

STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Thursday, January 11, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

<b>Present:</b>	Ann Tafel	Vice-Chairperson
	Hugo Avila	Member
	Hiram A. Gutierrez	Member
	Juan Mujica	Alternate
	Pablo Garcia	Alternate
<b>Absent:</b>	Jose Gutierrez	Chairperson
	Rogelio Rodriguez	Member
	Alex Lamela	Alternate
<b>Staff Present:</b>	Benito Alonzo	Assistant City Attorney I
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Hilda Tovar	Planner II
	Samantha Trevino	Planner I
	Natalie Moreno	Planner I
	Jessica Puga	Technician I
	Carmen White	Administrative Assistant

**CALL TO ORDER –Vice-Chairperson Ann Tafel**

**1. MINUTES:**

- a) Minutes for the meeting held on December 20, 2023.

The minutes for the meeting held on December 20, 2023 were approved. The motion to approve the minutes were made by Mr. Hugo Avila. Mr. Pablo Garcia seconded the motion, which carried unanimously with five members present and voting.

**As per Chairperson Jose Gutierrez’s suggestion, the following items had been recommended for approval by staff. They are as follows:**

**2. PUBLIC HEARINGS:**

- a) Request of Elda Langoni for a 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 metal carport measuring 20 feet by 12 feet, at Lot 37, La Lomita States Subdivision, Hidalgo County, Texas; 2913 La Vista. **(ZBA2023-0116)**
- b) Request of Maria Elena Garza for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 12 feet into the 20 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet, at Lot 28, Linda Vista Subdivision, Hidalgo County, Texas; 2538 Lindberg Avenue. **(ZBA2023-0117)**
- c) Request of Thirumurugan Gopalasamy, for a Variance to the City of McAllen Zoning Ordinance to allow an encroachment of 9.75 feet into the 25 feet rear yard setback

for a proposed covered patio at Lot 28, The Embers Subdivision, Hidalgo County, Texas; 305 Cornell Avenue. (ZBA2023-0120)

- d) Request of Dennis Steele, for Variances to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 4.5 feet into the 10 feet rear yard setback and 5 feet into the 10 feet east side yard setback for an existing swimming pool, 2) an encroachment of up to 10 feet into the 10 feet east side yard setback for an existing covered patio and barbecue grill area, and 3) an encroachment of 4.8 feet into the 10 feet rear yard setback and 3.6 feet into the 6 feet west side yard setback for an existing shed at Lot 23, Brookwood Subdivision Unit 2, Hidalgo County, Texas; 4101 Zinnia Avenue. (ZBA2023-0119)

Vice-Chairperson Ann Tafel asked if there was anyone else present in opposition or in favor of the special exceptions/variances. There was one in favor of the special exceptions/variances.

Mr. Hugo Avila moved to approve the special exceptions and variances. Mr. Alex Lamela seconded the motion. The Board voted to approve the special exceptions and variances with five members present and voting.

- e) 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) (TABLED: 12/20/2023)

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

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 36<sup>th</sup> Street between North 35<sup>th</sup> Street and North 36<sup>th</sup> Street. The Lot had 68 feet of frontage along North 36<sup>th</sup> Street and a depth of 100 feet for a total Lot size of 6,800 square feet. The property was zoned R-1 (single family residential) District. There was R-1 District in all directions except to the west across North 36<sup>th</sup> Street there was C-2 (neighborhood commercial) District and was 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 was 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 states 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 was 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.

During a site visit of Arthur Terrace Subdivision, Staff noticed there were 2 carports with possible encroachments along North 36<sup>th</sup> 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.

At the Zoning Board of Adjustments and Appeals meeting of December 20, 2023, no one appeared in opposition of the Special Exception request. Mr. Ramiro Ramirez, the applicant stated that a builder had been hired but resulted in an unfinished carport and he finished the construction himself. He stated the family uses the carport for shade. Board member Tafel stated that carports do not add to property values. Chairman Gutierrez reminded the applicant that since the recommendation from staff was "disapproval" a super majority of votes is required in order for the Board to grant approvals. The applicant was informed that the request could be tabled if he so chose the opportunity so the request can be heard by a full (five member) Board since there were only four members present. The applicant opted for the request to be tabled in order to be heard by a full Board. The Board members voted to table the request until it can be heard by a full Board. The vote was three members in favor of the motion to table the request with one Board member voting nay. Board member Tafel voted nay.

Staff recommended disapproval of the Special Exception request since there are no other carports along North 36<sup>th</sup> 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 explained for the Board members who were not present at the last meeting concerning the situation of this case.

Mr. Ramiro Ramirez, 6304 North 36<sup>th</sup> Street. The applicant stated that when does his family gatherings they move the vehicles out into the street. He also uses the carport for his vehicles. He did agree the street was narrow but that other residents park their vehicles in the street as well. He stated there were two other carports nearby in the same subdivision. Mr. Ramirez stated his two neighbors on each side of him were in favor of the carport. Board member Avila asked the applicant to explain what exactly happened to the carport. Mr. Ramirez stated he hired a contractor who did work on his daughter's home. When the

contractor came to start the job, he only installed the beams. He stated that the contractor did not return for two days. When he returned, he mentioned to Mr. Ramirez that his father had passed away and needed the money for the burial. At which time, he gave him the money and never returned to finish the job. Mr. Ramirez made a report. Board member Mujica asked the applicant when the carport was completed. Mr. Ramirez stated about a year and a half.

