

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 4, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

Present:	Jose Gutierrez	Chairperson
	Hugo Avila	Member
	Hiram A. Gutierrez	Member
	Daniel Santos	Member
	Ivan Garcia	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
Absent:	Pablo Garcia	Alternate
Staff Present:	Michelle Rivera	Assistant City Manager
	Samuel Nunez	Senior Planner
	Porfirio Hernandez	Planner I
	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 November 20, 2024

The minutes for the meeting held on November 20, 2024. The motion to approve the minutes were made by Mr. Hugo Avila. Mr. Hiram Gutierrez seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Maria Garcia Del Paz for a Variance to the City of McAllen Zoning Ordinance to allow an encroachment of seven feet into the 10-foot rear yard setback for an existing storage shed at Lot 19, The Village North Subdivision Unit 4, Hidalgo County, Texas; 605 Water Lilly Avenue. **(ZBA2024-0047)**

Mr. Hernandez stated the applicant was requesting a variance to encroach seven feet into the 10-foot rear yard setback for an existing wooden shed measuring 11 feet by 18 feet used for storing home and yard supplies.

The subject property was located along the south side of Water Lilly Avenue approximately 80 feet west of North 6th Street. The lot has 80.0 feet of frontage and 119.22 feet of depth for a total of 9,538 square feet. The property is zoned R-1 (Single Family Residential) District. The adjacent zoning is R-1 (Single Family Residential) District in all directions. There is R-3T (Multifamily Residential Townhouse) District to the south across Violet Avenue.

The Village North Subdivision Unit 4 was recorded on September 1, 1981. The plat indicates a 10-foot rear yard setback for the subdivision. A stop work order was issued on October 22, 2024 for "no building permit for a rear patio". On October 24, 2024 a second stop work order was issued for no building permit for "no permit for rear patio" and "rear room in backyard". Improvements to the storage shed include insulation and air conditioning and require a review through an application for a building permit. On October 24, 2024, the applicant submitted an application for a building permit for the patio addition and on October 30, 2024 for the rear storage shed. A variance application for the storage shed was submitted on November 6, 2024.

The applicant was requesting a variance to allow an encroachment of seven feet into the 10-foot rear yard setback for an existing wooden storage shed measuring 11 feet by 18 feet to be used for storing pool equipment, household items and garden tools. A picture of the structure in the rear yard shows a large shade tree that prevents relocation towards the interior of the property and out of the rear yard setback. The structure appears to be built on a concrete foundation.

No utility easements will be impacted by the encroachment into the rear yard setback.

The submitted site plan shows an existing swimming pool that appears to have been constructed with encroachments into the rear and west side yard setback. In the past swimming pools were allowed to be built within setbacks; however, a subsequent determination by the city's legal department included swimming pools as structures which require compliance with setbacks. According to Hidalgo County Appraisal District records, the pool was built in 1994. The swimming pool may be considered a non-conforming structure.

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

Measurements provided are without the benefit of a survey.

Staff recommended approval of the variance request since strict adherence to the rear yard setback might require a significant portion of the shed to be demolished. There was also an existing tree that the property owner would like to keep.

Chairperson Gutierrez mentioned that the report presented by staff made reference to a site plan showing a swimming pool constructed with possible encroachments. Staff stated that in the past swimming pools were allowed to be built within setbacks. The structure can be considered as a non-conforming structure.

Board member Mujica asked staff what the reason for recommending approval on the Variance request. Staff stated that there was a provision on the local government code where a finding of an "unnecessary hardship". The Board may consider if the cost of compliance is greater than 50% of the appraised value of the structure.

Ms. Maria Garcia Del Paz, 605 Water Lilly Avenue. She stated she bought the house two years ago and she needed storage space moving from the country. She was renting a storage facility at the time. She had Mr. Kolahdouz to build her a storage shed to blend in with the façade of the house and the neighborhood. She had Mr. Kolahdouz to call the City for obtaining any permits. They were told if the storage shed was less than 200

square feet they did not need a permit. She stated if the storage shed was put in of the tree it would have been 15 feet from the house so it would be put behind the tree.

Chairperson Gutierrez explained to the applicant how the Variance goes with the land and not the property owner.

Board member Avila stated he had concerns with safety issues that is why setbacks are made for the safety of their neighbor and themselves.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Variance request. There was no one to speak in favor of the Variance request.

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

Following discussion, Mr. Hugo Avila moved to approve the Variance request as recommended by staff. Mr. Ivan Garcia seconded the motion. The Board voted to approve the Variance request with five members present and voting.

