#### **AGENDA**

## ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, APRIL 20, 2022 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3<sup>RD</sup> FLOOR

At any time during the course of this meeting, the Zoning Board of Adjustment and Appeals may retire to Executive Session under Texas Government Code 551.071(2) to confer with its legal counsel on any subject matter on this agenda in which the duty of the attorney to the Zoning Board of Adjustment and Appeals under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. Further, at any time during the course of this meeting, the Zoning Board of Adjustment and Appeals may retire to Executive Session to deliberate on any subject slated for discussion at this meeting, as may be permitted under one or more of the exceptions to the Open Meetings Act set forth in Title 5, Subtitle A, Chapter 551, Subchapter D of the Texas Government Code.

### CALL TO ORDER - CHAIRPERSON SYLVIA HINOJOSA

### 1. MINUTES:

a) Minutes for the meeting held on April 6, 2022

### 2. PUBLIC HEARINGS:

a) Request of Daniel Rosas for the following special exception to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 13 ft. into the 20 ft. front yard setback for a metal carport measuring 20 ft. by 25 ft. at the front. 2) an encroachment of 6 ft. into the 6 ft. side yard setback for an attachment to the proposed carport measuring 10ft. by 64 ft. at Lot 6, Block 15, C.E Hammond Subdivision, Hidalgo County, Texas; 2021 Ebony Avenue. (ZBA2022-0010)

### 3. FUTURE AGENDA ITEMS

- a) 4425 Sandpiper Avenue
- b) 2612 Brazos Court
- c) 808 Upas Avenue
- d) 405 Cornell Avenue
- e) 1017 Orange Avenue
- f) 218 North 17th Street

#### ADJOURNMENT:

IF ANY ACCOMMODATIONS FOR A DISABILITY ARE REQUIRED, PLEASE NOTIFY THE PLANNING DEPARTMENT (681-1250) 72 HOURS BEFORE THE MEETING DATE. WITH REGARD TO ANY ITEM, THE ZONING BOARD OF ADJUSTMENTS AND APPEALS MAY TAKE VARIOUS ACTIONS, INCLUDING BUT NOT LIMITED TO RESCHEDULING AN ITEM IN ITS ENTIRETY FOR PARTICULAR ACTION AT A FUTURE DATE.

### STATE OF TEXAS COUNTY OF HIDALGO CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, April 6, 2022 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

Present: Sylvia Hinojosa Chairperson

Jose Gutierrez Vice-Chairperson

Ann Tafel Member
Hugo Avila Member
Rebecca Millan Alternate
Mark Talbot Alternate
Sam Saldivar, Jr. Alternate
Juan Mujica Alternate

Absent: Rogelio Rodriguez Member

Omar Garcia Senior Planner

Katia Sanchez Planner I

Julian Hernandez Planning Technician I
Carmen White Administrative Assistant

### CALL TO ORDER –Chairperson Sylvia Hinojosa

#### 1. MINUTES:

- a) Minutes for the meeting held on March 3, 2022.
- **b)** Minutes for the meeting held on March 17, 2022.

The minutes for the meeting held on March 3, 2022 and March 17, 2022 were approved. The motion to approve the minutes was made by Mr. Hugo Avila. Vice-Chairperson Jose Gutierrez seconded the motion, which carried unanimously with five members present and voting.

### 2. PUBLIC HEARINGS:

a) Request of Maria Carmen Salazar for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 23.73 feet into the 37.73 feet front yard setback for a proposed wooden porch addition measuring 15.25 feet by 17.20 feet at Lots 10 and 11, Block 1, Monterrey Subdivision, Hidalgo County, Texas; 1410 Mobile Avenue. (ZBA2022-0008)

Ms. Sanchez stated the applicant was requesting a variance for a proposed wooden porch addition that would encroach into the front yard setback along South Main Street. The applicant would like to construct the wooden porch addition for recreational purposes.

