

STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Thursday, July 27, 2023 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
	Rogelio Rodriguez	Member
	Hiram A. Gutierrez	Member
Absent:	Hugo Avila	Member
	Sam Saldivar	Alternate
	Juan Mujica	Alternate
Staff Present:	Austin Stevenson	Assistant City Attorney III
	Benito Alonzo	Assistant City Attorney I
	Edgar Garcia	Planning Director
	Omar Sotelo	Senior Planner
	Adriana Solis	Planner II
	Eduardo Garza	Planner II
	Samantha Trevino	Planner I
	Natalie Moreno	Planner I
Carmen White	Administrative Assistant	

CALL TO ORDER –Chairperson Jose Gutierrez

1. MINUTES:

- a) Minutes for the meeting held on July 13, 2023.

The minutes for the meeting held on July 13, 2023 were approved. The motion to approve the minutes were made by Vice-Chairperson Ann Tafel. Mr. Hiram Gutierrez seconded the motion, which carried unanimously with four 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 Jose De Leon for a Special Exception to the City of McAllen Zoning Ordinance to allow 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 Subdivision Unit No 1, Hidalgo County, Texas; 2712 Norma Avenue. (ZBA2023-0062)
- b) Request of Jose G. Vela for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 20 feet into the 25 feet front yard setback for an existing metal carport measuring 22 feet by 20 feet at Lot 1 and the West 22.5 feet of Lot 2, Block 3, Westway Heights Subdivision, Unit No. 1, Hidalgo County, Texas; 2021 Highland Avenue. (ZBA2023-0063)

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- c) Request of Juan Trujillo for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 15 feet into the 25 feet front yard setback for an existing metal carport measuring 20 feet by 22 feet at the East 47.5 feet of Lot 2 & West 45 feet of Lot 3, Block 3, Westway Heights Subdivision Unit No. 1, Hidalgo County, Texas; 2017 Highland Avenue. **(ZBA2023-0064)**

- d) Request of Rogelio Lopez 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 metal carport measuring 20 feet by 20 feet at Lot 11, Block 4, Colonia McAllen Unit No. 7 Subdivision, Hidalgo County, Texas; 1940 South 33rd Street. **(ZBA2023-0065)**

- e) Request of Wilberth Broca 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 metal carport measuring 20 feet by 18 feet at Lot 10, Block 4, Colonia McAllen Unit No. 7 Subdivision, Hidalgo County, Texas; 1936 South 33rd Street. **(ZBA2023-0066)**

- f) Request of Eduardo Gamba for the following variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 5 feet into the 15 feet rear yard setback for a proposed bedroom addition measuring 17.90 feet by 18.50 feet, and **2)** an encroachment of 5 feet into the 15 feet rear yard setback for a proposed swimming pool measuring 11 feet by 12.90 feet at Lot 49, Green Meadows Subdivision, Hidalgo County, Texas; 1905 Robin Avenue. **(ZBA2023-0067)**

Chairperson Jose Gutierrez asked if there was anyone present in favor of these special exceptions. There was no one else in favor of these special exceptions.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of these special exceptions. There was no one in opposition of these special exceptions.

Mr. Hiram Gutierrez **moved** to approve the previously outlined special exceptions listed on the agenda as 2a, 2b, 2c, 2d and 2f as per staff's recommendation, limited to the submitted plans corresponding to each item. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to approve with four members present and voting.

- i) Request of Donaciano Gomez for the following Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 23 feet into the 25 front yard setback and an encroachment of 5 feet into the 6 feet side yard setback for a metal carport measuring 20 feet by 20 feet, at Lot 1, Lincoln Terrace No. 8, Hidalgo County, Texas; 2721 Upas Avenue. **(ZBA2023-0051) (TABLED: 07/13/2023)**

Vice-Chairperson Ann Tafel **moved** to remove the item from the table. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously to remove the item from the table with four members present and voting.

Ms. Solis stated the applicant was requesting a special exception in order to allow an encroachment of 23 feet into the 25 front yard setback and 5 feet into the 6 feet side yard setback for a metal carport measuring 20 by 20 feet. The applicant stated they have multiple vehicles and protect vehicles from weather conditions.

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The subject property was located south of Upas Avenue and west of North 27th Street. The subject property was zoned R-1 (single-family) District. The adjacent properties are zoned R-1 District as well. Surrounding land uses include single-family dwellings.

