## AGENDA

# ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, OCTOBER 7, 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: $\underline{\text { 672-423-1883 }}$


#### Abstract

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 - Vice-Chairperson Erick Diaz

## 1. MINUTES:

a) Minutes for the meeting held on 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) (TABLED: 09/17/2020)
b) Request of San Juanita San Miguel for the following variances to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 5.17 ft . into the 6 ft . side yard setback along the north property line for an existing covered patio measuring 10 ft . by 24.33 ft ., 2) an existing covered patio measuring 10 ft . by 24.33 ft . with a distance of 3.17 ft . instead of 5 ft . to the main building, and 3) an encroachment of 6 ft . into the 6 ft . side yard setback along the south property line for an existing storage building measuring 12.75 ft . by 13.33 ft., at Lot 154, Colonia McAllen Unit No. 6 Subdivision, Hidalgo County, Texas; 2121 South 31st Street. (ZBA2020-0034)(TABLED: 08/05/2020) (REMAIN TABLED: 08/19/2020) (TABLED: 09/17/2020)
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. (ZBA20200041) (TABLED: 09/17/2020)
d) Request of Adriana Salazar, on behalf of Servikon, LLC, 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)
e) Request of David Rutledge for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 6 ft . into the 6 ft . side yard setback for an existing carport measuring 16 ft . by 36 ft . at Lot 4, North Garden Estates Subdivision, Hidalgo County, Texas; 301 Pelican Avenue. (ZBA2020-0054) (TABLED: 09/17/2020)
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)
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)
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)
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)
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)
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 $55 \mathrm{ft} ., 2$ ) 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)
I) Request of Hector Bosquez for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 3 ft . into the 6 ft . side yard setback for an proposed addition to an existing porch measuring 22 ft . by 22 ft . at Lot 25, Del Sol Subdivision Phase I, Hidalgo County, Texas; 2805 Quamasia Avenue. (ZBA2020-0060)

## 3. FUTURE AGENDA ITEMS

a) 1719 Redbud Avenue
b) 2021 Hawk Avenue
c) 601 North 2nd Street
d) 3937 Swallow Avenue
e) 2009 Iris Avenue
f) 2400 North 25 th Street
g) 4405 Gardenia Avenue
h) 201 South 2nd Street

## 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.

## MINUTES WILL BE UPLOADED MONDAY

## Planning Department

## Memo

TO: Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 2020
SUBJECT: 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)

## REASON FOR APPEAL:

Cesar H. Sanchez on behalf of J.M Moffitt Construction, owner of the property, is requesting a variance to allow an unattached structure in the R-2 (duplex-fourplex residential) District. The applicant would like to have a single family home independently of the existing duplex residential structure.

## PROPERTY LOCATION AND VICINITY:

The subject property has frontage on Nolana Avenue and is 50 ft . west away from $16^{\text {th }}$ Street. The lot has 90 ft . of frontage on Nolana Avenue and a depth of 120 ft . with a total lot size of 10,800 sq. ft. The property is zoned R-2 (duplex-fourplex residential) District. The surrounding land uses are duplexes to the west, north, and east, and single-family residences to the south.


## BACKGROUND AND HISTORY:

Larkspur Subdivision, Unit No. 2 was recorded on January 15, 1962. The variance request was submitted on July 28, 2020.

## ANALYSIS:

Section 138-192 permits the following uses in an R-2 (duplex-fourplex residential) District; single family residence, duplex -fourplex, duplex - fourplex townhouses, and duplex-fouplex condominiums. Section 138-1 defines a Triplex as a building designed for and/or occupied exclusively by three 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.

The applicant is proposing to build an unattached 3 bedroom and 2 bathroom single family residence on the subject property adjacent to the existing duplex to the west on the same lot. This would be noncompliant with the R-2 zoning district requirement.

Furthermore, Section 138-356 (7) of the Zoning Ordinance states that only one primary residential structure may be erected on an R-1, R-2, R-3T zoning district lot. The variance request is to essentially allow one duplex and one single-family home instead of one triplex building on the subject property.

There is no utility and irrigation easement shown on the plat.
Staff has not received any phone calls in opposition to the request.

## RECOMMENDATION:

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

## ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF SEPTEMBER 17, 2020:

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 request. At the advice of the Assistant City Attorney, the Board unanimously voted to table the variance request in order to allow clarification by city staff to whether rezoning may be the appropriate approach for this request. There were seven members present and voting.




## NOLANA AVE.



ALLEY


1607 Nolana Are
"10. nolana ave.



LARKSPUR SUBDIVISION, UNIT NO. I a
LARKSPUR SUBDIVISION, UNIT NO. 2
ME ALLEN, TEXAS
 680 "T of Lot






## Planning Department

## MEMO

TO: $\quad$ Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 2020
SUBJECT: REQUEST OF SAN JUANITA SAN MIGUEL FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 5.17 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE NORTH PROPERTY LINE FOR AN EXISTING COVERED PATIO MEASURING 10 FT. BY 24.33 FT., 2) AN EXISTING COVERED PATIO MEASURING 10 FT. BY 24.33 FT. WITH A DISTANCE OF 3.17 FT. INSTEAD OF 5 FT. TO THE MAIN BUILDING, AND 3) AN ENCROACHMENT OF 6 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE SOUTH PROPERTY LINE FOR AN EXISTING STORAGE BUILDING MEASURING 12.75 FT. BY 13.33 FT., AT LOT 154, COLONIA MCALLEN UNIT NO. 6 SUBDIVISION, HIDALGO COUNTY, TEXAS; 2121 SOUTH 31ST STREET. (ZBA20200034)

## REASON FOR APPEAL

San Juanita San Miguel, owner and applicant requests 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.


