# ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, NOVEMBER 4, 2020-4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, $3^{\text {RD }}$ 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 <br> Sylvia Hinojosa John Millin Juan F. Jimenez Jose Gutierrez Rogelio Rodriguez Rebecca Millan Hugo Avila | Vice-Chairperson <br> Member <br> Member <br> Member <br> Alternate <br> Alternate <br> Alternate <br> 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

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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 31 st Street. The property has 50 ft . of frontage along South 31st Street and a depth of 111 ft . for a tract size of $5,550 \mathrm{sq}$. ft . The property is zoned R-1 (single family residential) District. The surrounding zoning is $\mathrm{R}-1$ 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

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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 moved 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 $1 / 2$ 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

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(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 moved 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. (ZBA20200054) (TABLED: 09/17/2020)

Ms. Sylvia Hinojosa moved 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 $2^{\text {nd }}$ Street. The property has 120 ft . of frontage along Pelican Avenue and

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a depth of 130 ft . with a lot size of 15,600 square feet. Surrounding land use are singlefamily 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

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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.

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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 moved 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 moved 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 $2^{\text {nd }}$ 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 singlefamily houses.

The Courtlands was recorded on October 10, 1983. A building permit was submitted on July 282020 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 $11 / 2$ feet it would be 4 feet.

Ms. Sylvia Hinojosa moved 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

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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 $35^{\text {th }}$ Street, approximately 1,020 ft . North of Quince Avenue. The property has 50 ft . of frontage along North $35^{\text {th }}$ 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 20 $0^{\text {th }}, 2020$ 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 $27^{\text {th }}, 2020$.

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 $35^{\text {th }}$ 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 ( $1924 \mathrm{~N} .34^{\text {th }} \mathrm{St}$ ) 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

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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. $35^{\text {TH }}$ 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 moved 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 .

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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 moved 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 $5^{\text {th }}$ Lane. The lot has 72 ft . of frontage along $5^{\text {th }}$ Lane and a depth of 110 sq . ft . with a total area of $7,920 \mathrm{sq}$. 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. $5^{\text {th }}$ 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 moved 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 singlefamily houses.

Apollo Gardens was recorded on June 14, 1976. On July $31^{\text {st }}$, 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 18 ${ }^{\text {th }}$, 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 moved 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 moved 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. (ZBA20200060)

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

Ms. Sylvia Hinojosa moved 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 $35^{\text {th }}$ Street
c) 4508 North $5^{\text {th }}$ Lane

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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 moved to adjourn the meeting. Mr. John Millin seconded the motion, which carried unanimously with five members present and voting.

[^0]Carmen White, Secretary

1b) Minutes for October 21, 2020 will included in the November $18{ }^{\text {th }}$ 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 $3,424 \mathrm{sq}$. 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.


■П City of McAllen
Planning Department
REASON FOR APPEAL \& BOARD ACTION




Pool.

- Width
- length
- Distance Between Propertyline

Deck 3 Shed

- WXLXH
- width
- Height-Deck-5feet (shed Eft loinchers
- Distance Between Property line




Wooden deck- east side


Pool - east side


Wooden Deck - Rear side


Wooden Deck - Rear side


Pool - Rear side


Shed - Rear side


Shed - Rear side




| 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 <br> deck (2).pdf |

## Good afternoon,

My wife and I are the former owners of the property and dwelling located at 4204 Worthington Ave. McAllen, Texas 78503. We have obtained written authorization from Jorge Gutierrez, the current owner of 4204 Worthington Ave. McAllen, Texas 78503, to assist in obtaining a variance for the above-ground pool and the wooden deck, which are partially situated on a setback and easement. Please see the attached e-mail.

