

AGENDA

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING THURSDAY, JUNE 17, 2021 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3RD FLOOR

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

Meeting ID: 672 423 1883

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

CALL TO ORDER – CHAIRPERSON ERICK DIAZ

1. MINUTES:

- a) Minutes for the meeting held on June 2, 2021

2. PUBLIC HEARINGS:

- a) Request of Riverside Development Service, LLC for the following variances to the City of McAllen Zoning Ordinance **1)** to allow a lot width less than 50 ft. with a minimum width of 29.66 ft. for Lot 103 of proposed Campo de Sueños Phase II, 39 ft. to 44.5 ft. for Lots 61,67,68,72,73,77-80,82-86,92,104,105 of proposed Campo de Sueños Phase II, 45 ft. to 49.6 ft. for Lots 56-60,62,64-66,69,70,71,81,87,89-91,101 of proposed Campo de Sueños Phase II, 23.17 ft. for Lot 137 of proposed Campo de Sueños Phase III, 29 ft. to 34.5 ft. for Lots 135,144,145 of proposed Campo de Sueños Phase III, 34.51 ft. to 39 ft. for Lots 124,125,130,131,136,138,139,143,158 of proposed Campo de Sueños Phase III, 40 ft. to 45.5 ft. for Lots 111,112,123,126,129,132-134,140-142,146,148,150-152,155-157,163-166 of proposed Campo de Sueños Phase III, and 46 ft. to 50 ft. for Lots 113,147,153,154,159 of proposed Campo de Sueños Phase III, **2)** to allow a lot size of less than 5,000 sq. ft. with a minimum lot size of 4,512.31 for Lot 56 and 4,725.36 sq. ft. for Lot 57 of proposed Campo de Sueños Phase II, For a 26.663 acre tract of land out of Lot 45 and 52, La Lomita Irrigation and Construction Company's Subdivision Hidalgo County, Texas; 8300 North Ware Road.(ZBA2020-0087) **WITHDRAWN**
- b) Request of Jose G. Vela for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 20.83 ft. into the 25 ft. front yard setback for an existing metal carport measuring 20 ft. by 20 ft., at Lot 87, Olivarez Subdivision No. 5, Hidalgo County, Texas; 3004 Upas Avenue. (ZBA2021-0017) (TABLED: 06/02/2021)
- c) Request of Antonio & Martina Ramos, for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 21.75 ft. into the 25 ft. front yard setback for an existing metal carport measuring 18.42 ft. by 23.33 ft., at Lot 67, Casa Bonita Subdivision, Hidalgo County, Texas; 512 North 26th Street. (ZBA2021-0019)
- d) Request of Alicia G. Duarte for the following variances to the City of McAllen Zoning Ordinance to allow: **1)** to not require a 5 ft. separation for an accessory building to the main building for an existing storage building measuring 12.91 ft. by 18.08 ft.,**2)** an encroachment of 7 ft. into the 7 ft. side yard setback for an existing chimney measuring 13.04 ft. by 2.77 ft. **3)** an encroachment of 7 ft. into the 7 ft. south side yard setback for a proposed carport measuring 19.92 ft. by 20 ft., and **4)** an encroachment of 10 ft. into the 10 ft. rear yard setback for a proposed carport measuring 19.92 ft. by 20 ft., at Lot 24, Block 3, Retama Terrace Subdivision, Hidalgo County, Texas; 1020 North 27th ½ Street. (ZBA2021-0018)

3. FUTURE AGENDA ITEMS

- a)** 8300 North Ware Road
- b)** 3000 Melba Avenue
- c)** 2232 Nyssa Avenue
- d)** 413 Cornell Avenue
- e)** 7108 North 23rd Lane
- f)** 8915 North 22nd Lane

ADJOURNMENT:

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

STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, June 2, 2021 at 4:30 p.m. in the City Commission Meeting Room with the following present:

Present:	Erick Diaz	Chairperson (Zoom)
	Sylvia Hinojosa	Member (Zoom)
	Jose Gutierrez	Member (Zoom)
	Hugo Avila	Alternate (Zoom)
	Rogelio Rodriguez	Alternate (Zoom)
	Rebecca Millan	Alternate (Zoom)

Absent:	John Millin	Vice-Chairperson
	Juan F. Jimenez	Member
	Ann Tafel	Alternate

Staff Present:	Issac Tawil	City Attorney
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Liliana Garza	Planner II (Zoom)
	Carmen White	Secretary

CALL TO ORDER –Chairperson Erick Diaz

1. MINUTES:

- a) Minutes for the meeting held on May 19, 2021.

The minutes for the meeting held on May 19, 2021 were approved. The motion to approve the minutes was made by Mr. Hugo Avila. Ms. Sylvia Hinojosa seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Jose G. Vela for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 20.83 ft. into the 25 ft. front yard setback for an existing metal carport with a proposed measurement of 15 ft. by 20 ft., at Lot 87, Olivarez Subdivision No. 5, Hidalgo County, Texas; 3004 Upas Avenue. **(ZBA2021-0017)**

Staff was recommending this item to be tabled at this time.

Ms. Sylvia Hinojosa **moved** to table the special exception. Mr. Jose Gutierrez seconded the motion. The Board voted to table the special exception with five members present and voting.

- b) Request of Riverside Development Service, LLC for the following variances to the City of McAllen Zoning Ordinance **1)** to allow a lot width less than 50 ft. with a

minimum width of 29.66 ft. for Lot 103 of proposed Campo de Sueños Phase II, 39 ft. to 44.5 ft. for Lots 61,67,68,72,73,77-80,82-86,92,104,105 of proposed Campo de Sueños Phase II, 45 ft. to 49.6 ft. for Lots 56-60,62,64-66,69,70,71,81,87,89-91,101 of proposed Campo de Sueños Phase II, 23.17 ft. for Lot 137 of proposed Campo de Sueños Phase III, 29 ft. to 34.5 ft. for Lots 135,144,145 of proposed Campo de Sueños Phase III, 34.51 ft. to 39 ft. for Lots 124,125,130,131,136,138,139,143,158 of proposed Campo de Sueños Phase III, 40 ft. to 45.5 ft. for Lots 111,112,123,126,129,132-134,140-142,146,148,150-152,155-157,163-166 of proposed Campo de Sueños Phase III, and 46 ft. to 50 ft. for Lots 113,147,153,154,159 of proposed Campo de Sueños Phase III, **2)** to allow a lot size of less than 5,000 sq. ft. with a minimum lot size of 4,512.31 for Lot 56 and 4,725.36 sq. ft. for Lot 57 of proposed Campo de Sueños Phase II, For a 26.663 acre tract of land out of Lot 45 and 52, La Lomita Irrigation and Construction Company's Subdivision Hidalgo County, Texas; 8300 North Ware Road. **(ZBA2020-0087)**

Staff stated the Developers were requesting for the item to be tabled.

Ms. Sylvia Hinojosa **moved** to table the variance requests. Mr. Hugo Avila seconded the motion. The Board voted to table the variance requests with five members present and voting.

3. FUTURE AGENDA ITEMS:

- a) 1020 North 27th 1/2 Street
- b) 512 North 26th Street

ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Ms. Sylvia Hinojosa **moved** to adjourn the meeting. Mr. Jose Gutierrez seconded the motion, which carried unanimously with five members present and voting.

Chairperson Erick Diaz

Carmen White, Secretary

2a) 8300 North Ware Road

WITHDRAWN

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

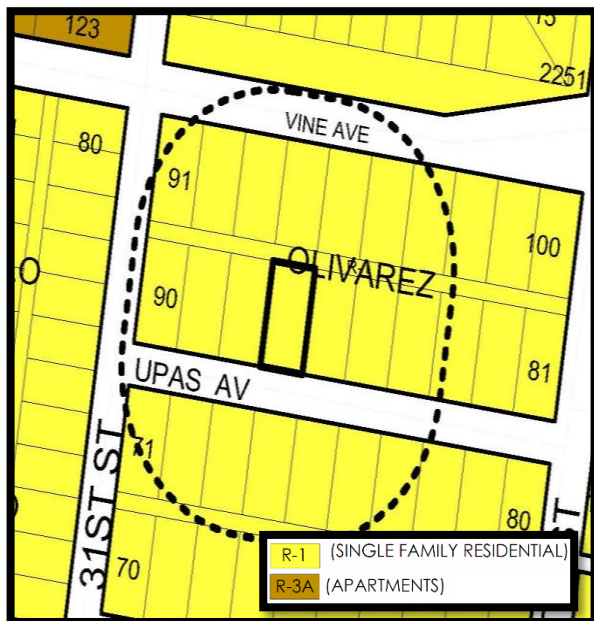
FROM: Planning Staff

DATE: June 10, 2021

SUBJECT: REQUEST OF JOSE G. VELA, FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: AN ENCROACHMENT OF 20.83 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING OF 20 FT. BY 20 FT. AT LOT 87, OLIVAREZ SUBDIVISION NO. 5, HIDALGO COUNTY, TEXAS; 3004 UPAS AVENUE. (ZBA2021-0017)(TABLED: 6/2/21)

REASON FOR APPEAL:

The applicant is requesting a special exception to encroach 20.83 ft. into the 25 ft. front yard setback an existing metal carport that measures 20 ft. by 20 ft. The applicant is requesting to allow the carport at the proposed location, since it protect him, his truck and cover the ramp to access the residence from inclement weather.