## PROPERTY LOCATION AND VICINITY:

The property is located on the east side of South $31^{\text {st }}$ Street. The property has 50 ft . of frontage along South $31^{\text {st }}$ 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 R-1 in all directions.

## BACKGROUND AND HISTORY:

Colonia McAllen Subdivision No. 6 was recorded on August 2, 1976. The plat specifies a front yardbuilding 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.

## ANALYSIS:

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 are no utility easements inside the property.
Planning Department staff has not received any calls in opposition to the variance requests.

## RECOMMENDATION:

Staff recommends 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.

## ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF SEPTEMBER 17, 2020:

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.



PERMIT APPLICATION REFERENCE NUMBER

(Please type or print in black or blue ink)

*OWNER INFORMATION NOT PROVDIED, INITIAL:
$\square$ NEW

$\square$ REMODELING $\square$ REPAIR $\square$ MOVE $\square$ REMOVE $\qquad$ BLDG. HGT. $\qquad$ NO. OF FLOORS BLDG NO. PARKING SPACES $\qquad$ SQ. FT LOT FRONT $\qquad$ FLOORER SQ. FT
$\qquad$
$\qquad$ LOt SU00 NEW $\qquad$ OF LOT $\qquad$ USE
SCOPE OF WORK TOBEDONE ( $1 z^{\prime} \times 24$ ') covered patio for owner to use in times


LOT $\qquad$ BLOCK $\qquad$ SUBDIVISION $\qquad$ MCAlLEN


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








Variance \#1 and \#2


Variance \#1 and \#2


Variance \#1 and \#2


Variance \#3


Variance \#1 and \#2


Variance \#3


Variance \#1 and \#2


Variance \#1 and \#2


Variance \#1 and \#2


Variance \#3


Variance \#1 and \#2

# Planning Department 

## Memo

TO: Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 1,2020
SUBJECT: 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. AND, 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)

REASON FOR APPEAL: The applicant is requesting a special exception for an existing carport area that is 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.

PROPERTY LOCATION AND VICINITY: The property is located on the north side of Uvalde Avenue, approximately 130 ft . west of South $26^{\text {th } 1 / 2}$ Street, and is zoned R-1 (single-family residential) District. The tract has a frontage along Uvalde Avenue of 50 ft . with a depth of 106 feet. Adjacent zoning is zoned is R1 (single family residential) District to the north, west, and east, and A-O (agricultural open space) District to the south. Surrounding land uses are single family residential and the Uvalde Park.


BACKGROUND AND HISTORY: The property is located in Colonia McAllen Unit. No. 4 Subdivision, which was recorded on June 30, 1975. The plat indicates a 20 ft . front yard setback, a 6 ft . side yard setback, and a 3 ft . rear yard setback. The site plan indicates 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.

## ANALYSIS:

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.

## ZONING BOARD OF ADJUSTMENT AND APPEAL MEETING OF SEPTMBER 17, 2020:

At that 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.

## RECOMMENDATION:

Staff recommends 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.

## City of McAllen Planning Department APPEAL TO ZONING BOARD OF <br> 311 North 15 $^{\text {th }}$ Street McAllen, TX 78501 <br> P. O. Box 220 <br> McAllen, TX 78505-0220 <br> (956) 681-1250 <br> (956) 681-1279 (fax) ADJUSTMENT TO MCALLEN ZONING ORDINANCE



I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.
Signature Gam Nintos zomons Date $7-14-20$ Print Name Robert ZAmorA Niofo Amoral Owner $\square$ Authorized Agent

Accepted by $\qquad$ Payment received by

Rev 10/18

CITY OF MCALLEN
Planning Department Variance request
legal descrerpton: Lot 3 Block 1
Colowia Mcallou \#4
PROPERTY ADDRESS: $\qquad$ z61z Uualde

CASE NUMBER: $\qquad$
HOLD HARMLESS AGREEMENT
MUST BE SIGNED BY THE PROPERTY OWNER
TO THE FULLEST EXTENT PERMITTED BY LAW, THE UNDERSIGNED APPLICANT AGREES TO INDEMNIFY, DEFEND AND SAVE HARMLESS THE CITY OF MCALLEN AND ITS COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, EXPENSES, COSTS, INJURIES AND LIABLITIES OF ANY NATURE (INCLUDING BUT NOT LIMITED TO CLAIMS FOR BODILY INJURY, DEATH, BUSINESS INTERRUPTION AND/OR PROPERTY DAMAGE) RELATING TO, ARISING OUT OF OR RESULTING FROM THE GRANTING AND/OR IMPLEMENTATION OF THE VARIANCE REQUESTED HEREIN.








Robert $Z_{\text {amoen }}$





# Planning Department 

## Memo

TO: Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 1, 2020
SUBJECT: 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)

REASON FOR APPEAL: The applicant is requesting variances to not comply with the 12 ft . separation between building on same lot and to not comply with the 10 ft . landscape strip along South Bentsen Road. The applicant is also requesting a variance request for the proposed apartments encroaching into the rear 10 ft . setback of the property.