The dwelling located on 4204 Worthington Ave. McAllen, Texas 78503 was completed on or about August 2017. Prior to issuing the Certificate of Occupancy, a male City of McAllen inspector, whose name I do not recall, inspected the property. My wife, father-in-law, and I walked around with him to make sure everything was in order. We discussed the above-ground pool and the deck in our backyard with this gentleman and asked if we needed some sort of variance or permit. The gentleman stated neither a variance nor permit were required because the pool and deck were both aboveground. The gentleman further stated that if it was an in-ground pool, and cement needed to be poured underground at the setbacks and easements, then a variance and permit would have been required. That was not the case here.

After his inspection, the Certificate of Occupancy was given to us and my wife and I moved in on or about August 2017. We did not hear of any issues whatsoever, or receive any complaints from anybody, regarding the above-ground pool and deck the entire time we were living there.

On or about July 31, 2020, we were advised that the City of McAllen wanted to investigate the pool and deck on 4204 Worthington Ave. McAllen, Texas 78503 . I met with Ms. Norma and a gentleman that day and she advised that a permit and/or variance was required for the pool and deck because they were partially encroaching on a setback and easement. I advised Ms. Norma of the conversation my wife, father-in-law, and I had with the City of McAllen inspector during his final inspection on or about August 2017, but unfortunately there was no notation of our conversation with the City of McAllen inspector in the file.

Of note, during the construction of the home located at 4204 Worthington Ave, we requested a variance for a $2^{\text {nd }}$ story front elevation overhang, which was granted by the City of McAllen. If we were told that a variance or permit was needed for the above-ground pool and/or deck, we would have unquestionably complied with the request and proceeded with the variance process; however, we relied on the representation of the city inspector who advised one was not necessary.

The following are our three (3) formal requests:

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.
3. Given that we had already applied for a variance for the dwelling located at 4204 Worthington Ave. McAllen, Texas 78503 (front elevation $2^{\text {nd }}$ story overhang), we hereby respectfully request a waiver of any variancerelated fees in this matter.

I am also attaching four (4) documents for your records:

1. Written authorization from current owner, Jorge Gutierrez, allowing my wife and $I$ to assist in this variance process.
2. Final survey (August 2017) of the dwelling located at 4204 Worthington Ave. McAllen, Texas 78503.
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<br>ROERIG, OLIVEIRA \& FISHER, L.L.P.<br>10225 N. 10th Street<br>McAllen, Texas 78504<br>Phone: (956) 393-6300<br>Fax: (956) 386-1625<br>rdelagarza@rofllp.com

## Raul De La Garza

From:
Sent:
To:
Subject:

Jorge Gutierrez [agtzjorge@gmail.com](mailto:agtzjorge@gmail.com)
Wednesday, August 05, 2020 11:15 AM
Raul De La Garza
Re: Pool and Deck Variance

Good Morning, yes I authorize Raul and Peyton Kampas De La Garza to assist me in the variance process for the pool and deck located at 4204 Worthington Ave Mcallen. Texas 78503. Thank you.

On Wed, Aug 5, 2020 at 10:40 AM Raul De La Garza [rdelagarza@rofllp.com](mailto:rdelagarza@rofllp.com) wrote:
Good morning, Jorge:

Please advise whether you authorize my wife, Peyton Kampas De La Garza, and I to assist you in the variance process for the pool and deck for your house located at 4204 Worthington Ave., McAllen, Texas 78503.

This assistance will be offered as former owners of the property and individuals with knowledge of relevant facts. This assistance is not being offered in 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@rofilp.com

## HOMEOWNER'S ASSOCIATION INFORMATION REQUEST



| Buyer / Borrower: | Jorge Gutierrez Zacarias and Astrid Gonzalez |
| :--- | :--- |
|  | 3004 S. L. St Apt 2 |
|  | McAllen, TX 78503 |

Falling Water at Bentsen Lakes Homeowner's
Association
Association Name:
*Payment will be made out to Association name written above.

