

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

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, August 7, 2024 at 4:30 p.m. in the McAllen Development Center, 311 North 15th Street, Executive Conference Room with the following present:

Present:	Jose Gutierrez	Chairperson
	Ann Tafel	Vice-Chairperson
	Hugo Avila	Member
	Hiram A. Gutierrez	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
	Daniel Santos	Alternate
Absent:	Rogelio Rodriguez	Member
	Pablo Garcia	Alternate
Staff Present:	Benito Alonzo	Assistant City Attorney I
	Michelle Rivera	Assistant City Manager
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Samuel Nunez	Senior Planner
	Alexis Martinez	Planner I
	Jessica Puga	Planning Technician II
Carmen White	Administrative Assistant	

CALL TO ORDER –Chairperson Jose Gutierrez

1. MINUTES:

- a) Minutes for the meeting held on July 25, 2024

The minutes for the meeting held on July 25, 2024 were approved. The motion to approve the minutes were made by Mr. Hiram Gutierrez. Mr. Hugo Avila seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Adrian Hinojosa for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 20 feet into the 20-foot front yard setback for an existing carport measuring 26 feet by 17.25 feet at Lot 133, Colonia McAllen Unit No. 6 Subdivision, Hidalgo County, Texas; 2108 South 30th ½ Street. (ZBA2024-0027)

Ms. Martinez stated the applicant was requesting a Special Exception to encroach 20 feet into the 20-foot front yard setback for an existing carport measuring 26 feet by 17.25 feet. The carport was proposed to provide weather protection for the applicant's 81 - year old mother.

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The subject property is located along the West side of S. 30th ½ Street, approximately 100 feet South of Uvalde Avenue. The lot has 50.0 feet of frontage and 111.0 feet of depth for a total of 5,550 square feet. The property is zoned R-1 (single family residential) District. The surrounding zones include R-1(single family residential) in all directions.

Colonia McAllen Unit No. 6 Subdivision was recorded on August 2, 1976. The plat requires a 20-foot front yard setback. According to HCAD, the house was built in 1986 with a garage. On July 11, 2024, the applicant applied for a Special Exception to encroach 20 feet into the 20-foot yard setback for an existing carport.

The applicant is requesting Special Exception to allow an encroachment of 20 feet into the 20-foot front yard setback for an existing mesh and metal carport measuring 26 feet by 17.25 feet. The carport was installed in order to provide protection from the weather elements for the applicant's 81-year-old mother.

The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view.

The applicant currently has access to an ally in the rear yard that contains a 3 ft. rear yard setback on their property, which allows enough space to have the existing carport relocated to the backyard.

There were two other Special Exceptions on file for carports encroaching into the front yard setback for this subdivision. The applicant at Lot 152 was approved for a Special Exception of an encroachment of 20 ft. into the 20-foot front yard setback for a purposed metal carport measuring 25 ft. by 20 ft. The applicant at Lot 62 was approved for a Special Exception of item #1) a 15 foot yard setback instead of 0 foot yard setback limited to the dimensions of the existing metal carport which is 18 ft. by 15 ft. after modifications. However, the board denied request #2) a 1.5-foot side yard setback instead of 6 feet.

A site visit by staff revealed twelve other carports in the subdivision that were illegally built without a permit.

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

Special exceptions are issued to and recorded for the present applicant/owner only. New property owners would need to apply for a new special exception request.

Measurements provided are without benefit of a survey.

Staff recommended disapproval of the Special Exception request since it does not align with the existing character of the majority of the subdivision and the applicant has access to a rear yard alley where the carport can be relocated and made to comply with the minimum building setbacks for the property. Further, the carport is over the 400 sq. ft. maximum size found in the zoning ordinance.

Chairperson Gutierrez asked staff if the applicant knew they were exceeding the maximum allowed (400 sq. ft.) carport dimensions. Staff stated yes. He also asked

regarding the 15 illegal carports that were in the neighborhood, was the City addressing the situation. Staff stated those carports did not have any building permits or special exceptions.

Vice-Chairperson Tafel asked if they had a garage. Staff stated they had a one-car garage.

Board member Avila commented that the carport did not align with the existing character in the neighborhood whether their illegal or not.

Board member Santos asked how this case came before the Board. Staff stated they received a Stop Work Order by the Building Inspector.

Board member Avila asked staff if the remainder of the carports in the neighborhood have the style of this canvas fabric carport. Staff stated the other carports were metal.

Board member Avila asked the Planning Director if the Board could approve a carport that went beyond the 400 square feet. Mr. Garcia stated no, if the Board was fine with the encroachment of 20 feet into the 20-foot front yard setback. Once it gets to the Building Department, staff would make sure that it had been cut back in some manner to be at a maximum of 400 square feet.

