

## AGENDA

### ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, AUGUST 4, 2021 - 4:30 PM MCALLEN DEVELOPMENT CENTER, 311 NORTH 15<sup>TH</sup> STREET EXECUTIVE CONFERENCE ROOM

Web: <https://zoom.us/join> or phone: (346) 248-7799

Meeting ID: 672 423 1883

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 Erick Diaz

#### 1. MINUTES:

- a) Minutes for the meeting held on July 21, 2021

#### 2. PUBLIC HEARINGS:

- a) Request of Maria Garcia for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of up to 8 ft. into the 20 ft. front yard setback for an existing carport measuring 20 ft. by 20 ft., at Lot 12, Ponderosa Park Phase I Subdivision, Hidalgo County, Texas; 2904 Kerria Avenue. **(ZBA2021-0029)**
- b) Request of Rafael de la Fuente for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 24.5 ft. into the 25 ft. front yard setback for an existing canvas carport measuring 22.9 ft. by 19.8 ft., at Lot 83, Ponderosa Park Phase 7 Subdivision, Hidalgo County, Texas; 3416 Esperanza Avenue. **(ZBA2021-0030)**
- c) Request of Sonia Abigail De Leon for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 22.4 ft. into the 25 ft. front yard setback for a proposed carport measuring 20 ft. by 21.5 ft., at Lot 81, Saddle Creek Unit 1 Subdivision, Hidalgo County, Texas; 9216 North 32nd Street. **(ZBA2021-0031)**
- d) Requests of Arnulfo and Maria Segovia for the following special exception and variance to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of up to 19.1 ft. into the 25 ft. front yard setback for a existing metal carport measuring 20 ft. by 18 ft., **2)** an encroachment of up to 4.33 ft. into the 5 ft. side yard setback along the west property line for an existing metal carport measuring 20 ft. by 18 ft., and **3)** an encroachment of 1.7 ft. into the 10 ft. rear yard setback for an existing storage building measuring 12 ft. by 12 ft. at Lot 83, Olivarez Subdivision No. 5, Hidalgo County, Texas; 2908 Upas Avenue. **(ZBA2021-0020)**
- e) Request of Ignacio Guerra III for the following special exception and variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 10 ft. into the 10 ft. rear yard setback for a proposed irregular shaped metal carport, **2)** to not require a 5 ft. separation for an accessory building to the main building for a proposed irregular shaped metal carport, **3)** to allow an encroachment of 10 ft. into the 10 ft. corner side yard setback along the west property line for an existing jacuzzi, and **4)** to allow an encroachment of 10 ft. into the 10 ft. corner side yard setback along the west property line for a proposed porch canopy measuring 17 ft. by 34 ft., at Lot 82, Las Villas Subdivision Unit No. 2, Hidalgo County, Texas; 101 East Marigold Avenue. **(ZBA2021-0032)**

### **3. FUTURE AGENDA ITEMS**

- a)** 2604 Toronto Avenue
- b)** 400 Date Palm Avenue
- c)** 405 Cornell Avenue
- d)** 1325 East Keeton Avenue
- e)** 3608 Upas Avenue

#### **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 PLANNING & ZONING COMMISSION 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 Thursday, July 21, 2021 at 4:30 p.m. in the City Commission Meeting Room with the following present:**

<b>Present:</b>	<b>Erick Diaz</b>	<b>Chairperson</b>
	<b>Sylvia Hinojosa</b>	<b>Member (Zoom)</b>
	<b>Jose Gutierrez</b>	<b>Member</b>
	<b>Ann Tafel</b>	<b>Alternate</b>
	<b>Hugo Avila</b>	<b>Alternate</b>
	<b>Rogelio Rodriguez</b>	<b>Alternate (Zoom)</b>
	<b>Rebecca Millan</b>	<b>Alternate</b>
<b>Absent:</b>	<b>John Millin</b>	<b>Vice-Chairperson</b>
	<b>Juan F. Jimenez</b>	<b>Member</b>
<b>Staff Present:</b>	<b>Issac Tawil</b>	<b>City Attorney</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</b>
	<b>Hebert Camacho</b>	<b>Planner I</b>
	<b>Mario Escamilla</b>	<b>Planner I</b>
	<b>Katia Sanchez</b>	<b>Planner I</b>
	<b>Porfirio Hernandez</b>	<b>Planning Technician II</b>
	<b>Julian Hernandez</b>	<b>Planning Technician</b>
	<b>Carmen White</b>	<b>Secretary</b>

**CALL TO ORDER –Chairperson Erick Diaz**

**1. MINUTES:**

- a)** Minutes for the meeting held on July 21, 2021.

The minutes for the meeting held on July 21, 2021 were approved. The motion to approve the minutes was made by Mr. Jose Gutierrez. Ms. Sylvia Hinojosa seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a)** Request of Riverside Development Service, LLC for the following variance to the City of McAllen Zoning Ordinance to allow a lot width less than 50 ft. with a minimum width of 29.66 ft. for lot 90 of proposed Campo de Sueños Phase II, 41.18 ft. to 49.98 ft. for Lots 58-64,66-68,71,73-79,88,91-97,101-103 of proposed Campo de Sueños Phase II, 24.65 ft. for Lot 139 of proposed Campo de Sueños Phase III, 26.89 ft. for Lot 138 of proposed Campo de Sueños Phase III, 34.12 ft. to 38.82 ft. for Lots 124,125,137,140,143-146,148 of proposed Campo de Sueños Phase III, 40.22 ft. to 49.49 ft. for Lots 106,111-113,123,126,127,130-136,141,147,149,151-160,168-172 of proposed Campo de Sueños Phase III, For a 26.663 acre tract of land out of Lot 45 and 52, La Lomita Irrigation and

Construction Company's Subdivision, Hidalgo County, Texas; 8300 North Ware Road. **(ZBA2020-0087) WITHDRAWN**

**This item was withdrawn no action was needed.**

- b) Requests of Armando Cobos for the following special exception to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 14.33 ft. into the 25 ft. front yard setback for a proposed metal carport measuring 16 ft. by 26 ft., and **2)** an encroachment of up to 3.52 ft. into the 6 ft. side yard setback for a proposed metal carport measuring 16 ft. by 26 ft., at Lot 44, North Depot Subdivision, Hidalgo County, Texas; 2232 Nyssa Avenue. **(ZBA2021-0022)**

Mr. Escamilla stated Armando Cobos, as requesting a special exception to allow: 1) an encroachment of 14.33 ft. into the 25 ft. front yard setback for a proposed metal carport measuring 16 ft. by 26 ft., and 2) an encroachment of up to 3.52 ft. into the 6 ft. side yard setback for a proposed metal carport measuring 16 ft. by 26 ft. The applicant is requesting the special exception in order to build a carport for shade to help with his medical conditions and protect his vehicles.

The property was located along the north side of Nyssa Avenue, approximately 390 feet east of North 23<sup>rd</sup> Street. The property has 50 feet of frontage along Nyssa Avenue with a depth of 100 feet for a total area of 5,000 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.

The subject property was located within North Depot Road Subdivision, and is considered a de facto subdivision. The plat does not indicate setbacks. However, any new construction is required to meet current Zoning Ordinance setback requirements. The current Zoning Ordinance setbacks for the R-1 District are as followed, the front yard setback is 25 feet, the side yard setbacks are 6 feet and the rear yard setback is 10 feet. An application for the variance request was submitted on June 01, 2021. An application for a building permit for a proposed porch was submitted initially on May 29, 2012 however, the permit never received a final inspection. The applicant has submitted a revised application with a new addition for a proposed carport.

The proposed 26 ft. by 16 ft. carport will be of metal construction and is proposed to be built over an existing concrete driveway. The submitted site plan shows a proposed carport attached to the house encroaching 14.33 ft. into the 25 ft. front yard setback and up to 3.52 ft. into the 6 ft. side yard setback. Front yard setbacks are important to help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Currently there is no alley access or garage on the subject property.

The applicant has been apprised of other structures that appear to be encroaching on the side and rear setbacks of the property. The applicant decided not to include those requests at this time.

The applicant can relocate the proposed carport toward the interior of the lot to be in compliance with the side yard setback, but this option would place the support structures in the current parking area and involve a re-design of the concrete driveway to accommodate the new location.

During a site visit, staff noticed other similar encroachments in the area. A review of Planning Department records did not reveal any variances granted along this street.

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

Staff recommended disapproval of the special exception request. If the Board grants approval of the request it should be limited to the footprint shown on the submitted site plan.

Board member Hugo Avila asked staff why on this case pertaining to a special exception it was recommending disapproval as opposed to other special exceptions that were for approval. Ms. Escamilla stated their decision it was still a front yard encroachment.

Board member Jose Gutierrez asked staff that there were other structures with encroachments that were not included in this case what was the applicant purposing to do with them. Mr. Escamilla stated that the applicant was present to answer that question.

Chairperson Diaz asked staff if there was a violation involved.

Legal, Mr. Austin Stevenson said the Planning Department was not responsible for enforcement and they would turn the information over to the Building Permit Department inspectors.

Board member Ann Tafel asked staff if they saw a copy of the building plan of the proposed carport and will it have gutters on the side. Mr. Escamilla stated it would be made of metal but did not mention anything about gutters.

Chairperson Diaz asked staff if they discussed with the applicant about reducing or changing the design of the carport. Mr. Escamilla stated they did. He stated when did a site visit they spoke with the applicant in moving the carport over but the way of the current driveway was designed it did not allow the structure posts to line up to where he parks.

Board member Sylvia Hinojosa asked staff when was this property built. Mr. Escamilla stated the plat they had was built back in the 1950s. Ms. Hinojosa's concern was that a lot of the restrictions that the City has now do not apply to a lot of these properties. One cannot restructure the property or the house. She stated it would be difficult to give them 6 feet on the side when they only have 1 foot back in the 1950s. Mr. Escamilla this was a special case because the subdivision was not officially recorded. There were other similar structures in the neighborhood with similar encroachments.

Chairperson Diaz asked staff if the house respects the setback. Mr. Escamilla stated if going back to the 1945 code it would be required to meet seven on the east and five on

the west. The house sits 3.62 feet to the fence line. Mr. Escamilla stated the proposed porch was roughly 10 feet away from the back up curb.

Mr. Armando Cobos, the applicant stated he wanted to build a carport to protect his vehicle from inclement weather but also for his safety with medical conditions. He wanted to build the carport from edge of the house to the street from side to side of the porch.

Board member Rogelio Rodriguez had concerns if allowed to go up to the area where the house is now it would pose a problem with the water runoff.

Mr. Amel Cobos, the applicant's son stated the structure will be built with the water going straight down into the street. If the concerns were with the gutters they could install them.

Chairperson Diaz asked if it was going to be attached to the building. The son stated no.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the special exception. There was no one else in favor of the special exception.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the special exception. There was no one in opposition of the special exception.

Mr. Hugo Avila **moved** to approve the special exception to the footprint as presented. Ms. Ann Tafel seconded the motion. The Board voted to approve the special exception with five members present and voting.

- c) Request of Sinai Ramirez, for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 20 ft. into the 20 ft. front yard setback for a proposed metal carport measuring 25 ft. by 20 ft., at Lot 152, Colonia McAllen Subdivision No. 6, Hidalgo County, Texas; 2201 South 31st Street. (ZBA2021-0027)**

Mr. Camacho stated the applicant was requesting a special exception to encroach 20 ft. into the 20 ft. front yard setback for a proposed metal carport that measures 20 ft. by 20 ft. The applicant was requesting to allow the carport at the proposed location, since it will protect her from the sun; the applicant had surgery on her face and she needs to limit the amount of sun exposure, additionally the carport would protect the vehicles from inclement weather and they would be able to enjoy the afternoon outside.

The subject property was located on the east side of North 31<sup>st</sup> Street, approximately 250 ft. north of Yuma Avenue. The property had 50 ft. of frontage along North 31<sup>st</sup> Street and a depth of 111 ft. with a lot size of 5,550 square feet. The property and adjacent zoning was R-1 (single family residential) District in all directions. Surrounding land use include single-family residential houses.

Colonia McAllen Subdivision No.6 was recorded on August 2, 1976. The plat specifies a 20 ft. front yard setback. A stop work order was issued by Building and Inspections Department staff on June 1, 2021 for the installation of a carport without a permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department

on June 3, 2021. An application for special exception request for encroachment of an existing carport was submitted to the Planning Department on June 11, 2021.

The special exception request was to allow an encroachment of 20 ft. into the 20 ft. front yard setback for proposed metal carport that measures 20 ft. by 20 ft. the construction has been initiated and the frame of the carport is already on place, however, the carport is not completed yet. The plat for the subdivision specified a 20 ft. front yard setback. The carport is aligned with the existing house and it was not encroaching into the side setbacks.

There was one variance request on file for a carport encroaching into the front yard and side yard setback for this subdivision; however, the request was disapproved in 2020. A site inspection confirmed that there are existing carports built around the neighborhood without a permit. There are other structures around the area that seemed to be encroaching into rear and side setbacks.

Staff had not received any phone calls or concerns in regards to the special exception request.

Staff recommended approval of the special exception since it complies with Section 138-371 (b) (1) of the Zoning Ordinance. If the Board chooses to approve the request, the approval should be limited to the proposed location shown on the site plan.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the special exception. There was no one else in favor of the special exception.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the special exception. There was no one in opposition of the special exception.

Chairperson Diaz asked Ms. Ramirez, the applicant if it would be an issue if she was to put gutters on her proposed metal carport. Ms. Ramirez stated it would not be an issue to put gutters if required.

Mr. Hugo Avila **moved** to approve the special exception as presented. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the special exception with five members present and voting.

- d) Request of Jonathan C. Arthur, for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 15 ft. into the 25 ft. rear yard setback for 1.) A proposed pool measuring 37.19 ft. by 13.92 ft., and 2.) a proposed BBQ area measuring 13.92 ft. by 10.80 ft. at Lot 71, La Floresta Subdivision Phase I, Hidalgo County, Texas; 9500 North 17th Street. **(ZBA2021-0026)**

Mr. Camacho stated the applicant was requesting a variance to a double fronting lot to encroach 15 ft. into the 25 ft. rear yard setback for a proposed pool that measures 37.19 ft. by 13.92 ft. and for a proposed BBQ area that measures 13.92 ft. by 10.80 ft. The applicant is requesting to allow the swimming pool and BBQ area at the proposed location, since it will keep the applicant's family happy and he would be matching the character of the neighborhood.

The subject property was located on the east side of North 17<sup>th</sup> Street, approximately 450 ft. north of Ozark Avenue. The property had 60 ft. of frontage along North 17<sup>th</sup> Street and a depth of 120 ft. with a lot size of 7,200 square feet. The property and adjacent zoning is R-1 (single family residential) District in all directions. Surrounding land use include single-family residential houses and vacant land.

La Floresta Subdivision Phase I was recorded on September 5, 2008. The plat specifies that double fronting lots (along N. Bicentennial Blvd.) have a 25 ft. rear yard setback. An application for a building permit for a swimming pool was submitted to the Building Permits & Inspections Department on May 21, 2021. An application for a variance request for encroachment for a proposed swimming pool and BBQ area was submitted to the Planning Department on June 14, 2021.

The variance request was to allow an encroachment of 15 ft. into the 20 ft. rear yard setback for proposed swimming pool and BBQ Area that measures 37.19 ft. by 13.92 ft. and 13.92 ft. by 10.80 ft. respectively. The plat for the subdivision specifies a 25 ft. rear yard setback for double fronting lots along N. Bicentennial Blvd. (lots 60-72). Standard rear yard setback in R-1 Districts was 10 ft. The development of the subdivision has built an 8 ft. masonry wall along the rear of the lots and N. Bicentennial Boulevard. There is a 10 ft. Utility Easement at the rear of the lot that will not be impacted by the proposed swimming pool and BBQ Area.