The subject property was located at the northwest corner of Mobile Avenue and South Main

Zoning Board of Adjustment & Appeals April 6, 2022 Page 2

Street and has a total area of 5,750 square feet. The property is zoned R-2 (duplex-fourplex residential) District and there is a single-family residence on the property occupying both lots. Surrounding land uses are a commercial plaza to the north with uses that include Ultrasound and AR Beauty Studio. Other surrounding land uses include single-family residences, Rose Lawn Cemetery to the east, and a vacant property to the north.

The subdivision was recorded on February 14, 1938. The property was zoned R-2 (duplex-fourplex residential) District.

A variance request to allow a zero-foot rear yard setback instead of the required five-foot rear setback for Lots 1-5 of this same subdivision was granted by the Zoning Board of Adjustment and Appeals Board on June 17, 1999.

On February 20, 2019 the Zoning Board of Adjustment and Appeals approved a variance request to allow an encroachment of 43.66 feet into the 52.66 feet front yard setback for a wooden porch measuring 15.5 feet by 20.25 feet for the subject property. An application for a building permit was submitted on March 01, 2022 for a proposed porch addition to the existing porch structure. An application for a variance request for the proposed porch addition was submitted on March 01, 2022.

The house was made of brick construction and there is an existing wooden porch along the east side of the property. The plat does not include plat notes regarding building setbacks. However, Section 138-367 on the Zoning Ordinance (Front Yards) states that when 50 percent or more of the frontage on one side of a street on any one block is improved with buildings that have a front yard which is greater than the required front yard in the district, no new building shall project beyond the average front yard so established. Based on the average of the existing front yard setbacks on this block for the lots that have a structure on them, the average building set back is 37.73 feet.

The variance request was to allow the construction of a wooden porch addition measuring 15.25 feet by 17.20 feet that would encroach 23.73 feet into the 37.73 feet front yard setback. The applicant is interested in constructing the wooden porch addition to enjoy time outside her house under a roof structure.

The contractor and the applicant are aware that there is a triangular area at the corner of the property (bounded by South Main Street and Mobile Avenue) where structures are not permitted since it may impair visibility of traffic at the intersection. Sight visibility triangles are intended to provide a clear line of sight at intersections. They have acknowledged in writing that the proposed construction will not encroach into this area.

There were no utility easements along the front of the subject property.

Staff had not received a phone call in support or opposition of the variance requests.

Staff recommended disapproval of the variance request as the request since it is not due to any special conditions of the property. However, if the Board chooses to grant the variance, it should be limited to the encroachment shown on the submitted site plan.

Board member Ann Tafel asked staff the current setbacks were 37 feet. Ms. Sanchez stated yes. Staff determined the setbacks by using the averaging method. The ordinance stated that if 50% or more of the block had an existing structure, they take the average of

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the setbacks based on that block. Ms. Sanchez also stated that this was used to square off the existing porch. She stated the applicant in order to avoid in that visibility triangle she was angling it to not obstructing that sight triangle.

Ms. Maria Carmen Salazar, the applicant stated she was proposing to build a wooden porch addition. She stated she was in remission of her medical condition and could not be in the sun for a period of time. She wanted to extend the porch so that she could be outside.

Vice-Chairperson Gutierrez asked staff if it was going to be enclosed in the near future. Ms. Sanchez stated that would be a question for the applicant. Vice-Chairperson Gutierrez asked the applicant if she was planning on enclosing the porch. Ms. Salazar stated no.

Ms. Sanchez stated there was one person present in favor of the variance request.

Ms. Esperanza Mustaffa, 1216 South Main Street, stated she lived behind the applicant and was in favor of variance request. She stated the porch did not bother her.

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

Chairperson Sylvia Hinojosa asked if there was anyone present in opposition of the variance request. There was no one in opposition of the variance request.

Following discussion, Ms. Ann Tafel <u>moved</u> to approve the variance request as submitted on the site plan. There was no second of the motion, so the motion died.

