

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

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Thursday, September 20, 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>Rogelio Rodriguez</b>	<b>Member</b>
	<b>Hiram A. Gutierrez</b>	<b>Member</b>
	<b>Hugo Avila</b>	<b>Member</b>
	<b>Juan Mujica</b>	<b>Alternate</b>
	<b>Alex Lamela</b>	<b>Alternate</b>
 <b>Staff Present:</b>	 <b>Benito Alonzo</b>	 <b>Assistant City Attorney I</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</b>
	<b>Natalie Moreno</b>	<b>Planner I</b>
	<b>Porfirio Hernandez</b>	<b>Planner I</b>
	<b>Jessica Puga</b>	<b>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 September 7, 2023.

The minutes for the meeting held on September 7, 2023 and were approved. The motion to approve the minutes were made by Mr. Hugo Avila. Mr. Hiram Gutierrez seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a) Request of Enrique Garza for a Special Exception and Variance to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 5 feet 9 inches into the 6 foot side yard setback and encroaching 3 feet into the 10 foot rear yard setback for an existing metal carport measuring 20 feet by 25 feet and 2) allow an encroachment of 2.5 feet into the 6 foot side yard setback and 5.5 feet into the 10 foot rear yard setback for an existing storage measuring 12 feet by 16 feet at Lot 2, Block 5, Carolyn Addition, Hidalgo County, Texas; 213 Upas Avenue. (ZBA2023-0083)

Ms. Moreno stated the applicant was requesting the above Special Exception and Variance to encroach into the rear and side yard setback. The applicant has stated he uses the carport for vehicle protection and the storage to store large items.

The subject property was located along the south side of Upas Avenue. The lot had 80 feet of frontage and 120 feet of depth for a total of 9,600 square feet. The property was zoned R-1 (single family residential) District. There was R-1 District in the area.

Zoning Board of Adjustment & Appeals

September 20, 2023

Page 2

Carolyn Addition was recorded on February 24, 1959. The plat shows a 10 feet rear yard setback for the subdivision and 6 feet side yard setbacks. On July 28, 2023, a non-compliance order was issued. On July 28, 2023, the applicant applied for a building permit. On August 17, 2023, the applicant applied for a Special Exception.

This request was for an existing metal carport and storage to be allowed to remain at its current location. Applicant stated the carport was used to provide shade for the homeowners, their vehicles, and the storage for placement of large household items that cannot fit inside the home.

Applicant does have a garage in the property which applicant stated his vehicles do not fit.

During site visit staff, reveal another structure encroaching in to the side and rear yard setback. Applicant was willing to add the structure in the application (storage).

Site visit by staff revealed 7 other rear encroachments within the subdivision, which did not have permits.

Measurements provided are without benefit of a survey.

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

Staff was recommending disapproval for special exception and variance due to the carport exceeding the 400 square feet for a carport and due to not being characteristic of the neighborhood.

Chairperson Gutierrez asked staff if they had discussed with the applicant the exceeding of the 400 square feet. Ms. Moreno stated yes, he is reducing it by 5 feet to be 400 square feet. Chairperson Gutierrez asked staff if they had it in writing. Ms. Moreno stated yes and that he had sent an email stating it.

Mr. Enrique Garza, the applicant stated the carport was built after hailstorm. They only had a one-car garage, which was too small for their one vehicle. In addition, they had a driveway that was wide enough for two vehicles but was difficult to back out. He stated he did not follow up with all the setbacks. They initially wanted to build a 20 by 20 carport because of the material costs. Their contractor told them he could build a 20 by 25 since he already had the materials. Mr. Garza stated he was willing to reduce it back by 5 feet from the rear to comply.

Board member Avila regarding the storage shed was anyone living there because he noticed the air-conditioner. Mr. Garza no one was living there. The purpose of the shed was for him to do projects. They use it to store household items and lawn equipment. Board member Avila asked if it was on a concrete floor. Mr. Garza stated it was on a wood foundation and could be moved depending on the cost.

Chairperson Gutierrez asked if there was electricity in the shed. Mr. Garza stated the contractor installed the pump next to it. The pump was for the swimming pool. When the inspector was there for the pool, he was asking questions about the pool. Mr. Garza stated he was not aware of the setbacks. Afterwards, he started applying for all the permits needed.

Chairperson Gutierrez explained to the applicant the difference between a special exception and a variance.

Chairperson Jose Gutierrez asked if there was anyone present in favor of the special exception. There was one person in favor of the special exception.

Ms. Laura Cristina Garcia, 208 West Upas Avenue stated she was in favor of the special exception and variance request. She described the neighbor's house prior to them purchasing the home that it was in a terrible state of repairs. She stated they take pride in their neighborhood.