PROPERTY LOCATION AND VICINITY:

The subject property is located on the north side of Upas Avenue, approximately 180 ft. east of North 31st Street. The property has 61 ft. of frontage along Upas Avenue and a depth of 124.8 ft. with a lot size of 7,612.8 square feet. The property and adjacent zoning is R-1 (single family residential) District in all directions. Surrounding land use include single-family residential.

BACKGROUND AND HISTORY:

Olivarez Subdivision No.5 was recorded on February 1, 1972. The plat specifies a 25 ft. front yard setback. A stop work order was issued by Building and Inspections Department staff on April 19, 2021 for the installation of a carport without a permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department on April 22, 2021. An application for special exception request for encroachment of an existing carport was submitted to the Planning Department on April 30, 2021.

ANALYSIS:

The special exception request is to allow an encroachment of 20.83 ft. into the 25 ft. front yard setback for an existing metal carport that measures 20 ft. by 20 ft. The plat for the subdivision specifies a 25 ft. front yard setback. The applicant is proposing to relocate the entire carport 8 ft. to the east to avoid encroachment into the side setback (5 ft. as per pattern). This location would have the carport to be align with the existing house.

There are no variance requests on file for carports encroaching into the setbacks for this subdivision; however, a site inspection confirmed that there are existing carports (approximately 7) built around the neighborhood without a permit. There are other structures around the area that seemed to be encroaching into rear and side setbacks.

Approval of the request will allow the existing carport to be relocated as depicted on the site plan.

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

RECOMMENDATION:

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

ZBA2021-0017



City of McAllen

Planning Department

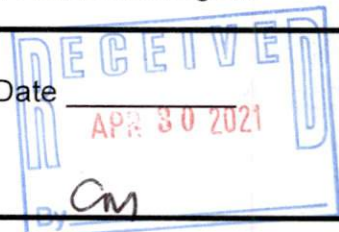
APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

ZBA
4-2-21

Project	Legal Description <u>Olivarez No5 Lot 87</u>
	Subdivision Name <u>Olivarez No5</u> Street Address <u>3004 Lpas Ave</u>
Project	Number of lots <u>1</u> Gross acres <u>7644.30</u> Existing Zoning <u>R1</u> Existing Land Use <u>Residential</u>
	Reason for Appeal (please use other side if necessary) <u>Build carport about 2-3yr Contractor fail to get permit.</u> <input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input checked="" type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required
Applicant	Name <u>Jose G. Vela</u> Phone <u>956-605-1264</u> Address <u>3004 Lpas Ave</u> E-mail <u>Vela7606a@icloud.com</u> City <u>McAllen</u> State <u>Tx</u> Zip <u>78501</u>
Owner	Name <u>Same</u> Phone _____ Address _____ E-mail _____ City _____ State _____ Zip _____
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 <u>[Signature]</u> Date <u>4/30/21</u> Print Name <u>Jose G. Vela</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent
Office	Accepted by _____ Payment received by _____ Date _____ Rev 09/20



H.C.



City of McAllen
Planning Department
REASON FOR APPEAL & BOARD ACTION

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

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

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

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

n/a

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

protection of vehicle

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

n/a

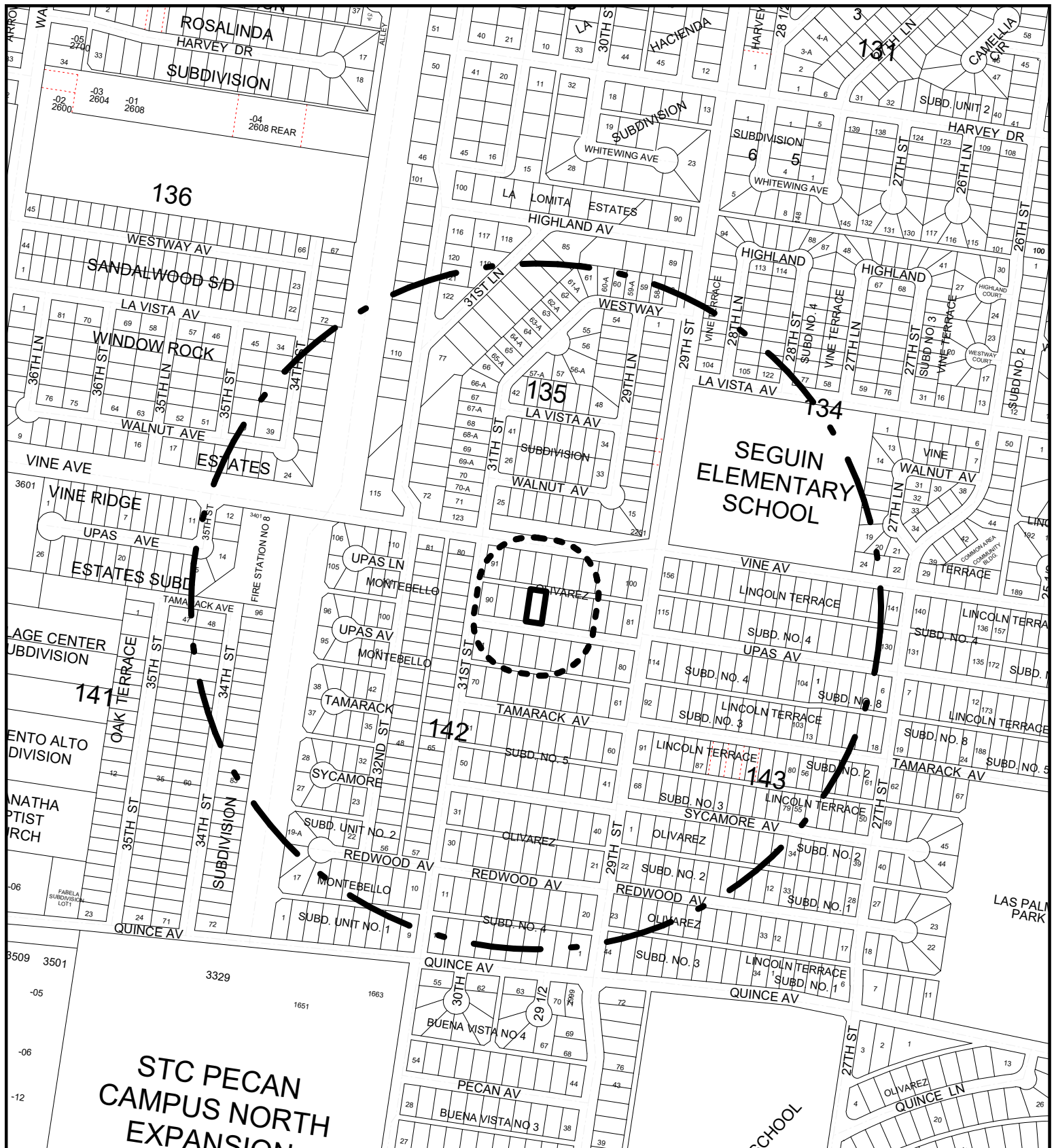
4. Describe special conditions that are unique to this applicant or property:

To protect our truck from Bad weather. Like the storm ^{we had in} 3/2012

Health reason, Jose G. Vela is a disable veteran and is unable to walk for a far distance, and needs to get to his truck very slow also he needs the shade provided by the Carport