Mr. Hugo Avila <u>moved</u> to disapprove the variance request. Vice-Chairperson Jose Gutierrez seconded on the motion. The Board voted to disapprove the variance request with three members voting aye and two members voting nay.

b) Request of Joyce Landwehr on behalf of Black Bear Diner for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 4.17 feet into the 75 feet front yard setback for a covered porch measuring 12.83 feet by 20 feet at Lot 1, T.M.J.C. Subdivision, Hidalgo County, Texas; 602 Expressway 83. (ZBA2022-0009)

Ms. Sanchez stated the applicant requested a variance to encroach 4.17 feet into the 75 feet front yard setback for a proposed covered porch. As per the applicant, the proposed covered porch will provide Black Bear Diner a branding feature to the existing structure, and will provide protection to the patrons of the restaurant from inclement weather.

The subject property was located at the northwest corner of U. S. Expressway 83, and South 6<sup>th</sup> Street. The property is zoned C-3 (general business) District. Adjacent zoning is C-3 District in all directions.

T.M.J.C. Subdivision was recorded on January 8, 1986. The site was the former location for two restaurants, Shoney's and El Pastor Grill. An application for a building permit was submitted on February 08, 2022. An application for the variance request was submitted to the Planning Department on March 02, 2022.

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The variance request was to allow an encroachment of 4.17 feet into the 75 feet front yard setback for a proposed covered porch. The proposed covered porch measured 12.83 feet by 20 feet.

The proposed covered porch will not extend into the parking lot, and will serve as a covering for a waiting area for restaurant patrons and was intended to provide protection to the patrons of the restaurant during inclement weather.

The covered porch served as a distinctive exterior feature to the Black Bear Diner restaurants. The restaurant was a bear-themed dining concept serving home-style food.

At the meeting of September 17, 2022, the Zoning Board of Adjustment and Appeals approved an encroachment of 27 feet into the 75 feet front yard setback for a new meeting room addition to the Drury Inn and Suites hotel located at Lot 2, T.M.J.C Subdivision (west of the subject property).

Staff had not received any phone call or email in opposition of the variance request.

Staff recommended approval of the variance request since the encroachment was minimal.

Mr. Patrick Burke, the representative, BBR Architect, 1701 Pacific Avenue, Dallas stated he was present on behalf of Black Bear Diner.

Chairperson Sylvia Hinojosa asked if there was anyone present in favor of the variance request. There was no one in favor of the variance request.

Chairperson Sylvia Hinojosa asked if there was anyone present in opposition of the variance request. There was no one in opposition of the variance request.

Ms. Ann Tafel **moved** to approve the variance request per staff's recommendation. Mr. Hugo Avila seconded the motion. The Board voted to approve the variance request with five members present and voting.

### 4. FUTURE AGENDA ITEMS:

- a) 4425 Sandpiper Avenue
- **b)** 2612 Brazos Court
- c) 808 Upas Avenue
- d) 405 Cornell Avenue
- e) 1017 Orange Avenue
- f) 218 North 17<sup>th</sup> Street

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# **ADJOURNMENT**

There being no further business to come b	efore the Zoning Board of Adjustment and
Appeal, Chairperson Sylvia Hinojosa moved	to adjourn the meeting.
	Chairperson Sylvia Hinojosa
Carmen White, Administrative Assistant	

# **Planning Department**

## Memo

**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** April 11, 2022

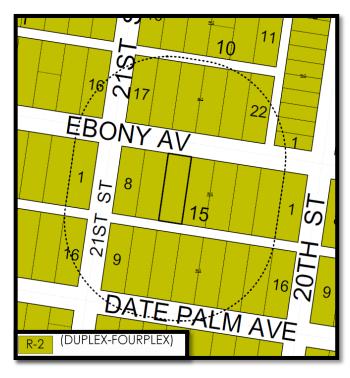
SUBJECT: REQUEST OF DANIEL ROSAS FOR THE FOLLOWING SPECIAL EXCEPTION TO

THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 13 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR A METAL CARPORT MEASURING 20 FT. BY 25 FT. AT THE FRONT 2) AN ENCROACHMENT OF 6 FT. INTO THE 6 FT. SIDE YARD SETBACK FOR AN ATTACHMENT TO THE PROPOSED CARPORT MEASURING 10 FT. BY 64 FT. AT LOT 6, BLOCK 15, C.E HAMMOND SUBDIVISION, HIDALGO COUNTY, TEXAS;

2021 EBONY AVENUE. (ZBA2022-0010)

### **REASON FOR APPEAL:**

The applicant is requesting a special exception for an encroachment into the front yard and side yard setbacks in order to construct a metal carport. The carport measures 20 ft x 25ft at the front and 10 ft x 64ft on the side. According to the applicant, the carport is to be built to protect his vehicles from the weather elements and accommodate parking area for the front part of his property.