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

Board member Rodriguez asked staff if on the picture shown that had the measuring tape was that on the side or in the rear. Ms. Moreno stated it was on the side. Board member Rodriguez asked what the distance from the fence to the post. Ms. Moreno stated they were encroaching 5 feet into the 6-foot setback.

Following discussion, Mr. Hugo Avila moved to approve the special exception as the applicant has explained it. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously to approve the special exception with five members present and voting.

Following discussion, Mr. Hiram Gutierrez moved to disapprove the variance request as the applicant has explained it. Vice-Chairperson Ann Tafel seconded the motion. The Board voted unanimously to disapprove the variance request with five members present and voting.

- b) Request of Alma Beraza for a Special Exception and Variance to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 4 feet into the 6 foot side yard setback for an existing metal carport measuring 19 feet by 21.6 feet, **2)** to allow an encroachment of 3.2 feet into the 10 foot rear yard setback for an existing patio measuring 25 feet by 25 feet and **3)** to allow an encroachment of 5 feet into the 6 foot side yard setback for a storage measuring 10 feet by 7 feet at Lot 83, Montebello Unit No. 3, Hidalgo County, Texas; 2108 North 32nd Street. **(ZBA2023-0085)**

Ms. Moreno stated the applicant was requesting the special exception and variance for encroachments into the side yard and rear yard setback for an existing metal carport, patio and storage. The applicant stated the carport is for vehicle protection and the patio for gatherings.

The subject property was located along the east side of 32<sup>nd</sup> street. The lot has 51 feet of frontage and 100 feet of depth for a total of 5,100 square feet. The property is zoned R-1 (single family residential) District. There is R-1 and R-3A (Apartments) District around the area.

Montebello No.3 Subdivision was recorded on October 20, 1981. The plat shows a 10 feet rear yard setback and a 6 feet side yard setback for the subdivision. On July 28, 2023, a

non-compliance order was issued. On August 02, 2023, the applicant applied for a building permit. On August 18, 2023, the applicant applied for a Special Exception.

The applicant was requesting to keep the requests for a more comfortable experience. The applicant stated that it is nice to arrive home on a rainy day and be able to get out of vehicle without getting wet.

Applicant does have a one-car garage in the property, but vehicle is too large to fit so she uses it as storage.

During site visit, staff revealed other structures in the rear that are encroaching into the rear yard and side yard setback. Applicant was willing to add those encroachments into this application (storage and patio).

Applicant stated that the storage would be removed at a later time.

Site visit by staff revealed 10 other encroachments, which did not have permits.

Measurements provided are without benefit of a survey.

Staff did receive one letter in support of the request.

Staff was recommending disapproval for requests 1, 2 and 3 due to not being characteristic to the neighborhood and can create a safety hazard in case of a fire.

Board member Rodriguez asked staff if the storage was a two story. Ms. Moreno stated yes. He asked if staff knew the height. Ms. Moreno stated she did not get the measurement of the height.

Board member Avila asked staff if there was alley in the back. Ms. Moreno stated yes.

Ms. Alma Beraza, the applicant stated the two-story storage unit existed when they bought the house back in 2002. She stated her husband spent two years trying to tear it down but it got too expensive. She stated they have been to find someone to do it but for the right price. Concerning the patio in the rear, it had been there about 12 to 15 years. Financially, they have been trying to see who to get to cut the pipes to tear down and put up some more pipes because it sits on cement. It goes as well for the carport in front. Chairperson Gutierrez asked the applicant if they built the carport. Ms. Beraza stated yes, both front and back years ago. She stated her husband had obtained a permit a year ago for the carport in front but there was a misunderstanding. She stated the building department said they would call her husband but never called. They had said that they sent him an email. He has one but because he works away from home, he never opened it. After a couple of months of he never heard from them again so he decided to build the carport.

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

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 Rodriguez asked staff if the City assists residents in situations for hardship if a structure needed to be taken down, any volunteers from certain departments. Mr. Garcia stated that the Code and Health Enforcement Department had an Imagine Tomorrow, which covers large trash bins but someone would still need to demolish the structure. The Grant Department issues grants for Affordable Homes of South Texas and Housing Authorities. That would be something to consider.

Chairperson Gutierrez asked if the applicant would like to table the item in order to speak with staff to discuss her options.

Following discussion, Vice-Chairperson Ann Tafel moved to table the item until the next meeting. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously to table the item with five members present and voting.

- c) Request of Javier Benavidez & Dalia Garcia for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 14.5 feet into the 20 foot front yard setback for an existing metal carport measuring 19 feet by 24 feet at Lot 46 & North 5 ft. of 45, Gardenia Terrace Unit No. 2 Subdivision, Hidalgo County, Texas; 3309 North 27th Street. (ZBA2023-0087)

Mr. Hernandez stated the applicant was requesting a Special Exception to encroach 14.5 feet into the 20 feet front yard setback for an existing carport measuring 19 feet by 24 feet for protection from the sun, hail and severe heat for her vehicles and for protection to the family as they go in and out of the house. Applicant is proposing to reduce the size of carport to meet the 400 square feet as per city ordinance.