Phone:


Address: coo Sampson Property Management, P.O. Box 6075 McAllen, TX 78502
(address where check will be mailed to)
Contact Person:
Javier Garza


What are the Total Homeowner's Dues: \$

. 0
Are these payable: $\square$ monthly $\square$ yearly $\square$ quarterly
Are the dues paid? $\square$ Yes $\square$ No if yes, homeowner's dues are paid through what date?: $07 / 01 / 2020$
Current by due $\square$ Yes $\square$ No If yes, what is the total amount due?: $\$ 444.00$ due by
Delinquent: months $\qquad$
This figure/total amount due to collect is good through what date?: $12 / 31 / 2020$ $\qquad$
Additional or Special Assessments: $4200^{00}$ Transfer fee payable to Samsonagement Does Fee Include Insurance?


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

26355


Violation/Offense:
Violation/Offense:


I HEREBY PROMISE TO APPEAR BEFORE THE MUNICIPAL COURT ON OR BEFORE:


YOUR FAILURE TO APPEAR MAY CAUSE A CRIMINAL COMPLAINT TO BE FILED AGAINST YOU AND A WARRANT FOR YOUR ARREST WILL BE ISSUED. Forwarding address
2201 Village Dr. Mistion, T* 78572

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

## Property

Account

| Property ID: | 720037 | Legal Description: <br> Geographic ID: | F1656-00-000-0067-00 |
| :--- | :--- | :--- | :--- |
| Type: | Real | Foning: <br> Agent Code: <br> Property Use Code: <br> Property Use Description: |  |
| Rocation |  |  |  |
| Address: | 4204 WORTHINGTON AVE |  |  |
| Meighborhood: | MCALLEN, TX | Mapsco: |  |
| Neighborhood CD: | F165600 | Map ID: | CML VOL 53 PG 192 |

## 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: 100.0000000000\%

Total Value: $\quad \$ 182,646$

| 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 $\begin{aligned} & \text { State } \\ & \text { Code: }\end{aligned}$ | $\begin{aligned} & \text { A1 Livin } \\ & \text { Are } \end{aligned}$ |  | 1989.5 sqft | Value: \$148,406 |
| :---: | :---: | :---: | :---: | :---: | :---: |
| Type | Description | Class CD | Exterior Wall | $\begin{array}{ll} \text { or } & \text { Year } \\ & \text { Built } \end{array}$ | 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 | $\mathrm{~N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ |
| 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 | $\$ 0$ | $\$ 33,726$ |


| 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 | Type | Description | Grantor | Grantee | Volume | Page | Deed Number |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 | 7/31/2020 | WDV | WARRANTY DEED/VENDORS LIEN | KAMPAS | ZACARIAS |  |  | 3135074 |
|  |  |  |  | PEYTON | JORGE G \& |  |  |  |
|  |  |  |  | SHARRON \& | ASTRID |  |  |  |
|  |  |  |  | RAUL DE LA | GONZALEZ |  |  |  |
|  |  |  |  | GARZA |  |  |  |  |
| 2 | 9/30/2014 | SVD | SPEC WD/VEN LIEN | MCALLEN 73 | KAMPAS PEYTON |  |  | 2552097 |
|  |  |  |  | LLC |  |  |  |  |
|  |  |  |  |  |  <br> RAUL DE LA GARZA |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |

## Tax Due

Property Tax Information as of 10/01/2020
Amount Due if Paid on: 宑.

| Year | Taxing <br> Jurisdiction | Taxable <br> Value | Base <br> Tax | Base <br> Taxes <br> Paid | Base <br> Tax Due | Discount / Penalty <br> \& Interest | Attorney <br> Fees | Amount <br> Due |
| :--- | :--- | :--- | :--- | :--- | :--- | :--- | :--- | :--- |

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.

## ATTACHMENT NO. 1

| 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 <br> deck (2).pdf |

## Good afternoon,

My wife and I are the former owners of the property and dwelling located at 4204 Worthington Ave. McAllen, Texas 78503. We have obtained written authorization from Jorge Gutierrez, the current owner of 4204 Worthington Ave. McAllen, Texas 78503, to assist in obtaining a variance for the above-ground pool and the wooden deck, which are partially situated on a setback and easement. Please see the attached e-mail.