### PROPERTY LOCATION AND VICINITY:

The subject property is located on the South side of Ebony Avenue. The property is located 100 feet from 21<sup>st</sup> Street the lot size is 7000 sq. feet according to the subdivision plat. The surrounding land use is all zoned single-family residential.

### **BACKGROUND AND HISTORY:**

The property is located along the south side of Ebony Avenue, approximately 100 feet east of North 21<sup>st</sup> Street. The property has 50 feet of frontage along Ebony Avenue with a depth of 140 feet for a total area of 7,000 square feet. There is a single-family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions. The surrounding land use is single family residential. There has been no previous permits requested for this property.

### **ANALYSIS:**

Request number one is for a special exception to allow an encroachment of 13 feet into the 20 feet front yard setback for an existing metal carport measuring 20 feet by 25 feet over an existing patio. The carport is not enclosed which allows for visibility when entering or exiting the property, since the car port is located 10 feet from the curb it does not pose any obstruction to traffic.

Request number two is for a special exception to allow an encroachment of 6 feet into the 6 feet side yard setback for an existing metal carport measuring 10 feet by 64 feet over an existing driveway. The carport is not enclosed which allows for visibility when entering or exiting the property, since the car port is located 10 feet from the curb it does not pose any obstruction to traffic. The carport forms an L-shape around the current residence.

The proposed carport will accommodate the placement of 5 vehicles on the property.

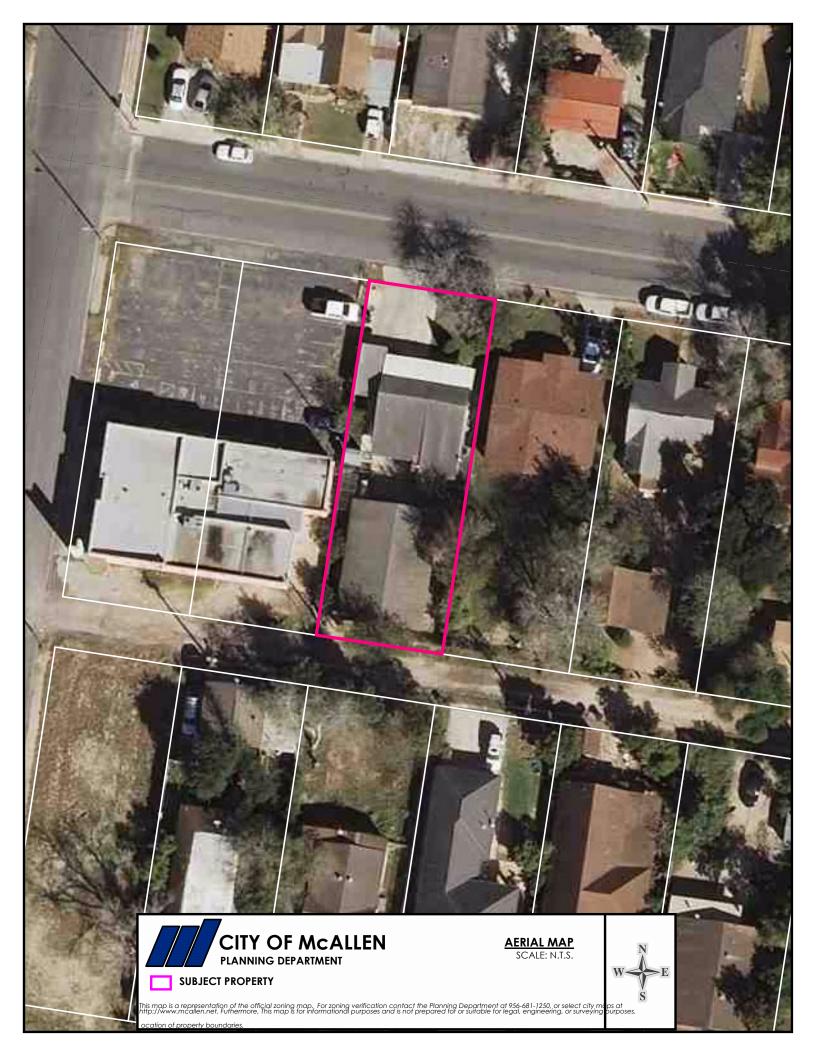
There is an alley on the property but no access on the subject property.