The plat for Lincoln Terrace No. 8 Subdivision was recorded on October 16, 1998. The plat states a 25 feet front yard setback and 6 feet side yard setback, with a 5 feet utility easement. A citation was issued May 22, 2023. An application for a building permit for a carport was submitted on May 22, 2023. An application for the special exception request was submitted on May 23, 2023.

Approval of the special exception request would allow an encroachment of 23 feet into the 25 feet front yard setback and 5 feet into the 6 feet side yard setback. The applicant stated a carport in the backyard was not feasible as there was no room to construct a carport. The residency consists of a one-car garage; the applicants have three vehicles. The request was submitted due to weather conditions such as the recent hailstorm, which the applicant stated.

The west side of the property does have a 5 feet utility easement according to the plat. The 5 feet into the 6 feet, side yard setback does encroach into the 5 feet utility easement.

Planning Department records reveals one approved special exceptions within the subdivision.

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

Staff recommended disapproval of the variance request due to the encroachment into the 5 feet utility easement.

The board moved to table the item on July 13, 2023 with discussion. The applicant initial requested an encroachment of 23 feet into the 25 feet yard setback and 5 feet into the 6 feet side yard setback. The side yard does have a 5 feet utility easement. The applicant discussed with the board to relocate the carport out of the side yard setback, only encroaching 23 feet into the 25 feet front yard setback. The carport remains 20 feet by 20 feet.

Vice-Chairperson Tafel asked staff if there was front yard easement. Ms. Solis stated there was none.

Mr. Donaciano Gomez, the applicant stated on the picture where it showed he was encroaching into the utility easement, he was moving it and leaving it at 6 feet so to not encroach.

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.

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

Mr. Gomez stated he was waiting to get the permit to get in contact with the person who built the frame so that he move it over. He wanted to move it into the grass part of the yard the five feet.

Board member Rodriguez asked staff if they had a new recommendation in lieu of the disapproval recommendation. Chairperson Gutierrez stated there was actually no new recommendation. Ms. Solis stated the recommendation would stay the same. Chairperson Gutierrez asked why. Ms. Solis stated it was still encroaching into the front yard setback. However, they were relocating it at the side yard setback.

Vice-Chairperson Tafel stated not only it would not only be moved sideways but also moved towards the house because it was still encroaching in the front 23 feet into the 25 foot.

Board member Rodriguez asked staff if the disapproval because it was encroaching into the actual front yard setback as close to the sidewalk. Planning Director Garcia stated that neighborhood has one other approved special exception so it was not characteristic of the neighborhood at this point.

Chairperson Gutierrez asked applicant if there was just one carport in the vicinity. Mr. Gomez stated there were more in the neighborhood. He stated he had taken pictures around the neighborhood but did not have them with him. Chairperson Gutierrez asked staff how many carports had staff noticed in the vicinity. Ms. Solis stated based on the records shown there were only one legal carport.

Vice-Chairperson Tafel asked staff did a garage exist. Ms. Solis stated it was a one-car garage. She stated they had discussed about moving it closer to the home. There was a pavement there but there was a reason behind it why he would not be able to move it forward.

Mr. Gomez stated the problem was the side yard setback in which he drew a new site plan to show the new measurements. He stated that staff asked him if could move it forward towards the house in which he responded he wouldn't want to bring it closer to the house because there was a sidewalk there that he wanted to use. Mr. Gomez stated if staff had said the encroachment was two feet from house and would be better, he would have drawn it on the site plan and dealt with the sidewalk himself.

Ms. Solis stated they discussed about moving it forward. She stated Mr. Gomez said it was about 8 feet and mentioned he did not want to move it forward. This was based solely on their request and could not make accommodations on their request.

Mr. Austin Stevenson, Legal stated it was not staff's responsibility to explain setbacks or to inform property owner of all the legal rights and responsibilities. They are set by ordinance and by the plat.

Chairperson Gutierrez asked legal if the applicant was willing to move the frame structure back towards the house, could the Board vote based on his amended request. Mr. Stevenson stated the request would have to be amended by the applicant to revise the request to be 14.5 feet encroachment into the 25-foot front yard setback.

Mr. Gomez stated he would be willing to move the frame structure forward the house 8.5 feet.

Board member Hiram Gutierrez asked if there was any calls or emails in opposition. Ms. Solis there was one at the last meeting but she was neither for nor against the case.

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Chairperson Gutierrez informed the applicant that there were four board members present. He asked if the applicant would like the Board to take action now or wait for the next meeting when there would be a full board. Mr. Gomez stated he would like the Board to vote now.