Mr. Adrian Hinojosa, the applicant, 2108 South 30 ½ Street, McAllen. He stated he wanted to build the carport out of wood but was informed by the Building Department not to because of the setbacks and safety hazards. They informed he could build one out of canvas material. Mr. Hinojosa told the contractor for him to take care of getting the permit. The contractor told him that he did not need a permit. After he built the carport, the City came out and issued a Stop Work Order. Mr. Hinojosa asked the inspector why he received the citation. He was told it came by a complaint. He then asked why when they were other carports built in the neighborhood.

Chairperson Gutierrez asked the applicant if he still had the contractor's contact number. Mr. Hinojosa stated yes and he spoke with him regarding the situation.

Board member Mujica asked the applicant what was the contractor's response. Mr. Hinojosa explained to him what the issue was and that he would need his help in correcting it. The contractor stated to let him know.

Chairperson Jose Gutierrez asked if there was anyone present in favor of the Special Exception. There was no one in favor of the Special Exception.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the Special Exception. There was no one in opposition of the Special Exception.

Board member Avila asked the applicant what was the purpose of the carport. Mr. Hinojosa stated it was for his 81-year-old mother who lives with him. To protect her from the inclement weather and to protect the vehicle of the bird droppings from the tree.

Board member Mujica stated to the applicant that it looked like he had space in the backyard for the carport. The applicant stated he wanted to expand for a room in the back in the future. Mr. Mujica stated he still had room to expand and build a carport for his

mother. Mr. Hinojosa mentioned there was no door in the back of the house for his mother to enter or exit.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove the Special Exception. Mr. Hiram Gutierrez seconded the motion. The Board voted to disapprove the Special Exception with three members voting aye and two members Mr. Alex Lamela and Mr. Hugo Avila voting nay.

- b) Request of Maria De La Rosa for a special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 22 feet into the 30-foot front yard setback for a proposed carport measuring 18 feet by 22 feet at Lot 3, Block 3, Colonia McAllen Subdivision, Hidalgo County, Texas; 2709 South 27th Street. (ZBA2024-0024)

Mr. Hernandez stated the applicant was requesting a Special Exception to encroach 22 feet into the 30-foot front yard setback for a proposed wooden carport measuring 18 feet by 22 feet for protection of vehicles from inclement weather.

The subject property was located along the east side of South 27th Street just south of Jordan Road. The property is zoned R-1 (single family residential) District. The surrounding zones include R-1 (single family residential) in all directions.

Colonia McAllen Subdivision was recorded on July 11, 1960. The plat shows a 30-foot front yard setback. The house was built in 2012 and, as with most houses in this subdivision, was built without a garage. A building permit application for the proposed carport was submitted on June 21, 2024. An application for a special exception request was submitted to the Planning department on July 8, 2024.

The applicant was requesting a Special Exception to allow an encroachment of 22 feet into the 30-foot front yard setback for a proposed carport that will be used for protection of their vehicle from the sun and severe weather such as hail.

A site visit was conducted by staff and found a total of seven front yard carports in the immediate vicinity. No approved special exceptions or building permits were found on file for the carports that were observed.

Special exceptions are issued to and recorded for the present applicant/owner only. New property owners would need to apply for a new special exception request.

Measurements provided are without the benefit of a survey.

There have been no calls or emails received in opposition of the Special Exception request.

Staff was recommending disapproval of the Special Exception request.

Chairperson Gutierrez asked staff what was the disapproval based on. Staff stated it was based on that the applicant was informed that she had room in the back to place the carport. She had access to the alley.

Board member Gutierrez asked about the no phone calls received as stated on the memo.

Staff stated the two phone calls were received today in opposition. Board member Mujica why they were in opposition. Staff stated one was that they had room in the back. The other opposition was on placement of the carport would stop the airflow coming into their property.

Ms. Maria De La Rosa, the applicant, 2709 South 27th Street. She stated she wanted the carport for protection of the sun. They lived there for 12 years and they had planted two trees 6 to 8 feet hoping for shade. Between the previous hail and freeze, the trees were ruined. They had one vehicle, which damaged it from the inclement weather. Chairperson Gutierrez asked if they could put the carport in the back. Ms. De La Rosa stated they had a small alley but the large truck they had was hard to maneuver onto the property.

Chairperson Jose Gutierrez asked if there was anyone present in favor of the Special Exception. There was no one in favor of the Special Exception.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the Special Exception. There was no one in opposition of the Special Exception.

Vice-Chairperson Tafel asked if there were any utility lines in the easement. Staff stated there were no utilities.

Following discussion, Mr. Hugo Avila moved to approve the Special Exception. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to approve the Special Exception with five members present and voting.

- c) Request of Josue Barroso on behalf of the McAllen North Spanish Congregation of Jehovah's Witnesses for a variance to the City of McAllen Zoning Ordinance to allow issuance of a building permit in excess of 10% replacement value for a non-conforming use at 0.815 of an acre, out of Lot 243, Pride O' Texas Subdivision, Hidalgo County, Texas; 4300 Kingdom Avenue. (ZBA2024-0025)

Mr. Hernandez stated the applicant was requesting a variance to allow issuance of a building permit in excess of 10% replacement value for a non-conforming use in order to remodel a building on the subject property. The applicant claims the variance is necessary to bring the building in compliance with current safety and ADA accessibility standards. The subject property is located along the north side of Kingdom Avenue approximately 400 ft. east of North Bentsen Road. The property is zoned R-1 (single family residential) District. The surrounding zoning includes R-1 (single family residential) District to the south and west, A-O (agricultural & open space) District to the north and east, and C-3L (light commercial) District to the northwest of the subject property.