The dwelling located on 4204 Worthington Ave. McAllen, Texas 78503 was completed on or about August 2017. Prior to issuing the Certificate of Occupancy, a male City of McAllen inspector, whose name I do not recall, inspected the property. My wife, father-in-law, and I walked around with him to make sure everything was in order. We discussed the above-ground pool and the deck in our backyard with this gentleman and asked if we needed some sort of variance or permit. The gentleman stated neither a variance nor permit were required because the pool and deck were both aboveground. The gentleman further stated that if it was an in-ground pool, and cement needed to be poured underground at the setbacks and easements, then a variance and permit would have been required. That was not the case here.

After his inspection, the Certificate of Occupancy was given to us and my wife and I moved in on or about August 2017. We did not hear of any issues whatsoever, or receive any complaints from anybody, regarding the above-ground pool and deck the entire time we were living there.

On or about July 31, 2020, we were advised that the City of McAllen wanted to investigate the pool and deck on 4204 Worthington Ave. McAllen, Texas 78503 . I met with Ms. Norma and a gentleman that day and she advised that a permit and/or variance was required for the pool and deck because they were partially encroaching on a setback and easement. I advised Ms. Norma of the conversation my wife, father-in-law, and I had with the City of McAllen inspector during his final inspection on or about August 2017, but unfortunately there was no notation of our conversation with the City of McAllen inspector in the file.

Of note, during the construction of the home located at 4204 Worthington Ave, we requested a variance for a $2^{\text {nd }}$ story front elevation overhang, which was granted by the City of McAllen. If we were told that a variance or permit was needed for the above-ground pool and/or deck, we would have unquestionably complied with the request and proceeded with the variance process; however, we relied on the representation of the city inspector who advised one was not necessary.

The following are our three (3) formal requests:

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.
3. Given that we had already applied for a variance for the dwelling located at 4204 Worthington Ave. McAllen, Texas 78503 (front elevation $2^{\text {nd }}$ story overhang), we hereby respectfully request a waiver of any variancerelated fees in this matter.

I am also attaching four (4) documents for your records:

1. Written authorization from current owner, Jorge Gutierrez, allowing my wife and $I$ to assist in this variance process.
2. Final survey (August 2017) of the dwelling located at 4204 Worthington Ave. McAllen, Texas 78503.
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<br>ROERIG, OLIVEIRA \& FISHER, L.L.P.<br>10225 N. 10th Street<br>McAllen, Texas 78504<br>Phone: (956) 393-6300<br>Fax: (956) 386-1625<br>rdelagarza@rofllp.com

## ATTACHMENT NO. 2

## Raul De La Garza

From:
Sent:
To:
Subject:

Jorge Gutierrez [agtzjorge@gmail.com](mailto:agtzjorge@gmail.com)
Wednesday, August 05, 2020 11:15 AM
Raul De La Garza
Re: Pool and Deck Variance

Good Morning, yes I authorize Raul and Peyton Kampas De La Garza to assist me in the variance process for the pool and deck located at 4204 Worthington Ave Mcallen. Texas 78503. Thank you.

On Wed, Aug 5, 2020 at 10:40 AM Raul De La Garza [rdelagarza@rofllp.com](mailto:rdelagarza@rofllp.com) wrote:
Good morning, Jorge:

Please advise whether you authorize my wife, Peyton Kampas De La Garza, and I to assist you in the variance process for the pool and deck for your house located at 4204 Worthington Ave., McAllen, Texas 78503.

This assistance will be offered as former owners of the property and individuals with knowledge of relevant facts. This assistance is not being offered in 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@rofilp.com

## ATTACHMENT NO. 3



## ATTACHMENT NO. 4



## ATTACHMENT NO. 5

Pool.