There are three variance requests on file, similar to the variance request; encroachment for swimming pool and other structures into the rear yard setback that were approved in 2017-2019, along the double fronting lots. A site inspection confirmed that there are existing structures in the property (pergola and storage) that will be removed to make room for the proposed constructions. Additionally, there are existing structures that seemed to be encroaching into the rear and side setbacks around the neighborhood that are without a permit.

Staff had not received any phone calls or concerns in regards to the special exception request.

Staff recommended disapproval of the variance request. If the Board chooses to approve the request, the approval should be limited to the proposed location shown on the site plan.

Board member Jose Gutierrez asked staff not for this case but in general there were existing structures seem to be encroaching in the rear and sides around the neighborhood without a permit. Mr. Camacho stated as the prior case that would be a Code Enforcement issue. Mr. Stevenson stated it was a complaint based process. Inspectors are out throughout the day responding to complaints that come from citizens. If the information is passed to them then action would be taken.

Chairperson Diaz asked staff regarding double fronting lots. Was that going to change at some point for rear setbacks on double fronting lots. Mr. Luis Mora, Deputy Director stated the City was being in the process of doing a Comprehensive Plan and with that will come a revision of an Ordinance. Typically, the double fronting setbacks in the rear was because there's a backyard usually backed up to a street so the safety reasons come into

play for that. During that process it could be considered as to whether the City want to keep the double fronting requirements or modify it. Perhaps take it into account the classification of the roadway that was back there whether it was a major local street or a major arterial reflect the setbacks on the type of roadway.

Board member Hinojosa commented that they should consider a ditch. A lot of the properties that were not going to develop behind them when there was a double fronting lots.

Mr. Jonathan C. Arthur, the applicant stated they wanted to build a pool for his wife's and son's medical condition. For the existing structure (pergola) there's no cement used. Chairperson Diaz asked the applicant how far was the house from the pool. Mr. Arthur stated it was a foot and a half from the house. The engineer had redesigned it four times.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the variance request. There was no one else in favor of the variance request.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was no one in opposition of the variance request.

Ms. Sylvia Hinojosa **moved** to approve the variance request. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the variance request with five members present and voting.

- e) Request of Eugenio Garcia for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 10 ft. into the 25 ft. rear yard setback for a proposed single family residence at Lot 23, The Embers Subdivision (Gated Community), Hidalgo County, Texas; 8100 North 3rd Street. **(ZBA2021-0028)**

Mr. Escamilla stated the applicant requests a variance to encroach 10 ft. into the 25 ft. front yard setback for the construction of a single-family residence.

The subject property is located on the cul-de-sac along North 3rd Street and Columbia Avenue. The irregular tract has 54.45 ft. frontage along the cul-de-sac on North 3rd Street with a tract size of approximately 12,428 sq. ft. The property is zoned R-1 (single family residential) District and is currently vacant. Surrounding land uses are single-family residences, and vacant land.

The Embers Subdivision was recorded on June 06, 2016. The applicant is proposing a new residential house on the property. An application for building permit was submitted on June 04, 2021. An application for a variance request was submitted on June 14, 2021.

The variance request is for a proposed single family residence that will encroach 10 ft. into the 25 ft. rear yard setback on a double frontage lot. There is a 15 ft. utility easement adjacent to rear yard setback that will not be impacted by the construction. The 15 ft. utility easement runs concurrently with the 25 ft. rear yard setback and the buildable area at the rear of the property is reduced by the 25 ft. setback requirement.

The standard rear yard setback for lots in the R-1 District is 10 ft. The Zoning Ordinance requires the rear yard setback to be the same as the front yard setback lots for lots with double frontage. The purpose of the additional setback of the rear yard is to separate the main building from the traffic and noise from roadways.

In the past, the Board had approved variances for accessory uses, but not for living areas.

On November 06, 2019, the Board voted to approve an encroachment of 10 ft. into the 25 ft. rear yard setback for a spa and 2 ft. into the 25 ft. rear yard setback for a swimming pool at 317 Cornell Avenue (lot 31).

On July 03, 2019, the Board voted to approve an encroachment of 6.58 ft. into the 25 ft. rear yard setback for a porch and 15 ft. into the 25 ft. rear yard setback for a swimming pool at 301 Cornell Avenue (lot 27).

On July 07, 2021, the Board voted to disapprove an encroachment of 10 ft. into the 25 ft. rear yard setback for a single-family residence at 413 Cornell Avenue (lot 4).

Staff had not received any phone calls in opposition to this variance request.

Staff recommended disapproval of the variance request.

Mr. Eugenio Garcia, 2206 South 49<sup>th</sup> Lane, the architect/builder for the applicants stated he was going to refer to the four questions that were on the back of the application his information to the irregular shaped lot. Because of the irregular shape Lot 23 it had a very large rear property line and short front line. Considering the 25-foot rear setback that they had to have almost one third of the area of the lot was going to be compromised because of it. If compared to Lot 22 which also had 15 feet for utility easement it was only 20 percent that was compromised for this requirement. A regular lot line of Lot 24 it had the 25-foot rear setback it was only 20 percent of the lot compromised for that. He went onto to compare the different lots and measurements with the information he had in order for the house to fit accordingly.

Board member Rogelio Rodriguez mentioned this was the largest lot in the subdivision. He asked Mr. Garcia what was the square footage of the house. Mr. Garcia stated it was going to be 5,500 square feet.

Chairperson Diaz asked if there was anyone present or on Zoom in favor of the variance request. There was no one else in favor of the variance request.

Mr. Jose Cano and Andreina Prado, 4208 Wichita Avenue, stated they wanted to build a one story house for the purpose of having their in-laws close to them. They tried several layouts and this worked out the best. Ms. Prado stated she wanted to have a lot of green area.

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was no one in opposition of the variance request.



Board member Hugo Avila and Chairperson Diaz commended the architect for having an analysis for the project which was very informative.

Mr. Jose Gutierrez **moved** to approve the variance request. Ms. Rebecca Millan seconded the motion. The Board voted to approve the variance request with five members present and voting.

**3. FUTURE AGENDA ITEMS:**

- a) 2908 Upas Avenue
- b) 2904 Kerria Avenue
- c) 3416 Esperanza Avenue
- d) 9216 North 32<sup>nd</sup> Street
- e) 101 East Marigold Avenue

**ADJOURNMENT**

There being no further business to come before the Zoning Board of Adjustment and Appeal, Chairperson Erick Diaz **moved** to adjourn the meeting.

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Chairperson Erick Diaz

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Carmen White, Secretary

## Planning Department

### Memo

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

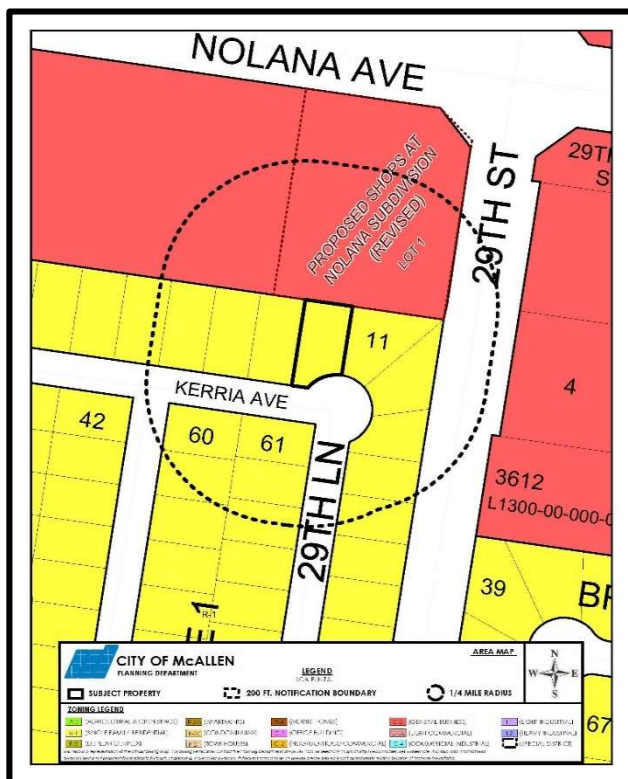
**FROM:** Planning Staff

**DATE:** July 28, 2021

**SUBJECT:** REQUEST OF MARIA GARCIA FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF UP TO 8 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR AN EXISTING CARPORT MEASURING 20 FT. BY 20 FT., AT LOT 12, PONDEROSA PARK PHASE I SUBDIVISION, HIDALGO COUNTY, TEXAS; 2904 KERRIA AVENUE. (ZBA2021-0029)

#### REASON FOR APPEAL:

Maria Garcia, is requesting a special exception to allow an encroachment of up to 8 ft. into the 20 ft. front yard setback for an existing carport measuring 20 ft. by 20 ft. The applicant was unaware that a building permit was never obtained by the builder at the time of construction. The applicant would like the structure to remain because the existing carport provides shade and protection during inclement weather for her medical conditions.



**PROPERTY LOCATION AND VICINITY:**

The subject property is located on a cul-de-sac along Kerria Avenue and North 29<sup>th</sup> Lane. The irregular tract has 73.93 ft. of frontage along the Kerria Avenue with a tract size of 7,376.77 sq. ft. The property is zoned R-1 (single family residential) District. Surrounding land uses are single-family residences, and vacant land.

**BACKGROUND AND HISTORY:**

The subdivision plat for Ponderosa Park Phase I Subdivision was recorded on July 29, 1997. As per plat, the front yard setback shall be 20 ft., the side yard setback shall be 6 ft., and the rear yard setback shall be 10 ft. According to Hidalgo County Appraisal District records the residential home was built in 1998. A stop work order was issued by Buildings and Inspections Department staff on April 21, 2021 for the construction of a carport without a building permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department on April 27, 2021. An application for a special exception request was submitted to the Planning Department on June 22, 2021 for the existing carport.

**ANALYSIS:**

The special exception request is for an existing metal carport measuring 20 ft. by 20 ft. over an existing driveway. The existing carport is open all sides. The submitted site plan shows a carport encroaching up to 8 ft. into the 20 ft.

The property is located along a Cul-de-sac making the property have an irregular shape varying the encroachments at the shortest point to two feet. There is no alley at the rear of the property where a carport could be alternatively built.

During a site visit of the area staff noticed similar encroachments in the area.

Staff has not received any phone calls or emails in opposition to this variance request.

**RECOMMENDATION:**

Staff recommends approval of the special exception request limited to the footprint shown on the submitted site plan.





City of McAllen

## Planning Department

## APPEAL TO ZONING BOARD OF

## ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

Project

Legal Description

Ponderosa Phase I, Lot 12  
2904 Kerria Ave McAllen

Subdivision Name

Ponderosa

Street Address

2904 Kerria Ave

Number of lots

1

Gross acres

Existing Zoning

R-1

Existing Land Use

House

Reason for Appeal (please use other side if necessary)

Letter Attached

☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name

MARIA (Mary) Garcia

Phone

956 929 1062

Address

2904 Kerria Ave

E-mail

Mcarlu@aol.com

City

McAllen

State

TX

Zip

78501

Owner

Name

Mary Garcia

Phone

929-1062

Address

2904 Kerria

E-mail

Mcarlu@aol.com

City

McAllen

State

Zip

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable)  
OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature

Maria Garcia

Date

5/11/21

Print Name

Maria Mary

☒ Owner☐ Authorized Agent

Office

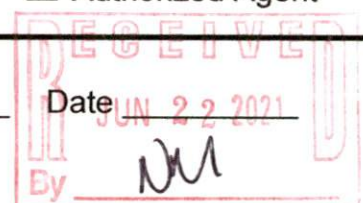
Accepted by

[Signature]

Payment received by

Date

JUN 22 2021







# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

\*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider **any combination** of the following: (Please use an additional page if necessary to complete responses)

\*\*Information provided here by the applicant does not guarantee that the Board will grant a variance.

\*\*\*Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:

Attached letter, I do not reason why my property would be able to have carport.

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:

My property sits at the end of the street all residents debris fly files toward our property during storms.

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:

Carport is well built frame is cemented into ground and metal well bolted. Property is kept clean at all times.

4. Describe special conditions that are unique to this applicant or property:

My cancer has advanced walking to front door during storms or rain can be dangerous. It is also a shade for myself to sit outside.

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date



June 22, 2021

Dear Sir/Ma'am: Re: Post Permit Issue: Ponderosa Park Phase I, Lot 12

My name is Mary Garcia I live at 2904 Kerria Ave. I would like to apologize for not having a permit for my carport, we were sure that the man that built it went and got a permit it, we were not aware of this: His name was Frank from in Edinburg when he started we told him to please handle everything because I was going thru hard chemo and was ill almost all of 2020 with Stage IV breast cancer, he started and finish most of it then he stop coming and his phone was disconnected, so we did the rest and make sure poles were secure with cement into the ground.

Carport was built to help me come in thru garage and during bad weather. Also, this is my outlet on days when I feel really ill I can sit outside without getting too much sun or wind, I don't how long I will stay well since my cancer has advanced. I promise if we ever sold our property I would take down the carport. I ask the board to please consider me and my request. I have taken pictures of other carports in out neighborhood these are only a few and most of them are past property lines as allowed. Thank you and please contact me if you have any questions. Mary Garcia 2904 Kerria Ave. McAllen, Tx

Thank you for your time.

## TOPA Central Texas Region - Texas Oncology McAllen Patient Summary

Patient: GARCIA, MARIA

Medical Record Number: ~~10167259~~

Date: 03/02/2021

DOB: ~~07/24/1962~~

Allergies: ~~Cipro, po solid (ciprofloxacin hcl), Keflex, po solid (cephalexin)~~

Problems: Anemia, Leukopenia, Breast cancer, female, Cancer risk assessment, Dehydration, Hypokalemia, Rib Pain, Lung metastasis, Bone metastasis, Pulmonary embolism



**PROPOSED SHOR  
NOLANA SUBDIVISION  
(REVISED)  
LOT 1**

**KERRIA AVE**

**29TH ST**

**11TH**

**60**

**61**

**11**



**CITY OF McALLEN**  
PLANNING DEPARTMENT



**SUBJECT PROPERTY**

**AERIAL MAP**  
SCALE: N.T.S.



This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes.  
Location of property boundaries.