Chairman, Board of Adjustment
Signature

Date



CITY OF McALLEN
PLANNING DEPARTMENT

AREA MAP

LEGEND

SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

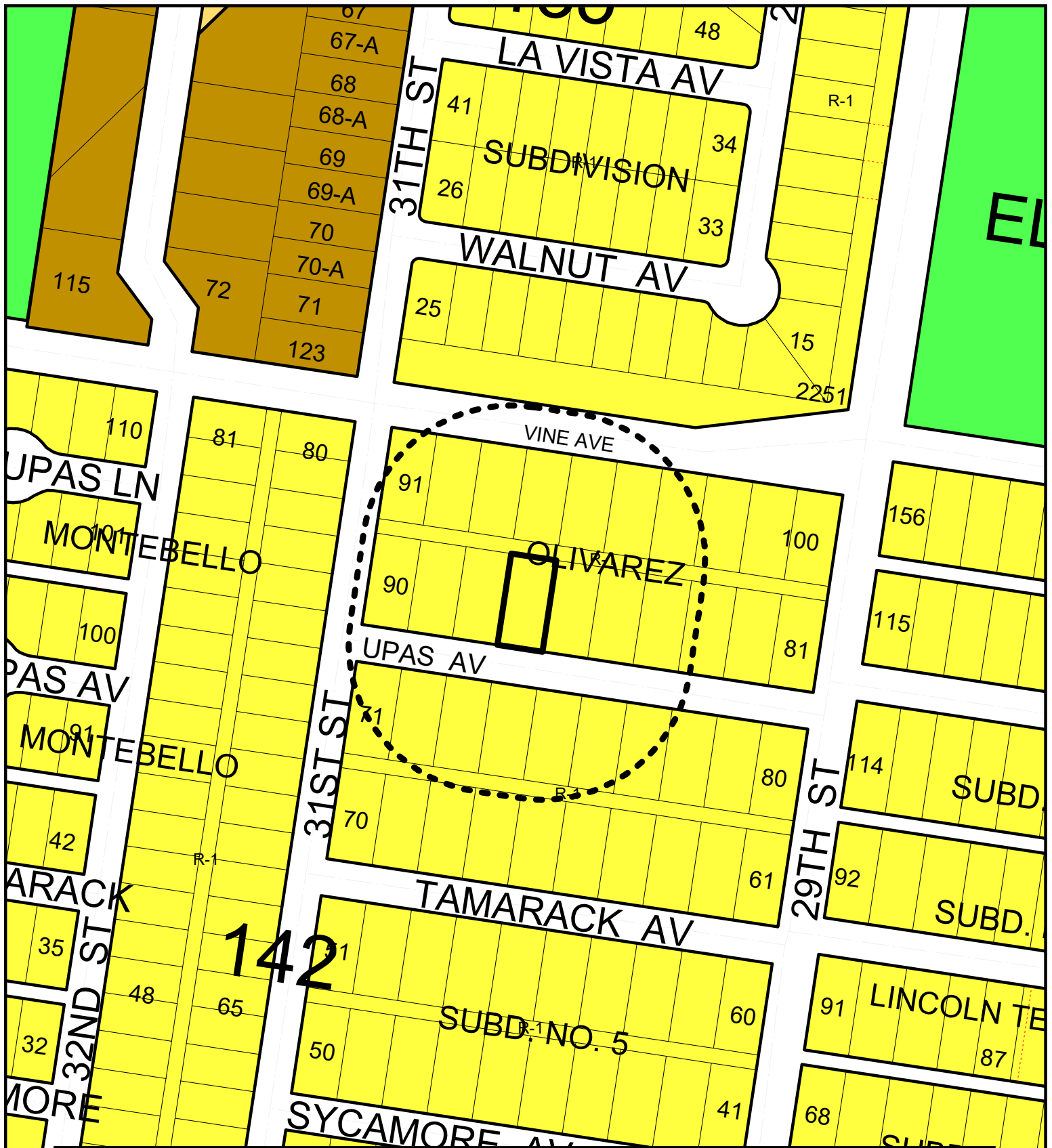
1/4 MILE RADIUS



ZONING LEGEND

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

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



CITY OF McALLEN PLANNING DEPARTMENT

LEGEND SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

1/4 MILE RADIUS



ZONING LEGEND

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

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CITY OF McALLEN
PLANNING DEPARTMENT

AERIAL MAP
SCALE: N.T.S.



SUBJECT PROPERTY



200' NOTIFICATION BOUNDARY



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File 82-8



NOTICE
VARIANCE
SPECIAL EXCEPTION
FOR
THIS PROPERTY
ZBA2021-0017

★ 5064



Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

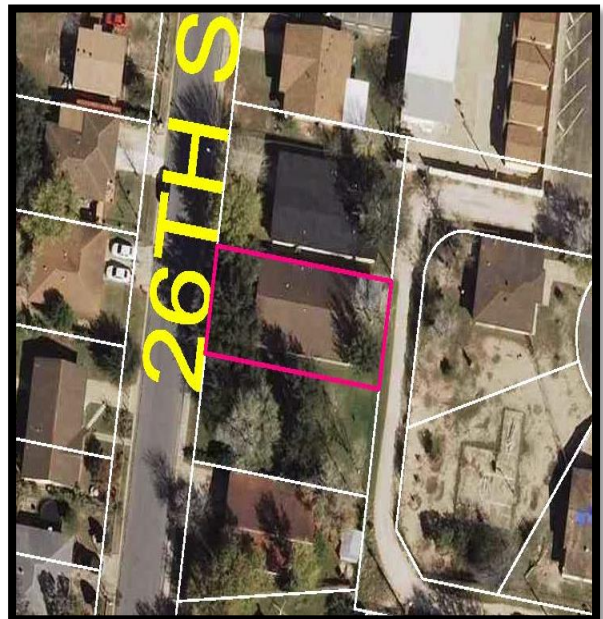
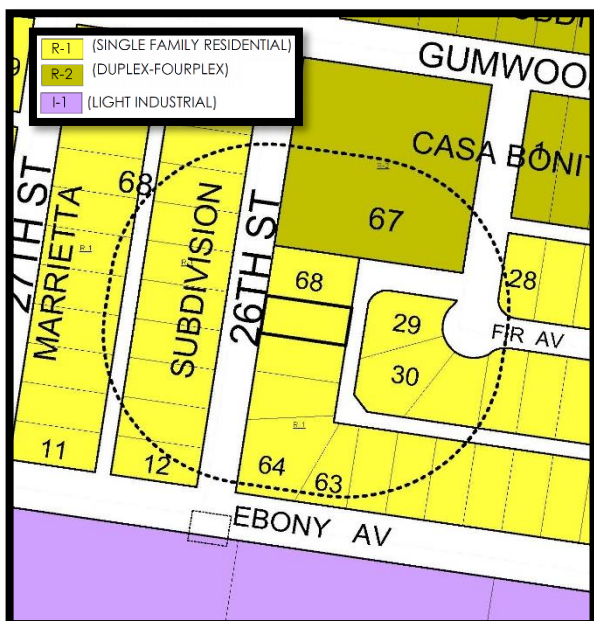
FROM: Planning Staff

DATE: June 10, 2021

SUBJECT: REQUEST OF ANTONIO & MARTINA RAMOS, FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: AN ENCROACHMENT OF 21.75 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING OF 18.42 FT. BY 23.33 FT. AT LOT 67, CASA BONITA SUBDIVISION, HIDALGO COUNTY, TEXAS; 512 NORTH 26TH STREET. (ZBA2021-0019)

REASON FOR APPEAL:

The applicant is requesting a special exception to encroach 21.75 ft. into the 25 ft. front yard setback for an existing metal frame/ nylon roof carport that measures 18.42 ft. by 23.33 ft. The applicants are requesting to allow the carport at this location, since it has been helpful to them, the carport helped the applicants by providing shade and be able to walk around the immediate area of their property instead of being confined inside the house during this pandemic. One of the applicants has some medical conditions, which benefits the applicant from consistent walking and the carport helps them by proving shade.



PROPERTY LOCATION AND VICINITY:

The subject property is located on the east side of North 26th Street, approximately 210 ft. north of Ebony Avenue. The property has 50 ft. of frontage along North 26th Street and a depth of 110 ft. with a lot size of 5,500 square feet. The property and adjacent zoning is R-1 (single family residential) District in all directions, R-2 (duplex-fourplex) District to the north and I-1 (light industrial) District to the south. Surrounding land use include single-family residential houses, Iglesia Bautista Emmanuel and International Paper Plant.

BACKGROUND AND HISTORY:

Casa Bonita was recorded on February 14, 1967. The plat specifies a 25 ft. front yard setback. A building permit was submitted in November 2012 for a detached carport, the building permit was disapproved by all corresponding departments, no construction was done at the time and the permit was destroyed. In October 2015, a second building permit was submitted for a gable carport, however, the applicant applied for a variance in November 2015, the variance was disapproved at the ZBOA meeting of November 18, 2015, in consequence, the departments a second time rejected the building permit, there was no construction at the time and the permit was destroyed. Building and Inspections Department staff issued a stop work order on April 29, 2021 for the installation of a carport without a permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department on May 5, 2021. An application for special exception request for encroachment of an existing carport was submitted to the Planning Department on May 12, 2021.

ANALYSIS:

The special exception request is to allow an encroachment of 21.75 ft. into the 25 ft. front yard setback for an existing metal carport with a nylon roof that measures 18.42 ft. by 23.33 ft. The plat for the subdivision specifies a 25 ft. front yard setback.

There is one variance request on file for a carport encroaching into the side and rear setbacks for this subdivision(2401 Fir Ave.), the variance was approved at the ZBOA meeting of August 22, 1979. A site inspection confirmed that, there are variety of existing structures around the neighborhood without any variances that seem to be encroaching into the setbacks. This carport would be the second one encroaching into the front yard setback in the immediate area. Carports are common in neighboring streets.

Approval of the request will allow the existing carport to remain as depicted on the site plan.

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

All measurements are without the benefit of a survey.

RECOMMENDATION:

Staff recommends approval of the special exception since reasons of appeal are health related. If the Board chooses to approve the request, the approval should be limited to the proposed location shown on the site plan.

