

**STATE OF TEXAS
COUNTY OF HIDALGO
CITY OF MCALLEN**

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, June 19, 2024 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
	Hugo Avila	Member
	Rogelio Rodriguez	Member
	Hiram A. Gutierrez	Member
	Juan Mujica	Alternate
	Alex Lamela	Alternate
	Daniel Santos	Alternate

Absent:	Pablo Garcia	Alternate
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Staff Present:	Issac Tawil	City Attorney
	Benito Alonzo	Assistant City Attorney I
	Omar Sotelo	Development Coordinator
	Samuel Nunez	Senior Planner
	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 May 22, 2024 (TABLED: 06/05/2024)

Vice-Chairperson Ann Tafel made a motion to remove the minutes from the table. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously with five members present and voting.

The minutes for the meeting held on May 22, 2024 were approved. The motion to approve the minutes were made by Mr. Rogelio Rodriguez. Vice-Chairperson Ann Tafel seconded the motion, which carried unanimously with five members present and voting.

- b) Minutes for the meeting held on June 5, 2024.

The minutes for the meeting held on June 5, 2024 were approved. The motion to approve the minutes were made by Mr. Rogelio Rodriguez. Vice-Chairperson Ann Tafel seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Hector J. Alcoser for a special exception to the City of McAllen Zoning Ordinance to allow an encroachment of up to 20 feet into the 20 foot front yard

setback for an existing carport at Lot 126, Ponderosa Park Phase II Subdivision, Hidalgo County, Texas; 3212 Kerria Avenue. (ZBA2024-0021)

The applicant is requesting a Special Exception to encroach up to 20 feet into the 20-foot front yard setback for an existing carport measuring 13 feet by 18 feet for protection of vehicles from inclement weather.

Mr. Hernandez stated the subject property was located along the North side of Kerria Avenue just east of North 32nd Lane. The property is an irregular shape lot with 38.56 feet fronting Kerria Avenue then a partial frontage of 34.89 feet along the curved boundary of a cul de sac. The property is zoned R-1 (single family residential) District. The surrounding zones include C-3 (general business) to the north and R-1 (single family residential) to the east, west and south.

Lot 126, Ponderosa Park Phase II was recorded on February 24, 1998. The plat shows a 20-foot front yard setback. A building permit application for a carport was submitted on July 18, 2022. The building permit was rejected by the Planning department with comments advising the applicant that a special exception would be needed to build a carport. A stop work order was issued on May 14, 2024. An application for a special exception request was submitted to the Planning department on May 21, 2024.

The applicant is requesting a Special Exception to allow an encroachment of up to 20 feet into the 20-foot front yard setback for an existing carport. The applicant states that the 20-foot front yard setback does not allow him to have any structures or a porch due to the offset of the front yard setback from the cul de sac. There is no alley at the rear of the property that would allow for relocation of the carport out of the 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.

Measurements provided are without the benefit of a survey.

There have been no calls or emails received in opposition of the Special Exception request.

Staff was recommending approval of the Special Exception request due to it is characteristic of the neighborhood and the irregular shape of the lot renders it unfeasible to construct any structure for safeguarding vehicles.

Board member Rogelio Rodriguez asked staff if the length of the carport need to be modified according to McAllen's standards on the driveway curb cut. Staff stated no.

Vice-Chairperson Tafel mentioned to staff that there was an existing garage. Staff stated yes, there was a garage. She asked if it was being used as a garage. Staff stated he was not knowledgeable but that the applicant was present to answer.

Mr. Hector J. Alcoser, 3212 Kerria Avenue, McAllen. The applicant responded to Vice-Chairperson Tafel's question that yes, they do use their garage. They had four vehicles.

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, Mr. Rogelio Rodriguez moved to approve the Special Exception. Mr. Hugo Avila seconded the motion. The Board voted to approve the Special Exception with five members present and voting.

- b) Request of Juan Muniz for the following variance to the City of McAllen Zoning Ordinance to allow a Lot size of 5,250 square feet instead of the required 5,600 square feet for a duplex at Lot 17, Block 11, College Heights Subdivision, Hidalgo County, Texas; 2164 Kennedy Circle. (ZBA2024-0014)

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

Mr. Hernandez stated the applicant was requesting a variance to allow a Lot area of 5,250 square feet instead of the minimum required Lot area of 5,600 square feet for construction of a duplex.

