

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 7, 2023 at 4:35 p.m. in the McAllen City Hall, Commission Chambers with the following present:

Present:	Jose Gutierrez	Chairperson
	Ann Tafel	Vice-Chairperson
	Hiram A. Gutierrez	Member
	Hugo Avila	Member
	Alex Lamela	Alternate
Absent:	Rogelio Rodriguez	Member
	Juan Mujica	Alternate
Staff Present:	Benito Alonzo	Assistant City Attorney I
	Luis Mora	Planning Deputy Director
	Omar Sotelo	Senior Planner
	Natalie Moreno	Planner I
	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 August 23, 2023.

The minutes for the meeting held on August 23, 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 Ron Adkins for a Variance to the City of McAllen Zoning Ordinance to allow an encroachment of 9 feet into the 10 feet rear yard setback for a storage measuring 16 feet 2 inches by 17 feet at Milmore Subdivision lot 16, Block 8, Hidalgo County, Texas; 1106 North 15th Street. (ZBA2023-0078)

Ms. Moreno stated the applicant was requesting a Variance to encroach 9 feet into the 10 feet rear yard setback for a storage to have room to store household items and to protect from weather conditions.

The subject property was located along the west side of 15th Street. The lot has 50 feet of frontage and 152.50 feet of depth for a total of 7,625 square feet. The property is zoned R-1 (single family residential) District. There is R-1 and C-3 (General Business) District around the area.

Milmor Subdivision was recorded on May 26, 1927. The plat shows a 10 feet rear yard setback for the subdivision. On July 12, 2023, a stop work order was issued. On July 13,

Zoning Board of Adjustment & Appeals

September 7, 2023

Page 2

2023, the applicant applied for a building permit. On August 2, 2023, the applicant applied for a variance encroaching 9 feet into the 10 feet into the rear yard setback.

The applicant was requesting a Variance to keep the storage for household items. The applicant is going to enclose the structure since right now it looks like a patio.

Site visit by staff revealed 12 other rear encroachments within the subdivision, which did not have permits. Staff revealed only 2 approved variances.

The subdivision has received two variance requests for storages. At the Zoning Board Adjustment and Appeals meeting on May 1, 2019 both requests were approved encroaching 7.5 feet into the 10 foot rear yard setback measuring 9.41 feet by 10 feet & encroaching 6.75 feet into the 10 foot rear yard setback measuring 9.41 feet by 10 feet at Milmore Subdivision, block 2, Lot 19.

Measurements provided are without benefit of a survey.

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

Staff recommended disapproval due to the amount of encroachment and that the structure would be available for other uses in the future. No hardship due to the land exists or had been claimed.

Mr. Ron Adkins, the applicant stated he had covering to store his possessions since he did not have anywhere else to store them. He wanted to enclose it to protect against the rain.

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

Board member Avila asked how this came before the Board. Ms. Moreno stated inspections drove by and noticed it. He also asked staff that there were two other variances granted in the same subdivision. Ms. Moreno stated it was on 16th Street that was approved on the same property for two storages.

Vice-Chairperson Tafel asked about the side yard setback. Ms. Moreno stated he was fine with the side yard setbacks.

Vice-Chairperson Ann Tafel moved to disapprove the variance request. Mr. Hiram Gutierrez seconded the motion. The Board voted unanimously to disapprove the variance request with five members present and voting.

- b) 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)**

Zoning Board of Adjustment & Appeals

September 7, 2023

Page 3

Ms. Moreno stated the applicant was requesting a special exception to encroach 5 feet into the 6-foot side yard setback, which will allow him to exercise in a shaded area and for vehicle protection.

The subject property is located along the west side of 39th Street. The lot has 70 feet of frontage and 108 feet of depth for a total of 7,560 square feet. The property is zoned R-1 (single family residential) District. There is 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-foot front yard setback and a 10 feet setback on the curve. There is a 5-foot 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 non-compliance 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 was made aware that he 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. Applicant mentioned it would be more costly for him to cut it back.

There was 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 has not received any phone calls, emails, or letters in opposition to the special exception request.

Measurements provided are without benefit of a survey.

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 carports not being characteristic of area.

Chairperson Gutierrez asked staff if they explained the limitation of the 400 square feet to the applicant. Ms. Moreno stated yes. Chairperson Gutierrez asked what his response was. Ms. Moreno stated it would be more costly to reduce it.

