

STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, February 7, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

Present:	Jose Gutierrez	Chairperson
	Ann Tafel	Vice-Chairperson
	Rogelio Rodriguez	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
Absent:	Hugo Avila	Member
	Hiram A. Gutierrez	Member
	Pablo Garcia	Alternate
Staff Present:	Benito Alonzo	Assistant City Attorney I
	Michelle Rivera	Assistant City Attorney
	Rodrigo Sanchez	Senior Planner
	Samantha Trevino	Planner I
	Natalie Moreno	Planner I
	Porfirio Hernandez	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 January 25, 2024.

The minutes for the meeting held on January 25, 2024 were approved. The motion to approve the minutes were made by Mr. Alex Lamela. Vice-Chairperson Ann Tafel seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Martin Lopez for the following Special Exception and Variance to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 10 feet into the 10-foot rear yard setback and an encroachment of 2.5 feet into the 10-foot south side setback for an existing carport measuring 26.5 ft by 10 ft. and, **2)** an encroachment of 9 feet into the 10-foot rear yard setback and an encroachment of 2.5 feet into the 6-foot north side setback for a storage building measuring 12 feet by 8 feet at Lot 56, Idela Park Unit No. 1 Subdivision, Hidalgo County, Texas; 4813 South 29th Street. **(ZBA2024-0003)**

Ms. Moreno stated the applicant was requesting to encroach 10 feet into the 10-foot rear yard setback, 2.5 feet into the 10-foot south side setback for an existing carport and 9 feet into the 10-foot rear yard setback and 2.5 feet into the 6-foot north side setback for an existing storage building. The existing carport will serve for protection of a family member with medical conditions from inclement weather conditions. It will also serve to protect the family vehicles.

The subject property was located at the northeast corner of Lucille Avenue and South 29th Street. The property was zoned R-1 (single family residential) District. There was R-1 District in all directions.

Idela Park Unit No. 1 was recorded on February 13, 1978. The plat shows there is a 10-foot setback and utility easement running concurrently at the rear of the property. A non-compliance order was issued on October 5, 2022 for a carport built without a permit. A request to abandon a 10-foot utility easement adjacent to the rear property line of Lot 56, Idela Park Subdivision, Unit 1 was approved by the City Commission on November 13, 2023. An application for a Special Exception request was submitted on January 8, 2024.

The Special Exception and Variance requests involve encroachments into the rear and side yard setbacks. The applicant stated he uses the carport to protect a family member with a medical condition as well as the family vehicles from inclement weather. The applicant also stated that the storage building is used to store lawn maintenance equipment and household items.

The resident contained a one-car garage that according to the applicant was used for one of his vehicles.

The property had a 10-foot utility easement at the rear of the property that runs concurrently with the 10-foot rear yard setback; however, the utility easement encroachments have been resolved through the abandonment process.

During a site visit of the area by staff, numerous other different types of encroachments were observed.

At the Zoning Board of Adjustments and Appeals meeting of July 27, 2023 the Board unanimously voted to approve a special exception for an encroachment of 15 feet into the 25-foot front yard setback for an existing metal carport measuring 28 feet by 13 feet at Lot 107, Idela Park Unit No. 1 Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of March 8, 2023 the Board unanimously voted to approve a special exception for an encroachment of 20.42 feet into the 25-foot front yard setback for an existing metal carport measuring 19 feet by 21 feet at Lot 186, Idela Park Unit No.1 Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of January 05, 2023 the Board unanimously voted to approve a special exception for an encroachment of 16 feet into the 25-foot Southside yard setback for an existing metal carport measuring 11.16 feet by 15.66 feet at Lot 111, Idela Park Unit 1 Subdivision.

Measurements provided are without benefit of a survey.

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.

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

Staff recommended approval of the request since there have been other similar requests approved within the subdivision and the request to abandon the 10 foot utility easement at

the rear of the property was successful.

Chairperson Gutierrez mentioned there was no indication of a variance for the storage building in the area. Ms. Moreno stated when she did a site visit; there were other encroachments of storages but did not have any approved for any variances.

Vice-Chairperson Tafel asked if staff explained the difference between a Special Exception and a Variance. Staff responded yes.