The subject property was located along the West side of North 27<sup>th</sup> Street just South of Hibiscus Avenue. The lot had 75 feet of frontage and 110.00 feet of depth for a total of 8,250 square feet. The property was zoned R-1 (single family residential) District. The surrounding zones include R-1(single-family residential) all around.

Gardenia Terrace Unit No. 2 subdivision was recorded on July 14, 1975. The plat shows a 20-foot front yard setback for the subdivision. On August 23, 2023, the applicant applied for a Special Exception to encroach 14.5 feet into the 20 feet front yard setback.

The applicant submitted a new site plan and letter to reduce the carport depth to 21 feet and comply with the new ordinance to meet the square footage. Applicant is requesting a Special Exception to allow an encroachment of 11.5 feet into the 20-foot front yard setback for an existing metal carport that would now measure 19 feet by 21 feet for protection from the sun, hail and severe heat for her vehicles and family as they go in and out of the house. Applicant states a recent hailstorm did some damage to one of her vehicles and the severe heat broke a window to her car.

Site visit by staff revealed 4 other carports in the area, in which two are built without a permit. A variance for a canopy was approved on May 17, 2012 for Lot 94. A building permit was issued for a carport for Lot 41.

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 benefit of a survey.

Staff was recommending approval of the special exception request as per applicant was reducing the size of the carport.

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.

Following discussion, Vice-Chairperson Ann Tafel moved to approve the special exception based on applicant's written statement to reduce the carport to meet the 400 square feet requirement. Mr. Hugo Avila seconded the motion. The Board voted unanimously to approve the special exception with five members present and voting.

- d) Request of Jose Guadalupe Cantu for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 5 feet into the 6 feet side yard setback for an existing metal carport measuring 21 feet by 24 feet at Lot 51, Alta Linda, Hidalgo County, Texas; 1909 South 39th Street. (ZBA2023-0079) (TABLED: 09/07/2023)

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

Ms. Moreno stated the applicant was requesting a special exception to encroach 5 feet into the 6 feet side yard setback. It helps the applicant with his outside exercises in a shaded area and for vehicle protection.

The subject property was located along the west side of 39<sup>th</sup> Street. The lot had 70 feet of frontage and 108 feet of depth for a total of 7,560 square feet. The property was zoned R-1 (single family residential) District. There was R-1, R-3A (Apartments) and C-3 (General Business) Districts around the area.

Alta Linda Subdivision was recorded on February 13, 1979. The plat shows a 25 feet front yard setback and a 10 feet curve setback for the subdivision. There is a 5 feet utility easement on the north side of the property. On August 23, 2022, a stop work order was issued. On August 24, 2022, a building permit was submitted. On January 16, 2023, a non-compliance order was issued. On May 13, 2023, another stop work order was issued. On August 2, 2023, a Special Exception application was submitted.

The applicant is requesting this Special Exception to keep the carport. Applicant is disabled and it will help him with his daily therapy exercise activities recommended by his doctor.

Site visit by staff revealed 1 other carport in the area, which did not have a permit.

During site visit, the applicant has two other structures in the back that may be encroaching into the side yard setback and rear yard setback. Applicant stated he would be removing those structures.

Applicant does have a consent to encroachment letter by AEP, which the court recorded on January 04, 2023.

There is no garage in the property.

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.

Measurements provided are without benefit of a survey.

At the last meeting on September 7th the applicant was given an opportunity to cut it back to make it at least the minimum 400 square feet requirement for a carport.

Applicant mentioned he received quotes on removing portion of the carport and it would be more costly for him to cut it back, therefore no proposal was made.

Staff was recommending disapproval for the Special Exception request due to exceeding the 400 square feet max for a carport stated in ordinance 138-371(g) and not being characteristic to the neighborhood.

Chairperson Gutierrez asked if the applicant was present. Ms. Moreno stated no he was not present.

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.

Following discussion, Mr. Hiram Gutierrez moved to disapprove the special exception. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously to disapprove the special exception with five members present and voting.

- e) Request of Carlos Alarcon on behalf of James Weaver for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 6 feet into the 6 feet East side yard setback for a carport measuring 15 feet by 35 feet at Rancho de La Fruta No. 1 Lot E 142.5' of W 285' of N 184.22' of 11, Hidalgo County, Texas; 108 East Fresno Avenue. (ZBA2023-0081) (TABLED: 09/07/2023)

Mr. Hernandez stated the applicant withdraw his application after meeting with staff. He decided to modify the carport in order to comply with the 6-foot side yard setback.