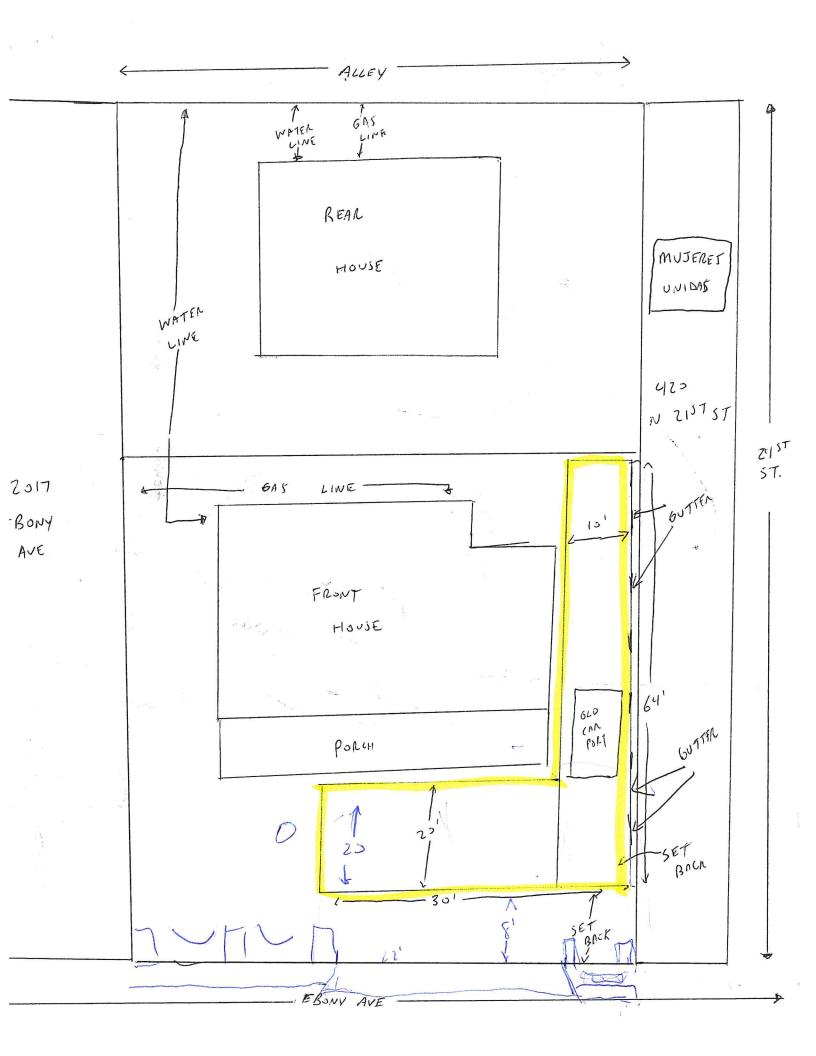
During the site visit, staff noticed other similar encroachments, specifically carports located at the front yard and side yard along Ebony Avenue; there are four other encroaching carports, in which they encroach both side and front yard setbacks within the same block along Ebony Ave. There are a total of six other carports along Ebony Ave and on the north side of Datepalm Ave between Bicentennial Blvd and North 23rd. The metal carport on the subject property is a characteristic of construction along the area. A review of the planning department records indicate a carport approved in 2019 and another previously in 2015.

Special exceptions are issued to an individual and recorded, however if new owner purchases the home they will have to apply as new owner.