# NOLANA AVE

PROPOSED SHOPS AT  
NOLANA SUBDIVISION  
(REVISED)  
LOT 1

## 29TH ST

29TH  
S

4

3612

L1300-00-000-0

39

BA

## KERRIA AVE

## 29TH LN

11

42

60

61

R-1



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

1/4 MILE RADIUS



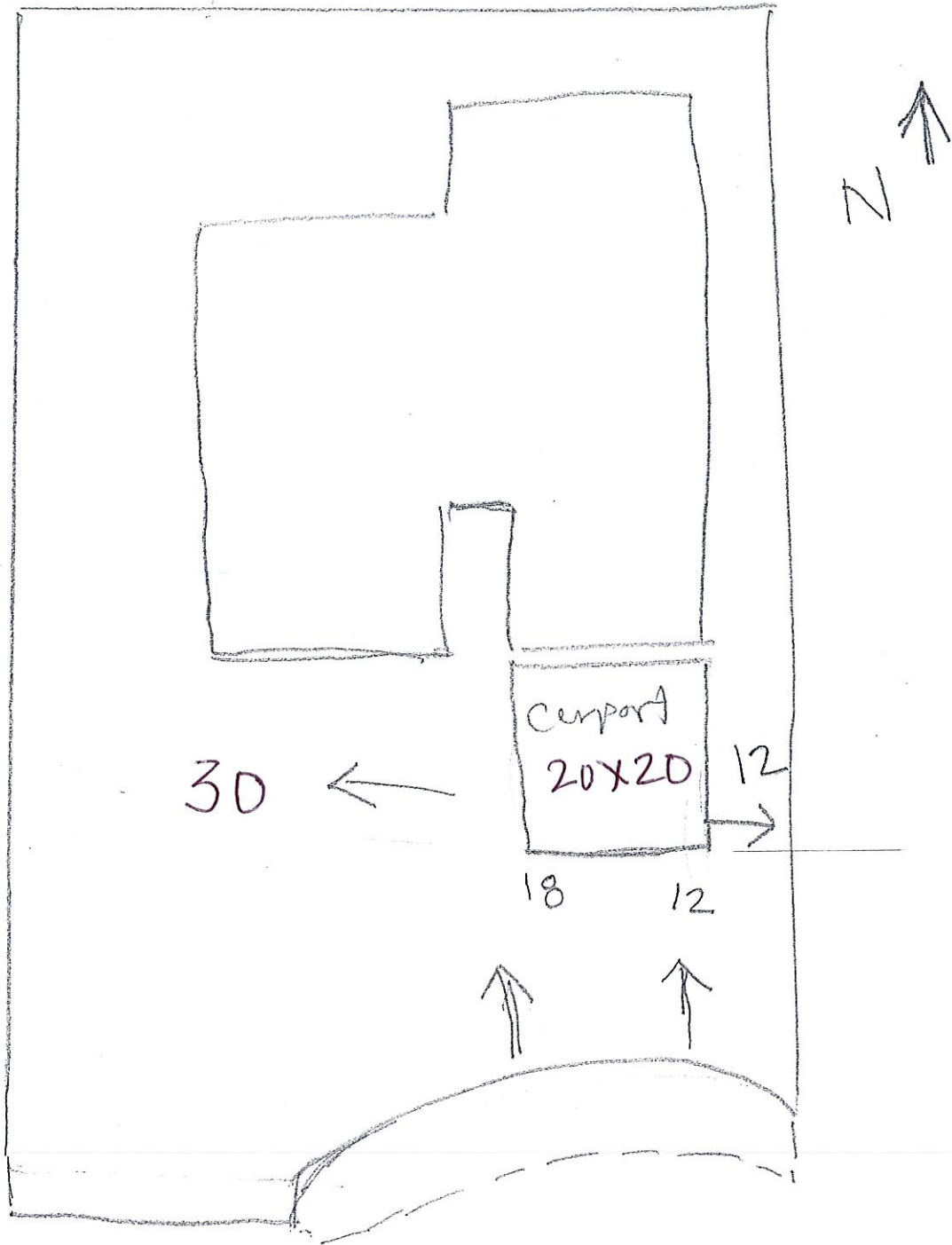
**ZONING LEGEND**

A-0 (AGRICULTURAL & OPEN SPACE)	R-3A (APARTMENTS)	R-4 (MOBILE HOMES)	C-3 (GENERAL BUSINESS)	I-1 (LIGHT INDUSTRIAL)
R-1 (SINGLE FAMILY RESIDENTIAL)	R-3C (CONDOMINIUMS)	C-1 (OFFICE BUILDING)	C-3L (LIGHT COMMERCIAL)	I-2 (HEAVY INDUSTRIAL)
R-2 (DUPLEX-FOURPLEX)	R-3T (TOWNHOUSES)	C-2 (NEIGHBORHOOD COMMERCIAL)	C-4 (COMMERCIAL INDUSTRIAL)	(SPECIAL DISTRICT)

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.

67





2904 Kerria Ave.





NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0029  
CITY OF BOULDER PLANNING DEPT.  
BOULDER, CO  
WWW.BCMALLON.NET

2904

TEXAS  
HSZ-8753



DATE	DEPT. B.	OF (F. B.)	PROJECT
1/5/97	E.L.	W.M.	PONDEROSA PARK PHASE
PRF			CURT
96-315			HIDALGO COUNTY, TEXAS

## Planning Department

### Memo

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

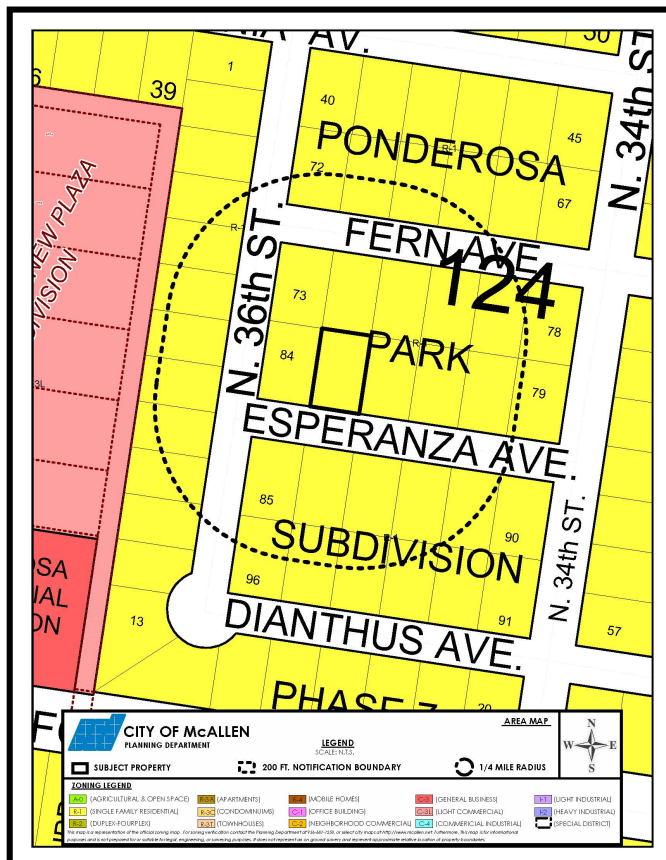
**FROM:** Planning Staff

**DATE:** July 28, 2021

**SUBJECT:** REQUEST OF RAFAEL DE LA FUENTE FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 24.5 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR AN EXISTING CANVAS CARPORT MEASURING 22.9 FT. BY 19.8 FT., AT LOT 83, PONDEROSA PARK PHASE 7 SUBDIVISION, HIDALGO COUNTY, TEXAS; 3416 ESPERANZA AVENUE. (ZBA2021-0030)

#### REASON FOR APPEAL:

Rafael de la Fuente is requesting the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of up to 24.5 ft. into the 25 ft. front yard setback for an existing canvas carport measuring 22.9 ft. by 19.8 ft. The applicant would like the structure to remain because the existing carport provides shade and protection for his vehicles during inclement weather.



**PROPERTY LOCATION AND VICINITY:**

The property is located along the north side of Esperanza Avenue, 69 ft. west of North 36<sup>th</sup> Street. The tract has 64 feet of frontage along Esperanza Avenue with a depth of 102 feet, for a tract size of 6,528 sq. ft. The property is zoned R-1 (single family residential) District. The surrounding land use is single family residential. There is an existing single family residence on the subject property.

**BACKGROUND AND HISTORY:**

Ponderosa Park Phase 7 Subdivision was recorded in January 6, 2003. As per plat, the front yard setback shall be 25 ft., the side yard setback shall be 6 ft., and the rear yard setback shall be 10 ft. According to Hidalgo County Appraisal District records the residential home was built in 2006 and acquired by the applicant in 2009. Three stop work orders were issued by the Buildings and Inspections Department staff between 2014 and 2016 for the construction of a carport without a permit. A fourth stop work order was issued on June 14, 2021. An application for a building permit for a carport submitted to the Building Permits & Inspections Department on September 3, 2014. An application for a special exception request was submitted to the Planning Department on June 24, 2021 for an existing carport.

**ANALYSIS:**

The special exception request is for an existing carport of canvas cover construction measuring 22.9 ft. by 19.8 ft. over an existing driveway. The existing carport is open all sides and visibility is not a concern. The submitted site plan shows a carport encroaching 24.5 ft. into the 25 ft. front yard setback. Front yard setbacks are important to help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

There is an existing garage that is used for recreational activities.

During a site visit staff noticed two other carports in the area; one of the carports was granted a special exception for an encroachment of 20 ft. into the 20 ft. front yard setback at the Zoning Board of Adjustments and Appeals meeting of June 03, 2020. The approved carport is located in Lot 90, Ponderosa Park Phase 6 Subdivision.

Staff has not received any phone calls or emails in opposition to this variance request.

**RECOMMENDATION:**

Staff recommends disapproval of the special exception requests. However, if the Board chooses to approve the requests, the approval should be limited to the footprint shown on the submitted site plan.



ZBOA  
8-4-21

City of McAllen

## Planning Department

APPEAL TO ZONING BOARD OF  
ADJUSTMENT TO MCALLEN ZONING ORDINANCE
 311 North 15<sup>th</sup> Street  
 McAllen, TX 78501  
 P. O. Box 220  
 McAllen, TX 78505-0220  
 (956) 681-1250  
 (956) 681-1279 (fax)

Project

Legal Description Lot 83 Ponderosa Park Phase 7 Subdivision

Subdivision Name Ponderosa Park Phase 7

Street Address 3416 Esperanza Ave

Number of lots 1 Gross acres \_\_\_\_\_

Existing Zoning Residential Existing Land Use \_\_\_\_\_

Reason for Appeal (please use other side if necessary) encroachment into the front setback

☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name Rafael de la Fuente Phone 956-342-4506

Address 3416 Esperanza Ave E-mail rafadelafuente@yahoo.com

City McAllen State Tx Zip 78501

Owner

Name Rafael de la Fuente Phone 956-342-4506

Address 3416 Esperanza Ave E-mail rafadelafuente@yahoo.com

City McAllen State Tx Zip 78501

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable)  
 OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

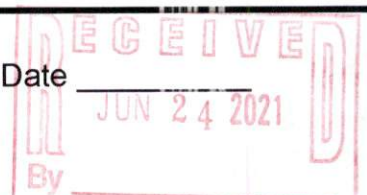
Signature Rafael de la FuenteDate June 23, 2021Print Name Rafael de la Fuente☒ Owner☐ Authorized Agent

Office

Accepted by \_\_\_\_\_

Payment received by \_\_\_\_\_

Date \_\_\_\_\_

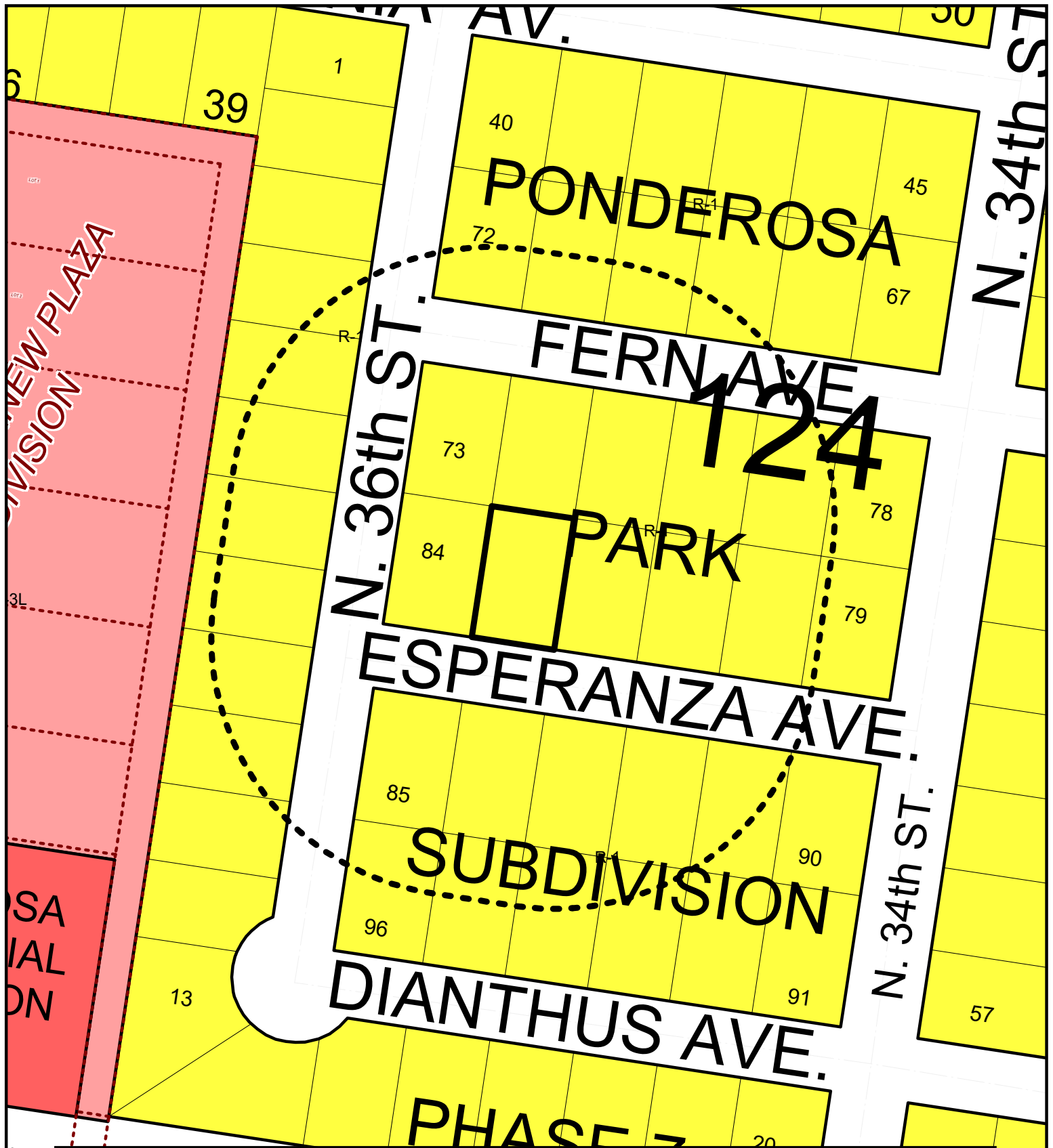





**City of McAllen**  
***Planning Department***  
**REASON FOR APPEAL & BOARD ACTION**

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: <i>(Please use an additional page if necessary to complete responses)</i></p> <p>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</p> <p>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</p>	
	1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:	
	2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:	
	<p><b>The city of McAllen has had a history of storms that has resulted in a destruction of property</b></p> <p><b>Due to hail storms, the. Installation of the canopy on the driveway, will prevent any</b></p> <p><b>Damages to my vehicles in the event of a hail storm or any other climate occurrences.</b></p>	
	3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:	
Board Action	4. Describe special conditions that are unique to this applicant or property:	
	Chairman, Board of Adjustment Signature	Date
	_____	_____










**CITY OF McALLEN**  
PLANNING DEPARTMENT


**LEGEND**  
SCALE: N.T.S.

**AREA MAP**



 **SUBJECT PROPERTY**

 **200 FT. NOTIFICATION BOUNDARY**

 **1/4 MILE RADIUS**

**ZONING LEGEND**

<div style="display: flex; justify-content: space-between;"> <div> <div style="background-color: #90EE90; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>A-0</b> (AGRICULTURAL &amp; OPEN SPACE)</div> <div> <div style="background-color: #FFDAB9; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>R-3A</b> (APARTMENTS)</div> <div> <div style="background-color: #FFA07A; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>R-4</b> (MOBILE HOMES) </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <div style="background-color: #90EE90; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>R-1</b> (SINGLE FAMILY RESIDENTIAL)</div> <div> <div style="background-color: #FFDAB9; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>R-3C</b> (CONDOMINIUMS)</div> <div> <div style="background-color: #FFA07A; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>C-1</b> (OFFICE BUILDING) </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <div style="background-color: #90EE90; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>R-2</b> (DUPLEX-FOURPLEX)</div> <div> <div style="background-color: #FFDAB9; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>R-3T</b> (TOWNHOUSES)</div> <div> <div style="background-color: #FFA07A; border: 1px solid black; width: 15px; height: 10px; display: inline-block;"></div> <b>C-2</b> (NEIGHBORHOOD COMMERCIAL) </div> </div>
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**C-3** (GENERAL BUSINESS)