ZBA2021-0019

ZBA
6/17/2021

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Project	Legal Description	<u>Lot 67</u>				
	Subdivision Name	<u>Casa Bonita</u>				
	Street Address	<u>512 N. 26th St.</u>				
	Number of lots	<u>1</u>	Gross acres	<u></u>		
	Existing Zoning	<u>Residential</u>	Existing Land Use	<u>Residential</u>		
	Reason for Appeal (please use other side if necessary)	<u>Keep structure for daily routine, protection, and medical problems.</u>				
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input checked="" type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required					
Applicant	Name	<u>Antonio + Martina Ramos</u>		Phone	<u>956-212-3121</u> <u>956-537-4652</u>	
	Address	<u>512 N. 26th St.</u>		E-mail	<u>marprim62@outlook.com</u>	
	City	<u>McAllen</u>	State	<u>TX</u>	Zip	<u>78501</u>
Owner	Name	<u>Antonio + Martina Ramos</u>		Phone	<u>956-212-3121</u> <u>956-537-4652</u>	
	Address	<u>512 N. 26th St.</u>		E-mail	<u>marprim62@outlook.com</u>	
	City	<u>McAllen</u>	State	<u>TX</u>	Zip	<u>78501</u>
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input type="checkbox"/> 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		<u>Antonio Manuel Ramos</u> <u>Martina S. Ramos</u>			
	Print Name		<u>Antonio M. Ramos</u> <u>Martina S. Ramos</u>			
Office	Accepted by	<u>H.C.</u>	Payment received by	<u></u>	Date	<u>5/12/2021</u>
	Rev 09/20 <div style="float: right; border: 2px solid red; padding: 5px; text-align: center;"> RECEIVED MAY 12 2021 By <u>uw</u> </div>					

5 Paid w/ c.c.



City of McAllen
Planning Department
REASON FOR APPEAL & BOARD ACTION

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

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

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

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

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

See attachment

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

see attachment

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

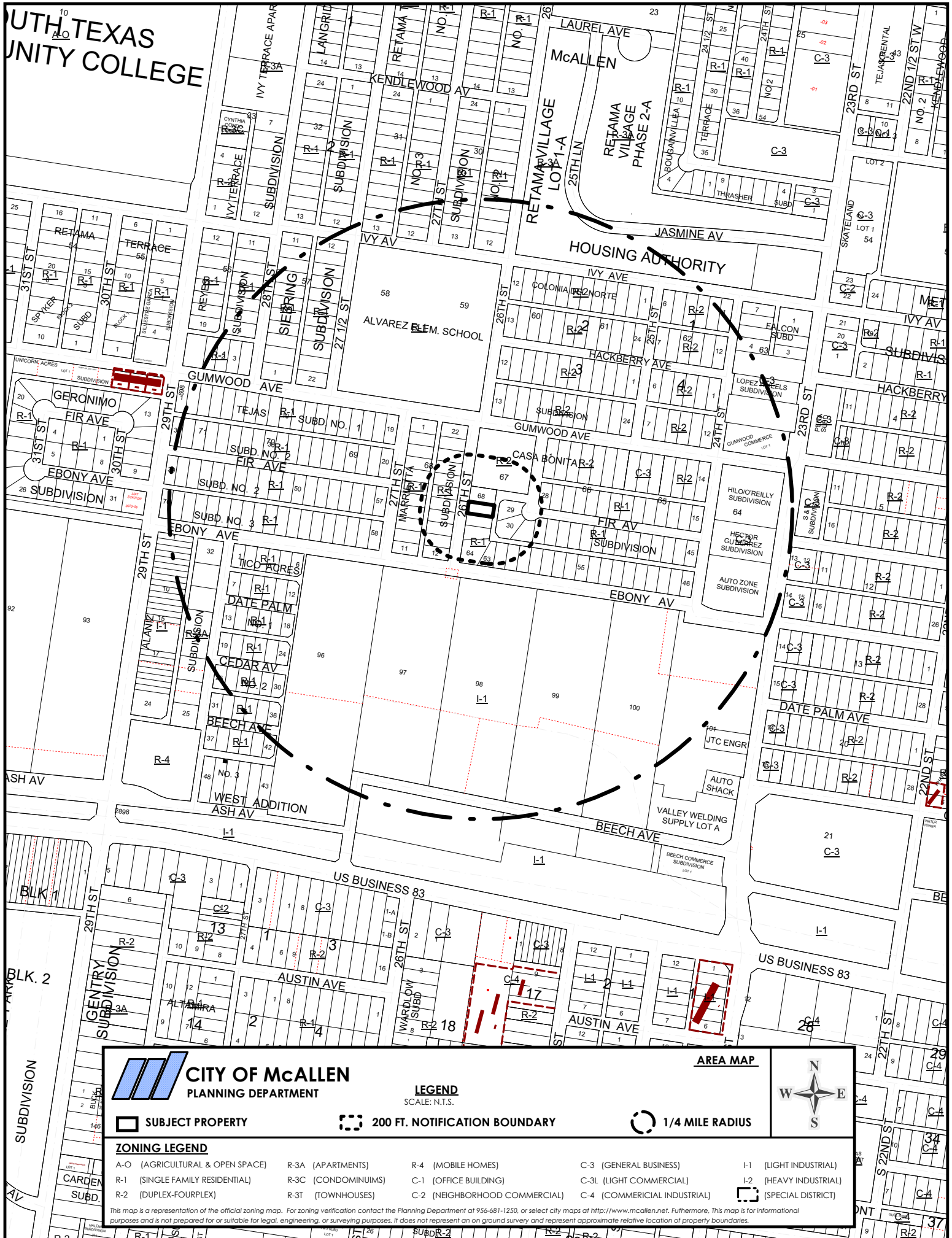
see attachment

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date



CITY OF McALLEN

PLANNING DEPARTMENT

LEGEND

SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

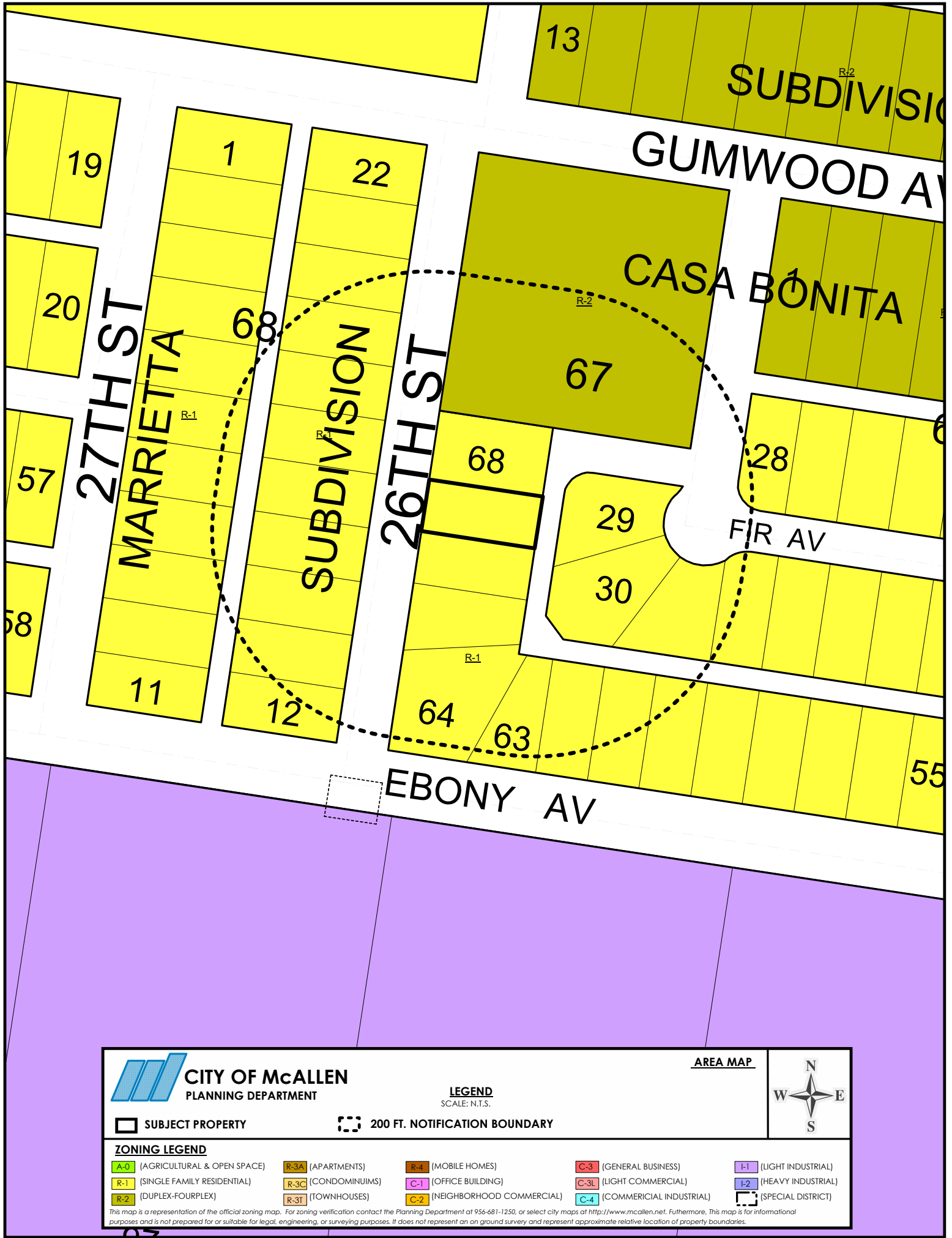
1/4 MILE RADIUS



ZONING LEGEND

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

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26TH ST



CITY OF McALLEN
PLANNING DEPARTMENT

AERIAL MAP
SCALE: N.T.S.