PROPERTY LOCATION AND VICINITY: The property is located on the northwest corner of South Bentsen Road and Colbath Road. The tract has 246.2 feet of frontage along South Bentsen Road and depth of 275 feet front fronting Colbath Road for a total area of 1.55 acres and is zoned R-3A (multifamily residential apartments) District. The adjacent zoning is R-1 (single family residential) District to the north and south, and $\mathrm{C}-3$ (general business) District to the east and west. Surrounding land uses are single family residences, commercial uses, church, and vacant land.


BACKGROUND AND HISTORY: The property is located in Colonia McAllen Unit. No. 4 Subdivision, which was recorded on June 30, 1975. The plat indicates a 20 ft . front yard setback, a 6 ft . side yard setback, and a 3 ft . rear yard setback. The site plan indicates 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.

## ANALYSIS:

Variance request \#1 is to allow an 8 ft . separation between buildings instead of the required 12 ft . The site plan indicates that the proposed apartment units will be 8 ft . from each other; however, the applicant states that the buildings will have fire protection sprinkler system along with a fire hydrant in the middle of the apartment buildings and Fie Department Connection to each building. As per Section 138-356 (footnote 3.c) of the City's ordinance, units on the same parcel shall be separated by at least 12 feet.

Variance request \#2 to allow a 7 ft . landscaping strip along South Bentsen Road instead of the required 10 ft . In order to accommodate the necessary parking for the proposed development, the applicant encroached 3 ft . into the required 10 ft . wide landscaping strip along Bentsen Road. If parking area is reduced, then parking requirement will not be met. As per Section 110-49(a) of the City's ordinance, a landscape strip area with a minimum width of ten feet shall be provided along and within the property lines of all nonresidential and multifamily uses contiguous to a public street, excluding driveway entrances and exits. For properties having a lot depth of less than 200 feet, the landscaped strip may be reduced to a minimum width of five feet with a landscape hedge not exceeding three feet in height.

Variance request \#3 is to allow an encroachment of 4 ft . into the 10 ft . rear yard setback for proposed apartments. As per the City's ordinance no structures are allowed to be built on any setbacks.

## RECOMMENDATION:

Staff recommends disapproval of the variance request \#1 because no apartment units on the same parcel are allowed to be less than 12 ft . apart. Staff recommends disapproval of the variance request \#2 because a landscape strip area with a minimum width of ten feet is required along property lines of all nonresidential uses. Staff recommends disapproval of variance request \#3 because no buildings nor accessory structures are allowed to be built on any setbacks. If the Board chooses to grant the variances, it should be limited to the foot print as shown on the site plan and with the condition that they add a three-foot hedge to the landscaping strip along South Benston Road.

Legal Description
A 1.55 acre tract of land out of Lot 178 ，JOHN H．SHARY SUBDIVISION

Subdivision Name $\qquad$ propoust Street Address


Number of lots $\qquad$ Gross acres
1.55

Existing Zoning $\qquad$ Existing Land Use $\qquad$ Vacant

Reason for Appeal（please use other side if necessary） $\qquad$
Building Separation and landscaping strip along South Bentsen Road
区 \＄300．00 non－refundable filing fee
区 Current Survey and Metes and Bounds（if the legal description of the tract is a portion of a lot）is required


To the best of your knowledge are there any deed restrictions，restrictive covenants， etc．which would prevent the utilization of the property in the manner indicated？
$\square$ Yes
区 No

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

Signature ， Print Name Accepted by Payment received by $\qquad$
BY：




CIVIL, STRUCTURAL
AND

Legal Description:
A 1.55 acre tract of land out of Lot 178, JOHN H. SHARY SUBDIVISION, Hidalgo County, Texas, as per map thereof recorded in Volume 1 Page 17 of the Map Records of said County, said tract being more particularly described by metes and bounds as follows:

Beginning at the Southeast corner of said Lot for the Southeast corner hereof;
Thence with the South line of said Lot, the centerline of Colbath Road, North $81918^{\prime} 50^{\prime \prime}$ West 275.00 feet to the Southwest corner hereof;

Thence with the East line of Casa Corsica LTD's tract as described in Document Number 494270 of the Official Records of said County, North 08941'10" East, at 21.50 feet found a three-quarter (3/4) inch diameter iron pipe at the apparent North Right of Way of said Road, at 246.20 feet in all (Deed: 245.00 feet) in all to the Northwest corner hereof; whence a found three-quarter (3/4) inch diameter iron pipe bears North $81918{ }^{\prime} 50^{\prime \prime}$ West 0.30 feet;

Thence with the North possession line of Jerry L. Bridgewater's tract as described in Document Number 1255255 of the Official Records of said County, South $81918^{\prime} 50^{\prime \prime}$ East, at 245.00 feet found a one-half ( $1 / 2$ ) inch diameter iron rod with cap stamped "CVQ" at the apparent West Right of Way of Bentsen Road (S. $44^{\text {eh }} \mathrm{St}$.), at 275.00 feet in all to the Northeast corner hereof;

Thence with the East line of said Lot, the centerline of Bentsen Road, South 08941'10 ${ }^{\prime \prime}$ West 246.20 feet (Deed: 245.00 feet) to the PLACE OF BEGINNING, containing One and fifty-five hundredths (1.55) acres, more or less.