**I-1** (LIGHT INDUSTRIAL)

**C-3L** (LIGHT COMMERCIAL)

**I-2** (HEAVY INDUSTRIAL)

**C-4** (COMMERCIAL INDUSTRIAL)

**(SPECIAL DISTRICT)**



N. 36th ST.  
FERNAY  
PARK  
ESPERANZA  
SUBDIVISION

73

84

85

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**CITY OF McALLEN**  
PLANNING DEPARTMENT



**SUBJECT PROPERTY**

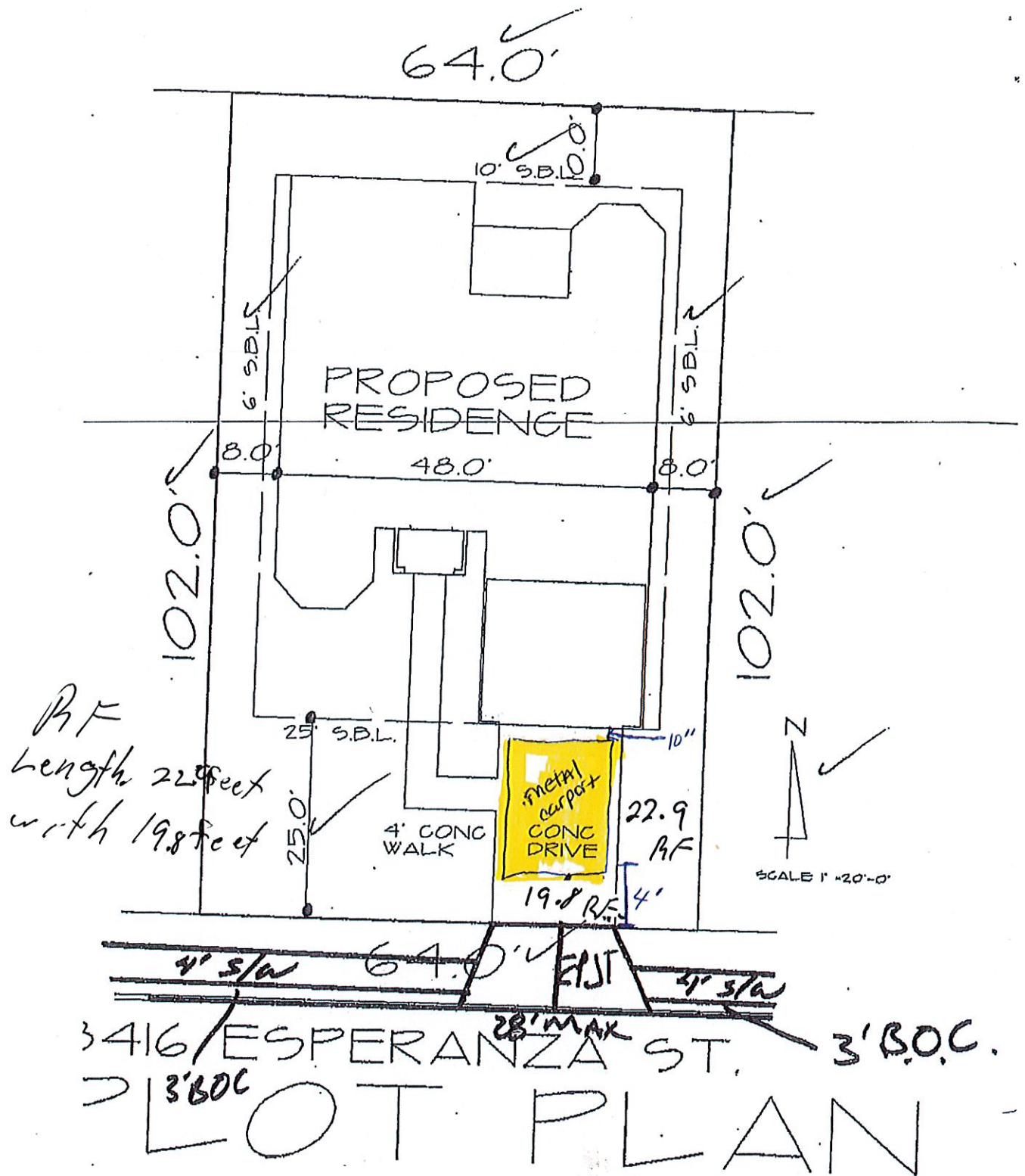
**AERIAL MAP**

SCALE: N.T.S.

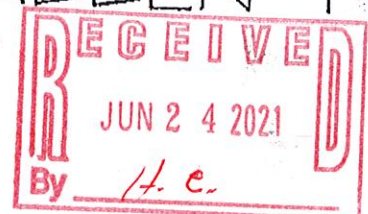


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ocation of property boundaries.





T 83, PONDEROSA PARK  
E VII CITY OF MCALLEN TX.











NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0030

3416



**SALINAS ENGINEERING & ASSOCIATES**  
CONSULTING ENGINEERS & SURVEYORS  
2221 DAFFODIL AVE. - MCALLEN, TEXAS  
(956) 682-9081 (956) 686-1489 (FAX)  
dsalinas.sea@sbcglobal.net

PONDEROSA PARK PHASE 7 SUBDIVISION  
VOL. 41, P. 108, H.C.M.R.

S 81°17'00" E 64.00'

N 08°43'00" E 102.00'

S 08°43'00" E 102.00'

N 81°17'00" E 64.00'

3415 ESPERANZA AVENUE

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N. WARE ROAD (F.M. 2220)

LOCATION MAP  
SCALE 1"=1000'

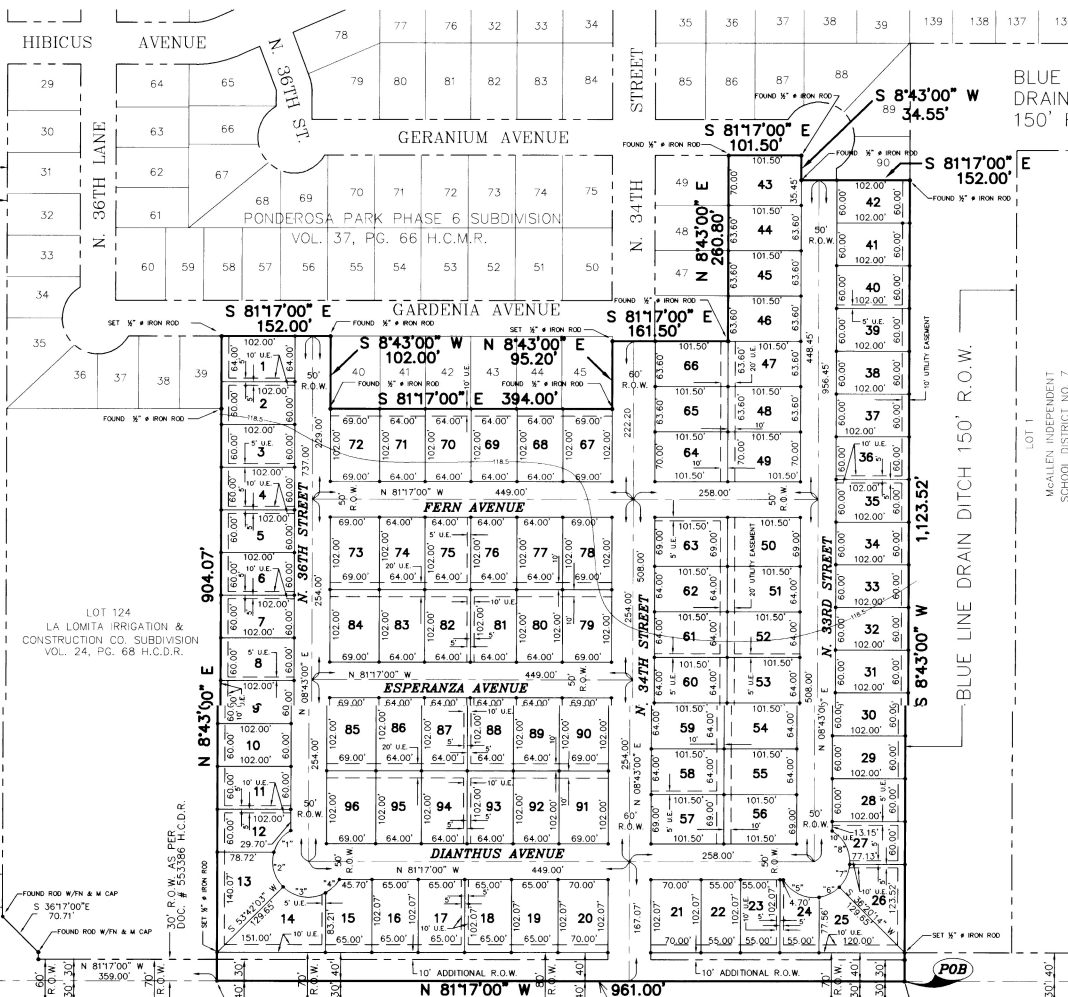
DATE: NOVEMBER 15, 2001

DRAWN BY: JBG

JAVIER HINOJOSA ENGINEERING  
CONSULTING ENGINEERS

416 E. DOVE AVENUE MCALLEN, TEXAS 78504  
PHONE (956) 668-1588

\\MCALLEN\PONDEROSA PARK PHASE 7 SUBDIVISION\PONDEROSA PARK PHASE 7 SUBDIVISION PLAT\DWG\PP7PLAT.DWG



CURVE DATA				
No.	DELTA	RADIUS	TANGENT	LENGTH
1	40°07'23"	50.00'	16.26'	35.01'
2	64°53'34"	50.00'	31.79'	53.65'
3	73°40'11"	50.00'	37.45'	64.29'
4	31°18'53"	50.00'	14.01'	27.33'
5	68°02'52"	50.00'	33.76'	59.38'
6	36°45'19"	50.00'	16.61'	32.08'
7	41°07'31"	50.00'	18.76'	35.89'
8	64°04'17"	50.00'	31.29'	55.91'

LOT AREAS		
LOT #	SQ. FT.	ACRES
12	5,760.60	0.132
13	5,666.30	0.130
14	8,995.04	0.206
15	6,419.00	0.147
24	4,672.27	0.107
25	6,536.66	0.150
26	6,823.59	0.157
27	5,263.67	0.121

GENERAL NOTES

- NO STRUCTURES PERMITTED OVER ANY EASEMENTS.
- MINIMUM BUILDING SETBACKS SHALL BE AS FOLLOWS:  
(EXCEPT WHERE GREATER SETBACK OR EASEMENT APPLIES)  
FRONT: 25.00 FEET  
SIDE: 6.00 FEET  
SIDE CORNER: 10.00 FEET  
GARAGE SETBACK: 18.00 FEET EXCEPT WHERE GREATER SETBACK IS REQUIRED.  
REAR: 10.00 FEET
- THIS PROPERTY IS LOCATED IN ZONE "B" ON A FLOOD INSURANCE RATE MAP - COMMUNITY PANEL NO. 480343 0005 C. REVISED NOV. 2, 1982.
- DEVELOPER SHALL PROVIDE AN ENGINEERED DETENTION PLAN, APPROVED BY THE ENGINEERING DEPARTMENT PRIOR TO AN APPLICATION FOR A BUILDING PERMIT.
- DRAINAGE DETENTION REQUIRED OF 1.46 ACRE-FEET AND OR 661 CUBIC FEET PER LOT.
- MINIMUM PERMISSIBLE FINISHED FLOOR ELEVATION SHALL BE 16' ABOVE TOP OF CURB AS MEASURED AT THE CENTER OF THE LOT
- BENCH MARK: CITY OF MCALLEN DATUM (CODE NO. MC 64)  
TOP OF CURB IN LOT LOCATED 155 FEET EAST OF THE EAST PROPERTY LINE OF THIS SUBDIVISION ON THE NORTH SIDE OF DAFFODIL ROAD ELEV. = 118.79.
- A 25 x 25 FOOT CORNER CLIP EASEMENT IS HEREBY DEDICATED AT ALL STREET INTERSECTIONS.

FILED FOR RECORD IN:  
HIDALGO COUNTY  
BY J.D. SALINAS, III  
COUNTY CLERK  
ON 10/23 AT 3:41 AM/PM  
RECORDING NUMBER 1251520  
DEPUTY

- A 4' WIDE SIDEWALK IS REQUIRED ALONG THE NORTH SIDE OF DAFFODIL AVENUE, AND ALSO ALONG BOTH SIDES OF N. 33RD STREET, N. 34TH STREET, N. 36TH STREET, GERANIUM AVENUE, GARDENIA AVENUE, FERN AVENUE, ESPERANZA AVENUE, AND DIANTHUS AVENUE.
- A 1/2" DIAMETER IRON ROD SHALL BE SET ON ALL LOT CORNERS.
- A 6" BUFFER IS REQUIRED ALONG DAFFODIL AVENUE AND FROM ANY COMMERCIAL ZONE/USE.
- NO CURB CUT OR LOT FRONTAGE PERMITTED UNTO DAFFODIL AVENUE.