- Width
- length
- Distance Between Propertyline

Deck 3 Shed

- WXLXH
- width
- Height-Deck-5feet (shed Eft loinchers
- Distance Between Property line



## ATTACHMENT NO. 6

## HOMEOWNER'S ASSOCIATION INFORMATION REQUEST



| Buyer / Borrower: | Jorge Gutierrez Zacarias and Astrid Gonzalez |
| :--- | :--- |
|  | 3004 S. L. St Apt 2 |
|  | McAllen, TX 78503 |

Falling Water at Bentsen Lakes Homeowner's
Association
Association Name:
*Payment will be made out to Association name written above.

Phone:


Address: coo Sampson Property Management, P.O. Box 6075 McAllen, TX 78502
(address where check will be mailed to)
Contact Person:
Javier Garza


What are the Total Homeowner's Dues: \$

. 0
Are these payable: $\square$ monthly $\square$ yearly $\square$ quarterly
Are the dues paid? $\square$ Yes $\square$ No if yes, homeowner's dues are paid through what date?: $07 / 01 / 2020$
Current by due $\square$ Yes $\square$ No If yes, what is the total amount due?: $\$ 444.00$ due by
Delinquent: months $\qquad$
This figure/total amount due to collect is good through what date?: $12 / 31 / 2020$ $\qquad$
Additional or Special Assessments: $4200^{00}$ Transfer fee payable to Samsonagement Does Fee Include Insurance?


## 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.


■ City of McAllen
Planning Department
REASON FOR APPEAL \& BOARD ACTION




Res 2020-06656

5





STATE OF TEXAS,
COUNTY OF HIDLIOOI

## INOW ALL MEEN BY THESE PRESEATS


Lhllt

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$$ STATE of RENS:

CONTY of HIDNLCO1
ATM
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## Cawluhtich





Eeing a resubdintion of the south 10 acres of the EAST 17 ACRES, LOT 29 , JOHN H. SHARY SUEDIVISION hidalgo county, texas
, CHARLES L. MELDEN, A REGISTERED NULLK SUIVEYOR, DO HEREEY CERTIFY THAT THIS PLAT IS A TUUE AND COMECT REPGESENTATION THE SUBDIVISION OF THE LANDS HEREN DESCRIEED AS SUVVEYED AND SUBDIVIDED UNDES AY IEACID


BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THS DAY MERSONALLY AMPEARED ROEERT F. POOL III, KNOWN TO ME TO FE THE
PFRSO
WHOSE



 Fehurany A. D., 19 21. $\qquad$ chaाRMAN Oen Sebry THIS PLAT APTROVED BY THE CITY COMMMSS Dow whital


## Hidalgo CAD

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

## Property



## Values

(+) Improvement Homesite Value:
\$25,634
(+) 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: 100.0000000000\%
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

| Improvemen \#1: | t RESIDENTIAL State Code: | A2 Living Area: | 938.0 sqft Value: \$25,634 |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: |
| Type | Description | Class CD | Exterior Wall | Year <br> Built | SQFT |
| MHR | MANUFACTURED HOME RES | MHFA | HDB | 1983 | 784.0 |
| STGW | wood storage | MHFA - * |  | 1983 | 48.0 |
| CANW | SLAB WOOD CAN | MHFA - * |  | 1998 | 560.0 |
| VSK | VERTICAL SKIRTING | MHFA - * |  | 1983 | 140.0 |
| ADDN | MH ADDITION | MHFA - * |  | 1983 | 154.0 |
| CANW | SLAB WOOD CAN | MHFA - * |  | 1983 | 518.0 |
| STGW | WOOD STORAGE | MHFA - * |  | 1983 | 144.0 |

Land

| $\#$ | Type | 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 | $\mathrm{~N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ | $\mathrm{N} / \mathrm{A}$ |
| 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


| Year | Taxing <br> Jurisdiction | Taxable <br> Value | Base <br> Tax | Base Taxes <br> Paid | Base Tax <br> Due |  <br> Interest | Attorney <br> Fees | Amount <br> Due |
| :--- | :--- | :--- | :--- | :--- | :--- | :--- | :--- | :--- |

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.