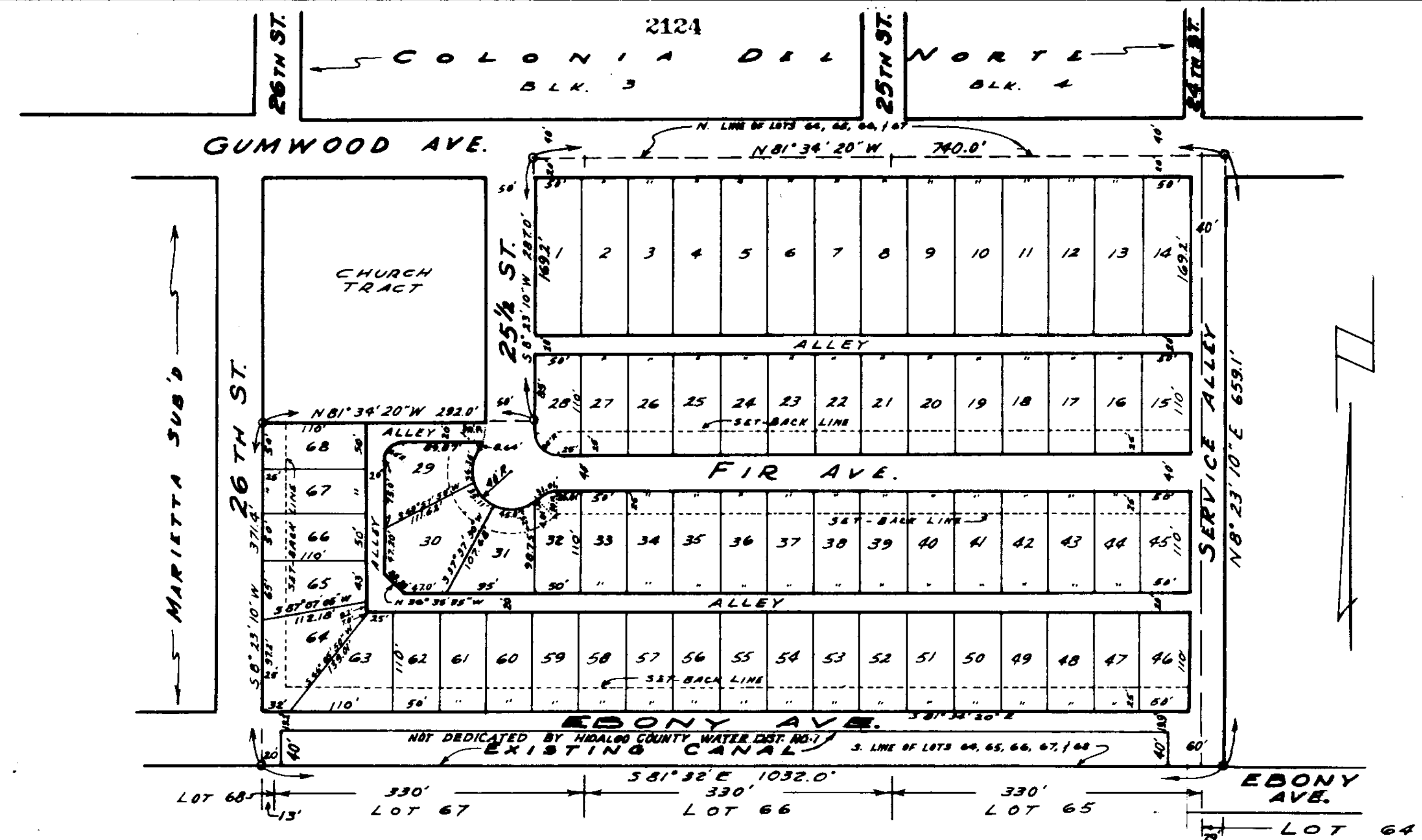
SUBJECT PROPERTY



200' NOTIFICATION BOUNDARY



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



APPROVED FOR RECORDING
BY
COMMISSIONERS COURT
This 1st day of February, 1967
SANTOS SALDANA, County Clerk
Hidalgo County, Texas
By: James DeBuck Deputy

MAP
OF
CASA BONITA SUBDIVISION
MC ALLEN, TEXAS

BEING A RESUBDIVISION OF THE WEST 29.0 FT. OF LOT 64, ALL OF LOTS 65, 66, 67 AND THE EAST 13.0 FT. OF LOT 68; BLOCK 2, C.E. HAMMOND'S SUBD.; HIDALGO COUNTY, TEXAS; less 1 except the North 287.0 ft. of the West 292.0 ft. thereof. Containing 13.68 acres of land, more or less.

FILED FOR RECORD THIS DATE
At 4:32 o'clock P.M.

FEB 14 1967
SANTOS SALDANA
County Clerk, Hidalgo County, Texas
By: M. Bradley Deputy

APPROVED
FOR RECORDING
Hidalgo Co. Right of Way Dept.
By: [Signature]
Date 3-10-67

Scale: 1"=100'

Date: 12-30-66

I, C. L. FABIAN, A REGISTERED PUBLIC SURVEYOR, DO HEREBY CERTIFY THE FOREGOING MAP TO BE A TRUE AND CORRECT REPRESENTATION OF THE LANDS HEREON SHOWN AS PLATTED BY ME FROM SURVEY OF THE OUTSIDE BOUNDARIES OF SAME.

[Signature]
C. L. FABIAN
REGISTERED PUBLIC SURVEYOR
MC ALLEN, TEXAS

STATE OF TEXAS:
COUNTY OF HIDALGO:

KNOW ALL MEN BY THESE PRESENTS: THAT ART BUILDERS, INCORPORATED, OWNER OF THE LANDS HEREON MAPPED AND PLATTED, DO HEREBY DEDICATE THE SURFACE USE OF THE STREETS AND ALLEYS SHOWN ON THE ABOVE MAP TO THE USE OF THE PUBLIC AND UNTO THE CITY OF MC ALLEN, TEXAS, SO LONG AS IT SHALL ACCEPT, MAINTAIN AND PROTECT THE SAME FOR THE USE AND BENEFIT OF THE PUBLIC.

IN TESTIMONY WHEREOF, ART BUILDERS, INC., HAS CAUSED THESE PRESENTS TO BE EXECUTED ON THIS 2ND DAY OF FEBRUARY, A.D. 1967.

ATTEST:
[Signature]
Ben Rapp, SECRETARY

ART BUILDERS, INCORPORATED
BY: [Signature]
A. J. HAUSMAN, PRESIDENT

STATE OF TEXAS:
COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED A. J. HAUSMAN, PRESIDENT OF ART BUILDERS, INC., OWNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, IN THE CAPACITY THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THE 2ND DAY OF FEBRUARY, A.D. 1967.

[Signature]
NOTARY PUBLIC IN AND FOR
HIDALGO COUNTY, TEXAS
BOBBIE CLOWE
Notary Public in and for
Hidalgo County, Texas

THIS PLAT APPROVED BY THE MC ALLEN ZONING AND PLANNING BOARD ON THIS THE 1ST DAY OF FEBRUARY, A.D. 1967.

MC ALLEN ZONING AND PLANNING BOARD

BY: [Signature]
BEN BILBREV, CHAIRMAN

THIS PLAT APPROVED BY THE CITY COMMISSION OF THE CITY OF MC ALLEN, TEXAS ON THIS THE 6th DAY OF FEBRUARY, A.D. 1967.