The vacant property was located southeast of the intersection of Jackson Avenue of Kennedy Circle. The property has a frontage of 50 feet along Kennedy Circle and a depth of 140 feet. The property is zoned R-2 (duplex-fourplex residential) District. There is R-2 District in all directions.

College Heights Subdivision was recorded on December 28, 1926. The front yard setback is 20 feet as per the R-2 Zoning District. The application for the Variance request was submitted on April 24, 2024.

The applicant submitted a feasibility plan that shows the layout of the proposed duplex on a Lot area of 5,250 square feet. The applicant has not submitted an application for a building permit with site plan for formal review.

The duplex will consist of two living units, which will include a bedroom, kitchen, bath and dining room. The feasibility plan shows compliance with parking and setback requirements.

The variance request is to allow a 5,250 square feet Lot for the duplex use instead of the 5,600 square feet required as per Section 138-356 of the Zoning Ordinance. The minimum area for a duplex use in the R-2 (duplex-fourplex residential) District is 5,600 square feet. The Lot size is deficient by 350 square feet or .0625 percent.

Development along Kennedy circle is primarily single family residential and duplex use along this neighborhood may conform to the character of the area.

Staff had received two phone calls and one email in opposition to the variance request with concerns of a duplex not being characteristic to the neighborhood.

Staff recommended approval of the request since the deficiency is only 6% of the required Lot area and the proposed construction conforms to the R-2 (duplex-fourplex residential) District designation for the subject property.

Staff requested this item to be tabled due to a discrepancy with the previously provided case packet.

At the Zoning Board of Adjustments and Appeals meeting of June 5, 2024, there was one person in opposition to the variance request. Following discussion, Mr. Hiram Gutierrez moved to table the variance request. Mr. Hugo Avila seconded the motion. There were five Board members present and voting.

Vice-Chairperson Tafel asked staff if there had been any modifications on the proposal since the last meeting. Staff stated there was none.

Mr. Juan Muniz, 3000 Zenaida Avenue. The applicant stated there no changes but that there was two other duplexes in the same subdivision. He stated he met the requirements for the setback on the three parking spaces for a one bedroom, one bath and landscaping. Chairperson Gutierrez asked the applicant if he had discussed with staff about any changes. Mr. Muniz stated no because he met all the requirements.

Board member Rodriguez asked staff if there were other apartment complexes in the same area similar to the applicant's proposal. Staff stated no just, what was on the aerial picture.

Vice-Chairperson Tafel asked staff if there had been any of the neighboring property owners written or called in support or opposition to this request. Staff stated that since the meeting there had not been any calls only that one person at the last meeting who was in opposition. That person was not present.

Chairperson Gutierrez asked staff if back in 1926 if duplexes were allowed back then. Staff stated the previous zoning ordinance was zoned for duplex (R-2) District.

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, Mr. Hugo Avila moved to approve the Variance request. Mr. Hiram Gutierrez seconded the motion. The Board voted to approve the Variance request with five members present and voting.

- c) Request of Merle D. Davis for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 3 feet into the east 6 foot side yard setback for a proposed swimming pool at Lot 45, Parkwood Manor Subdivision, Hidalgo County, Texas; 2317 Sandpiper Avenue. (ZBA2024-0020)

Mr. Hernandez stated the applicant was requesting a variance for an encroachment of three feet into the six-foot side yard setback along the east property line for a proposed swimming pool measuring approximately 28.5 feet by 14 feet. The applicant states the

pool was needed for physical therapy purposes, exercise and recreation.

The subject property was located along the south side of Sandpiper Avenue, west of North 23rd Lane. The Lot has 69 feet of frontage along Sandpiper Avenue and 104 feet of depth for a total Lot size of 7,176 square feet. The property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions.

Parkwood Manor Subdivision was recorded in July 1983. The recorded plat shows a six-foot side yard setback. An application for a variance request was submitted on May 15, 2024.

The variance request was for a proposed swimming pool, which was considered an accessory structure and requires compliance with setbacks. The applicant proposes to build a swimming pool to be used for physical therapy purposes, exercise and recreation.

The submitted site plan shows a proposed swimming pool encroaching three feet into the six-foot side yard setback along the east property line. There are no utility easements that would be impacted by the proposed encroachment.