West side yard wooden canopy encroachment


Shed encroachment to the Rear yard setback


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




East side yard (no encroachments)


## Planning Department

## Memo

TO: $\quad$ 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 $35{ }^{\text {TH }}$ 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 6 ft . 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 $35^{\text {th }}$ Street, approximately $1,020 \mathrm{ft}$. North of Quince Avenue. The property has 50 ft . of frontage along North $35^{\text {th }}$ 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 $27^{\text {th }}, 2020$.

## 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 $35^{\text {th }}$ 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 17 ft . 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. $34^{\text {th }}$ 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.

■ City of McAllen Planning Department APPEAL TO ZONING BOARD OF

311 North $15^{\text {th }}$ Street McAllen, TX 78501
P. O. Box 220

McAllen, TX 78505-0220
(956) 681-1250
(956) 681-1279 (fax)

ADJUSTMENT TO MCALLEN ZONING ORDINANCE


## II/City of McAllen Planning Department REASON FOR APPEAL \& BOARD ACTION






SPREE +
maxuphes







## Planning Department

## Memo

TO: $\quad$ 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 $25{ }^{\text {TH }}$ 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 $25^{\text {th }}$ Street, just north of La Vista Avenue. The property has 67.17 ft . of frontage along North $25^{\text {th }}$ 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.
pd by C.C.

## $\Pi$ City of McAllen Planning Department REASON FOR APPEAL \& BOARD ACTION

|  | My nother is disabled and I am trying to add a gacage |
| :---: | :---: |
|  | for easy access for the paramedics to pick her up and |
|  | transport her on the stretcher. I just purchased this house |
|  | on 9-9-20 and my agent didn $t$ inform me about this |
|  | process. |
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|  | Chairman, Board of Adjustment <br> Date Signature |









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

From: Roel A Gonzalez
2404 N. $25^{\text {th }}$ 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




## Planning Department

## 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 $3^{\text {rd }}$ 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.

$\square \square$ City of McAllen
Planning Department REASON FOR APPEAL \& BOARD ACTION
*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)
**Information provided here by the applicant does not guarantee that the Board will grant a variance.
***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:
tho subdivision Monde an assessment in 1978 prior to the ordinance of 18 feet. el plat has no note of Sat back in frontef the lots. the front has Beet of set
2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:
we ere leaving 10 feet for the 51 de welt
3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:
the construction is not obstructing the vision for the attest or traffic. the game ni s my Neighbor the built it one wilreedy
4. Describe special conditions that are unique to this applicant or property:
the lot is town house/patio home am e the ot he reazow because my garage wises converted in another Bedroom . Instil need a gagiege for
retired old lady Board Action retired old lady

Chairman, Board of Adjustment
Date Signature











# 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 <br> (316 Uvalde Ave., McAllen, Texas) |
| 2 | Photo of Home of Appellant <br> (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/<br>Mark W. Walker<br>Texas Bar No. 20717350<br>Attorney at law for Anne Walker Cragg<br>1400 N. McColl, Suite 205<br>McAllen, Texas 78501<br>(956) 803-0092<br>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 error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter. 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, as shown on the maps fixing the several districts, accompanying and made a part of this chapter, where the street layout actually on the ground varies from the street layout as shown on such maps. 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 unreasonable hardship 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. If no structural alterations are made, 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 as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, 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 board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant. 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 $\S 211.009$ 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 $21^{\text {st }}$ Street. The property has 70 ft . of frontage along Highland Avenue and a depth of 112.5 ft . with a lot size of $7,875 \mathrm{sq}$. 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.





scra






$\square$ Non-Compliance
Stop Work

## OFFICE OF BUILDING OFFICIAL

NOTICE
THIS STRUCTURE HAS BEEN INSPECTED AND IS NOT ACCEPTED / PERMITTED
(1) GENERAL
$\square$ CONSTRUCTION
ELECTRICAL
MECHANICAL WORK
PLUMBING
GAS PIPING
OCCUPANCY
PLEASE CONTACT OUR OFFICE AT 956-681-1300 FOR FURTHER ASSISTANCE.
-NOTE-
INSPECTOR DATE
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## Planning Department

## 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 $5,538 \mathrm{sq}$. 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.