ATTEST:
[Signature]
SANTOS SALDANA, CITY CLERK

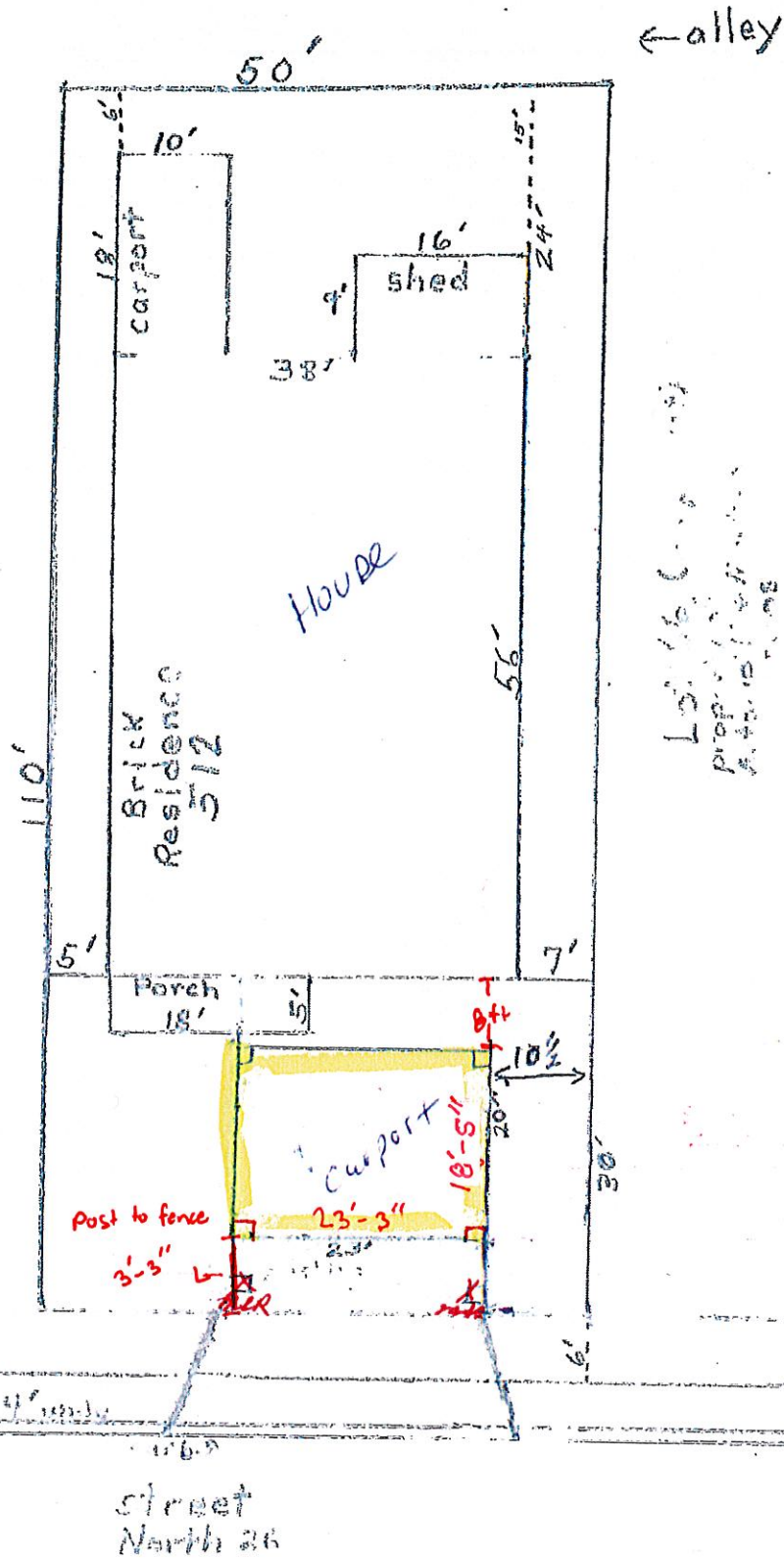
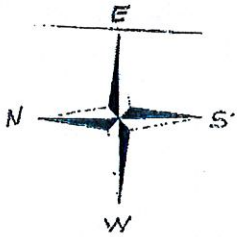
[Signature]
PAUL G. VEALE, MAYOR

THIS PLAT APPROVED BY THE HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 ON THIS 9th DAY OF February, A.D. 1967.

ATTEST:
[Signature]
SECRETARY

[Signature]
PRESIDENT

Lot 67
Casa Bonita Subdivision
McAllen, Texas



Page 10

7. Prove







Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: June 10, 2021

SUBJECT: REQUEST OF ALICIA G. DUARTE, FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) TO NOT REQUIRE A 5 FT. SEPARATION FOR AN ACCESSORY BUILDING TO THE MAIN BUILDING FOR AN EXISTING STORAGE BUILDING MEASURING 12.91 FT. BY 18.08 FT., 2) AN ENCROACHMENT OF 7 FT. INTO THE 7 FT. SIDE YARD SETBACK FOR AN EXISTING CHIMNEY MEASURING 13.04 FT. BY 2.77 FT., 3) AN ENCROACHMENT OF 7 FT. INTO THE 7 FT. SOUTH SIDE YARD SETBACK FOR A PROPOSED CARPORT MEASURING 19.92 FT. BY 20 FT., AND 4) AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. REAR YARD SETBACK FOR A PROPOSED CARPORT MEASURING 19.92 FT. BY 20 FT. AT LOT 24, BLOCK 3, RETAMA TERRACE SUBDIVISION, HIDALGO COUNTY, TEXAS; 1020 NORTH 27TH ½ STREET. (ZBA2021-0018)

REASON FOR APPEAL:

The applicant is requesting the variances to allow an existing storage building and chimney to remain at its current location, and to be able to build a proposed carport in order to protect their vehicles from inclement weather and because the current garage cannot fit both of the vehicles.



PROPERTY LOCATION AND VICINITY:

The subject property is located on the southwest corner of Kendlewood Avenue and North 27th ½

Street. The property has 55 ft. of frontage along North 27th ½ Street and a depth of 130 ft. with a lot size of 7,150 sq. ft. The adjacent zoning is R-1 (single-family) District in all directions. Surrounding land use include single-family residences.

BACKGROUND AND HISTORY:

Retama Terrace Subdivision was recorded on February 28, 1956. The original building permit for the house was issued on 2013. A second building permit for the construction of a storage building was approved in 2014. An application for a building permit for a proposed carport has not been submitted. The application to request the variances was submitted on May 5, 2021.

ANALYSIS:

Variance #1:

As per Building permit records, a building permit was submitted and approved for the addition of a storage in 2014 (RES2014-04120), however, this permit was not routed to the Planning Department for review. Zoning ordinance 138-369 states that no accessory building shall be closer than 5 ft. from the main building except where a firewall is provided. There is no firewall detail stipulated on the building permit and the distance from the main structure to the storage is 4 ft. 4 inches. The building permit was never finalized.

Variance #2:

Is to allow an existing chimney to remain at its current location with an encroachment of 7 ft. into the 7 ft. side yard setback along the south property line. The chimney has a measurement of 13.04 ft. by 2.77 ft. and sits along the brick fence. Additionally, the chimney has an elevated concrete slab that serves a counter with a sink on it. There is no building permit on file for this construction.

Variance #3 & #4

These variances is to allow the construction a proposed metal carport on the southeast corner of the lot. The proposed measurement for the carport is 19.92 ft. by 20 ft.

Approval of the variance requests will allow the following:

1. Storage shed to remain at its current location
2. Chimney to remain at its current location
3. For a proposed metal carport to be built encroaching into side and rear setbacks

During the site visit, staff noticed that there are other existing structures in the area that appear to be encroaching into the side and rear yard setbacks. There is only two approved variances in the area for carports and storages encroaching into the front yard setback and side yard and rear setbacks respectively. Variances were approved in 2017.

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

RECOMMENDATION:

Staff recommends approval of variance #1, and disapproval of the variance request #2, #3 and #4. If the Board chooses to approve the requests, the approval should be limited to the encroachments shown on the submitted site plan.

ZBA2021-0018

ZBA
6.2.21

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Project

Legal Description

Betama Terrace Lot 24 BIK 3

Subdivision Name

Street Address

1020 N. 27th 1/2 St. McAllen Tx 78501

Number of lots

1

Gross acres

Existing Zoning

Existing Land Use

Reason for Appeal (please use other side if necessary)

Build CARPORT (Roof)
and Tool Shed
☒ \$300.00 non-refundable filing fee + ☐ \$50.00 Recording Fee for Special Exception (carport)

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

Applicant

Name ALICIA G. DUARTE

Phone (956) 682-6278

Address 1020 N. 27th 1/2 St

E-mail mlduarte.0913@yahoo.com

City McAllen

State TX

Zip 78501

Owner

Name ALICIA G. DUARTE

Phone (956) 682-6278

Address 1020 N. 27th 1/2 St

E-mail mlduarte.0913@yahoo.com

City McAllen

State TX

Zip 78501

Authorization

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

☐ Yes

☒ No

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

Signature Alicia Duarte

Date 5-5-2021

Print Name ALICIA G. DUARTE

☒ Owner

☐ Authorized Agent

Office

Accepted by

Payment received by

Date

MAY 05 2021

Rev 09/20

By NM

05



City of McAllen

Planning Department

REASON FOR APPEAL & BOARD ACTION

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

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

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

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

Granting permission would allow us to build a roof for the two (2) Vehicles we have parked.

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

This carport roof would protect our Vehicles against the elements such as the scorching sun, heavy rain and hail as we have experienced in the past.

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

The roof would neither affect public health nor welfare as this is inside property line.