Pablo Peña III
R.P.L.S. No. 5242

Date: 11-26-2019




## Planning Department

## Memo

TO: $\quad$ Zoning Board of Adjustment \& Appeals
FROM: Planning Staff

## DATE: September 28, 2020

SUBJECT: REQUEST OF DAVID RUTLEDGE FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: AN ENCROACHMENT OF 6 FT. INTO THE 6 FT. SIDE YARD SETBACK FOR AN EXISTING CARPORT MEASURING 16 FT. BY 36 FT. AT LOT 4, NORTH GARDEN ESTATES SUBDIVISION, HIDALGO COUNTY, TEXAS; 301 PELICAN AVENUE. (ZBA2020-0054)

## REASON FOR APPEAL:

The special exception is 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.


## PROPERTY LOCATION AND VICINITY:

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

## BACKGROUND AND HISTORY:

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.

## ANALYSIS:

The request is 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 spoke 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 is 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 has received a letter of concern in regards to the location and fire hazard of the special exception.

## ZBOA Meeting of September 17, 2020:

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.

## RECOMMENDATION:

Staff recommends 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.








David Rutledge<br>301 W. Pelican Avenue<br>McAllen, Texas 78504<br>956-457-2685 cell

August 19, 2020

City of McAllen<br>Planning Department<br>311 N. 15 ${ }^{\text {th }}$ Street<br>McAllen, Texas 78501

## RE: APPEAL TO ZONING BOARD OF ADJUSTMENT REQUEST FOR VARIANCE TO SIDE YARD SETBACK

Greetings,
Attached please find my appeal to the Zoning Board, and my request for a variance to the 6 foot side-yard setback.

I am requesting this variance because beginning in March of 2018, I built a stand-alone carport, with no electrical lights or power connections. I built the carport to protect one or more of my vehicles from damage from storms, flying debris, or hail. However, I failed to request a building permit prior or during the construction.

Since then, I have received two citations. The first citation (\#22379), dated 05-31-2018, was issued for two violations: 1) Construction without Inspection, and 2) Construction without a permit. I plead "no contest" and paid fines at the McAllen Municipal Court for this first citation.

The second citation (\#24804), dated 11-20-2019 was issued for the same violations. Since I felt that I had already paid for the citations issued because of my initial construction, I needed advice on how to work with the City of McAllen with this issue.

I consulted Attorney Rey Ortiz and he recently advised me to complete this appeal and request a variance, and deliver the appeal and the required fees to the planning department.

I have attached a drawing, several printed photographs, and copies of previous notices and two separate citations that have been issued to me, David Rutledge.


301 pelican avenue


FRONT


DRAWING IS NOT TO SCALE.





Dear City of McAllen:
We believe, that in good faith, the City of McAllen will protect us and our property by reasonably enforcing rules and regulations via building codes which include the set back ordinance. The City of McAllen as well as the North Garden Estates Home Owner's Association were blindsided by the owner of the property located at 301 Pelican Avenue, building a carport without a city permit and ignoring building codes to benefit their own personal interests while compromising residents' personal safety. In other words, said owner is seeking a variance when they failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback. Ignorance of the law should be no excuse. Safety is a main concern when building close to a neighbor's property. That's why a six foot side yard set back has been implemented and placed into effect. As the carport stands, it encroaches six feet into a six foot set back side yard. This is totally unacceptable and causes a serious safety concern, especially when a gas line runs along the side of the neighboring house adjacent to this carport. On more of a personal level, the carport is located approximately six feet from the resident's bedroom. One of the residents is elderly and disabled and has difficulty ambulating and uses a wheel chair. Is this carport a fire hazard waiting to happen? it certainly has that potential. We hope that the City of McAllen would not be irresponsible by approving such a request and putting a neighbor's life in jeopardy.

Thank you for permitting us to submit this letter in lieu of attending this virtual public hearing.

Anonymous concerned neighbor of North Garden Estates


# David Rutledge <br> 301 W. Pelican Avenue <br> McAllen, Texas 78504 <br> 956-457-2685 

September 10, 2020
Mr. H. Camacho Sent via email
McAllen Planning Department
McAllen Planning Department
311 N. 15 ${ }^{\text {th }}$ Street
McAllen, Texas 78504

RE: My Representative for hearing on September 27, 2020

Mr. Camacho,

Please accept this letter as my notice and authorization that Attorney Reynaldo Ortiz will act and speak on my behalf during the hearing and in all matters concerning my request for a variance to the side setback and existing carport at my address, 301 W. Pelican Avenue, McAllen, Texas.

Respectfully,
(Authorized without signature because I am unable to print and scan at this time)
David Rutledge
956-457-2685 cell


| From: | rutledg001@aol.com |
| :--- | :--- |
| Sent: | Monday, September 21, 2020 11:13 AM |
| To: | Hebert Camacho |
| Cc: | rey@leydeortiz.com |
| Subject: | Re: Meeting of 9/17 |

Mr. Camacho,

1) I cannot see how the carport could be a fire hazard. As I explained previously, I have taken every precaution to prevent the carport from ever catching fire.

The fence is made of concrete and will not burn.
The neighbor's house is brick and mortar with wood facia and soffit. But there is no reason why it would burn!
There is no fire hazard. There is no electricity to the carport.
2) I have no possible way to move the carport from where it is now to another location - even if it is two feet to the east..

The carport dimensions (approximately 16 feet wide by 35 feet long) plus the fact that it sits on eight (8) pillars would make it virtually impossible to move without destroying it.

Therefore I have no alternate solutions. I do not have a proposed new location.
Please relay to the Zoning Board that I apologize, but I cannot move the carport without undergoing a significant expense, and that it the carport is damaged by trying to move it, this would place an undue hardship on the property owner.

