

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 21, 2023 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

<b>Present:</b>	<b>Jose Gutierrez</b>	<b>Chairperson</b>
	<b>Ann Tafel</b>	<b>Vice-Chairperson</b>
	<b>Hugo Avila</b>	<b>Member</b>
	<b>Rogelio Rodriguez</b>	<b>Member</b>
	<b>Sam Saldivar</b>	<b>Alternate</b>
	<b>Juan Mujica</b>	<b>Alternate</b>
<b>Absent:</b>	<b>Hiram A. Gutierrez</b>	<b>Member</b>
<b>Staff Present:</b>	<b>Benito Alonzo</b>	<b>Assistant City Attorney I</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</b>
	<b>Samantha Trevino</b>	<b>Planner I</b>
	<b>Porfirio Hernandez</b>	<b>Planning Technician II</b>
	<b>Jessica Pugo</b>	<b>Planning Technician I</b>
	<b>Carmen White</b>	<b>Administrative Assistant</b>

**CALL TO ORDER –Chairperson Jose Gutierrez**

**1. MINUTES:**

- a) Minutes for the meeting held on June 7, 2023.

The minutes for the meeting held on June 7, 2023 were approved. The motion to approve the minutes were made by Vice-Chairperson Ann Tafel. Mr. Hugo Avila seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a) Request of Maria Saldana for a Special Exception to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 15 feet into the 20 feet front yard setback for an existing metal carport with canvas cover measuring 21 feet by 20 feet, and **2)** an encroachment of 6 feet into the 6 feet west side yard setback for an existing metal carport with canvas cover measuring 21 feet by 20 feet, at Lot 11, Los Encinos Subdivision Unit 2, Hidalgo County, Texas; 3036 Olga Avenue. **(ZBA2023-0044)**

Ms. Trevino stated the applicant was requesting a special exception to encroach 15 feet into the 20 feet front yard setback, and 6 feet into the 6 feet west side yard setback. Both requests are for an existing metal carport constructed to protect her vehicles from rain, hail, and the sun, as the house does not have a garage.

The subject property was located along the north side of Olga Avenue, and north of Sam Houston Elementary. The Lot had 50 feet of frontage along Olga Avenue and a depth of 102.70 feet for total square feet of 5,135 feet. The property is zoned R-1 (single-family residential) District. There is R-1 district in all directions.

Los Encinos Subdivision Unit 2 was recorded in June 1995. The plat shows a 20 feet front yard setback and a 6 feet side yard setback. A stop work order was posted July 8, 2022 for carport built without a permit. An application for a building permit was submitted July 26, 2022. The special exception application was submitted May 9, 2023.

The applicant was requesting a special exception in order to allow an encroachment of 15 feet into the 20 feet front yard setback and an encroachment of 6 feet into the 6 feet west side yard setback for an existing carport with canvas cover in order to protect her vehicles from the weather elements.

The applicant proposed to reduce the size of the carport by 5 feet in order to clear a 5 feet utility easement that runs concurrently with the front yard setback adjacent to the front property line. The proposed reduction will result in the carport dimensions modified to a size of 16 feet by 20 feet.

The front yard setback was 20 feet along Olga 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 carport could be relocated to the rear of the property and accessed through the alley to maintain curb appeal and be closer in compliance.

The side yard setback is 6 feet for the common side property line. A 6 feet wooden wall separates the driveway from the neighboring property.

During a site visit, staff noticed that there were no other carports within Los Encinos Subdivision Unit 2.

Special exceptions are issued to and recorded for the present applicant/owner only. New 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 there are no other carports, nor have other special exceptions been granted for Lots within Los Encinos Subdivision Unit 2.

Vice-Chairperson Tafel asked staff if there was a neighbor on the west side and up to the property line. Ms. Trevino stated yes.

Board member Avila asked staff regarding the canvas carport that was curved; was it measured from the curve. Ms. Trevino stated they measure it from the posts.

Ms. Maria Saldana, the applicant stated the carport was built in 2022. Chairperson Gutierrez asked if she requested a building permit. She responded no. Chairperson Gutierrez asked if she had someone build it and if that person knew about obtaining a permit. She stated she hired someone and did not mention anything about a permit.

Board member Avila asked if there was any space between the column and the fence. Ms. Saldana stated just a few inches.

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.

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the special exception. There was someone in opposition of the special exception.

Board member Avila mentioned to staff that the applicant was willing to reduce the carport back five feet to clear the utility easements. Ms. Trevino stated yes. Staff stated a carport in the rear would not be feasible because the alley was not paved. When it rains, it was not safe to drive on.

Board member Rodriguez asked staff if the applicant was willing to move it inward to avoid the 6 feet. Ms. Trevino stated they did not discuss that with the applicant. When she submitted the application, she initially wrote a letter to move it five feet back to clear the utility easement. It was not until staff went to the side was she noticed it was encroaching into the 6 feet on the side.

Chairperson Gutierrez asked Ms. Saldana if she wanted to table the item until the next meeting in order to reconsider her request with staff. She responded yes.