Chairperson Gutierrez reiterated the difference between both to Mr. Lopez in Spanish. Mr. Martin stated he understood the difference.

Mr. Lopez stated his first intentions was to build the carport in front but noticed that there were no other carports on the other properties, he decided to put it in the back. He wanted to protect his vehicles from the inclement weather. He stated they have a back door that leads out from the house that they use sometimes for his wife when she is in the wheelchair to protect her when it rains.

Board member Mujica asked the applicant how long has he resided at that address. Mr. Lopez stated it has been about 25 years. Board member Mujica asked the applicant when the carport was built. Mr. Lopez stated about 4 years. He stated a person came by who has done carports in the past and told him he did not need a permit. Board member Mujica asked the applicant how long was the storage shed been there and was it on a cement foundation. Mr. Lopez stated it was not. He stated he had miscellaneous items and lawn equipment. Board member Mujica asked the applicant, which has more traffic Lucille Avenue or 29th Street. Mr. Lopez stated Lucille Avenue and has never had trouble getting in and out of the driveway.

Board member Mujica asked staff which was the Variance and which one was the Special Exception. Ms. Moreno clarified the difference but stated that the storage shed was 96 square feet and that was the reason staff recommended approval.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Special Exception/Variance request. There was one in favor of the Special Exception/Variance request.

Mr. Juan Cedillo, 4804 South 29th Street. He stated he was in favor of the request. He stated he lived four houses down on 29th Street from Mr. Lopez.

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

Board member Mujica had concerns with the Variance request being that the neighbor's wooden structure and Mr. Lopez's storage shed being of wood shows the proximity to each other causing a fire hazard.

Mr. Juan Mujica moved to approve the Special Exception per staff's recommendation. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to approve the Special Exception with five members present and voting.

Following discussion, Mr. Juan Mujica moved to disapprove the Variance request. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to disapprove the Variance request with four members voting aye and one member-voting nay, Mr. Alex Lamela.

- b) Request of Alfredo Alaniz to allow the following Variances to the City of McAllen Zoning Ordinance: 1) a front yard setback of 15 feet instead of 20 feet, 2) a lot area of 3,500 square feet instead of the required 5,600 square feet for a single family residence at the South ½ of Lot 24, Block 3, West Addition to McAllen Subdivision, Hidalgo County, Texas; 2200 Fresno Avenue. (ZBA2024-0001)

Vice-Chairperson Tafel asked staff if there was sufficient space for off-street parking. Mr. Hernandez stated they were planning on parking in the rear of the yard and had off-street parking.

Mr. Hernandez stated the applicant was requesting variances to the required Lot size and front yard setback in order to accommodate a residential house on the subject property.

The subject property was vacant and located at the northwest corner of Fresno Avenue and South 22nd Street. The property dimensions are 50 ft. in width and 70 ft. of depth and is zoned R-2 (duplex-fourplex residential) District. The adjacent zoning was R-2 District in all directions.

West Addition to McAllen was recorded on March 9, 1929. The application for the variance requests was submitted on January 2, 2024. A warranty deed from 1962 reflects the subject property as a split from the original lot with its current configuration. The remaining original lot area to the north is vacant and under different ownership. An application for a building permit has not been submitted.

Variance request #1 is to allow a 15-foot front yard setback instead of the required 20 feet. The structure that is to be relocated onto the property is 45 feet in depth. Required setbacks are 20 feet for the front yard and 10 feet for the rear yard. Available space for these two setbacks is 25 feet and is five feet short of compliance. The applicant is requesting a five-foot encroachment into the front yard in order to allow more space at the rear of the property for parking of the family vehicle. Front yard setback encroachment may affect the aesthetics of the property. Rear yard setbacks are less visible and can provide more privacy.

Variance request #2 is to allow a 3,500 square foot Lot instead of the required minimum 5,600 square foot. The applicant acquired the property in October 2019 and intends to relocate an approximately 1,035 square foot single family home onto the subject property. However, the property is a split lot and does not meet the area requirement of the R-2 District. A variance to the minimum lot size of 5,600 square feet is required as per section 138-356 of the City of McAllen Zoning Ordinance. The tract was split from the original lot in 1962.