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

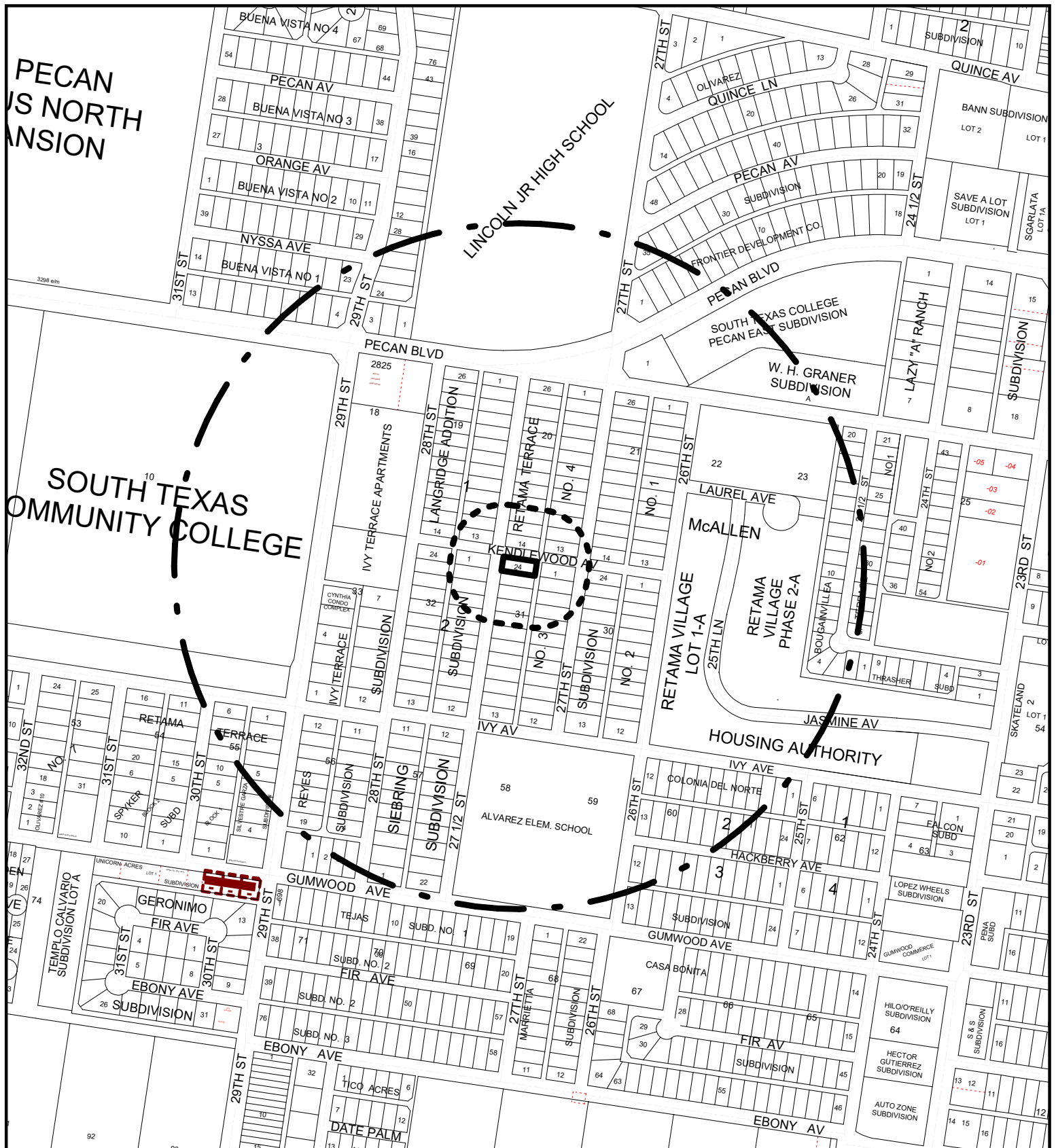
Our home has an attached two car garage but only one vehicle fits. The other car & truck are parked outside. Requesting to build, professionally, a carport roof to protect our Vehicles.

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date



CITY OF McALLEN
PLANNING DEPARTMENT

AREA MAP




 **SUBJECT PROPERTY**

 **200 FT. NOTIFICATION BOUNDARY**

 **1/4 MILE RADIUS**

ZONING LEGEND

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

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CITY OF McALLEN
PLANNING DEPARTMENT

AERIAL MAP
SCALE: N.T.S.



SUBJECT PROPERTY



200' NOTIFICATION BOUNDARY



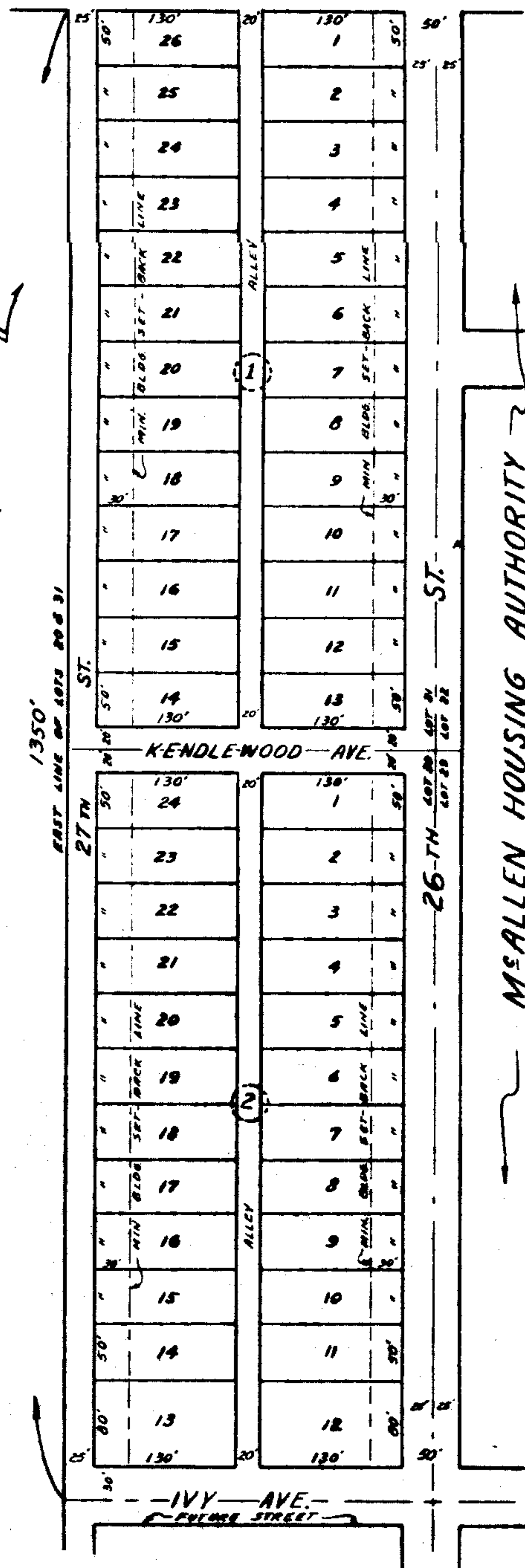
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3760

FILED FOR RECORD THIS DATE
M 10 1956 A. M.

FEB. 28 1956

HIGHWAY F.M. 495



MAP OF RETAMA TERRACE McALLEN, TEXAS

BEING A RESUBDIVISION OF LOTS 21 & 30, BLOCK 2,
C. E. HAMMOND'S SUBDIVISION OF PORCIONES 61,
62, 63 & 64, HIDALGO COUNTY, TEXAS

SCALE: 1"=100'

DATE: 1-16-56

STATE OF TEXAS
COUNTY OF HIDALGO

KNOW ALL MEN BY THESE PRESENTS THAT WE, DAVID FARR AND MOE ADAMS, OWNERS OF THE PROPERTY HEREON DESCRIBED, DO HEREBY ADOPT, DEDICATE AND CONFIRM THE FOREGOING MAP AND DO HEREBY DEDICATE TO THE PUBLIC THE SURFACE USE OF THE STREETS, ALLEYS AND EASEMENTS THEREON SHOWN.

David Farr
DAVID FARR

Moe Adams
MOE ADAMS

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DAVID FARR AND MOE ADAMS, OWNERS, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 16th DAY OF JANUARY, A.D. 1956.