The construction of the home has an "L" shaped configuration and the homeowner feels the proposed location is the most appropriate location for placement of the swimming pool. Relocation of the proposed swimming pool to the rear yard area is not feasible since there is a driveway entrance from the alley for a car garage.

Measurements provided are without benefit of a survey.

Staff recommended disapproval of the variance request since unnecessary hardship has not been established however, if the Board approves the request, it should be limited to the encroachment shown on the submitted site plan.

Vice-Chairperson Tafel asked staff the measurements for the proposed pool. Staff stated it was 28 feet by 14 feet.

Mr. Merle D. Davis, 2317 Sandpiper Avenue, McAllen. He stated they had room according to the pool people they had room in the back yard for an 11 foot wide pool. He was requesting 2 feet of easement because a foot of that was the cool deck.

Board member Mujica asked the applicant he noticed on the site plan provided there was a space of 7 feet, essentially 8 feet to the pool to the building. He asked the applicant why he could not move it 2 feet towards the building. Mr. Davis stated there was a concrete pad that had been there when they bought the house a year ago. He wanted to maintain it for a Texas room.

Board member Avila explained to Mr. Davis that the variance ordinance and how it runs with the land. He went onto to say the next owner could build anything else providing he meets with the building requirements.

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 disapprove the Variance request. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the Variance request with five members present and voting.

- d) Request of Arnold Cavazos on behalf of Gabriel Alanis for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 20-foot rear yard setback on the East Rear and South Rear portion for a proposed residence at Lot 19, Lago Vista Subdivision, Hidalgo County, Texas; 4501 South "M" Street. (ZBA2024-0018) (TABLED: 06/05/2024)

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

Mr. Nunez stated the applicant is requesting variances to allow an encroachment of 10 feet into the 20-foot rear yard setback into the east rear yard and into the south rear yard for a proposed single-family residence.

The subject property is located on a partial cul-de-sac at the intersection of South "M" Street and Helena Avenue. The irregular shaped property is vacant and is zoned R-1 (single family residential) District. Adjacent zoning is R-1 District to the north and west. There was A-O (agricultural and open space) District to the south. The area to the east across South Jackson Road is in the city limits of Pharr.

Lago Vista Subdivision was recorded on October 31, 2006. The plat indicates a front setback of 25 feet and 20 feet for a rear yard setback. Due to an oversight during the site plan review process the building permit was issued stating a rear yard setback of 10 feet, instead of the required 20 feet for the rear yard setback. A variance request was submitted on May 2, 2024.

The applicant is requesting a variance to allow an encroachment of 10 feet into the 20-foot rear yard setback. The specific encroachment width are approximately 34.4 feet for the garage, 74.25 for the outdoor kitchen and extends 27.16 feet along the south portion of the rear yard setback. The plat shows an irrigation easement that was abandoned by the Hidalgo County irrigation District.

Analysis of the area appears to be 45% of the Lot that is unbuildable due to the restrictions. As per Texas Local Government Code 211.009 (b-1), "Compliance would result in a loss to the Lot on which the structure is located of at least 25 percent of the area on which development may physically occur."

To the east side of the property there is a ROW easement. As per discussion with Engineering Department, there are no plans of future expansion to Jackson Road at their location. This request will, therefore, not negatively impact future road expansions plans. There is vacant land south of the subject property.

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 proposed residence will be in compliance with the 25 foot front yard setback.

The standard rear yard setbacks for a R-1 district is 10 feet as per our current Code of Ordinance. Lots 8 through 18, just west of Lot 19 show a rear setback of 10 feet.

Variations run with the land and remain as a condition for future owners and new constructions.

Measurements provided on the site plan are without benefit of a survey.

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

Staff recommended approval of the variance request since the applicable minimum setbacks for the subject property would result in a loss to the Lot of at least 25 percent of the buildable area, as per Texas Government Code 211.009(b-1). Moreover, the requested rear yard setback of 10 feet complies with the City's current Zoning Ordinance for R-1 (single family residential) District properties and will not negatively impact future road expansions or development plans for the area.

At the Zoning Board of Adjustments and Appeals meeting of May 22, 2024, no one appeared in opposition to the variance request. There were five Board members present and voting. Following discussion, Board member Hugo Avila made a motion to approve the request. The motion was seconded by Board member Hiram H. Gutierrez. Two members voted aye and three members voted nay.

Chairman Gutierrez adjourned the meeting at 5:18 p.m.