SECURITY INTEREST HOLDER

STATE OF TEXAS  
COUNTY OF HIDALGO  
I, THE UNDERSIGNED, HOLDER OF SECURITY INTEREST IN THE ABOVE DESCRIBED PROPERTY, BEING THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS PONDEROSA PARK PHASE 7 SUBDIVISION, OF THE CITY OF MCALLEN, TEXAS, DO HEREBY CONSENT TO THE SUBDIVISION OF THE PROPERTY AS PROVIDED FOR UNDER THE PLAT AND DO HEREBY THAT ANY FORECLOSURE RELATING TO THE SECURITY INTEREST IN THE ABOVE DESCRIBED PROPERTY SHALL BE SUBJECT TO THE PLATING OF THE PROPERTY AS PROVIDED FOR HEREIN.  
CARLOS VASQUEZ  
INTERNATIONAL BANK  
SECURITY INTEREST HOLDER  
DATE 10/31/02

STATE OF TEXAS  
COUNTY OF HIDALGO  
BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED Carlos Vasquez KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE  
NOTARY PUBLIC, TEXAS  
MY COMMISSION EXPIRES 5/24/2006



METES AND BOUNDS DESCRIPTION

A TRACT OF LAND CONTAINING 20.355 ACRES, SITUATED IN THE CITY OF MCALLEN, HIDALGO COUNTY, TEXAS, AND ALSO BEING A PART OR PORTION OF LOT 124, LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION, MAP REFERENCE, VOLUME 24, PAGE 67 & 68, H.C.D.R. AND SAID 20.355 ACRES ALSO BEING A PART OR PORTION OF A TRACT DEEDED TO G.M.C. LTD. RECORDED IN DOCUMENT NO. 556840, H.C.D.R. AND SAID 20.355 ACRES ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON A NAIL SET ON THE SOUTHEAST CORNER OF SAID LOT 124 AND THE CENTER LINE OF DAFFODIL AVENUE (MILE 2 ROAD) FOR THE SOUTHEAST CORNER OF THIS TRACT;  
THENCE N 81°17'00" W, ALONG THE SOUTH LINE OF SAID LOT 124 AND THE CENTER LINE OF SAID DAFFODIL AVENUE, A DISTANCE OF 961.00 FEET TO A NAIL SET, FOR THE SOUTHWEST CORNER OF THIS TRACT;  
THENCE N 08°43'00" E, AT A DISTANCE OF 30.00 FEET PASS THE NORTH RIGHT-OF-WAY LINE OF SAID DAFFODIL AVENUE AS RECORDED IN DOCUMENT NO. 553386, H.C.D.R., AND CONTINUING A TOTAL DISTANCE OF 904.07 FEET TO A 1/2" IRON ROD SET ON THE NORTHEAST CORNER OF LOT 30, PONDEROSA PARK PHASE 6 SUBDIVISION AS RECORDED IN VOLUME 37, PAGE 66, H.C.M.P., AND THE SOUTH RIGHT-OF-WAY LINE OF GARDENIA AVENUE, FOR THE WESTERN MOST NORTHWEST CORNER OF THIS TRACT;  
THENCE S 81°17'00" E, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID GARDENIA AVENUE, A DISTANCE OF 152.00 FEET TO A 1/2" IRON ROD FOUND ON THE NORTHWEST CORNER OF LOT 40, OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, FOR AN OUTSIDE CORNER OF THIS TRACT;  
THENCE S 08°43'00" W, ALONG THE WEST LINE OF SAID LOT 40 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, A DISTANCE OF 102.00 FEET TO A 1/2" IRON ROD FOUND ON THE SOUTHWEST CORNER OF SAID LOT 40 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, FOR AN INSIDE CORNER OF THIS TRACT;  
THENCE S 81°17'00" E, ALONG THE SOUTH LINE OF SAID LOT 40 THROUGH 45, OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION A DISTANCE OF 394.00 FEET TO A 1/2" IRON ROD FOUND ON THE SOUTHEAST CORNER OF SAID LOT 45 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, FOR AN INSIDE CORNER OF THIS TRACT;  
THENCE N 08°43'00" E, ALONG THE EAST LINE OF SAID LOT 45 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, A DISTANCE OF 95.20 FEET TO A 1/2" IRON ROD SET, FOR AN OUTSIDE CORNER OF THIS TRACT;  
THENCE S 81°17'00" E, AT A DISTANCE OF 60.00 FEET PASS A 1/2" IRON ROD FOUND ON THE EAST RIGHT-OF-WAY LINE OF 34TH STREET AND THE SOUTHWEST CORNER OF LOT 46 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, AND CONTINUING ALONG THE SOUTH LINE OF SAID LOT 46 A TOTAL DISTANCE OF 161.50 FEET TO A 1/2" IRON ROD FOUND ON THE SOUTHWEST CORNER OF SAID LOT 46 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, FOR AN INSIDE CORNER OF THIS TRACT;  
THENCE N 08°43'00" E, ALONG THE EAST LINE OF LOTS 46 THROUGH 49 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, A DISTANCE OF 260.80 FEET TO A 1/2" IRON ROD FOUND ON THE NORTHEAST CORNER OF SAID LOT 49 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION AND THE SOUTH RIGHT-OF-WAY LINE OF GARDENIA AVENUE, FOR THE NORTHERN MOST NORTHWEST CORNER OF THIS TRACT;  
THENCE S 81°17'00" E, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID GERANIUM AVENUE, A DISTANCE OF 101.50 FEET TO A 1/2" IRON ROD FOUND ON THE WEST RIGHT-OF-WAY LINE OF 33RD STREET, A DISTANCE OF 34.55 FEET TO A 1/2" IRON ROD FOUND, FOR AN INSIDE CORNER OF THIS TRACT;  
THENCE S 08°43'00" W, ALONG THE WEST RIGHT-OF-WAY LINE OF SAID 33RD STREET, A DISTANCE OF 152.00 FEET TO A 1/2" IRON ROD FOUND, FOR AN INSIDE CORNER OF THIS TRACT;  
THENCE S 81°17'00" E, AT A DISTANCE OF 50.00 FEET PASS A 1/2" IRON ROD FOUND ON THE EAST RIGHT-OF-WAY LINE OF SAID 33RD STREET AND THE SOUTHWEST CORNER OF SAID LOT 90 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, AND CONTINUING ALONG THE SOUTH LINE OF SAID LOT 90 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION, A TOTAL DISTANCE OF 152.00 FEET TO A 1/2" IRON ROD FOUND ON THE SOUTHWEST CORNER OF SAID LOT 90 OF SAID PONDEROSA PARK PHASE 6 SUBDIVISION AND THE EAST LINE OF SAID LOT 124 OF LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION, FOR THE EASTERN MOST NORTHEAST CORNER OF THIS TRACT;  
THENCE S 08°43'00" W, ALONG THE EAST LINE OF SAID LOT 124 OF SAID LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION, AT A DISTANCE OF 1083.52 FEET PASS A 1/2" IRON ROD FOUND ON THE NORTH RIGHT-OF-WAY LINE OF SAID DAFFODIL AVENUE, AND CONTINUING A TOTAL DISTANCE OF 1123.52 FEET TO THE POINT OF BEGINNING, CONTAINING 20.355 ACRES OF LAND OF WHICH 0.662 OF ONE ACRE LIES IN THE RIGHT-OF-WAY OF SAID DAFFODIL AVENUE, LEAVING A NET OF 19.693 ACRES OF LAND, MORE OR LESS.

SUBDIVISION PLAT OF  
PONDEROSA PARK PHASE 7  
SUBDIVISION

A TRACT OF LAND CONTAINING 20.355 ACRES, SITUATED IN THE CITY OF MCALLEN, HIDALGO COUNTY TEXAS, AND ALSO BEING A PART OR PORTION OF LOT 124, LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION, MAP REFERENCE, VOL. 24, PG. 67 & 68, COUNTY DEED RECORD, AND SAID 20.355 ACRES ALSO BEING A PART OR PORTION OF A TRACT DEEDED TO G.M.C. LTD., DOCUMENT NO. 556840, HIDALGO COUNTY DEED RECORD.

STATE OF TEXAS  
COUNTY OF HIDALGO

I, THE UNDERSIGNED OWNER OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS PONDEROSA PARK PHASE 7 SUBDIVISION AN ADDITION TO THE CITY OF MCALLEN, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY CERTIFY THAT THE STRUCTURES DESCRIBED ARE APPROXIMATE TO THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 23 DAY OF OCTOBER, A.D. 2002.

CLAUDIA N. YBARRA  
Notary Public, State of Texas  
My Commission Expires March 25, 2004  
CLAUDIA N. YBARRA  
NOTARY PUBLIC, TEXAS  
MY COMMISSION EXPIRES

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 HEREBY CERTIFY THAT THE DRAINAGE PLANS FOR THIS SUBDIVISION COMPLY WITH THE MINIMUM STANDARDS OF THE DISTRICT ADOPTED UNDER CHAPTER 49, ARTICLE 21(C), OF THE TEXAS CONSTITUTION. THE DISTRICT HAS NOT REVIEWED AND APPROVED THE DRAINAGE PLANS DESCRIBED ARE APPROXIMATE TO THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED. IT IS THE RESPONSIBILITY OF THE DEVELOPER OF THIS SUBDIVISION AND ITS ENGINEER TO MAKE THESE DETERMINATIONS.

BY: 10/23/02

THIS PLAT IS HEREBY APPROVED BY THE HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 DATED THIS 23 DAY OF OCTOBER, A.D. 2002.

I, THE UNDERSIGNED, MAYOR OF THE CITY OF MCALLEN, CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIRED SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY OFFICE IS REQUIRED.

DATE 10/19/02  
MAYOR, CITY OF MCALLEN

THIS SUBDIVISION PLAT OF PONDEROSA PARK PHASE 7 SUBDIVISION IS HEREBY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MCALLEN, TEXAS AND IS HEREBY APPROVED BY COMMISSION.

DATED THIS 23 DAY OF OCTOBER, A.D. 2002.

STATE OF TEXAS  
COUNTY OF HIDALGO

I, JAVIER HINOJOSA, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

JAVIER HINOJOSA, P.E.  
REGISTERED PROFESSIONAL ENGINEER #74808  
DATE 10/25/02

STATE OF TEXAS  
COUNTY OF HIDALGO

I, CARLOS VASQUEZ, A REGISTERED PUBLIC LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

CARLOS VASQUEZ  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4608  
COUNTY LAND SURVEYORS  
2014 NORTH WARE ROAD  
MCALLEN, TEXAS 78502  
(956) 618-1551 DATE SURVEYED: 10-10-01



## Planning Department

### Memo

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

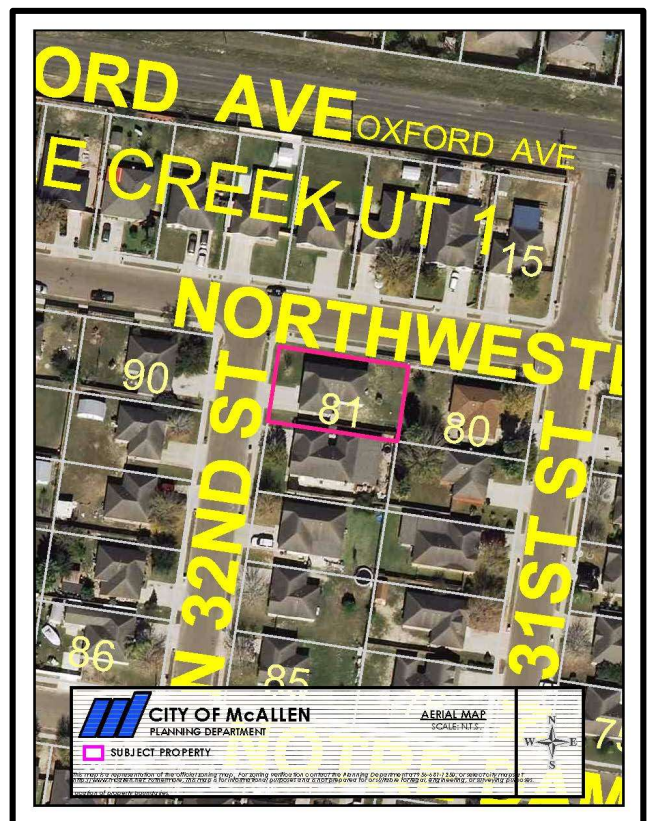
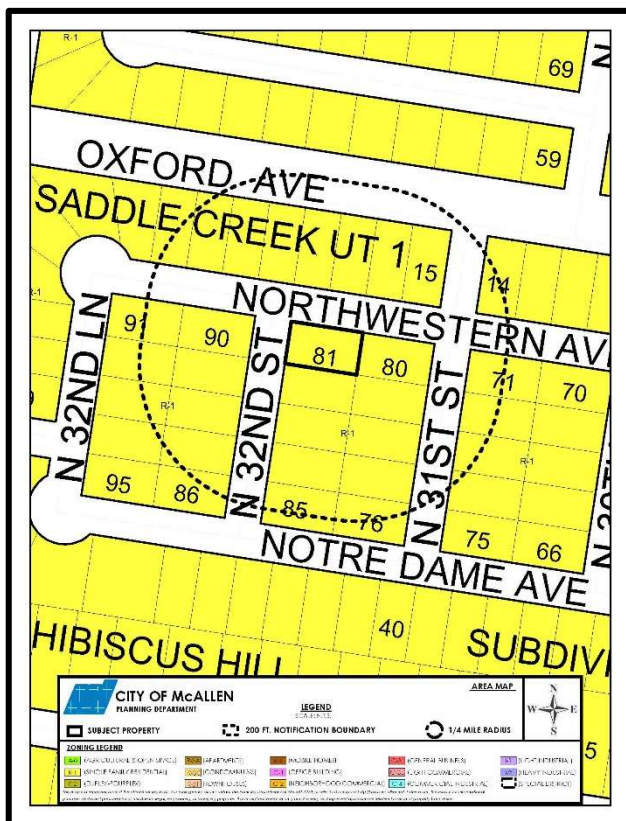
**FROM:** Planning Staff

**DATE:** July 28, 2021

**SUBJECT:** REQUEST OF SONIA ABIGAIL DE LEON FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 22.4 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR A PROPOSED CARPORT MEASURING 20 FT. BY 21.5 FT., AT LOT 81, SADDLE CREEK UNIT 1 SUBDIVISION, HIDALGO COUNTY, TEXAS; 9216 NORTH 32ND STREET. (ZBA2021-0031)

#### REASON FOR APPEAL:

Sonia Abigail De Leon, is requesting a special exception to allow an encroachment of 22.4 ft. into the 25 ft. front yard setback for a proposed carport measuring 20 ft. by 21.5 ft. The applicant is requesting the carport to aide her during inclement weather in the transportation (unloading and loading) of her mother which utilizes a wheel chair.



**PROPERTY LOCATION AND VICINITY:**

The subject property is located on the southeast corner of the intersection of North 32<sup>nd</sup> Street and Northwestern Avenue. The corner lot has 58 ft. of frontage along North 32<sup>nd</sup> Street and a depth of 100 ft. for a tract size of 5,800 sq. ft. The property is zoned R-1 (single family residential) District. Surrounding land uses are single-family residences.

**BACKGROUND AND HISTORY:**

The subdivision plat for Saddle Creek Unit I Subdivision was recorded on September 11, 2001. The plat specifies a 25 ft. front yard setback, 6 ft. side yard setbacks except for corner lots which shall be 10 ft., and a 10 ft. rear yard setback. According to Hidalgo County Appraisal District records a residential home was built and acquired by the applicant in 2002. An application for a building permit for a carport submitted to the Building Permits & Inspections Department on June 29, 2021. An application for a special exception request was submitted to the Planning Department on July 6, 2021 for a proposed carport. From 2010-2011 the Board voted to approve three special exception request to not provide one off street parking space for a single family use located beyond the front yard setback, at Lots 34, 83, and 87, Saddle Creek Unit 1 Subdivision.

**ANALYSIS:**

The special exception request is for a proposed carport measuring 20 ft. by 21.5 ft. to be built over an existing driveway. The submitted site plan shows a proposed carport encroaching 22.4 ft. into the 25 ft. front yard setback.

Currently there is an existing carport that is part of the house, however the applicant would like additional space to maneuver in and out of the family vehicle.

Front yard setbacks are important to help to keep the character of single family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Approval of the special exception request may encourage other property owners to build similar structures in the front yard. Buildings are not permitted to be located within the front yard setbacks.

Staff has not received any phone calls or emails in opposition to this variance request.

**RECOMMENDATION:**

Staff recommends disapproval of the special exception requests. However, if the Board chooses to approve the requests, the approval should be limited to the footprint shown on the submitted site plan.



ZBA  
8/4/2021

ZBA2021-0031



City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

Project

Legal Description Saddle Creek UT 1 lot 81

Subdivision Name Saddle Creek

Street Address 9216 N. 32nd St.