Board member Mujica had concerns regarding the impact of the structure for the remainder of the neighborhood. It did not go through the process the City had in place for permitting.

Following discussion, Mr. Juan Mujica moved to disapprove the special exception until the next meeting. Mr. Alex Lamela seconded the motion. The Board voted to disapprove the special exception with four members voting aye and one voting nay, Mr. Hugo Avila.

- f) Request of Gerardo Morales, for a Variance to the City of McAllen Zoning Ordinance to allow an encroachment of 17 feet into the 18 foot rear yard setback and 6 feet into the 6 feet east side yard setback for an existing pergola at Lot 65, Spanish Oaks @ Frontera Subdivision, Hidalgo County, Texas; 705 Grambling Avenue. (ZBA2023-0118)

Ms. Trevino stated the request was to allow encroachments of 17 feet into the 18 foot rear yard setback, and 6 feet into the 6 foot east side yard setback for an existing pergola.

The subject property was located along the south side of Grambling Avenue approximately 59.25 feet east of North 8<sup>th</sup> Street. The property was zoned R-1 (single-family residential) District. There was R-1 District in all directions, except to the south there is C-3 (general business) District.

Spanish Oaks @ Frontera Subdivision was recorded May 8, 2018. The plat shows an 18-foot rear building setback line and a 6-foot interior side yard setback. A stop work order was issued July 28, 2023 for construction without a permit. An application for a building permit was submitted on August 3, 2023. A citation was issued September 28, 2023. The variance request application was submitted November 10, 2023.

Furthermore, the applicant was requesting that the pergola with its encroachments be allowed to remain. The applicant stated that the pergola would help to provide shade for a proposed hot tub that will be used for therapy purposes for a family member.

According to the dimensions and distances shown on the submitted site plan at the rear yard area, there was insufficient space to accommodate placement of the pergola in its current form without encroaching into the rear yard setback. At best, relocation would minimize the rear yard setback encroachment; however, the encroachment along the interior east side yard could be eliminated. The structure was built on a concrete foundation. There is a concrete wall at the rear of the property that screens the pergola from the alleyway.

A review of Planning Department records did not reveal any other variances granted within the Subdivision.

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

Staff was recommending disapproval of the variance request since reduction in size and relocation may achieve compliance.

Vice-Chairperson Tafel asked staff if there were any utility lines across the rear. Staff stated there were none.

Board member Avila asked staff if the new wall that is shown across the alley was that because the lot next door was commercial lot. Staff stated it was the end of the subdivision.

Mr. Gerardo Morales, 705 Grambling Avenue, McAllen. The applicant stated he was requesting a variance but never obtained a permit. He asked the builder and he stated he had built many pergolas and never needed a permit. Vice-Chairperson Tafel explained to the applicant the difference between a variance, which runs with the land, anyone could build anything there, and a special exception, was to the current owner. If he were to sell the house, the new owner would have to return to obtain a permit for the pergola.

Board member Mujica had an issue with the side encroachment concerning a fire hazard.

Vice-Chairperson Ann Tafel asked if there was anyone else present in favor of the variance request. There was no one in favor of the variance request.

Vice-Chairperson Ann Tafel asked if there was anyone present in opposition of the variance request. There was no one in opposition of the variance request.

Ms. Trevino stated there was one neighbor who called inquiring the case that was in favor of the variance request.

Following discussion, Mr. Juan Mujica moved to disapprove the variance request. Mr. Pablo Garcia seconded the motion. The Board voted to disapprove the variance request with five members present and voting.

### 3. FUTURE AGENDA ITEMS:

- a) 2001 Newport Avenue
- b) 1701 Wisteria Avenue
- c) 8214 North 23<sup>rd</sup> Street
- d) 3201 Highway 83
- e) 2600 Trenton Road
- f) 12505 North 40<sup>th</sup> Street
- g) 3305 Whetstone Avenue
- h) 3500 Ventura Avenue
- i) 12509 North 40<sup>th</sup> Street
- j) 4012 Ventura Avenue
- k) 12500 North 40<sup>th</sup> Street
- l) 12606 North 33<sup>rd</sup> Lane

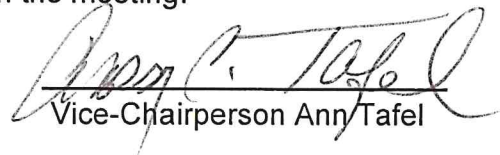
- m) 3300 Wolf Creek Avenue
- n) 3700 Ventura Avenue
- o) 3302 Wolf Creek Avenue
- p) 3300 Whetstone Avenue

**ADJOURNMENT**

There being no further business to come before the Zoning Board of Adjustment and Appeal, Vice-Chairperson Ann Tafel moved to adjourn the meeting.



Carmen White, Administrative Assistant



Vice-Chairperson Ann Tafel