At the Zoning Board of Adjustments and appeals meeting on September 18, 2019 the Board voted to approve variance requests to allow a 3,000 square foot Lot instead of the required 5,600 square foot and to allow an encroachment of 12 feet into the 20 feet front yard setback for an 8 foot x 8 foot porch at Lot 1, Block 4, West Addition to McAllen Subdivision.

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

Variance request #1: Staff recommended approval of the variance request since the house to be moved onto the Lot is already built with current dimensions and the variance represents the minimum variance that will make possible to accommodate the proposed residential structure on the south half of Lot 24.

Variance request #2: Staff recommended approval of the variance request since the warranty deed shows the lot split occurred before the current subdivision ordinance.

Board member Rodriguez asked staff being that it is one lot but two owners in McAllen they were able to build a house even though there is two ownership. Staff stated it was a split lot. Board member Rodriguez asked staff being that they will be closer to the street, will it disfigure some of the other homes meeting the actual front setback. Staff stated it was just the aesthetic view by five feet.

Vice-Chairperson Tafel asked if staff knew what type materials was used to build the house. Staff stated it was made of wood. Vice-Chairperson if the houses in the area built of wood. Staff stated some houses were made of wood.

Board member Mujica asked Planning Director what happens on the permitting process if the house had been built. Mr. Garcia stated they would have to get a moving permit and the house would have to meet the Codes.

Following discussion, Mr. Alex Lamela moved to approve the Variance requests as per staff's recommendations. Mr. Juan Mujica seconded the motion. The Board voted to approve the Variance requests with five members present and voting.

- c) Request of Isidro Rodriguez for the following Variance to the City of McAllen Zoning Ordinance to allow a lot area of 4,912.8 square feet instead of the required 5,600 square feet for a Duplex, for Lot 2, Block 3, and Lot 13, Block 5, La Paloma Addition Subdivision, Hidalgo County, Texas; 1023 South Bicentennial Boulevard. (ZBA2024-0004)

Ms. Moreno stated the applicant was requesting a variance to allow a Lot area of 4,912.8 square feet instead of the minimum required Lot area of 5,600 square feet for construction of a duplex.

The subject property was located at the northeast corner of South Bicentennial Boulevard and Kennedy Avenue. The property had a frontage of 48.2 feet along South Bicentennial Boulevard and a depth of 100 feet for Lot 13 and 104 feet for Lot 2 for a tract size of 4,912.8 feet. The property was zoned R-2 (duplex-fourplex residential) District. There is R-2 District in all directions.

La Paloma Addition Subdivision was recorded on December 4, 1926. The front yard setback was 20 feet as per the R-2 Zoning District. The application for the Variance request was submitted on January 10, 2024.

The applicant submitted a feasibility plan that showed the layout of the proposed duplex with Lot area of 4,912.8 square feet.

The two lots that comprise the subject property are Lots of record that were originally zoned Residential C District C Area District restricted to a single-family use. The 1979 Zoning Ordinance allowed a duplex on 5,600 square feet with the R-2 District. The applicant had not submitted an application for a building permit with site plan for formal review.

The variance request was to allow a 4,912.8 square feet Lot instead of the 5,600 square feet as required per Section 138-356 of the Zoning Ordinance. The minimum area for a Lot in the R-2 (duplex-fourplex residential) District is 5,600 square feet.

The development trend in the South McAllen and La Paloma neighborhood area in the past has been to allow single family residential on one and two Lots but not duplex uses. Section 138-370 Lot area per family states "Where a Lot of record... has less area or width than required... in the district in which it is located, and the owner of such Lot does not own any other parcel or tract adjacent thereto, such Lot may nonetheless be used for a one-family dwelling...". The practice by the city has been consistent with this section of the ordinance.

At the Zoning Board of Adjustment and Appeals meeting of March 16, 2016, the Board approved a variance request for a Lot area of 4,750 square feet instead of the required 5,600 square feet for a duplex at Lots 8 & 9, Block 2, South McAllen Addition Subdivision.

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

Staff recommended disapproval of the variance request since the construction of single-family residential on one or two Lots was consistent with the development trend of the area.