- f) Request of Gerardo Castillo for a Special Exception and Variance to the City of McAllen Zoning Ordinance to: **1)** allow an encroachment of 20 feet into the 20 feet front yard setback for a proposed wooden carport measuring 16 feet by 22 feet, **2)** to allow an encroachment of 6 feet into the 6 feet rear yard setback for an existing carport measuring 12.13 feet by 20 feet, **3)** to allow an encroachment of 6 feet in the 6 feet side yard setback and 6 feet into the 6 feet rear yard setback for an existing storage shed measuring 24.2 feet by 10.2 feet and **4)** to allow an encroachment of 6

feet into the 6 feet side yard setback and 6 feet into the 6 feet rear yard setback for an existing (L) shaped shed measuring 27.4 feet by 14.1 feet and 15.4 feet and 11.3 feet at Lot 28, McColl Terrace Subdivision, No. 2. Hidalgo County, Texas; 213 East Vine Avenue. (ZBA2023-0073) (TABLED: 09/07/2023)

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

Mr. Hernandez stated since the last meeting the applicant met with staff to correct the wording of the material of the carport to being metal. Mr. Castillo also retained a list of signatures from the neighbors who were in favor of his request. Mr. Castillo was proposing to have the carport cantilevered, which was going to be supported on one post.

Board member Mujica asked staff if there were any drawings submitted for the cantilever. Mr. Hernandez stated no, just the site plan.

Vice-Chairperson Tafel asked staff if it was still going to be 20 feet into the 20-foot front setback that was not being reduced. Mr. Hernandez stated the proposed was 16 feet by 20-foot front yard setback. Vice-Chairperson Tafel asked about special exception #2, the rear yard setback. Mr. Hernandez stated that nothing had changed. Variance requests #3 and #4 remain the same, no changes.

Mr. Gerardo Castillo, the applicant stated he changed the wording from the wooden carport to the metal carport. The metal carport would be in compliance. Being a cantilever, it would not have any poles on one side. He stated that 95% of the vehicles hang over the sidewalks. The driveways were small. Mr. Castillo mentioned about the structures in the back that had been there for 25 years and no one came out to cite the previous owner. Chairperson Gutierrez stated to the applicant that if at any time he decided to sell the home the next owner could change the use of the structure because the variance goes with the land.

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

Chairperson Jose Gutierrez asked if there was anyone present in opposition of the special exceptions/variance requests. There was no one in opposition of the special exceptions/variance requests.

The Board decided to vote on each item separately.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove the special exception #1. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously to disapprove special exception #1 with five members present and voting.

Vice-Chairperson Ann Tafel moved to disapprove special exception #2. Mr. Rogelio seconded the motion. The Board voted unanimously to disapprove special request #2 with five members present and voting.

Mr. Hugo Avila moved to disapprove variance requests #3 #4. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously to disapprove variance requests #3 and #4 with five members present and voting.



At this time, Mr. Garcia stated the applicant for Item 2D had arrived. The item had been disapproved however, asked if the Board would be willing to bring back to discuss. The idea was for Mr. Cantu to get with staff and see if he would be willing to reduce the carport and that there was no new proposal, which was why the Board disapproved.

Mr. Jose Guadalupe Cantu, the applicant stated that his daughter had built the carport for him to do his therapies her not knowing about obtaining a building permit. He stated that if he removes the carport and relocate it would be costly. In addition, if he were to reduce it by four feet again it would be costly. Mr. Cantu mentioned that there were many others with carports almost to the sidewalk. Chairperson Gutierrez stated that his request was for the square footage of the carport being more than the 400 square footage requirement not so much the height. Mr. Cantu the only utility line that ran down the middle was AEP. He spoke with them and he had a letter that was not a problem with the utility line.

Board member Avila asked legal if a vote could be rescinded in this case so that the applicant could return with a modification. Mr. Garcia stated a motion was made to rescind to re-hear an item, and then there is a second and then the Board votes.

Following discussion, Mr. Hugo Avila moved to re-open item 2d for further discussion. Mr. Rogelio Rodriguez seconded the motion. The Board voted to re-open item 2D with three members voting and two members voting nay, Vice-Chairperson Ann Tafel and Chairperson Jose Gutierrez.

Mr. Hugo Avila moved to table the item for the applicant to have time to discuss with City staff his options. Mr. Rogelio Rodriguez seconded the motion. The Board voted to table the item. The Board voted with three members voting aye and three members voting nay, Vice-Chairperson Ann Tafel and Chairperson Jose Gutierrez.

Chairperson Gutierrez explained to Mr. Cantu the item was tabled until the next meeting without another fee.

### 3. FUTURE AGENDA ITEMS:

- a) 704 Heron Avenue
- b) 4301 North 28<sup>th</sup> Street
- c) 3404 Providence Avenue
- d) 4416 Sandpiper 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