Thank you,
David Rutledge
301 W. Pelican Avenue
McAllen, Texas 78504
956-457-2685 cell
-----Original Message-----
From: Hebert Camacho [HCamacho@mcallen.net](mailto:HCamacho@mcallen.net)
To: rutledg001@aol.com [rutledg001@aol.com](mailto:rutledg001@aol.com)
Sent: Mon, Sep 21, 2020 9:42 am
Subject: Meeting of 9/17

## Good Morning Mr. Rutledge,

At the ZBOA meeting the Board decided to table your request, their concern was pretty much the proximity of the carport to the property line (concrete fence) and how it may become a fire hazard, both myself and Mr. Ortiz explained how the carport was built in order to delay the spread of fire, with the materials you describe to me. However, the Board wants to have an alternate solution to the location, maybe relocating the structure a few feet away from the property line, so there might be more space in between structures.
If you could please send me a site plan with some alternate solutions on a proposed new location that might work for you.

The next meeting would be on Wednesday October 7 , if you could have a proposed new location by this week that way we can prepare the case the following week.

## Thank you

Sincerely,

## Hebert Camacho

Planner I
City of McAllen Planning Department
311 N. 15 ${ }^{\text {th }}$ Street
HCamacho@mcallen.net
Phone: (956) 681-1250

Disclaimer: If you are not the intended recipient or have received this e-mail in error, please notify me via return e-mail and telephone at 956-681-3111, and permanently delete and purge the original and any copy thereof. This e-mail, with attachments hereto, if any, is intended only for receipt and use by the addressee(s) named herein, and may contain legally privileged and/or confidential information. Regardless of address or routing, if you are not the intended recipient, then you are hereby notified that any use, copying, reproduction, dissemination, distribution, or transmission of this e-mail, and any attachments hereto, is strictly prohibited. Whereas all reasonable steps have been taken to ensure the accuracy and confidentiality of the information and data submitted herein, the City of McAllen and its employees are not liable if information or data is corrupted or does not reach its intended destination.

## Planning Department

## Memo

TO: $\quad$ Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: September 28, 2020
SUBJECT: 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, THE COURTLANDS SUBDIVISION, HIDALGO COUNTY, TEXAS; 409 DOVE AVENUE. (ZBA20200049)

## REASON FOR APPEAL:

The variance is 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.


## PROPERTY LOCATION AND VICINITY:

The subject property is 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 single-family houses.

## BACKGROUND AND HISTORY:

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

## ANALYSIS:

The request is 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 is 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 has received one phone call of concern in regards to the variance request due to the encroachment of the side.

## ZBOA Meeting of September 17, 2020:

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.

## RECOMMENDATION:

Staff recommends 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.

| $\begin{aligned} & \text { U } \\ & \frac{0}{O} \\ & 0 \\ & \hline 0 \end{aligned}$ | Legal Description LOT TEN (10) BLock ONE (1) |
| :---: | :---: |
|  | Subdivision Name The Countlands Subdivision |
|  | Street Address 409 Sore Are |
|  | Number of lots ___ Gross acres |
|  | Existing Zoning ___ Existing Land Use Resedswtuet |
|  | Reason for Appeal (please use other side if necessary) modify existing pergold $\qquad$ SHonten top Edjes |
|  | $\square \$ 300.00$ non-refundable filing fee $+\square \$ 50.00$ Recording Fee for Special Exception (carport) Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required |
| 䓞 | Name Joss $L$ Sulinas $\qquad$ Phone $956-533-6572$ $\qquad$ <br> Address 409 Dovs Ars $\qquad$ E-mail Joss e Sountrexis fime.cam City $\qquad$ M私LE~ State $\qquad$ Tx $\qquad$ Zip 78504 |
| ¢ |  |

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

Yes
No
I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.


Date 8-5-20


- Owner



## MCity of McAllen Planning Department REASON FOR APPEAL \& BOARD ACTION

|  | Refer to the attached Letter and Pictures. |  |
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|  | Chairman, Board of Adjustment Signature | Date | ature

Dore Ave


12 ft

East side
yard

Neighbors fence

Back





Dear Chairman \& Board Members:

I have been advised by the City building inspector that our existing pergola is not in compliance with our 10 ft side yard set- back line we are currently 6 inches over the side yard set-back line. Our pergola does not touch or harm our neighbors wall or roof there are 2 ft ' 8 inches between the pergola and our neighbors' home. Therefore, I am asking to please consider this appeal and allow us to keep our existing pergola as is. However, as I explained to the City inspector, we want to modify the top roofs edging to cut them shorter and due to hurricane Hanna I need to replace Two (2) cover lit corrugated polycarbonate-clear roofs that have been damaged. Mr . Chairman and Board Members our pergola means so much to our family especially during these difficult times we are all going through, it has transformed our back yard and turned it into a great outdoor living space, it has provided us with a beautiful shaded area for our children to swim in a small inflatable pool, my son enjoys playing ball, my daughter can ride her scooter and we enjoy a BBQ under the shade. My wife has been able to create an area for her gardening. Therefore, I am kindly asking you and the board to please approve this appeal. I have attached herein (5) five pictures of our pergola and family enjoying the pergola.

(956) 533-6572






## Planning Department

## Memo

TO: $\quad$ Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 2020
SUBJECT: REQUEST OF JUAN LOPEZ 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 $35^{\text {H }}$ STREET. (ZBA2020-0056)

## REASON FOR APPEAL:

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


## 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 20 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 $27^{\text {th }}, 2020$.