Board member Mujica asked staff by the duplex R-2 requirement was it a sufficient four-car parking and did they have the required setback for the front. Staff stated it did have sufficient parking for four cars and they met the front setbacks.

Mr. Isidro Rodriguez, 1023 South Bicentennial Boulevard, McAllen, Texas. He stated he was requesting a variance. Mr. Julio Carranza, 4119 Crosspoint Boulevard, Edinburg, Texas. He stated he was representing Mr. Rodriguez and the builder for the project. Mr. Carranza handed out a folder including the proposed duplex site plan along with the new sidewalk and driveway. Engineer had approved the proposed layout of the duplex.

Board member Mujica asked Mr. Carranza if the owner was aware that the property was R-1 zoned. Mr. Carranza stated it was an R-2 however; there was a discrepancy with the lot size. He stated that in the folder there were pictures of recent duplexes on exact corner lots in that area.

Board member Mujica mentioned about tabling the item or go into Executive Session to discuss it further.

Board member Rodriguez asked the Planning Director if a retention or detention was required for a multifamily. Mr. Garcia stated it was not required for old lots because requirements were not issued at the time during the subdivision, unlike today. Board member Rodriguez had concerns with flooding.

Board member Mujica asked staff about if the property was zoned as something, what the Board's options are. Mr. Garcia stated the City of McAllen has cumulative zoning which means in an R-2 (duplex-fourplex) zoning you can do what an R-1 (residential) allows, in an R-3 (Multifamily residential apartment) you can do what an R-1 (residential) and an R-2 (duplex-fourplex) allows. The property was zoned R-2 (duplex-fourplex) it can 100% be used for a single-family home. It would not have to be rezoned.

Mr. Carranza stated regarding the drainage, the ratio would only be the first floor be covering 1,300 square feet out of 4,800 square foot lot. It would be less than 30% covering ground. Board member Mujica asked Mr. Carranza if it would be retaining water on that side or would be running off onto the City's storm sewer. Mr. Carranza stated when they did the subdivision or the revamping of Bicentennial Boulevard; it considered the zoning in the R-2 (single-family residential).

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.

Board member Rodriguez asked staff if the homes that are north Bicentennial Boulevard and Kennedy Avenue from streets 19th and 13th, were they R-1 (residential) homes or duplexes. Staff stated they were largely single-family homes. Mr. Rodriguez had concerns with the parking on Kennedy Avenue because Bicentennial Boulevard is a high traffic street.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove the Variance request as per staff's recommendation. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the Variance request with four members voting aye and one nay, Mr. Juan Mujica.

- d) Request of Gilberto R. Ramirez for a Variance to the City of McAllen Zoning Ordinance to allow a lot area of 5,530 square feet instead of the required 5,600 square feet for a duplex at Lot 12, Block 8, D. Guerra's Addition to McAllen Subdivision, Hidalgo County, Texas; 2004 Galveston Avenue. **(ZBA2024-0002)**

Mr. Hernandez stated the applicant was requesting a variance to the minimum lot size requirement in order to build a duplex on the subject property.

The subject property was vacant and was located along the north side of Galveston Avenue and west of South 20th Street. The property was 39.5 feet wide by 140 feet deep for a total Lot size of 5,530 square feet. The property was zoned R-2 (duplex-fourplex residential) District. The adjacent zoning was R-2 District in all directions.

D. Guerra's Addition to McAllen was recorded on November 19, 1926. An application for a building permit was submitted on December 14, 2023. An application for the variance request was submitted on December 29, 2023.

Hidalgo County Appraisal District (HCAD) records show the current property owner acquired the property in June 2022. The applicant intends to construct a duplex approximately 1,824 square feet in size on the property. However, the property does not

meet the Lot area requirement (for a duplex) of the R-2 District. In order for the property owner to be able to obtain a building permit to build the proposed duplex on the subject property, a variance to the minimum lot size requirement of 5,600 square feet was required.

A feasibility plan showing the proposed construction has been submitted and was attached.

In the City of McAllen Zoning Ordinance, Section 138-370 Lot Area per family states "Where a Lot of record...has less area or width than required...in the district in which it is located, and the owner of such Lot does not own any other parcel or tract adjacent thereto, such Lot may nonetheless be used for a one-family dwelling...".