Chairperson Gutierrez informed the applicant that regarding the 400 square feet, at this time it would be difficult to approve the request being that the carport was more than 400 square feet.

Mr. Cantu stated his daughter had the carport built for him and did not know about obtaining a permit. Chairperson Gutierrez asked the applicant the contractor who built the carport, did he obtain a permit.

Mr. Cantu stated it was a friend of his son-in-law. He stated there other carports in the area. Chairperson Gutierrez stated they might have built them without a building permit.

Chairperson Gutierrez suggested for the applicant to speak with staff about other options he could do and to table the item until the next meeting.

Mr. Hiram Gutierrez moved to table the special exception until the next meeting. Mr. Hugo Avila seconded the motion. The Board voted unanimously to table the special exception with five members present and voting.

- c) Request of Nicolas Hernandez for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 19 feet into the 20 feet front yard setback and 5 feet into the 10 feet side yard setback for metal carport measuring 18 feet by 18 feet at Colonia Hermosa No. 2, Lot 12, Block 7 Hidalgo County, Texas; 2001 Cortez Avenue. (ZBA2023-0080)

Mr. Hernandez stated the applicant was requesting a Special Exception to encroach 19 feet into the 20-foot front yard setback for an existing metal carport measuring 18 feet by 18 feet for protection from the sun for his vehicles and his son who has Down syndrome with a skin condition in which he can play outside in the shade.

The subject property was located along the south side of Cortez Avenue intersecting with South 20th Street. The Lot has 50 feet of frontage and 139.00 feet of depth for a total of 6,950 square feet. The property was zoned R-1 (single family residential) District. The surrounding zones include R-1(single-family residential) to the West and South, A-O (agricultural and open space) to the East.

Colonia Hermosa No. 2 was recorded on November 28, 1947. The plat showed a 20-foot front yard setback and a 25-foot corner clip for the subdivision. On August 1, 2023, a stop work order was issued. On August 2, 2023, the applicant applied for a building permit. On August 7, 2023, the applicant applied for a Special Exception to encroach 19 feet into the 20-foot front yard setback and 5 feet into the 10-foot side yard setback.

The applicant was requesting Special Exception to allow an encroachment of 19 feet into the 20 foot front yard setback and 5 feet into the 10 foot side yard setback for an existing metal carport measuring 18 feet by 18 feet for protection from the sun for his vehicles and his son who had down syndrome with a skin condition in which he can play outside in the shade. The carport is also encroaching into the 25 foot x 25 foot corner clip, which was necessary for safety.

Site visit by staff revealed 9 other carports in the area, 8 of which are illegal.

At the Zoning Board Adjustment and Appeals meeting of October 21, 2015 the board unanimously voted to approve a variance request to allow a front yard setback of 2.41 feet instead of 20 feet for a carport measuring 17 feet by 22 feet for Lot 19, Block 9, Colonia Hermosa No.2 Subdivision.

Zoning Board of Adjustment & Appeals

September 7, 2023

Page 5

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.

There was one phone call from a neighbor in favor of the request.

Measurements provided were without benefit of a survey.

Staff was recommending disapproval of the special exception since the carport falls into the 25ft x 25ft corner clip, which causes a sight obstruction and does not comply with setbacks.

Board member Gutierrez asked staff to explain the 25 ft. x 25 ft. corner clip. Mr. Hernandez stated per the ordinance there was a corner clip going on one side and corner clip on the other side and then intersecting.

Vice-Chairperson Tafel asked if that was all corner lots in McAllen or just this subdivision. Mr. Hernandez stated that for this subdivision there was a 25-foot x 25-foot corner clip.

Board member Avila asked if there was a garage. Mr. Hernandez stated no.

Mr. Nicolas Hernandez, the applicant stated when he had the carport built he was not sure if the builder had obtained a building permit. After two years, he received a notice that a permit was not obtained. The reason he had the carport built was that his son had Down syndrome with skin conditions.

Vice-Chairperson Tafel asked if there was any room in the back to build something similar to the carport. Mr. Cantu stated yes, but they do not go in the back that much. Chairperson Gutierrez stated that would solve the problem of the visibility from the corner clip in front.