## ANALYSIS:

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 .

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.

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.

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.

## RECOMMENDATION:

Staff recommends 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.

■ 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






neishbor



## Memo

TO: Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 2020


#### Abstract

SUBJECT: 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)


## REASON FOR APPEAL

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

## PROPERTY LOCATION AND VICINITY:

The subject property is located 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 is zoned R-1 (single family residential) District and is currently vacant. Surrounding land uses are single-family residences, FFA Farm, and vacant land.


## BACKGROUND AND HISTORY:

Antigua Subdivision was recorded on July 06, 2006. The applicant is proposing a new residential house on the property. An application for building permit has not been submitted. An application for a variance request was submitted on August 24, 2020.

## ANALYSIS:

The variance request is for a proposed single family residence that will encroach 10 ft . into the 25 ft . rear yard setback on a double frontage lot. There is a 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 is 10 ft .
The Zoning Ordinance requires the rear yard setback to be the same as the front yard setback lots for lots with double frontage. The purpose of the additional setback of the rear yard is to separate the main building from the traffic and noise from roadways.

In the past, the Board has approved variances for accessory uses, but not for living areas. However, of 19 lots in the subdivision, only Lots 1, 2, 3, and 19 are double fronting lots.

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

## RECOMMENDATION:

Staff recommends approval of the variance request.

2BA2080-CO55









## Planning Department

## Memo

TO: Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 2020
SUBJECT: 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)

## REASON FOR APPEAL:

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

## PROPERTY LOCATION AND VICINITY:

The property is 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 sq. ft. The property is zoned R-1 (single family residential) District. The surrounding land uses include single-family residential uses.


## BACKGROUND AND HISTORY:

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.

## ANALYSIS:

The variance request is 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 shows that the existing house occupies most of the buildable area not allowing much space for the proposed swimming pool to be established.

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

The survey shows 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.

## RECOMMENDATION:

Staff recommends 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.

## ADJUSTMENT TO MCALLEN ZONING ORDINANCE



Reason for Appeal (please use other side if necessary) Quero poner una Al berra y defido a la restriction vascr mu pequeña y necesito el setback del parte traces.
[ $\$ 300.00$ non-refundable filing fee $\boldsymbol{+} \square \$ 50.00$ Recording Fee for Special Exception (carport)
$\square$ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required


City Mcallen State $\qquad$ Zip 78504

To the best of your knowledge are there any deed restrictions, restrictive covenants,
etc. which would prevent the utilization of the property in the manner indicated?
$\square$ Yes
® No
I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.


Date

$$
9 / 1 / 2020
$$

© Owner
Authorized Agent

Accepted by


Payment received by $\qquad$ Date $\qquad$

Rev 10/18

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











## Planning Department

## Memo

TO: $\quad$ Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 2020
SUBJECT: REQUEST OF GERARDO 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 METAL CARPORT MEASURING 20 FT. BY 30 FT., AT LOT 50, APOLLO GARDENS SUBDIVISION, HIDALGO COUNTY, TEXAS; 2113 HIBISCUS AVENUE. (ZBA2020-0051)

## REASON FOR APPEAL:

The applicant is 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.


## PROPERTY LOCATION AND VICINITY:

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

## BACKGROUND AND HISTORY:

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

## ANALYSIS:

The request is 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 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 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 has not received any phone calls in opposition to the special exception.

## RECOMMENDATION:

Staff recommends 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.

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF SEPTEMBER 17, 2020 : 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.

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


Number of lots $\qquad$ Gross acres $\qquad$
$\qquad$ $R-1$ Existing Land Use $\qquad$
Existing Zoning

$\$ 300.00$ non-refundable filing fee $+\boxed{\square} \$ 50.00$ Recording Fee for Special Exception (carport)
Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required






PRO. BOX 220 McALLEN, TEXAS 78505-0220 APPLICATION MUST BE COMPLETE (Please type or print in black or blue ink) Michael Morales ревмит appellation reference number ReS 2020-05441
 *OWNER INFORMATION NOT PROVDIED, INITIAL.:


The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant herby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the improvements shall not be occupied until a Certificate of Occupancy has been Issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.
Michael Morals Murphies metal oo ff andmarelllc30@gmail


# City of McAllen Building Inspections INSPECTIONS REQUEST FOR SERVICE 

| CASE NUMBER |
| :--- |
| BLD2020-00332 |


| DATE |
| :--- |
| $07 / 31 / 2020$ |


| CASE OF ADDRESS |
| :--- | :--- |
| 2113 HIBISCUS Ave |


| DETAILED DESCRIPTION |
| :--- | :--- |
| carport without a permit |


| INSPECTION RESULTS |  |  |  |  |  |
| :---: | :---: | :---: | :---: | :---: | :---: |
| Insp. Date | Ins. Type | Request Comments | Result Comments | Result | Inspector |
| 07/31/2020 | Investigate | carport without a permit | Issued citation \#26356 to Mr.Lopez on site. Please see attached picture. | Posted SWO Citation | Robert Rodriguez |