The existing Lot area of the subject property was 70 square feet short of meeting the requirement of 5,600 square feet and was the minimum variance that will make possible the proposed duplex.

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

Staff recommended disapproval of the variance request since there remains a reasonable use of the property by constructing a single-family use.

Board member Mujica asked staff if there was an alley in the rear. Staff responded yes.

Mr. Gilbert Ramirez, 10124 North Glasscock Avenue, Mission, Texas. He stated he was requesting a variance to build a duplex on the property. Vice-Chairperson Tafel asked the applicant if the originally designed to have four parking spaces side by side. Mr. Ramirez stated they had changed the design to have two parking spaces in the back and two parking spaces in front in order to have more landscaping.

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.

Board member Rodriguez asked staff if the surrounding structures that are around, were they houses or another multifamily units. Staff stated they were regular residential house.. Board member Rodriguez asked if there were any phone calls or concerns about going in the alley. Staff stated there was none. Board member Rodriguez asked how big the alley was and if it was maintained well. Staff stated the alley was 20 feet and when staff visited the site it look well maintained.

Following discussion, Vice-Chairperson Ann Tafel moved to approve the Variance request as per staff's recommendation. Mr. Alex Lamela seconded the motion. The Board voted to approve the Variance request with five members present and voting.

- e) Request of Martin Ramirez for a Special Exception to the City Of McAllen Zoning Ordinance to allow and encroachment of 15 feet into the 20-foot front yard setback for an existing carport measuring 20 feet by 22 feet at Lot 2, The Rocks Subdivision, Hidalgo County, Texas; 8214 North 23rd Lane. (ZBA2023-0123) (TABLED: 01/25/2024)

Mr. Juan Mujica moved to remove item from the table. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously to remove the item from the table with five members present and voting.

Ms. Trevino stated the applicant was requesting to encroach 15 feet into the 20-foot front yard setback for an existing carport that is being used for the protection of his family vehicles from the weather elements.

The subject property was located along the east side of North 23rd Lane. The property was zoned R-1 (single family residential) District.

The Rocks Subdivision was recorded May 26, 1998. The plat showed a 20-foot front yard setback and a 5-foot utility easement that runs concurrently along the front property line. An application for a building permit was submitted November 8, 2022. An abandonment application to abandon the 5-foot utility easement was submitted December 7, 2022, but was not approved by the City of McAllen. A non-compliance notice was issued on May 6, 2023 for a carport structure built without a permit. The Special Exception application was submitted December 20, 2023.

The applicant was requesting to encroach 15 feet into the 20-foot front yard setback for an existing carport that is being used for the protection of the family vehicles from the weather elements. The applicant has five vehicles, and states that his garage is not sufficient to protect the multiple vehicles.

At the Zoning Board of Adjustments and Appeals meeting of November 15, 2023 the Board unanimously voted to approve a special exception for an encroachment of 14 feet into the 20-foot front yard setback for an existing carport measuring 15 feet by 20 feet at Lot 1, The Rocks Subdivision. The applicant proposed a reduction in the size of the carport for an encroachment of 14 feet into the 20-foot front yard setback.

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.

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

Staff recommended disapproval of the Special Exception request since the house has an existing two-car garage.

Ms. Trevino stated it was an existing carport but was willing to reduce it back to clear the utility easement.

Mr. Martin Ramirez, 8214 North 23rd Lane. He stated he bought the property 23 years ago. He was requesting an encroachment of 14 feet in order to modify the carport in order to be off the 5-foot easement. He stated it did not obstruct the neighbor's view. He wanted it to protect his vehicles from the inclement weather. Chairperson Gutierrez asked the applicant how many vehicles he had. Mr. Ramirez stated five vehicles.

Ms. Trevino stated the advertisement was to allow the encroachment of 15 feet, which would be the cut back. Staff stated there was a letter and a site plan.

Mr. Rogelio Rodriguez moved to approve the Special Exception as per staff's recommendations. Mr. Juan Mujica seconded the motion. The Board voted to approve the Special Exception with five members present and voting.

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.

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