### **RECOMMENDATION:**

Staff recommends disapproval of the special exception request of the proposed carport, due to the excessive size of the structure. However, if the Board approves the request it should be limited to the encroachment shown in the submitted site plan.















# **PLANNING DEPARTMENT**



311 N 15th Street McAllen, TX 78501 Phone: 956-681-1250 Fax: 956-681-1279

# **2022 CALENDAR**

Meetings:  City Commission ☐ Planning & Zoning Board ☐ Zoning Board of Adjustment ☐ HPC - Historic Preservation Council								Deadlines:  D- Zoning/CUP Application  * Holiday - Office is closed												
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30	24 31 A-2/16 & 2/17	25	26 <b>HPC</b>	27	28	29	27	A-3/16 & 3/17												
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			N-3/16 & 3/17 D - 4/5 & 4/6																	
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	21 A-4/5 & 4/6	22	23 N-4/5 & 4/6	24	25	26	17	18 A- 5/3 & 5/4	19	N- 5/3 & 5/4 D-5/17 & 5/18	21	22	23							
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	2 A- 5/17 & 5/18	3	4 D: 6/1 & 6/7 N-5/17 & 5/18	5	6	7		6 A-6/21 P&Z	7	8 N-6/21 P&Z	9	10	11							
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15	16 A-6/1 ZBA	17	18 N-6/1 ZBA D-6/15 & 6/21	19	20	21	19	20 A-7/6 & 7/7	21	22 N-7/6 & 7/7	23	24	25							
22	23 A-6/7 PZ HOLIDAY 30	24		26	27 A-6/15 ZBA	28	26	27	28	29 <b>HPC</b>	30									
			subject to cha	nge at any ti	me. Please o	contact the	e Plannin	g Department	at (956) 681	-1250 if you h	ave any que	stions.								



# **PLANNING DEPARTMENT**



311 N 15th Street McAllen, TX 78501 Phone: 956-681-1250 Fax: 956-681-1279

# **2022 CALENDAR**

A Pu	ity Commis Iblic Utility E Historic Pre	ssion Board	Meetings:		& Zoning oard of Adju														
1176 -	HISTORIC PRE	es Council		29.			Tione	day Office		GUST 20	199								
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					<u></u>		30	31 A-11/16 & 11/17		HPC		<u></u>							
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27	28	29	30	<u>_</u>		-	25	HOLIDAY	27	28	29	30	31						
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Deadline	s and Meeting	g Dates are	subject to cha	nge at any ti	me. Please c	contact the	e Plannin	g Department	at (956) 681	-1250 if you h	ave any que	stions.							

## 2022 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/05/22	01/19/22	02/02/22	02/17/22	03/03/22	03/1722	04/06/22	04/20/22	05/04/22	05/18/22	06/01/22	06/15/22	07/07/22	07/20/22	08/03/22	08/17/22	09/08/22	09/21/22	10/05/22	10/19/22	11/02/22	11/16/22	12/07/22	12/21/22
ERICK DIAZ- CHAIRPERSON	Р																							
SYLVIA HINOJOSA-CHAIRPERSON	Р	Р	Ρ	Р	Α	Α	Ρ																	
JOSE GUTIERREZ-VICE-CHAIR	Р	Р	Р	Р	Р	Р	Р																	
ANN TAFEL	Α	Р	Р	Р	Р	Р	Р																	
HUGO AVILA	Р	Р	Р	Р	Ρ	Р	Р																	
ROGELIO RODRIGUEZ	Р	Р	Р	Р	Ρ	Р	Α																	
REBECCA MILLAN (ALT 1)	Р	Р	Р	Р	Ρ	Р	Р																	
MARK TALBOT (ATL 2)				Р	Р	Α	Р																	
SAM SALDIVAR (ALT 3)				Р	Р	Α	Р																	
JUAN MUJICA (ALT 4)				Р	Р	Р	Р																	

P - PRESENT

A - ABSENT

NEW APPOINTMENT

**MC - MEETING CANCELLED** 

**NRM - NO MEETING** 

LOQ - LACK OF QUORUM

**RS - RESIGNATION**