John P. ...
NOTARY PUBLIC
HIDALGO COUNTY, TEXAS

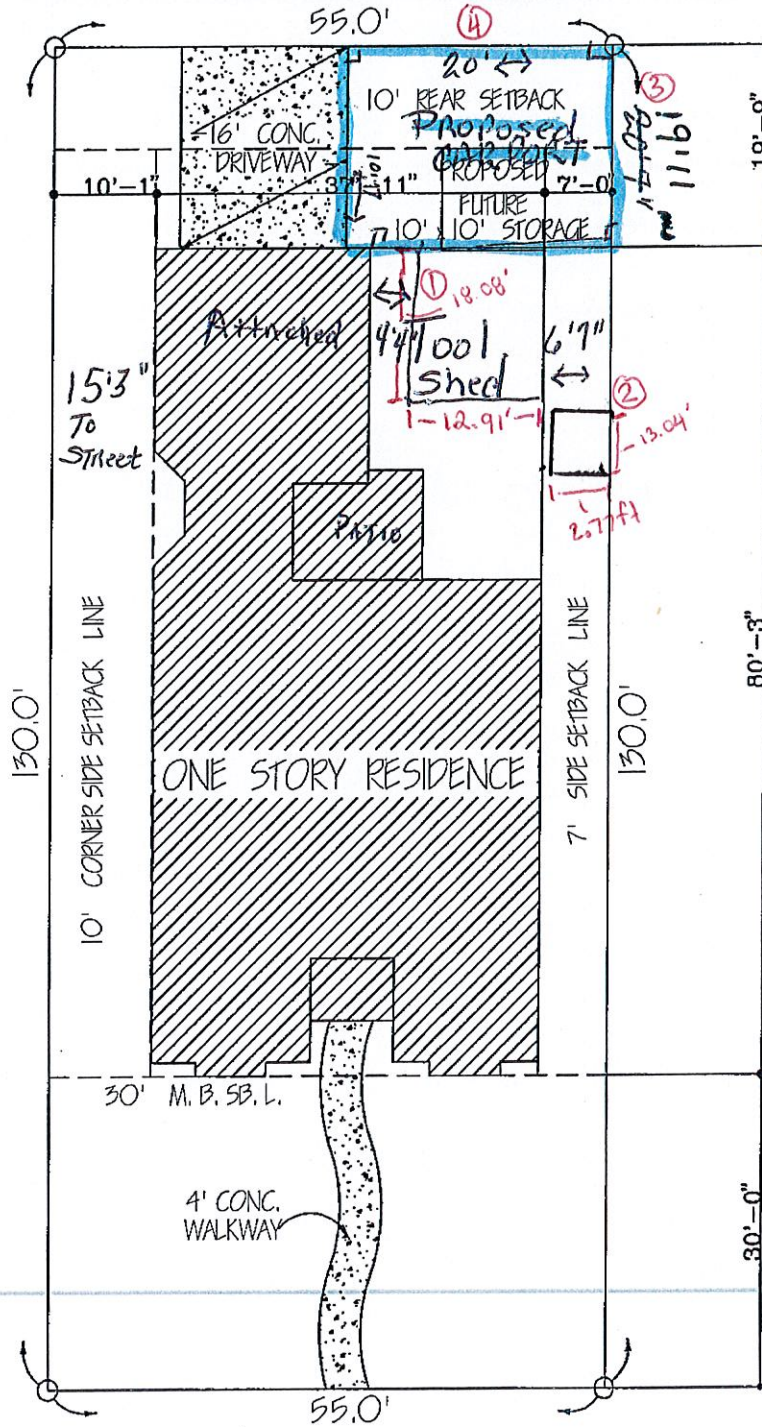
THIS MAP APPROVED BY THE MC ALLEN ZONING AND PLANNING BOARD ON THE 19th DAY OF JAN. 1956.

MC ALLEN ZONING AND PLANNING BOARD
BY *J. E. Cook*
J. E. COOK, JR. CHAIRMAN

I, C. L. FABIAN, A REGISTERED PUBLIC SURVEYOR, DO HEREBY CERTIFY THE FOREGOING MAP TO BE A TRUE AND CORRECT REPRESENTATION OF THE LANDS HEREON DESCRIBED AS PLATTED BY ME FROM SURVEY OF THE OUTSIDE BOUNDARIES OF SAME.

C. L. Fabian
C. L. FABIAN
REGISTERED PUBLIC SURVEYOR
MC ALLEN, TEXAS

20' ALLEY













NOTICE
VARIANCE
FOR
THIS PROPERTY
ZBA 2021-0013

1020

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

Table of Contents

Chapter 138-Zoning1

 Section 138-1 Definitions1

Chapter 110-Vegetation6

 Section 110-26 Definitions6

Chapter 138-Zoning

Sec. 138-1. - Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Footnotes:

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

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

Chapter 110-Vegetation

Sec. 110-26. - Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exceptions Cited within the Zoning Ordinance

Exceptions pertaining to front yard setbacks:

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

Exceptions pertaining to rear yard setbacks:

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

Exceptions pertaining to side yard setbacks:

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

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

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

Exceptions as per Planning Department Policy

By policy the following are permitted:

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

Legal opinions:

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

ZONING BOARD OF ADJUSTMENT AND APPEALS

RULES AND PROCEDURES

CITY OF MCALLEN

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

I. ORGANIZATION AND OFFICERS

A. Members

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

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

B. Officers

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

C. Duties and Officers

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

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

II. POWERS OF THE BOARD

A. General Powers

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

B. Specified Powers

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

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

III. DUTIES OF BOARD MEMBERS

A. General Duties of Members

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

B. Disqualification/Conflict of Interest

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

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

IV. A BASIS FOR ACTION

The Board shall decide each case based on the following:

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

V. APPLICANTS

A. Legally Vested Interest

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

B. Applications

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

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

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

C. Meetings

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

D. Evidence

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

VI. HARDSHIP

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

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

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

VII. MEETINGS

A. Texas Public Information Act and Open Meetings Act.

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

B. Quorum

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

C. Regular Meetings

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

D. Special Meetings

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

E. Order of Business

The usual order of business shall be:

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

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

F. Staff Recommendations

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

G. Action by the Board

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

H. Minutes of the Board

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

VIII. DECISIONS OF THE BOARD

A. Precedent

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

B. Public Statements

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

B. Parliamentary Procedure

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

IX. WITHDRAWAL OF APPEAL

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

X. ATTENDANCE

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

XI. AMENDEMENT PROCEDURE

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

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

Executive Secretary

ORDINANCE NO. 2018- 70

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNED this 9th day October, 2018.

CITY OF McALLEN

John Ingram, City Commissioner

Attest:

Perla Lara

Perla Lara, TRMC/CMC, CPM
City Secretary

Approved as to form:

Austin W. Stevenson

Austin W. Stevenson, Assistant City Attorney



2021 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

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

P - PRESENT

A - ABSENT

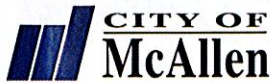
 NEW APPOINTMENT

MC - MEETING CANCELLED

NRM - NO MEETING

LOQ - LACK OF QUORUM

RS - RESIGNATION



PLANNING DEPARTMENT

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



2021 CALENDAR

Meetings:

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

HPC - Historic Preservation Council

Deadlines:

D- Zoning/CUP Application N - Public Notification

* Holiday - Office is closed

JANUARY 2021

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

FEBRUARY 2021

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

MARCH 2021

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

APRIL 2021

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

MAY 2021

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

JUNE 2021

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

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

2021 CALENDAR

Meetings:  City Commission  Public Utility Board  Planning & Zoning Board  Zoning Board of Adjustment HPC - Historic Pres Council							Deadlines: D- Zoning/CUP Application N - Public Notification * Holiday - Office is closed						
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JULY 2021							AUGUST 2021						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3	1	2	3	4	5	6	7
					A-7/20 & 7/21			A- 8/18 & 8/19		N- 8/18 & 8/19 D-9/1 & 9/2			
4	5 HOLIDAY	6	7 N-7/20 & 7/21 D-8/4 & 8/5	8	9	10	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21
18	19	20	21 HPC N-8/4 & 8/5 D-8/18 & 8/19	22	23	24	22	23	24	25	26	27	28
25	26	27	28	29	30	31	29	30	31				
								A-ZBA 9/1		N-ZBA 9/1 D-9/16 & 9/17			
								A-PZ 9/7		HPC N-PZ 9/7			
								A-ZBA 9/15					

SEPTEMBER 2021							OCTOBER 2021						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 N-ZBA 9/15 D-10/5 & 10/6	2	3	4						1	2
					A-PZ 9/21								
5	6 HOLIDAY	7	8 N-PZ 9/21	9	10	11	3	4	5	6 N-10/19 & 10/20 D-11/2 & 11/3	7	8	9
12	13	14	15	16	17	18	10	11	12	13	14	15	16
19	20	21	22 HPC N-10/5 & 10/6	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31			HPC			

NOVEMBER 2021							DECEMBER 2021						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3 N-11/16 & 11/17 D-12/1 & 12/7	4	5	6				HPC N-ZBA 12/15 D-1/4 & 1/5	2	3	4
	A-11/16 & 11/17												
7	8	9	10	11	12	13	5	6	7	8	9	10	11
								A-PZ 12/21		N- PZ 12/21			
14	15	16	17 N-ZBA 12/1 D-PZ-12/21	18	19	20	12	13	14	15	16	17	18
	A-ZBA 12/1									D-1/18 & 1/19			
21	22	23	24	25	26	27	19	20	21	22	23	24	25
	A-PZ 12/7		N-PZ 12/7	HOLIDAY				A- 1/4 & 1/5		N- 1/4 & 1/5	HOLIDAY	HOLIDAY	
28	29	30					26	27	28	29	30	31	
	A-ZBA 12/15											HOLIDAY	

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