At the Zoning Board of Adjustments and Appeals meeting of June 5, 2024, no one appeared in opposition to the variance request. There were five Board members present and voting. Following discussion, Board member Hugo Avila made a motion to approve the request. The motion was seconded by Board member Hiram H. Gutierrez. Two members voted aye and three members voted nay. Therefore, Mr. Rogelio Rodriguez made a motion to table the item with Mr. Hugo Avila seconded the motion.

Mr. Issac Tawil, City Attorney stated he asked staff to go back and look at this application and the lot as to why staff recommended approval. In reviewing the application, he noticed the site picture with the yellow highlighted border. There was a disproportioned amount of setback that had been taken up by the lot. He had staff go back and calculate to see what percentage of the lot actually would be unbuildable. The updated memo from staff that reflects a recommendation based upon local government code 211.009(b)(1)(2) where an unnecessary hardship is found when compliance would result loss to the lot on which the structure was located at least 25% of the area on which development physically occur.

Chairperson Gutierrez asked legal counsel that the City had been insisting on the fact that nowadays that these types of properties with a 10 foot setback approved by City ordinance. Legal counsel stated there were defined setbacks within the ordinances. Chairperson Gutierrez asked should that be the case, why when the plat was subdivided that this was not taken into consideration, and leaving it at 10 feet instead of the 20 feet from the very beginning. Legal counsel stated when he reviewed the plat notes, this lot there was a carveout at the corner along Jackson Road which was the southside of the lot. When the engineer did the plat the drafted the plat notes so that the setback for this lot encroached additional footage from the corner of the little nitch that was carved out.

Board member Avila asked staff about the gas easement that ran across the middle of the lot. Staff stated that as per the plat notes it had been abandoned.

Board member Rodriguez mentioned about the owner knew about the setbacks and the problem that came with this lot. Staff stated there was oversight made by staff where they provided a 10 foot rear setback and based on that information that was provided to the property owner or the contractor. They went ahead and had the permit approved for the building plans. It was not noticed until after the fact that one of their engineering firms assisting in the project caught that it was not a 10 foot setback but a 20 foot setback.

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

Mr. Gabriel Alanis, 1926 Sunset Drive, Mission. The applicant stated as per Vice-Chairperson Tafel's question to redesign the plans. He stated they had been approved by the bank and received City's permits. Also, going back to Mr. Rodriguez's comments about the setbacks in that they did not know about the setbacks. The only thing that they knew was about the 25-foot setback gas line that they could not build. They were not aware of the 20-foot setback.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was someone else in favor of the Variance request.

Mr. Servando A. Cavazos, 4501 "M" Street, McAllen. He represented the builder. He stated the Homeowners Association and the City had approved to build. He did not know why they were asked to redesign their dream home.

Chairperson Jose Gutierrez asked if there was anyone else present in favor of the Variance request. There was someone else in favor of the Variance request.

Mr. Oscar Falcon, 5221 N. McColl Road, McAllen. He stated he represented the Homeowners Association. He stated it seemed that the process in the whole permitting, design and construction of the project had been done incorrectly. The contractor did follow-up with the City to get the setbacks done and drawn based on what was given to them by the City. He stated based on the errors what was done that would account for a hardship at no fault to them. Mr. Falcon stated the dirt pad had been constructed and some of the ditches had been dug. Time line had been delay with the recent rain.

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.

Mr. Servando Cavazos, Lot 19, Lago Vista Subdivision. He stated the surveyors go by the records by the County. The County stated 10 feet.

Ms. Gabriela Alanis, 3100 S. Colonel Rowe Boulevard. She stated in the same subdivision she bought a lot for her and husband. The lot she bought was also in a cul-de-sac with a 10-foot yard setback. She stated it would be costly to redesign the plan. If she knew this was going to be a problem, she would have not bought the lot. She had bought the lot for her son and future family.

Board member Rodriguez asked staff that the plat was easily accessible online. Staff stated yes, it was a public document.

Mr. Omar Sotelo, Development Coordinator, stated when you have double fronting lots, technically this large lot was not facing a street because you have Hidalgo County Irrigation District. When the permit was issued, it was overlooked because you would see on the site plan that this would be the rear and not the side.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove the Variance request. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the Variance request with two members voting aye and two voting nay, Mr. Hugo Avila and Mr. Hiram Gutierrez. Chairperson Jose Gutierrez voted to disapprove.

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