$\square$ City of McAllen
Planning Department REASON FOR APPEAL \& BOARD ACTION
*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)
**Information provided here by the applicant does not guarantee that the Board will grant a variance.
***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:
Since property is on a corner lot were giving up more space than the other residents lots.
2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:
Due to my service connected disabilites from serving in Combat and suffering from PTSD, self isolation, anxiety, and depression 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 affecting the public or neigblocs. It is not blocking anyones view it sets back enough and does not interfere with eitititic on leah stepeti) 4. Describe special conditions that are unique to this applicant or property:

Due to my medical issues doctor and psychivites recommend th's for me to distract myself from even clay triggers.














2020 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

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| ERICK DIAZ-VICE-CHAIRPERSON | P | P | NM | P | NM | P | P | NM | A | P | P | P | P | P | P | 109 | P | P | P |  |  |  |  |
| SYLVIA HINOJOSA | P | P | NM | P | NM | A | A | NM | A | P | P | A | P | A | P | loq | P | P | P |  |  |  |  |
| DAVID SALINAS-CHAIRPERSON | P | P | NM | P | NM | P | P | NM | P | P | P | P | P | P | P |  |  |  |  |  |  |  |  |
| JOHN MILLIN, III | A | A | NM | P | NM | P | P | NM | P | A | P | P | P | P | P | loq | P | P | P |  |  |  |  |
| SONIA FALCON | A | P | NM | A | NM | A | A | NM | A | P | A | A | P | P | A | loq | P |  |  |  |  |  |  |
| JOSE R. GUTIERREZ | P | P | NM | P | NM | P | P | NM | P | P | P | P | P | P | P | loq | P | P | P |  |  |  |  |
| JUAN F. JIMENEZ | P | P | NM | P | NM | P | A | NM | P | A | P | A | P | A | P | loq | A | P | P |  |  |  |  |
| HUGO AVILA (ALT 1) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | P | P | P |  |  |  |  |
| ROGELIO RODRIGUEZ(ALT 2) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | P | P | P |  |  |  |  |
| REBECCA MILLAN (ALT 3) |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | P | P | $\mathbf{P}$ |  |  |  |  |

P-PRESENT
A - ABSENT
NEW APPOINTMENT
MC - MEETING CANCELLED
NRM - NO MEETING
LOQ - LACK OF QUORUM
RS - RESIGNATION


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 Adjustmnet Grants a special exception as provided in this section, the site plan and the minutes of the Zoning Board of Adjustment meeting shall be officially recorded with Hidalgo County.
(e) Any special exception granted under this chapter is granted solely to the applicant and may not be transferred, sold, inherited, bequeathed, or devised.
(f) A new special exception shall be required upon any change or transfer in ownership of the underlying tract; a special exception granted to a previous applicant does not confer any right to any other individual or corporation to maintain the carport without approval from the Zoning Board of Adjustment.

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

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

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

CONSIDERED, PASSED and APPROVED this $\underline{8}^{\text {th }}$ day of October, 2018, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code.

SIGNED this $9^{\text {th }}$ day October, 2018.


Perla Lara, TRMC/CMC, CPM
City Secretary


Austin $\mathbb{W}$. 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 right-of-way boundary.
b. Rear lot line means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
c. Side lot line means the property between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.
Lot of record means a parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the county clerk; or a tract of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the county clerk prior to October 15, 1973, which has not been divided since recording.

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

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

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

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

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

Ornamental feature means an addition to a structure designed to enhance the appearance of the structure, in compliance with all of the following criteria:
(1) Any space occupied by or enclosed by the ornamental feature should not be included in or made a part of the air conditioned, heated, or enclosed portion of the structure;
(2) The feature should serve no purpose or function for the structure other than ornamentation. The building should be equally functional without the feature as with the feature; and
(3) The feature shall extend no further than 24 inches into a required yard.

