

STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, December 20, 2023 at 4:33 p.m. in the McAllen City Hall, Commission Chambers with the following present:

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

CALL TO ORDER –Chairperson Jose Gutierrez

1. MINUTES:

- a) Minutes for the meeting held on November 1, 2023.
- b) Minutes for the meeting held on December 6, 2023

The minutes for the meeting held on November 1, 2023 and December 6, 2023 were approved. The motion to approve the minutes were made by Vice-Chairperson Ann Tafel. Mr. Hugo Avila seconded the motion, which carried unanimously with four members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Christian Leonardelli for the following Variance to the City of McAllen Zoning Ordinance to allow an encroachment of 14 feet into the 25 feet rear yard setback for a proposed swimming pool measuring 29 feet by 13 feet, at Lot 29, Campo de Suenos Subdivision, Hidalgo County, Texas; 8508 North 33rd Lane. (ZBA2023-0102)

Ms. Moreno stated the applicant was requesting to allow the above-mentioned encroachment for a proposed rectangular shaped swimming pool measuring 29 feet by 13 feet with an encroachment of 14 feet into the 25 feet rear yard setback. The applicant states the required 25 feet rear yard setback leaves insufficient space for the construction and thus compels the encroachment.

The subject property was located along the east side of North 33rd Lane between North

33rd Lane and North 33rd Street. The irregular shaped Lot has 58.79 feet of frontage along North 33rd Lane and a depth of 112.84 feet at its deepest point for a total Lot size of 7,656 square feet. The property was zoned R-1 (single family residential) District. There was R-1 District in all directions except to the east across North 33rd Street; there was A-O (agricultural & open space) District.

Campo De Suenos Subdivision was recorded on January 20, 2021. The plat states the rear yard setback is 25 feet for double fronting lots. A special exception request application was submitted on November 10, 2023.

Lots 25-29 along this Block on Campo De Sueno Subdivision have double frontage along North 33rd Lane and North 33rd street, have a required 25 feet front, and rear yard setbacks.

The applicant stated that a contractor was hired to build an in ground swimming pool at the rear of the property. In April 2023, the contractor began excavation for the swimming pool but construction was never completed. The applicant hired a different contractor and subsequently learned that an application for a swimming pool permit had never been submitted and the excavation area encroached into the 25 feet rear yard setback.

City Ordinance Section 138-367 (b) states, "where lots have double frontage...a required front yard shall be provided on one street only." The submitted site plan shows the existing residence is in compliance with the 25 feet front yard setback along North 33rd Lane. However, an approved variance is still necessary to resolve the plat note setback requirement of 25 feet for the rear yard.

A 10 feet utility easement and 1-foot technology easement adjacent to the rear property line of Lot 29, run concurrently with the 25 feet rear yard setback but will not be impacted by the proposed encroachment.

A review of Planning Department records did not reveal any variances granted for swimming pools within this subdivision.

Measurements provided are without benefit of a survey.

Staff had not received any phone calls, emails, or letters in opposition to the variance request.

Staff recommended approval of the variance request since the required front yard has 25 feet along North 33rd Lane and was in compliance with the City of McAllen Zoning Ordinance requirement for double fronting lots.

Vice-Chairperson Tafel asked staff if the fence in the back was within the property line and did it interfere with any utility lines. Ms. Moreno stated yes, the fence was within their property line and that it did not interfere with any utility lines.

Mr. Christian Leonardelli, the applicant stated his address as 8508 North 33rd Lane.

Chairperson Gutierrez asked the applicant when the first contractor he hired started the excavation, did he request a permit. Mr. Leonardelli stated when he signed the contract the contractor said he was going to take care of all the permits needed. He stated the contractor bailed out in the middle of the job along with most of his money. The second

contractor he hired gave him the bad news that the excavation was done over the boundary lines.

Chairperson Gutierrez mentioned to the applicant that there were four members present and should be five. He asked the applicant if he wanted to proceed with his presentation. Being there were four Board members and if one votes against it, his case would not be approved. He gave the applicant a chance to table it until the next meeting when there would be five members present. Mr. Leonardelli stated he wanted to move forward with the process.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the variance request. There was no one in favor of the variance request.

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

Following discussion, Vice-Chairperson Ann Tafel moved to approve the variance request per staff's recommendation. Mr. Hugo Avila seconded the motion. The Board voted to approve the variance request with four members present and voting.

- b) Request of Ramiro Ramirez for the following Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 20 feet into the 20 feet front yard setback for an existing carport measuring 19 feet by 19 feet, at Lot 53, Arthur Terrace Subdivision, Hidalgo County, Texas; 6304 North 36th Street. **(ZBA2023-0103)**

Ms. Moreno stated the applicant was requesting to allow an encroachment of 20 feet into the 20 feet front yard setback for an existing carport. The applicant is requesting the carport to remain for protection of the family's vehicles from adverse weather elements.