Following discussion, Mr. Rogelio Rodriguez moved to approve the special exception to reduce by 8.5 feet to make it a 14.5 feet encroachment into the 25 front yard setback as per the applicant. Mr. Hiram Gutierrez seconded the motion. The Board voted to table the item with four members present and voting.

- h) Request of Mario Ferron 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 with canvas cover measuring 18 feet by 20 feet, at Lot 43, Ponderosa Park Phase 6 Subdivision, Hidalgo County, Texas; 3409 Gardenia Avenue. (ZBA2023-0045) (TABLED: 06/21/2023) (TABLED: 07/13/2023)

Vice-Chairperson Ann Tafel moved to remove the item from the table. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously to remove the item from the table with four members present and voting.

Ms. Trevino recapped it was tabled at the last meeting because the carport was currently located over a utility easement. The applicant had proposed to move it back 3 feet but more than likely need a full five feet. He did provide a survey. Staff had not receive the letter and was not present. Ms. Trevino asked if the Board would want to take action now or retable it for the next meeting.

Chairperson Gutierrez asked staff if they had any contact with the applicant. Ms. Trevino stated she had not received any correspondence.

Board member Gutierrez asked if the Board approve a special exception over an easement. Staff stated no, as long as they have the intent to cut if back.

Mr. Stevenson, legal stated technically they could approve it but strongly caution against it in case the utility companies came and destroy properties in case of an emergency the Board or City would be brought into litigation.

Ms. Trevino stated the applicant was requesting the special exception to encroach 20 feet into the 20 feet front yard setback for an existing metal carport to provide protection for an individual with health concerns.

The subject property was located along the south side of Gardenia Avenue between North 34th and North 36th Streets. The Lot has 63.50 feet of frontage and a depth of 102.00 feet for a total square footage of 6,477 feet. The property is zoned R-1 (single-family residential) District. The surrounding land use is R-1 District in all directions.

Ponderosa Park Phase 6 Subdivision was recorded March 12, 2001. The plat states a 20 feet front yard setback. A stop work order was posted August 17, 2022. A building permit application was submitted October 10, 2022. A special exception application was submitted May 15, 2023. The applicant stated the carport was built by a contractor but without a building permit.

The applicant was requesting a special exception to encroach 20 feet into the 20 feet front yard setback for an existing metal carport. The carport was to provide protection from the sun exposure for a person with health concerns.

The front yard setback was 20 feet along Gardenia Avenue. Front yard setbacks help to keep the character of single-family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

The plat for this subdivision indicated a 5 feet utility easement adjacent to the front property line and runs concurrently with the front yard setback. The carport appears to be encroaching into the utility easement. The utility easement abandonment process would need to be undertaken in order to attempt to resolve the 5 feet carport encroachment into the utility easement.

At the Zoning Board and Adjustment and Appeals meeting of June 7, 2023 a request for an encroachment of 15 feet into the 20 feet front yard setback for an existing metal carport with canvas cover was approved for Lot 74, Ponderosa Park Phase 6 Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of August 17, 2022 a request for an encroachment of 15 feet into the 20 feet front yard setback for a proposed metal carport that was approved at Lot 12, Ponderosa Park Phase 6 Subdivision.

At the Zoning Board of Adjustments and Appeals meeting of June 3, 2020, a request for an encroachment of 20 feet into the 20 feet, front yard setback for a proposed carport was approved for Lot 90, Ponderosa Park Phase 6 Subdivision.

There was an existing two-car garage that is part of the home that is used for storage of vehicles and other items.

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 disapproval of the request since the carport also appears to encroach into a 5 feet utility easement adjacent to the property line.

At the Zoning Board of Adjustment and Appeals meeting of July 13, 2023 Mr. Mario Ferron, the applicant, stated that 3 years ago his wife acquired a medical condition that does not allow her to be exposed to sunlight. She uses the garage to be able to have time with her grandchild without being in the sun. The Board voted to table the special exception request to allow the applicant time to acquire a survey and consider reductions to the encroachment.

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

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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 disapprove the special exception. Mr. Hiram Gutierrez seconded the motion. The Board voted to disapprove the special exception with four members present and voting.

3. FUTURE AGENDA ITEMS:

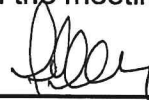
- a) 2520 Pecan Avenue
- b) 1903 South 48th Lane
- c) 1808 North 32nd Street
- d) 2021 Ebony Avenue
- e) 909 North Jackson Road

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