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

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

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

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

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

Restaurant means a building or portion of a building where the primary business is the on-premises sale of prepared food, with adequate kitchen facilities for the preparation of the food to be sold, the adequacy of such kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered, and where alcoholic beverages may be sold under the following conditions:
(1) At least 51 percent of the gross income shall be derived from the sale of prepared food.
(2) Any outside entrances, outside separate identification, outside signs or other separate advertising for lounge or bar areas shall be permitted only as an accessory or secondary feature of the restaurant.
(3) Live entertainment may be permitted.
(4) Whenever the director of planning on the basis of a sworn complaint from any person determines that a violation of this section exists, he may require any person serving alcoholic beverages as an incidental use to provide the city, within 30 days of notification, a verified audit for each quarter of the calendar year, showing the gross income derived from the sale of food.

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

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

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

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

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

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

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

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

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

Yard means an open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the definitions of "yard" set out in this section. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.
(1) Front yard means a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the right-of-way line and wall of the main building or any projections thereof other than projections of the usual uncovered steps, uncovered balconies or uncovered porches. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension, except where corner lots may be square in dimension and/or have double frontage, in which case the front yard shall correspond to the lot's side adjacent to the longest block face in which it occurs and to which the majority of the existing structures front.
(2) Rear yard means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than projections of uncovered steps, uncovered balconies or uncovered porches. On all lots, the rear yard shall be in the rear of the front yard.
(3) Side yard means a yard between the main building and the side line of the lot, and being the minimum horizontal distance between a side lot line and the sides of the main buildings or any projections thereof.
(Code 1966, § 32-2; Ord. No. 1996-8, § I, 1-22-96; Ord. No. 1996-70, § I, 11-18-96; Ord. No. 1998-68, § 1, 2-27-98; Ord. No. 1999-69, § 1, 8-9-99; Ord. No. 2004-15, § 5, 2-9-04; Ord. No. 2015-38, § II, 5-11-15)

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

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

## Chapter 110-Vegetation

Sec. 110-26. - Definitions.
The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

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

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

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

Frontage means lineal distance measured along abutting street rights-of-way.
Ground cover means low growing plants planted in such a manner as to form a continuous cover over the ground, typical horizontal growth form with a maximum height of 24 inches, such as 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
10. Water towers

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.

## IOI. DUTIES OF BOARD MEMBERS

## A. General Duties of Members

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

## B. Disqualification/Conflict of Interest

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

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

## IV. A BASIS FOR ACTION

The Board shall decide each case based on the following:

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

## V. APPLICANTS

## A. Legally Vested Interest

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

## B. Applications

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

All applications for variances and special exceptions to commercial properties must be submitted with a current, valid "on the ground" survey. An applicant must submit a pauper form with their application if
they cannot proffer a valid survey; provided, however, the applicant illustrates their property with setbacks and encroachments as a survey would.

## C. Meetings

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

## D. Evidence

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

## VI. HARDSHIP

A. For an "unnecessary hardship" to apply to a variance, it must relate to the very property for which the variance is sought and be a condition unique, oppressive, and uncommon to other properties. An unnecessary hardship may not be self-created, or be solely financial.
B. "Hardship" must be based on hardship resulting from sharp changes in topography or unusual terrain features. The applicant may prove the topography with a plot plan which includes topographic information related to known base points or surveys, and profiles or particular problems involved, including relationships to topographic features of adjoining properties.
C. There is no unnecessary hardship if the property is suitable and useable for the uses permitted in the district in which it lies, although there will be a loss of profit or other economic disadvantage on account of such use.

## VII. MEETINGS

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

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

## B. Quorum

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

## C. Regular Meetings

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

## D. Special Meetings

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

## E. Order of Business

The usual order of business shall be:

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

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

## XI. AMENDEMENT PROCEDURE

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

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

## Executive Secretary


[^0]:    Vice-Chairperson Erick Diaz