- b) Request of Francisco Pons Ballesteros for a Variance to the City of McAllen Zoning Ordinance to not provide a masonry screen eight feet in height and instead provide a six-foot cedar fence with columns for the proposed Georgetown Park Subdivision at 9.1 Acres out of Lot 1, Block 17, Steele & Pershing Subdivision and Lot 1, Block 9, A.J. McColl Subdivision, Hidalgo County, Texas; 1100 East El Rancho Road (ZBA2024-0048)

The applicant requested this item be tabled until the next meeting.

Being no discussion, Mr. Hugo Avila moved to table the Variance request until the next meeting. Mr. Daniel Santos seconded the motion. The Board voted to table the Variance request with five members present and voting.

- c) Request of MCI Development, LLC for variances to the City of McAllen Zoning Ordinance to allow the following encroachments: 1) a garage door setback of 18 feet instead of 25 feet and 2) an encroachment of 10 feet into the 25-foot front yard setback, for a proposed single family residence at Lot 15, La Veranda Subdivision, Hidalgo County, Texas; 4709 Sweetwater Avenue. (ZBA2024-0045) (TABLED: 11/20/2024)

Mr. Daniel Santos moved to remove the item from the table. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously with five members present and voting.

Ms. Martinez stated the applicant was requesting variances to allow the above-mentioned encroachments for a proposed single-family residential home. Approval of the variances will allow for a patio area as well as allow a larger size for the home.

The subject property was located along the south side of Sweetwater Avenue approximately 400 feet west of South 46th Street. The vacant lot has 92.24 ft. of frontage along Sweetwater Avenue and a depth of 85.74 ft. at its deepest point for a tract size of 6,669 sq. ft. The property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions. The surrounding land use is single-family

residential and vacant properties.

La Veranda Subdivision was recorded on January 20, 2006. Submittal of an application for a building permit is pending determination of the variance request. An application for the variance requests was submitted on October 23, 2024.

Variance #1 is to allow a garage door setback of 18 ft. instead of 25 ft. The McAllen Code of Ordinances states in Section 138-356 (footnote 2) "entrances to a garage or enclosed carport shall be a minimum of 18 feet from streets or alleys in the A-O, R-1, R-2, R-3A, R-3C and R-3T Districts unless otherwise specified by the Planning and Zoning Commission". The plat specifies a front yard building setback of 25 ft. and states 18 ft. for a garage setback "except where greater setback is required – greater setback applies". In this case, the greater setback of 25 ft. will apply. The site plan shows the proposed distance from the front property line to the proposed garage door at 18 feet. It does not show the 25 ft. front yard setback with the proposed area of encroachment.

Variance #2 is to allow construction of a proposed single-family residence with an encroachment of 10 ft. into the 25-foot front yard setback. The site plan shows the proposed distance from the front property line to the residence at 15 ft. It also shows the 25 ft. front yard setback with the proposed encroachment area.

The plat for this subdivision indicates a five-foot utility easement adjacent to the front property line and a 10-foot utility easement adjacent to the rear property line.

The subject property has partial frontage on a cul-de-sac, which gives the property an element of an irregular shape.

If the variance request is approved the applicant must comply with all other building and zoning ordinance requirements.

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

Variance request #1: Staff recommended **disapproval** since the site plan can be modified for compliance.

Variance request #2: Staff recommended **approval** since the partial frontage on the cul-de-sac makes for an irregular shaped lot. A 10-foot utility easement adjacent to the rear property line reduces the buildable area for this property.

No one appeared in opposition of the request. The Board made a motion to table the item, to allow the applicant to speak on their behalf or answer further questions that the Board would have. Staff had conferred with the applicant through email and phone requesting their presence at the upcoming meeting of December 4, 2024.

Mr. Marco Antonio Ramos, 4709 Sweetwater Avenue. He stated he was representing the applicant and owner Javier Barragan of the property. He stated they wanted to have the 18 feet instead of the 25 feet for the garage door setback. In addition, the 25 feet to 15 feet for the front yard setback.

Board member Mujica asked Mr. Ramos if anything had been built. Mr. Ramos stated no, they were just in the proposed stages of getting a permit for the construction. Board member Mujica asked him if they had tried to figure out a way to build in order to keep within the setbacks. Mr. Ramos stated they were proposing for the measurements of the property. The cul-de-sac was very small and they wanted to leave more space in the back.

Board member Ivan Garcia asked staff if any other variances had been granted for the garage setback in this subdivision. Ms. Martinez stated that for the garage setback there had not been similar approval. There had been one similar to this one across, Lot 18 and their request was for 15 feet for the front yard setback.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Variance requests. There was no one to speak in favor of the Variance requests.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Variance requests. There was no one to speak in opposition of the Variance requests.

Following discussion, Mr. Hugo Avila moved to disapprove Variance request #1 and approve Variance request #2. Mr. Hiram Gutierrez seconded the motion. The Board voted to disapprove Variance request #1 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