Number of lots 1 Gross acres \_\_\_\_\_

Existing Zoning \_\_\_\_\_ Existing Land Use \_\_\_\_\_

Reason for Appeal (please use other side if necessary) Build carport (metal roof)  
attached to siding of the house

☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name Sonia Abigail De Leon Phone (956) 789-3843

Address 9216 N. 32nd St. E-mail Soniadeleonka@gmail.com

City McAllen State Texas Zip 78504

Owner

Name Sonia Abigail De Leon Phone (956) 789-3843

Address 9216 N. 32nd St. E-mail Soniadeleonka@gmail.com

City McAllen State Texas Zip 78504

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes

☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable)  
OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature [Signature]

Date 7-06-21

Print Name Sonia Abigail De Leon

☒ Owner

☐ Authorized Agent

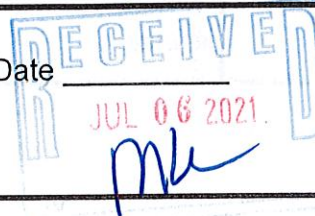
Office

Accepted by [Signature]

Payment received by \_\_\_\_\_

Date \_\_\_\_\_

Rev 09/20



RC#802996



# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

\*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)

\*\*Information provided here by the applicant does not guarantee that the Board will grant a variance.

\*\*\*Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below:

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:

Requesting permission to build a carPort 21 w x 20 L

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:

It would help me alot with my mother exposed to the weather while unloading her from the vehicle to her wheelchair.

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:

The car port would neither affect public health nor welfare as this is inside property line.

4. Describe special conditions that are unique to this applicant or property:

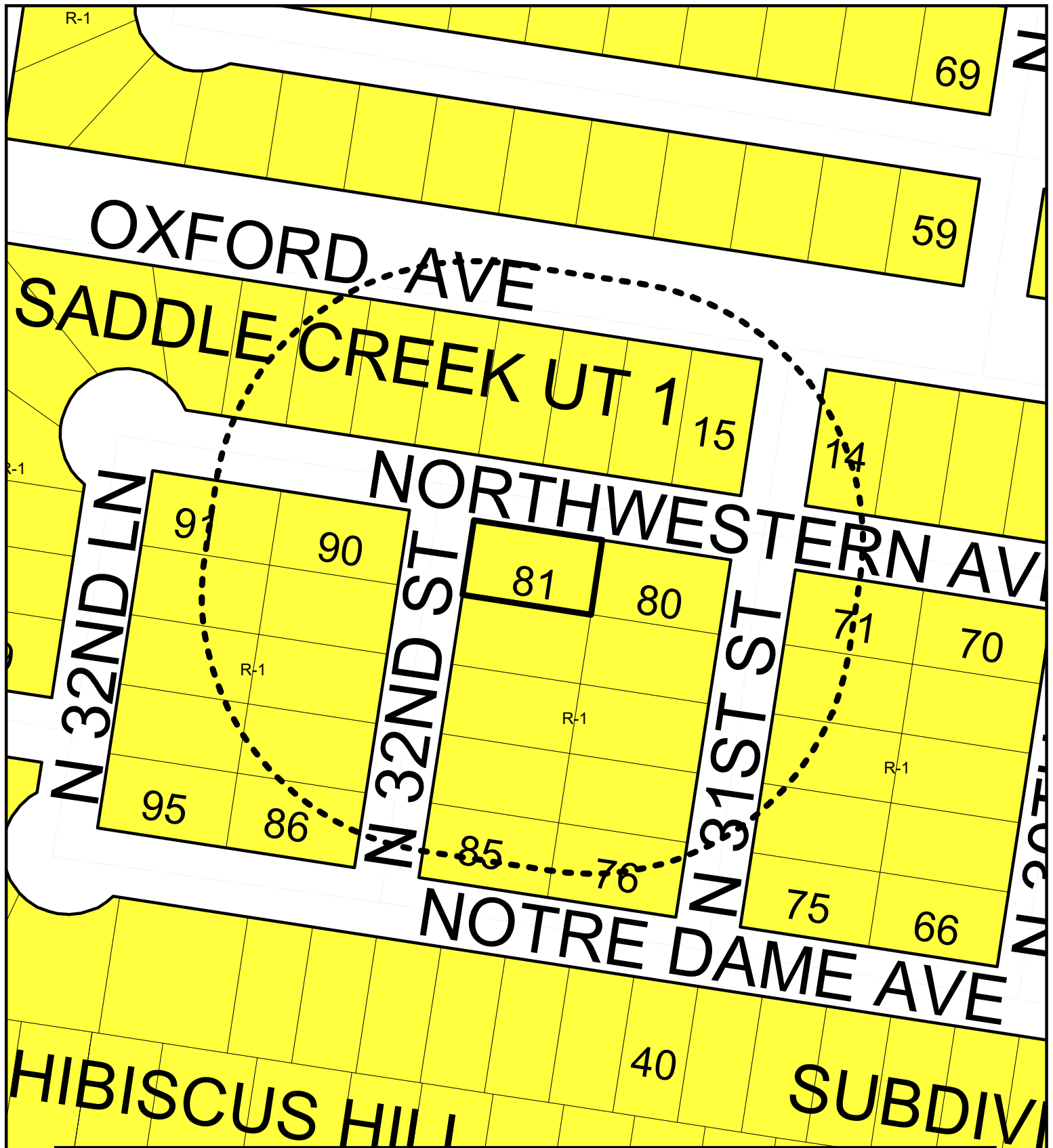
My house already has a one car car port, but it is really difficult and unspacious to unload my mom having access to her wheel chair.

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

**AREA MAP**



**SUBJECT PROPERTY**

**200 FT. NOTIFICATION BOUNDARY**

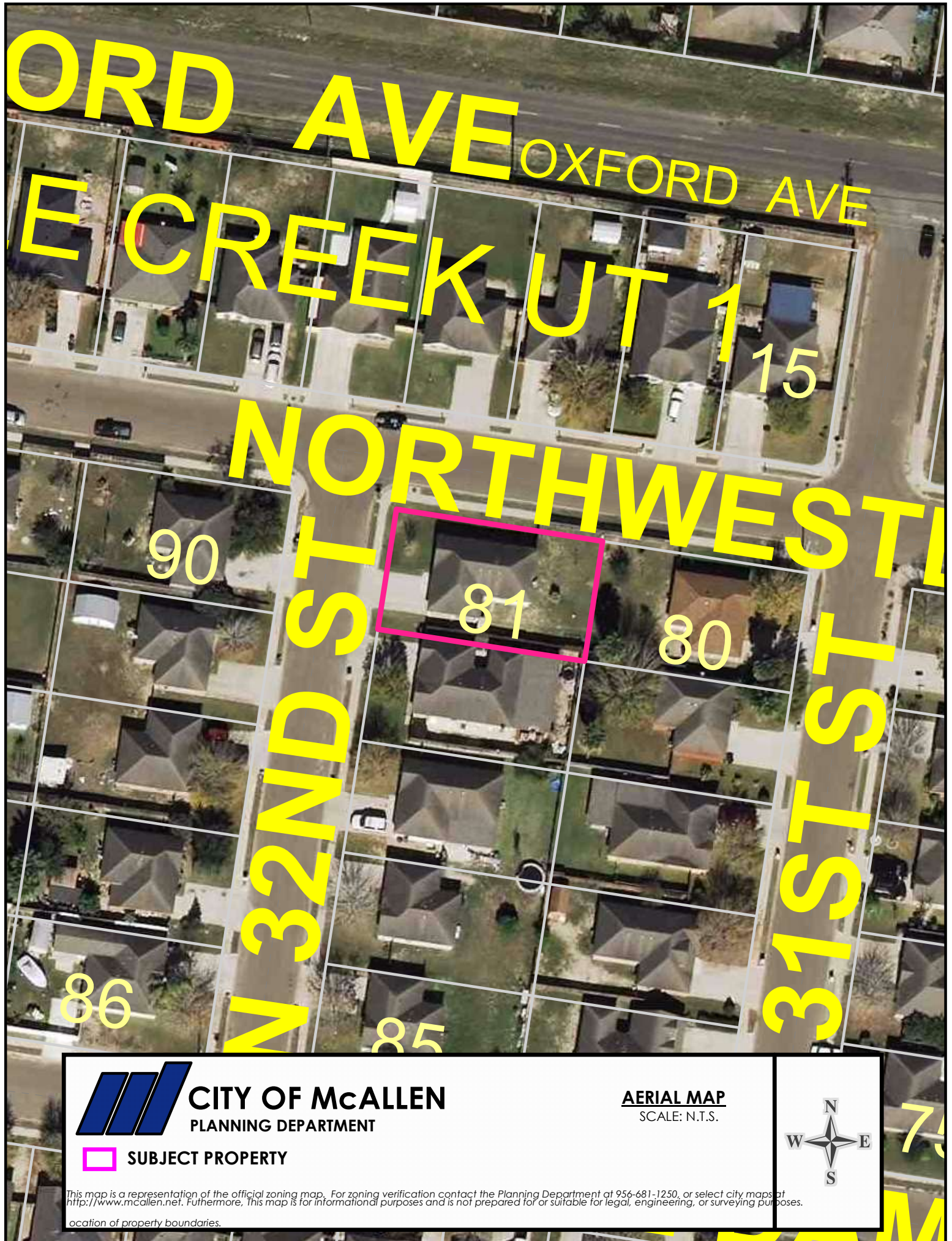
**1/4 MILE RADIUS**

**ZONING LEGEND**

<b>A-0</b> (AGRICULTURAL & OPEN SPACE)	<b>R-3A</b> (APARTMENTS)	<b>R-4</b> (MOBILE HOMES)	<b>C-3</b> (GENERAL BUSINESS)	<b>I-1</b> (LIGHT INDUSTRIAL)
<b>R-1</b> (SINGLE FAMILY RESIDENTIAL)	<b>R-3C</b> (CONDOMINIUMS)	<b>C-1</b> (OFFICE BUILDING)	<b>C-3L</b> (LIGHT COMMERCIAL)	<b>I-2</b> (HEAVY INDUSTRIAL)
<b>R-2</b> (DUPLEX-FOURPLEX)	<b>R-3T</b> (TOWNHOUSES)	<b>C-2</b> (NEIGHBORHOOD COMMERCIAL)	<b>C-4</b> (COMMERCIAL INDUSTRIAL)	<b>(SPECIAL DISTRICT)</b>

This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, This map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.





**CITY OF McALLEN**  
PLANNING DEPARTMENT



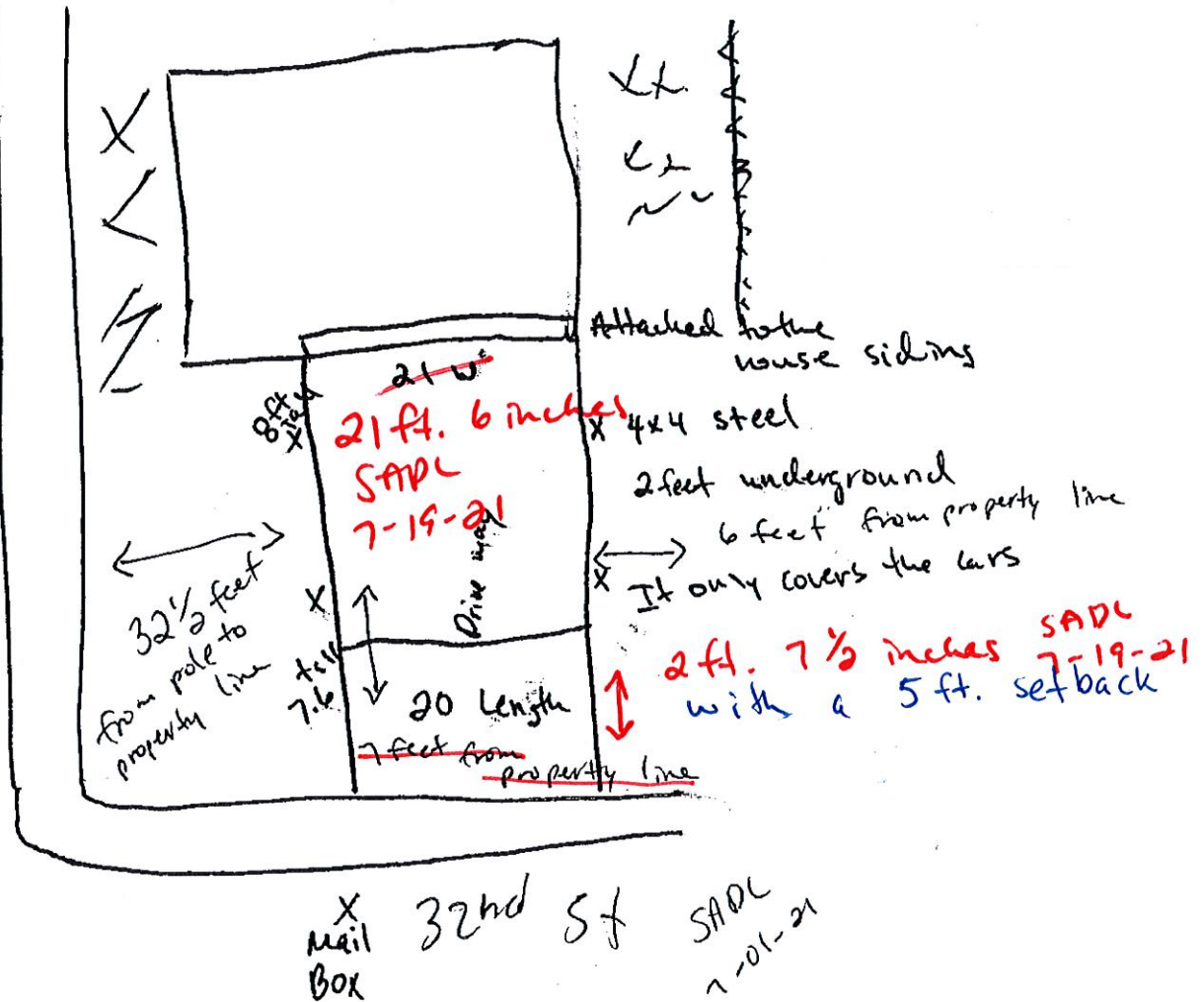
**SUBJECT PROPERTY**

**AERIAL MAP**  
SCALE: N.T.S.



This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes.  
ocation of property boundaries.