The subject property was located along the east side of North 36th Street between North 35th Street and North 36th Street. The Lot had 68 feet of frontage along North 36th Street and a depth of 100 feet for a total Lot size of 6,800 square feet. The property is zoned R-1 (single family residential) District. There is R-1 District in all directions except to the west across North 36th Street there is C-2 (neighborhood commercial) District and is the site for El Rodeo Meat Market and El Rodeo Taco Express Restaurant.

Arthur Terrace Subdivision was recorded on June 22, 1982. The plat states a front yard setback of 20 feet. A stop work order was issued on June 10, 2023 for a carport built without a permit. A building permit application was submitted on September 22, 2023. A Special Exception request application was submitted on November 15, 2023.

The Special Exception request is for an existing metal carport that encroaches 20 feet into the 20 feet front yard setback. The applicant would like the carport to remain in order to provide protection from adverse weather conditions such as hail, rain and excessive sunlight, for the family's vehicles.

There was an existing two-car garage, which the applicant stated was used to park his daughter's vehicle(s).

The property owner stated that a contractor was hired for the construction of the carport, but subsequently learned that building permits had not been obtained.

Front yard setbacks help keep the character of single-family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

There is no alley at the rear of the property that would allow for relocation of the carport out of the front yard setback.

Special Exceptions are issued to and recorded for the present applicant/owner only. A change in ownership would require the new owner to apply for a Special Exception.

A photo of the carport suggests that the structure may be encroaching, even though slightly, into the right of way, but measurements provided are without the benefit of a survey.

During a site visit of Arthur Terrace Subdivision, Staff noticed there were 2 carports with possible encroachments along North 36th Lane at Lots 22 and 23. A review of Planning Department records did not reveal any application for building permits or Special Exceptions granted for these existing carports on these Lots.

Staff had received a letter signed by three residents in support of this Special Exception request.

Staff recommended disapproval of the Special Exception request since there are no other carports along North 36th Street between Lark and Gull Avenues. If the Board approves the request, approval should be limited to the encroachment shown on the submitted site plan.

Vice-Chairperson Tafel asked staff if there were other carports in the area. Ms. Moreno stated in the subdivision there were two but along that street, there were not any carports.

Mr. Ramiro Ramirez, 6304 North 36th Street. He stated he hired a builder that apparently obtained a permit. The contractor came to Mr. Ramirez and informed him that his father had passed away and asked for the money to prepare for his burial. He paid the builder the money never returning to finish the job. He only thing put the beams. Mr. Ramirez wanted the two-car carport for the inclement weather and family gatherings. He put marble around the posts to make it sturdier.

Chairperson Jose Gutierrez asked if there was anyone else 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 staff on the three people who signed in favor of the carport, were their addresses listed. Staff stated they were provided with only two addresses of the three people. Staff stated they were the two neighbors next to him. The third one was in a different subdivision with possibly a wrong address.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove the special exception. There was no second motion, the motion died.

Legal, Benito Alonzo stated as per the Code it was allowed for the Board to proceed

forward with four members with the meeting today. Moving forward against City staff's recommendation to approve it, would need a vote of a super majority of the Board and under State Law the voting power of the full five members of the Board. Even though four members are present, it does require a super majority to go against City staff's recommendation a concurrence of four members to approve it. The applicant can request to table the item to be heard by a full five member Board.

Chairperson Gutierrez asked the applicant if he would like to have the item tabled or proceed further with the four members present. The applicant requested the item to be tabled.

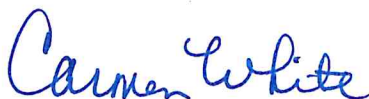
Following discussion, Mr. Hugo Avila moved to table the special request until the next meeting. Mr. Alex Lamela seconded the motion. The Board voted to table the special exception with four members present and voting.

3. FUTURE AGENDA ITEMS:

- a) 2913 La Vista Avenue
- b) 2538 Lindberg Avenue
- c) 705 Grambling Avenue
- d) 4101 Zinnia Avenue
- e) 305 Cornell Avenue
- f) 12505 North 40th Street
- g) 3305 Whetstone Avenue
- h) 3500 Ventura Avenue
- i) 12509 North 40th Street
- j) 4012 Ventura Avenue
- k) 12500 North 40th Street
- l) 12606 North 33rd Lane
- m) 3300 Wolf Creek Avenue
- n) 3700 Ventura Avenue
- o) 3302 Wolf Creek Avenue
- p) 3300 Whetstone Avenue

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