Following discussion, Mr. Hugo Avila moved to table the special exception to reconsider your options with staff. Mr. Juan Mujica seconded the motion. The Board voted to table the special exception with five members present and voting.

- b) 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)

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 34<sup>th</sup> and North 36<sup>th</sup> 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 states 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 is 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.

Zoning Board of Adjustment & Appeals

June 21, 2023

Page 4

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.

Chairperson Gutierrez asked staff the Stop Work Order that was issued last year, was it for the building of the carport. Staff responded yes. He asked staff what happened afterwards. Ms. Trevino stated the building permit was submitted a month or so later. To her knowledge, they might have continued with the construction or it might had been completed.

Mr. Mario Ferron, the applicant stated he noticed neighbors had a similar carport and asked for their contractor's information. Chairperson Gutierrez asked if the contractor ever mentioned about a building permit. Mr. Ferron responded no.

Board member Mujica asked Mr. Ferron how long had lived in his house. He stated 20 years. In addition, he asked when the carport was built. He stated 3 years. Mr. Ferron stated that years ago his wife had acquired a medical condition that does not allow her to be exposed to sun light for a period. She uses the garage to be able to have value time with her grandchild without being in the sun.

Following discussion, Vice-Chairperson Ann Tafel **moved** to table the special exception to reduce the columns back to be in compliance. Mr. Juan Mujica seconded the motion. The Board voted to table the item with five members present and voting.

Zoning Board of Adjustment & Appeals

June 21, 2023

Page 5

- c) Request of Uriel Torres on behalf of Maria del Carmen Ruiz for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 16 feet into the 30 feet front yard setback for a proposed carport measuring 16 feet by 14 feet, at Lot 22, Rosa Linda Subdivision, Hidalgo County, Texas; 3401 Harvey Drive. (ZBA2023-0046)

Ms. Trevino stated the applicant was requesting the special exception to encroach 16 feet into the 30 feet front yard setback for a proposed carport that will provide protection from adverse weather.

The subject property was located along the south side of Harvey Drive, near the end of a cul-de-sac. The property has a Lot frontage of 65 feet and a depth of 130 feet for a total square footage of 8,450 feet. The property is zoned R-1 (single-family residential) District. The surrounding land use is R-1 (single family residential) District in all directions.

Rosa Linda Subdivision was recorded September 8, 1971. The plat shows a 30 feet front yard setback. An application for a building permit has not been submitted. An application for a special exception request was submitted on May 15, 2023.

The applicant was requesting the special exception to encroach 16 feet into the 30 feet front yard setback for a proposed carport that will provide protection for the property owner who was elderly. The applicant stated that the proposed carport will provide protection from inclement weather and lessen the possibility of slips and falls from rainfall on walking surfaces.

A windshield survey along Harvey Drive revealed only one carport constructed with a possible encroachment within Rosa Linda Subdivision; however, a review of Building Permits and Inspections records did not reveal a building permit for the construction.

Special exceptions are granted and recorded for the present applicant/owner only. New property owners would need to apply for a new special exception request.

There were no paved alley access to the subject property.

There were no utility easements running concurrently with the setback.

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 carports are not characteristic of construction within the front yards of Rosa Linda Subdivision, and approval of the special exception request may encourage other property owners to build similar structures.

Mr. Uriel Torres, representing the applicant Maria Del Carmen Ruiz stated he wanted to build a carport for protection against inclement weather. In addition, his aunt who is disabled wanted to protect against falls pertaining to wet weather. He stated the front yard setback was 30.6 feet from the curb to the house. The carport would measure 16 feet by 14 feet wide. He also stated that from the neighbor it would be 7 feet side setback from the carport.



Chairperson Gutierrez asked Mr. Torres if there were any other carports in the neighborhood. Mr. Torres stated there two other carports.

Board member Avila explained to the applicant that the special exception does not run with the land. If for any reason, the owner sells the property the new owner would have to come before this Board to keep the carport. Otherwise, they would have to take it down.

Board member Rodriguez asked staff if the applicant plans to connect the carport to the house would the front setback measurements change since it will be one structure. Ms. Trevino stated the front yard setback would be 30 feet regardless. The house was built at 30 feet. Whether the applicant wants to attach or not attach the carport the only remedy was the encroachment into the front yard setback.

Following discussion, Vice-Chairperson Ann Tafel moved to approve the special exception per staff's recommendation. Mr. Sam Saldivar seconded the motion. The Board voted to approve the special exception with four members voting aye and one member, Rogelio Rodriguez voting nay.

### 3. FUTURE AGENDA ITEMS:

- a) 1100 South 10<sup>th</sup> Street
- b) 305 Cornell Avenue
- c) 100 Fern Avenue
- d) 2721 Upas Avenue
- e) 2752 Judith Avenue
- f) 2107 Jackson Avenue
- g) 9401 North 10<sup>th</sup> Street
- h) 2820 North 30<sup>th</sup> Street
- i) 4105 Zinnia Avenue
- j) 5101 South 29<sup>th</sup> Street
- k) 4319 North 26<sup>th</sup> Lane
- l) 2909 Tamarack Avenue
- m) 2524 Goldcrest Avenue
- n) 1400 Westway Avenue

### 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