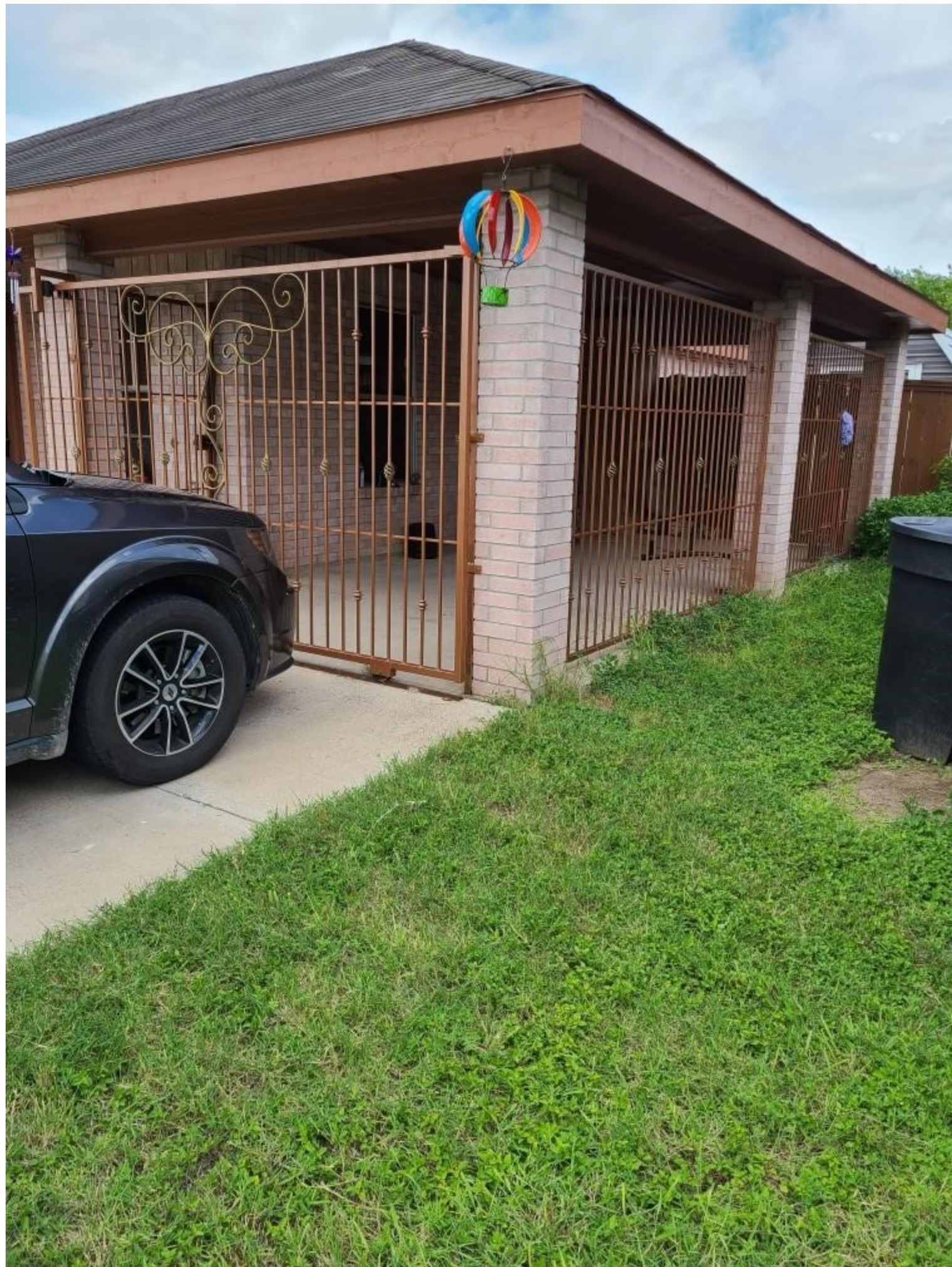
Northwestern















NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0031





# SUBDIVISION PLAT OF SADDLE CREEK UNIT

(APPROVED AS OBRA SUBDIVISION)

BEING A 19.11 ACRE TRACT LAND OUT OF LOT 36,  
LA LOMITA IRRIGATION AND CONSTRUCTION CO.'S  
SUBDIVISION OF PORCIONES 61, 62, & 63, HIDALGO COUNTY, TEXAS

PREPARED BY: K. K. ENGINEERING CONSULTANT  
DATE: AUG. 18, 2000

OWNER: OBRA HOMES, INC.  
3900 N. 10TH STREET SUITE 850  
MCALLEN, TEXAS 78501

STATE OF TEXAS  
COUNTY OF HIDALGO

I (WE), THE UNDERSIGNED, OWNER (S) OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS SADDLE CREEK UNIT SUBDIVISION TO THE CITY OF MCALLEN, TEXAS, AND WHOSE NAME (S) IS (ARE) SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, SEWER LINES, WATER COURSES, STORM SEWERS, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH I (WE) WILL CAUSE TO BE INSTALLED THEREON SHOWN OR NOT SHOWN ON THIS PLAT OR OTHERWISE TO BE INSTALLED OR DEDICATED UNDER THE SUBDIVISION APPROVAL PROCESS OF THE CITY OF MCALLEN ALL THE SAME FOR THE PURPOSES THEREIN EXPRESSED, EITHER ON THE PLAT HEREOF OR ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE CITY OF MCALLEN.

OWNER: OBRA HOMES, INC.  
DAVID O. ROGERS III, PRESIDENT

SCALE: 1" = 100'

LOT NO.	AREA (SQ. FT.)
1	5,352
2	5,066
3	5,043
4	6,373
5	7,053
6	5,951
23	5,807
24	8,100
25	6,925
26	5,609
27	5,063
28	5,055
29	5,450
30	9,694
31	8,262
32	8,443
50	5,019
51	6,043
52	5,910
53	5,063
54	5,188
55	5,357

STATE OF TEXAS  
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED DAVID O. ROGERS III KNOWN TO ME TO BE THE PERSON (S) WHOSE NAME (S) IS (ARE) SUBSCRIBED TO THE FOREGOING AND ACKNOWLEDGED TO ME THAT HE (SHE) EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 18 DAY  
OF August, 2000.



NOTARY PUBLIC IN AND FOR  
STATE OF TEXAS  
MY COMMISSION EXPIRES 9/14/2003

I, THE UNDERSIGNED, MAYOR OF THE CITY OF MCALLEN HEREBY CERTIFY THAT THIS SUBDIVISION CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY AFFIRMATION IS REQUIRED.

Leo Montalvo  
MAYOR, CITY OF MCALLEN

STATE OF TEXAS  
COUNTY OF HIDALGO

THIS SUBDIVISION PLAT OF SADDLE CREEK UNIT 1 SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF MCALLEN, TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION.

DATED THIS 10 DAY OF September, 2001 A.D.

Danny Brulley  
CHAIRMAN

HIDALGO COUNTY DRAINAGE DISTRICT No. 1 HEREBY CERTIFIES THAT THE DRAINAGE PLANS FOR THIS SUBDIVISION COMPLY WITH THE MINIMUM STANDARDS OF THE DISTRICT ADOPTED UNDER TEX. WATER CODE §49.21. THE DISTRICT HAS NOT REVIEWED AND DOES NOT CERTIFY THAT THE DRAINAGE STRUCTURES DESCRIBED ARE APPROPRIATE FOR THE SPECIFIC SUBDIVISION, BASED ON GENERALLY ACCEPTED ENGINEERING CRITERIA. THE RESPONSIBILITY OF THE DEVELOPER OF THE SUBDIVISION AND ITS ENGINEER TO MAKE THESE DETERMINATIONS.

HIDALGO COUNTY DRAINAGE DISTRICT No. 1

BY: [Signature]  
9/18/01

STATE OF TEXAS  
COUNTY OF HIDALGO

I, KAMBIZ S. KHADEMI, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT.

Kambiz S. Khademi  
KAMBIZ S. KHADEMI, P.E.  
REG. PROFESSIONAL ENGINEER No. 57767

STATE OF TEXAS  
COUNTY OF HIDALGO

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE ON THE GROUND UNDER MY SUPERVISION.

Reynaldo Robles  
REYNALDO ROBLES  
REGISTERED PROFESSIONAL LAND SURVEYOR No. 57767  
P.O. BOX 476  
WESLACO, TEXAS 78599

FILED FOR RECORD IN:  
HIDALGO COUNTY  
BY J.D. SALINAS, III  
COUNTY CLERK  
ON 09-11-01 AT 2:26 AM  
AS A RECORDING NUMBER 0006627  
BY Bela Cruz, DEPUTY

Recorded in Volume 38 Page 86  
of the map records of Hidalgo  
County, Texas  
Melden and Hunt, Inc.

## GENERAL PLAT NOTES:

- MINIMUM FLOOR ELEVATION SHALL BE 1/4" + 18" FOR EACH LOT.
- THE SUBDIVISION IS IN ZONE "X" (AREAS OUTSIDE 500-YR. FLOOD PLAIN) ON A FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 480334-0325 AND 0295 D REVISED JUNE 6, 2000.
- MINIMUM BUILDING SETBACK SHALL BE AS FOLLOWS:  
FRONT: 25.0' OR GREATER FOR EASEMENTS.  
REAR: 10.00' AND 20' AT REAR OF LOTS 5 THRU 24.  
SIDE CORNER LOT: 10.00 FEET OR GREATER FOR EASEMENTS.  
CUL-DE-SAC: 10.00 FEET OR GREATER FOR EASEMENTS.  
GARAGE SETBACK 18' EXCEPT WHERE GREATER SETBACK REQUIRED.
- CENTRAL POWER AND LIGHT CO. HEREBY GRANTED AN EASEMENT AND RIGHT-OF-WAY ON EACH LOT IN SAID SUBDIVISION FOR AN UNDERGROUND ELECTRIC SERVICE LATERAL TOGETHER WITH THE LOCATION WHERE SUCH SERVICE LATERAL IS TO BE OR IS INSTALLED AND MAINTAINED FROM TIME TO TIME.  
  
X X 3' EASEMENT TO CPL FOR PEDESTAL SPACE SPECIFIC LOCATION SHOWN ON MAP BY THIS SYMBOL. SO  
PAD 12' X 6' EASEMENT TO CPL FOR TRANSFORMER SPACE SPECIFIC LOCATION SHOWN ON MAP BY THIS SYMBOL. LA
- A TOTAL OF 1.32 ACRE FEET OF DETENTION IS REQUIRED FOR THIS SUBDIVISION AN ENGINEERED DETENTION PLAN WILL BE SUBMITTED AND APPROVED BY THE ENGINEERING DEPT. PRIOR TO ISSUANCE OF BUILDING PERMIT.
- THE CITY OF MCALLEN TO HAVE A 25'X25' CORNER CPL EASEMENT AT STREET INTERSECTIONS, MEASURED FROM THE CURB.
- SIDEWALK REQUIRED ON OXFORD AVE., 29TH STREET, N. 33RD STREET AND ON BOTH SIDES OF ALL INTERIOR STREETS.
- BUFFER REQUIRED ALONG OXFORD AVE., 29TH ST. AND N. 33RD STREET AND FROM ANY ADJACENT COMMERCIAL ZONE/USE.
- NO LOT FRONTAGE OR ACCESS FROM OXFORD AVE., 29TH ST. AND N. 33RD STREET.
- ONCE THE 10 AC. TO THE SOUTH IS DEVELOPED THE IRRIGATION LINE AND EASEMENT ON LOTS 10, 11, 66 - 70, 45, AND 46 WILL BE AUTOMATICALLY ABANDONED.
- NO BUILDING ALLOWED OVER ANY EASEMENTS.

LOT 36  
LA LOMITA IRRIG. CO. SUBD.

OXFORD AVE.

S 81° 14' 27" E

1320.93'

N 81° 14' 27" W

1319.44'

LA LOMITA IRRIG. CO. SUBD.

THIS PLAT APPROVED BY HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 ON THIS THE 19th DAY OF August, 2001.

HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 WILL NOT BE RESPONSIBLE FOR DRAINAGE OR DELIVERY OF WATER TO ANY LOT IN THIS SUBDIVISION. IF DESIRED, THIS WILL NOT BE AT DISTRICT EXPENSE.

NO IMPROVEMENTS OF ANY KIND SHALL BE PLACED UPON H.C.I.D. NO. 1 RIGHT-OF-WAY OR EASEMENTS WITHOUT THE EXPRESSED WRITTEN PERMISSION OF SAID TRACT HEREIN DESCRIBED.

[Signature]  
SECRETARY

[Signature]  
PRESIDENT

## METES AND BOUNDS DESCRIPTION

BEING 19.11 ACRES OF LAND SITUATED IN HIDALGO COUNTY, TEXAS, AND BEING THE SOUTH 19.11 ACRES OF LOT 36, LA LOMITA IRRIGATION COMPANY'S SUBDIVISION AS PER MAP RECORDED IN VOLUME 24, PAGE 68 OF THE HIDALGO COUNTY DEED RECORDS, AND SAID 19.11 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

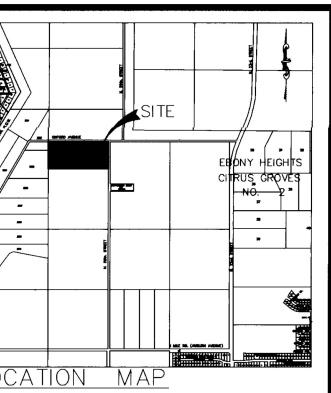
BEGINNING AT A 1/2-INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID LOT 36 AND THE SOUTHEAST CORNER OF SAID TRACT HEREIN DESCRIBED;

THENCE, NORTH 81° 14' 27" WEST, WITH THE SOUTH LINE OF SAID LOT 36, AT A DISTANCE OF 20.00 FEET PASS A 1/2-INCH IRON ROD FOUND FOR REFERENCE ON THE EXISTING WEST RIGHT-OF-WAY LINE OF NORTH 29TH STREET (ROOTH ROAD) AND CONTINUING FOR A TOTAL DISTANCE OF 1,319.44 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID TRACT HEREIN DESCRIBED;

THENCE, NORTH 08° 34' 22" EAST, 630.57 FEET, WITH THE EAST LINE OF WARE ROAD ESTATES SUBD. VOL. 36 PG. 142 TO A 3/4-INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID TRACT HEREIN DESCRIBED;

THENCE, SOUTH 81° 14' 27" EAST, 1320.93 FEET TO A 1/2-INCH IRON ROD SET FOR THE NORTHEAST CORNER OF SAID TRACT HEREIN DESCRIBED;

THENCE, SOUTH 8° 42' 30" WEST, 630.57 FEET, WITH THE EAST LINE OF SAID LOT 36 AND WITH THE CENTERLINE OF SAID NORTH 29TH STREET TO THE POINT OF BEGINNING AND CONTAINING 19.11 ACRES OF LAND MORE OR LESS.



K Engineering Consultant  
GENERAL PROFESSIONAL CIVIL ENGINEERING SERVICES

McAlLEN, TEXAS 78502 FAX (956) 630 2129

## Memo

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

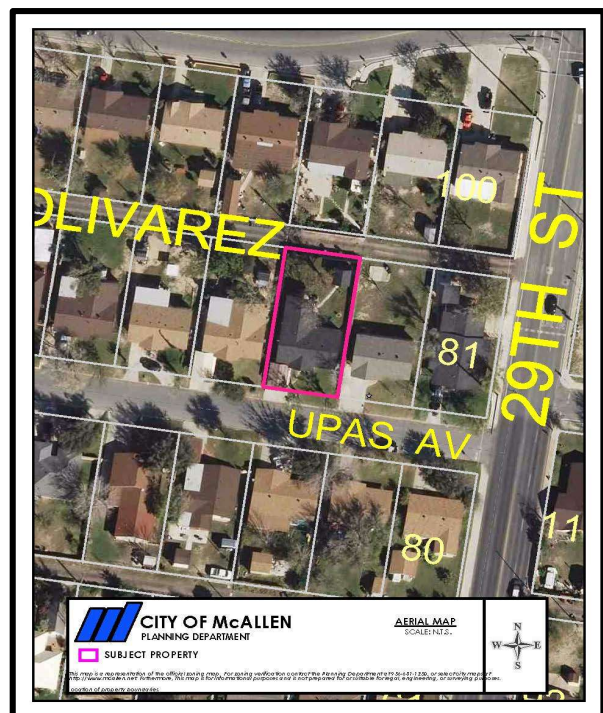
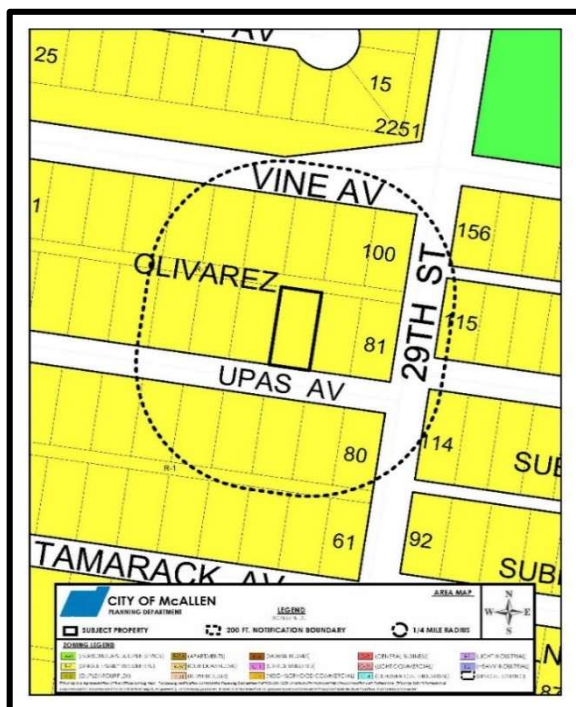
**FROM:** Planning Staff

**DATE:** July 28, 2021

**SUBJECT: REQUESTS OF ARNULFO AND MARIA SEGOVIA FOR THE FOLLOWING SPECIAL EXCEPTION AND VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF UP TO 19.1 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR A EXISTING METAL CARPORT MEASURING 20 FT. BY 18 FT., 2) AN ENCROACHMENT OF UP TO 4.33 FT. INTO THE 5 FT. SIDE YARD SETBACK ALONG THE WEST PROPERTY LINE FOR AN EXISTING METAL CARPORT MEASURING 20 FT. BY 18 FT., AND 3) AN ENCROACHMENT OF 1.7 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING STORAGE BUILDING MEASURING 12 FT. BY 12 FT. AT LOT 83, OLIVAREZ SUBDIVISION NO. 5, HIDALGO COUNTY, TEXAS; 2908 UPAS AVENUE. (ZBA2021-0020)**

### REASON FOR APPEAL:

The applicants are requesting the special exception in order to allow an existing carport to encroach into the front and side yard setbacks and a variance for an existing storage building to encroach into the rear yard setback. The applicants at time of change of ownership were unaware of the encroachments and construction done without a building permit, since the construction was done under previous property ownership. The applicants would like for the existing storage building to remain in its current location. Their request to keep the carport is due to medical conditions.