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 no one in opposition of the special exception.

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

- d) 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)

Mr. Hernandez stated the applicant was requesting a Special Exception for an encroachment of 6 feet into the 6 feet east side yard setback to allow an existing metal carport, which is needed, based on the plan design of the house.

The subject property was located along the South side of Fresno Avenue approximately 138 feet east of South 1st Street. The lot has 142.50 feet of frontage and 169.22 feet of depth for a total of 24,113.85 square feet. The property was zoned R-1 (single family

residential) District. The property was surrounded by R-1 in all directions.

Rancho de la Fruta #1 was recorded on May 22, 1920. The plat shows a 6-foot side yard setback. On June 28, 2023, a stop work order was issued. On July 3, 2023, the applicant applied for a building permit.

On August 7, 2023, the applicant applied for a special exception encroaching 6 feet into the 6-foot side yard setback.

The applicant is requesting a special exception in order to allow an encroachment of 6 feet into the 6 foot East side yard setback to allow an existing metal carport that has no flammable materials in which is needed based on the plan design of the house. Applicant states there was a "Save and Except" that allows the carport to the limit of the property.

Site visit by staff revealed no other carports in the area. Staff noticed structures in the rear of property that could be encroaching onto the rear setback and will be attended at a later time.

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 disapproval due to structure not being characteristic of the neighborhood and exceeding the 400 square foot max for a carport stated in ordinance 138-371(g). Further analysis revealed the "Save and Except" portion is not part of the lot, thus carport would be encroaching into neighboring property.

Mr. Hernandez stated there were two neighbors that had called in opposition of the special exception.

Vice-Chairperson Tafel asked staff if the concrete strip on the side was the property line. Mr. Hernandez stated according to the site plan the property was up against the carport.

Mr. Carlos Alacron, on behalf of James Weaver, stated Mr. Weaver built the carport in 2023 before the ordinance of the 400 square footage. Vice-Chairperson Tafel asked if he obtained a permit. Mr. Alacron stated no he did not.

Chairperson Gutierrez stated that before going any further, he asked Mr. Alacron to table the item until the next meeting in order to speak with staff to see other options. Mr. Cantu stated that Mr. Weaver would be willing to reduce the carport in order to comply with the ordinance.

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

- e) 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)

Mr. Hernandez stated the applicant was requesting a special exception for an encroachment of 16 feet into the 20 feet front yard setback for a proposed wooden carport measuring 16 feet by 22 feet that will be used to protect his elderly mother when taking her to medical appointments and vehicles from the sun and falling debris during inclement weather. Applicant is also requesting to allow an encroachment for an existing carport in the rear, a covered area encroaching into the West side yard setback and rear yard setback and an "L" shaped storage area encroaching into the East side yard setback and rear yard setback.

The property was located along the north side of East Vine Avenue east of North "C" Street. The lot has 50.0 feet of frontage and a depth of 125.0 feet for a lot size of 6,250 square feet. The property is zoned R-1 (single-family residential) District. There is R-4 (mobile home) district to the north.

McColl Terrace Subdivision No. 2 was recorded December 15, 1975. The plat shows a 20 feet front yard setback for the subdivision. A building permit has not been submitted. A special exception request application was submitted July 17, 2023.

The applicant was requesting a special exception in order to allow an encroachment of 16 feet into the 20 feet front yard setback for a proposed wooden carport measuring 16 feet by 22 feet that will be used to protect his elderly mother when taking her to medical appointments and vehicles from the sun and falling debris during inclement weather. Applicant was considering to build the carport out of metal for stronger framework. The request to allow the special exception for the carport in the rear as well as the variances for the covered areas in the rear is for family gatherings and because the structures were there when they moved in to the property.

During a site visit, staff noticed that there were 6 other carports within McColl Terrace subdivision No. 2 in which 5 are considered illegal and 1 was granted request for a special exception.

At the Zoning Board of Adjustments and Appeals meeting of October 5, 2022 the Board unanimously voted to approve a special exception for an encroachment of 20 feet into the 20 feet front yard setback for a metal carport measuring 18 feet by 22 feet at Lot 37.

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.

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 recommended disapproval of the special exception request for number 1 and 2 being that they are not characteristic of the neighborhood and encroachment of existing carport in the rear is all the way to the lot line.