## Property Search > 118597 LOPEZ GERARDO \& CARLA Tax Year: 2020

 for Year 2020Property
Account

| Property ID: | 118597 | Legal Description: | APOLLO GARDENS LOT 50 |
| :---: | :---: | :---: | :---: |
| Geographic ID: | A5500-00-000-0050-00 | Zoning: | RS |
| Type: | Real | Agent Code: |  |
| Property Use Code: |  |  |  |
| Property Use Description: |  |  |  |
| Location |  |  |  |
| Address: | 2113 HIBISCUS AVE MCALLEN, TX | Mapsco: |  |
| Neighborhood: | APOLLO GARDENS | Map ID: | CML VOL 19 PG 122 |
| Neighborhood CD: | A550000 |  |  |
| Owner |  |  |  |
| Name: | LOPEZ GERARDO \& CARLA | Owner ID: | 529165 |
| Mailing Address: | 2113 HIBISCUS AVE <br> MCALLEN, TX 78501-6029 | \% Ownership: | 100.0000000000\% |
|  |  | Exemptions: | HS |

## Values

| (+) Improvement Homesite Value: | + | \$73,646 |  |
| :---: | :---: | :---: | :---: |
| (+) Improvement Non-Homesite Value: | + | \$0 |  |
| (+) Land Homesite Value: | + | \$33,600 |  |
| (+) Land Non-Homesite Value: | + | \$0 | $\mathrm{Ag} /$ Timber Use Value |
| (+) Agricultural Market Valuation: | + | \$0 | \$0 |
| (+) Timber Market Valuation: | + | \$0 | \$0 |
| (=) Market Value: | = | \$107,246 |  |
| (-) Ag or Timber Use Value Reduction: | - | \$0 |  |
| (=) Appraised Value: | = | \$107,246 |  |
| (-) HS Cap: | - | \$312 |  |
| (=) Assessed Value: | = | \$106,934 |  |

## Taxing Jurisdiction

Owner: LOPEZ GERARDO \& CARLA
\% Ownership: 100.0000000000\%

Total Value: $\quad \$ 107,246$

| Entity | Description | Tax Rate | Appraised Value | Taxable Value | Estimated Tax |
| :--- | :--- | ---: | ---: | ---: | :---: |
| CAD | APPRAISAL DISTRICT | 0.000000 | $\$ 107,246$ | $\$ 106,934$ | $\$ 0.00$ |
| CML | CITY OF MCALLEN | 0.495677 | $\$ 107,246$ | $\$ 106,934$ | $\$ 530.05$ |
| DR1 | DRAINAGE DISTRICT \#1 | 0.105100 | $\$ 107,246$ | $\$ 106,934$ | $\$ 112.39$ |
| GHD | HIDALGO COUNTY | 0.575000 | $\$ 107,246$ | $\$ 106,934$ | $\$ 614.87$ |
| JCC | SOUTH TEXAS COLLEGE | 0.173300 | $\$ 107,246$ | $\$ 106,934$ | $\$ 185.32$ |
| R12 | ROAD DIST 12 | 0.000000 | $\$ 107,246$ | $\$ 106,934$ | $\$ 0.00$ |
| SML | MCALLEN ISD | 1.152800 | $\$ 107,246$ | $\$ 81,934$ | $\$ 944.54$ |
| SST | SOUTH TEXAS SCHOOL | 0.049200 | $\$ 107,246$ |  | $\$ 106,934$ |
|  | Total Tax Rate: | 2.551077 |  |  |  |
|  |  |  |  | Taxes w/Current Exemptions: | $\$ 2,439.78$ |
|  |  |  |  | Taxes w/o Exemptions: | $\$ 2,735.93$ |

## Improvement / Building

| Improvement RESIDENTIAL |
| :--- |
| $\# 1:$ | | State |
| :--- |
| Code: | | A1 |
| :--- | | Living |
| :--- |
| Area: |


| Type | Description | Class CD | Exterior <br> Wall | Year <br> Built | SQFT |
| :--- | :--- | :--- | :--- | :--- | :--- |
| MA | MAIN AREA | BRKFA-6P | DBRK | 1976 | 1346.0 |
| GAR | GARAGE | $*$ |  | 1976 | 484.0 |
| POR | PORCH (COVERED) | $*$ |  | 1976 | 90.0 |
| PAT | PATIO | $*$ |  | 1976 | 117.0 |
| CAN | CANOPY | $*$ |  | 2012 | 160.0 |

Land

| \# | Type | Description | Acres | Sqft | Eff Front | Eff Depth | Market Value | Prod. Value |
| :--- | :--- | :--- | :--- | :--- | :--- | :--- | ---: | ---: |
| 1 | L | LOT | 0.1607 | 7000.00 | 70.00 | 100.00 | $\$ 33,600$ | $\$ 0$ |

## 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 | $\$ 73,646$ | $\$ 33,600$ | 0 | 107,246 | $\$ 312$ | $\$ 106,934$ |
| 2019 | $\$ 67,072$ | $\$ 33,600$ | 0 | 100,672 | $\$ 3,459$ | $\$ 97,213$ |
| 2018 | $\$ 58,625$ | $\$ 29,750$ | 0 | 88,375 | $\$ 0$ | $\$ 88,375$ |
| 2017 | $\$ 60,503$ | $\$ 25,200$ | 0 | 85,703 | $\$ 0$ | $\$ 85,703$ |
| 2016 | $\$ 62,382$ | $\$ 25,200$ | 0 | 87,582 | $\$ 1,511$ | $\$ 86,071$ |
| 2015 | $\$ 57,246$ | $\$ 21,000$ | 0 | 78,246 | $\$ 0$ | $\$ 78,246$ |
| 2014 | $\$ 52,887$ | $\$ 21,000$ | 0 | 73,887 | $\$ 0$ | $\$ 73,887$ |
| 2013 | $\$ 52,887$ | $\$ 21,000$ | 0 | 73,887 | $\$ 0$ | $\$ 73,887$ |
| 2012 | $\$ 52,487$ | $\$ 21,000$ | 0 | 73,487 | $\$ 0$ | $\$ 73,487$ |
| 2011 | $\$ 50,383$ | $\$ 21,000$ | 0 | 71,383 | $\$ 0$ | $\$ 71,383$ |
| 2010 | $\$ 50,383$ | $\$ 21,000$ | 0 | 71,383 | $\$ 0$ | $\$ 71,383$ |
| 2009 | $\$ 50,381$ | $\$ 21,000$ | 0 | 71,381 | $\$ 0$ | $\$ 71,381$ |
| 2008 | $\$ 50,381$ | $\$ 21,000$ | 0 | 71,381 | $\$ 0$ | $\$ 71,381$ |


