					
Deadline	s and Meeting	g Dates are	l subject to cha	nge at anv fir	l me. Please o	ontact the	e Planning	Department	at (956) 681	-1250 if vou h	ave anv que	stions.				
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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 EXCPEPTIONS 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 Adjustment 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 8th 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 9th day October, 2018.

CITY OF MCALLEN

John Ingram, dity Commissioner

Attest:

Perla Lara, TRMC/CMC, CPM

City Secretary

Approved as to form:

Austin W. Stevenson, Assistant City Attorney

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 rightof-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.

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 liriope, 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.

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.

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. <u>A BASIS FOR ACTION</u>

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. <u>APPLICANTS</u>

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. <u>MEETINGS</u>

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.
- 1) 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. <u>ATTENDANCE</u>

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 Se	ecretary assigned by the Plan	ning Department of the C	ity of McA	Ilen.		
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TT						
Executive Secretary						