Zoning Board of Adjustment & Appeals

September 7, 2023

Page 8

Staff recommended disapproval of the variances number 3 and 4 being that structures are encroaching all the way to the lot lines which creates a safety issue in case of a fire and no hardship exists due to the land nor has one been claimed.

Mr. Gerardo Castillo, the applicant stated he came to get a permit for the carport in the front, which would be a metal carport not wooden. He stated he takes care of his elderly mother and he has medical conditions.

He stated that doctor who had those structures built owned the house. He was unaware of the structures were not in compliance in the back. The structures that had been there over 25 years.

Chairperson Gutierrez explained to Mr. Castillo the difference between a variance and a special exception. Mr. Castillo stated there were eight carports on his street. Chairperson Gutierrez mentioned to Mr. Castillo that staff had indicated most of them were built without permits.

Board member Mr. Avila asked the applicant if there was a garage there at one time. Mr. Castillo stated it could have been but it was not when he bought the house.

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 no one in opposition of the special exception.

Mr. Hernandez stated when staff went out there, street view, the rear carport was too small for a vehicle.

Vice-Chairperson Tafel had one issue with the wording of the special exception concerning "proposed wooden carport", even though the applicant stated he was proposing a metal carport. The other concern with the carport being up the property line.

Following discussion, Mr. Alex Lamela moved to table the special exception until the next meeting. Mr. Hugo Avila seconded the motion. The Board voted unanimously to table the special exception with five members present and voting.

- f) Request of Itzel Sanchez on behalf of Armando Sanchez for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 25 feet into the 25 feet front yard setback for an existing metal carport with canvas cover measuring 16 feet by 27 feet at Lot 81, Cielo Vista Subdivision Phase 1, Hidalgo County, Texas; 3013 Ursula Avenue. (ZBA2023-0077)

Ms. Moreno stated the applicant was requesting a special exception to encroach 25 feet into the 25-foot front yard setback. The request is for an existing metal carport with canvas cover for other vehicles and for weather protection.

The subject property was located along the south side of Ursula Avenue. The Lot has 52 feet of frontage along Ursula Avenue and a depth of 103 feet for a total of 5,356 square feet. The property is zoned R-1 (single family residential) District. There is R-1 district in all directions.

Zoning Board of Adjustment & Appeals

September 7, 2023

Page 9

Cielo Vista Subdivision was recorded on March 3, 2007. The plat shows a front yard setback of 25 feet with no utility easement. A non compliance notice was issued on July 12, 2023 for a carport built without a permit. A building permit application was submitted on July 14, 2023. A special exception request application was submitted on July 25, 2023.

The applicant was requesting to keep the existing metal carport with canvas cover for weather reasons and because they have multiple large vehicles.

Carport seems to be encroaching into the right of way.

There was an existing one-car garage, which the applicant stated she uses it for her ATV since her vehicles are too large to fit.

Zoning Board of Adjustments has considered Special Exception requests for 6 properties within this subdivision. The Board approved six requests for Lots 2, 20, 21, 72, 75, and 78. Five of the requests were for encroachments of 25 feet into the 25 feet front yard setback and one request was for an encroachment of 24 feet into the 25 feet front yard setback.

At the meeting of June 26, 2023 City Commission approved Ordinance 138-371(g) in reference to the maximum square footage of 400 square feet allowed for a carport.

Special Exception are issued to and recorded for the present applicant/owner only. New property owners would be responsible to apply for a new special exception if requested.

Measurement 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 the Special Exception request due to exceeding the 400 square feet max for a carport stated in ordinance 138-371(g) and due to the fact; it may also be encroaching into the right of way.

Ms. Moreno stated the applicant brought in an amended proposal to cut back the metal carport after the legal notices had been mailed out.

Board member Avila asked staff the wording "appeared as it seems to be encroaching into the right of way", how did it appear. Ms. Moreno stated the line in the front as shown behind the parked truck on the picture that could be the line for the right of way and it is without the benefit of a survey.

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.

Vice-Chairperson Ann Tafel moved to approve the special exception based on applicant's amended request to reduce the carport. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously to approve the special exception with five members present and voting.

3. FUTURE AGENDA ITEMS:

- a) 213 Upas Avenue
- b) 2108 North 32nd Street
- c) 3309 North 29th Street

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