| 2007 | $\$ 50,656$ | $\$ 21,000$ | 0 | 71,656 | $\$ 0$ | $\$ 71,656$ |
| :--- | :--- | :--- | :--- | :--- | :--- | :--- |

## Deed History - (Last 3 Deed Transactions)

| \# | Deed Date | Type | Description | Grantor | Grantee | Volume | Page | Deed Number |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| 1 | 8/19/2003 | WDV | WARRANTY DEED/VENDORS LIEN | CALLAHAN JOHN W \& ORALIA | LOPEZ <br> GERARDO \& CARLA |  |  | 1233623 |
| 2 | 11/28/2000 | GFD | GIFT DEED | CALLAHAN ORALIA \& JOHN SURVIVORSHIP | CALLAHAN JOHN W \& ORALIA |  |  | 923831 |
| 3 | 8/16/2000 | GFD | GIFT DEED | CALLAHAN JOHN W MD | CALLAHAN ORALIA \& JOHN SURVIVORSHIP |  |  | 896977 |

## Tax Due

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

| 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.

PRO. BOX 220 McALLEN, TEXAS 78505-0220 APPLICATION MUST BE COMPLETE (Please type or print in black or blue ink) Michael Morales ревмит appellation reference number ReS 2020-05441
 *OWNER INFORMATION NOT PROVDIED, INITIAL.:


The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant herby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the improvements shall not be occupied until a Certificate of Occupancy has been Issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.
Michael Morals Murphies metal oo ff andmarelllc30@gmail

## Planning Department

## Memo

TO: Zoning Board of Adjustment \& Appeals
FROM: Planning Staff
DATE: October 2, 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 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)

## REASON FOR APPEAL:

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


## PROPERTY LOCATION AND VICINITY:

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

## BACKGROUND AND HISTORY:

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

## ANALYSIS:

Variance \#1: To allow an encroachment of up to 6 ft . into the 6 ft . west 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 west 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 rear property line to the outside wall of the above ground swimming pool at approximately 3 ft . The 3 ft . comprises a 10 ft . rear utility easement. The above ground swimming pool also encroaches on the 10 ft . utility easement at the rear of lot 67. The pool is moveable.

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 10 ft . on the 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.


■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






| 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?


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.

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

## ITEM 2L) 2805 QUAMASIA AVENUE

## TABLED UNTIL THE NEXT OF MEETING OF OCTOBER 21, 2020

2020 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

\begin{tabular}{|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|c|}
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\hline REBECCA MILLAN (ALT 3) \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& \& P \& \& \& \& \& \& <br>
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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


## CRITERIA FOR ZBOA DETERMINATIONS

## APPEALS

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

## SPECIAL EXCEPTIONS

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

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

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

The general public, the board of commissioners, and the planning board are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, wherever and whenever possible, except:
(1) When necessary to preserve property rights established prior to the date the ordinance from which this article is derived became effective as to the property in question, and
(2) When necessary to promote the general welfare and to protect the character of the surrounding property.

## VARIANCES

Authorized only when ALL of the following applies:

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

## Definitions

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## Chapter 138-Zoning

Sec. 138-1. - Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dwelling unit means any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boardinghouses or mobile homes.
(1) Single-family means a building designed for and/or occupied exclusively by one family as a separate dwelling unit.
(2) Duplex means a building designed for and/or occupied exclusively by two families living independently of each other.
(3) Triplex means a building designed for and/or occupied exclusively by three families living independently of each other.
(4) Fourplex means a building designed for and/or occupied exclusively by four families living independently of each other.
(5) Multiple means a building designed for and/or occupied exclusively by five or more families living independently of each other.
The determination of whether one family is living independent of another is based on one or more of the following criteria: separate sanitary facilities; separate kitchen facilities; separate entrances; or separate utilities.

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

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

Existing. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.
Family means one or more persons living together as a single housekeeping unit with common sanitary and kitchen facilities.

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

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

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

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

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

Lot means an undivided tract or parcel of land having frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record. The word "lot" includes the word "plot."
(1) Corner lot means a lot abutting upon two or more public streets at their intersection.
(2) Building coverage means percentage of the lot that is occupied by the ground area of a building and its accessory buildings.
(3) Lot, double frontage means a lot abutting on two nonintersecting public streets as distinguished from a corner lot.
(4) Lot lines means the lines bounding a lot as defined in this section.
a. Front lot line means the property line between the front yard and the contiguous street right-of-way boundary.
b. Rear lot line means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
c. Side lot line means the property between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.
Lot of record means a parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the county clerk; or a tract of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the county clerk prior to October 15, 1973, which has not been divided since recording.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