Pride O' Texas Subdivision was filed for record on November 4, 1929. According to Hidalgo County Appraisal District records, the primary building was built in 1995. The current owner acquired the property in 1983.

On November 23, 2015, a building permit for a remodel of a parsonage was submitted. A Commercial building permit for the current proposed remodel was submitted on June 7, 2024.

The variance request was to allow the remodeling of the church building and to bring it into compliance with current safety standards.

The tract was unsubdivided property and Planning department records do not show a Conditional Use Permit (CUP) for the operation of a church at this location.

According to Section 138-89 (a) "on any nonconforming structure or portion of a structure containing a nonconforming use, no work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-load-bearing walls, fixtures, wiring or plumbing to an extent exceeding ten percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure, as the case may be."

The proposed remodeling will not increase the square footage of the current structure. The proposed remodeling however will exceed the replacement value of the non-conforming structure in excess of 10%.

According to Hidalgo County Appraisal District, the current value of the non-conforming structure is \$211,453. Ten percent of the value is \$21,145.

According to the submitted estimates, the total cost of repairs to the main building would be \$214,400. This estimate total would exceed the 10% replacement value by 101.4%.

Measurements provided are without the benefit of a survey.

There have been no calls or emails received in opposition of the variance request.

Staff recommended disapproval of the variance request.

Chairperson Gutierrez asked staff if they the applicant knew why staff recommended disapproval of the request. Staff stated yes. He asked what their response was once they heard the recommendation. Staff stated they reduced the amount of the material cost and was still above the 10%.

Vice-Chairperson Tafel asked regarding the address 4300 Kingdom Avenue. She did not see it on the map. Planning Director stated it was not a dedicated street.

Board member Mujica asked legal if this was non-conforming use should this be before the Planning and Zoning Board. Planning Director stated the structure existed then sections of the property were being sold. Once those sections of the property started, began selling that would make it non-conforming. The Zoning Ordinance was the Board's purview.

Mr. Josue Barroso, the applicant, 1327 Felix Street, Alamo, Texas. He was the authorized agent on behalf of the project. They initiated the project through permitting. He stated the reason it did not have a Conditional Use Permit was that in 1983 when it was first built it was part of the County. Eventually the City of McAllen amended the property. It was mentioned to them about a subdivision process and Conditional Use Permit but was recommended to apply for a variance. Mr. Barroso stated on Section 138-89(a) according to the Code the number that was being used calculation over 10% was the appraised value with the County \$211,000. However, the Code stated 10% of the current

replacement cost not the current appraised value. They referred to a local architect in McAllen and they were given an estimate to a similar type of building \$350.00 a square foot, which would them in the 1.5 million-replacement cost. Chairperson Gutierrez stated that the legal department would answer by which number would be considered or take into account. He was asked by staff to submit a more complete breakdown of the material cost. Staff eliminated some of the number that did not need a permit coming down with a number of \$150,000.00. Senior Planner, Mr. Nunez stated that they did meet with the applicant but was not presented with the report that had been mentioned in terms of the replacement value. Staff had a discussion of certain options that they could consider but were not given official numbers that were being presented here such as a report.

Vice-Chairperson Tafel recommended that the item be tabled until the two entities come together with identical information and measurements.

Chairperson Jose Gutierrez asked if there was anyone present in favor of the Variance request. There was someone in favor of the Variance request.

Mr. Jeffrey Howell, architectural Director, 5122 Ebony Drive, San Antonio, Texas. He stated the original building was built in 1983. It was the only building on that block at that time. One other structure close to there was a residence. The property was rezoned with said church on the property. It was zoned commercial all around except for the few residential on the street. They would like enhance the property. They would like to correct some safety issues and have accessibility for the elderly congregation. They would also like to repave the parking lot.

Chairperson Jose Gutierrez asked if there was anyone present in favor of the Variance request. There was someone in favor of the Variance request.

Mr. Abel Pena, 3200 Flamingo Avenue, McAllen, Texas. He stated he was in favor and was presently attending that particular building. He stated it would enhance the neighborhood.

Chairperson Jose Gutierrez asked if there was anyone present in favor of the Variance request. There was someone in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the Special Exception. There was no one in opposition of the Special Exception.

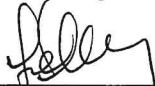
Following discussion, Vice-Chairperson Ann Tafel moved to table the Variance request in order to provide estimates on proposed work. Mr. Juan Mujica seconded the motion. The Board voted to table the Variance request with five members present and voting.

ADJOURNMENT

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



Carmen White, Administrative Assistant



Chairperson Jose Gutierrez