**PROPERTY LOCATION AND VICINITY:**

The property is located on the Northside of Upas Avenue, approximately 123 ft. west of North 29<sup>th</sup> street. The lot has 61.4 ft. of frontage along Upas Avenue and a depth of 124.5 ft. for a lot size of 7,644.3 sq. ft. The property is zoned R-1 (single-family residential) District. The adjacent zoning is R-1 District in all directions. The surrounding land uses include single-family residences.

**BACKGROUND AND HISTORY:**

The Olivarez Subdivision No.5 was recorded on February 01, 1972. The plat specifies a front yard setback of 25 ft. front but does not indicate other setbacks. The subdivision was recorded prior to 1979 and the applicable setbacks were subject to the 1945 Zoning Ordinance. The side yard setback along the East side is 7 feet and 5 feet along the West side. The rear yard setback under the 1945 Zoning Ordinance was 3 feet for accessory buildings however the rear yard setback requirement changed to 10 feet under the 1979 zoning ordinance. According to Hidalgo County Appraisal District records the residential home was built in 1978, the existing storage building in 2006, the existing carport in 2013, and acquired by the applicants on August 8, 2020. A stop work order was issued by Buildings and Inspections Department staff on April 20, 2021 for the construction of a carport without a permit. An application for a building permit was submitted on May 4, 2021 and an application for a special exception and variance request was submitted on May 18, 2021.

**ANALYSIS:**

The special exception request is for an existing carport which is of aluminum construction measuring 20 ft. by 18 ft. and is secured by bolts to an existing concrete driveway. The existing carport is open all sides. The submitted site plan shows a carport encroaching 19.1 ft. into the 25 ft. front yard setback and up to 4.33 ft. into the 5 ft. side yard setback.

On June 17, 2021, the Board voted to approve a special exception request for an encroachment of 20.83 ft. into the 25 ft. front yard setback for a carport, at lot 87, Olivarez Subdivision No.5.

Currently there is no garage on the subject property.

The variance request is for an encroachment of 1.7 ft. into the 10 ft. rear yard setback for an existing storage building measuring 12 ft. by 12 ft. The storage building could be moved to the interior of the property to be in compliance with the rear yard setback, however the storage building sits over an existing concrete foundation and relocation would involve a re-design of the foundation and possible reconstruction of the storage building. A 20 ft. alley is located at the rear of the property and provides additional building separation. The encroachment comprises of 20.4 sq. ft. or 0.03% of the required rear yard. Buildings that are less than 200 sq. ft. do not require a building permit but must comply with building setbacks for the zoning in which they are located.

During a site visit, staff noticed similar encroachments into the front and rear yard setbacks in this block.

The plat does not show any utility easements on the subject property.

Staff has not received any phone calls or emails in opposition to this special exception request.

**RECOMMENDATION:**

Staff recommends approval of the special exception requests and variance, limited to the footprint shown on the submitted site plan.



ZBA 2021-0020



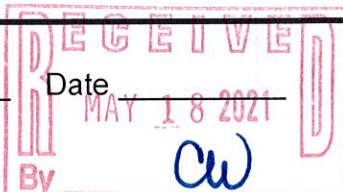
City of McAllen

## Planning Department

APPEAL TO ZONING BOARD OF

## ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

Project	<p>Legal Description <u>LOT 83</u></p> <p>Subdivision Name <u>OLIVARES SUBDIVISION</u></p> <p>Street Address <u>2908 UPAS AVE.</u></p> <p>Number of lots <u>1</u> Gross acres _____</p> <p>Existing Zoning _____ Existing Land Use <u>Home</u></p> <p>Reason for Appeal (please use other side if necessary) <u>The Front Car porch has been there AT LEAST since 2010 maybe longer</u></p> <p><input type="checkbox"/> \$300.00 non-refundable filing fee + <input type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport)</p> <p><input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required</p>
	Applicant
Owner	<p>Name <u>SAME</u> Phone _____</p> <p>Address _____ E-mail _____</p> <p>City _____ State _____ Zip _____</p>
Authorization	<p>To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.</p> <p>Signature <u>[Signature]</u> Date <u>5-18-21</u></p> <p>Print Name <u>ARNULFO SEGOVIA Maria T. Segovia</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent</p>
Office	<p>Accepted by <u>[Signature]</u> Payment received by _____</p> <p>Rev 10/18</p> <p style="text-align: right;">  </p>





# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

\*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider **any combination of** the following: (Please use an additional page if necessary to complete responses)

\*\*Information provided here by the applicant does not guarantee that the Board will grant a variance.

\*\*\*Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:

MRS SEGOVIA HAD BREAST CANCER & HAD A THREE SURGERIES  
FOR MELANOMA - VERY SENSITIVE TO SUN & HEAT SO SHE PORCH  
KEEPS THE CAR A LITTLE COOLER IN SUMMERTIME

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:

Same as above - the porch will help Mrs Segovia with her  
health issues - Also it has been there for at least  
TEN YEARS -

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:

the porch does not encroach nor bother any neighbors  
AND ALSO THERE ARE SEVERAL SAME STYLE PORCHES  
ON OUR STREET / NEIGHBORHOOD

4. Describe special conditions that are unique to this applicant or property:

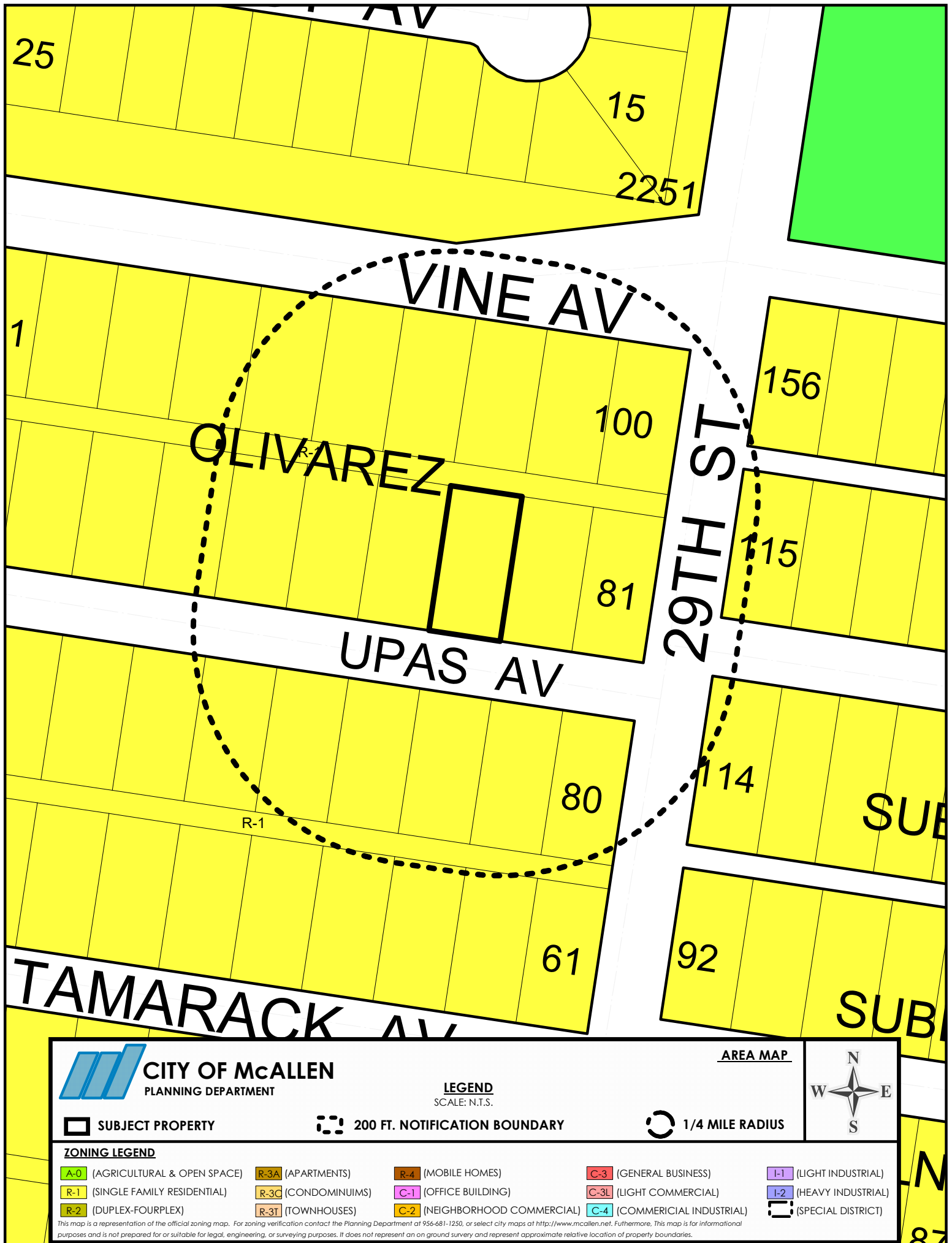
NO SPECIAL CONDITIONS ~~are~~ to property but given the  
time it has been there & health conditions of Mrs Segovia  
we FEEL it should be GRANT FATHERED IN. Thank you

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date







**CITY OF McALLEN**  
PLANNING DEPARTMENT



**SUBJECT PROPERTY**

**AERIAL MAP**

SCALE: N.T.S.

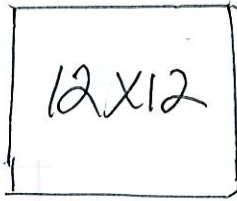


This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes.  
ocation of property boundaries.



Alley

8.3'  $\updownarrow$  8.3'



7.4'

40'

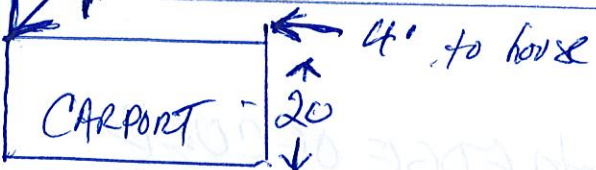
EXPANDED VIEW OF  
CARPORT ON BACK

House

9'



8'  $\swarrow$   
From property line to Porch Poles



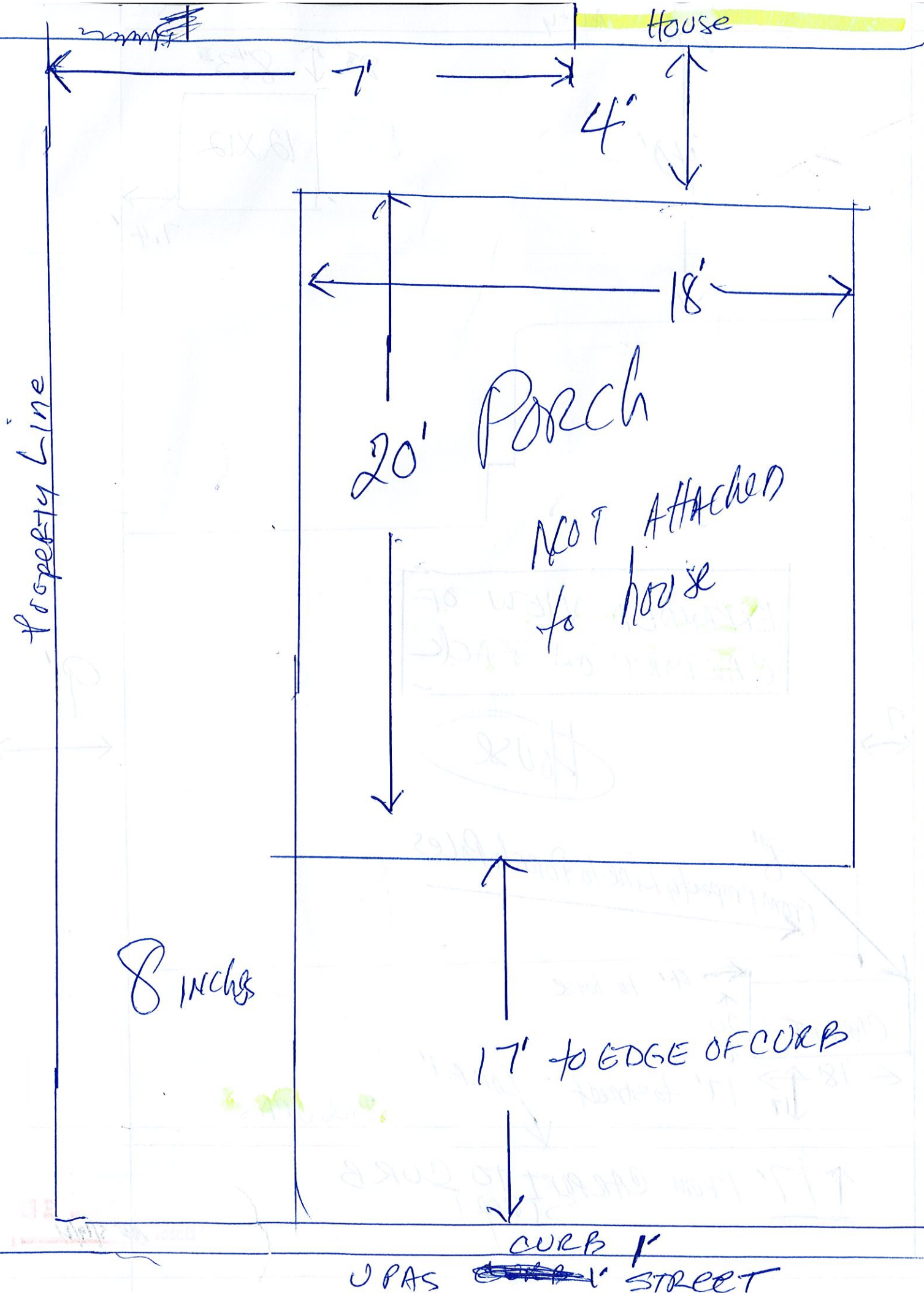
18'  $\leftarrow \rightarrow$  17' to street curb

2908 UPAS

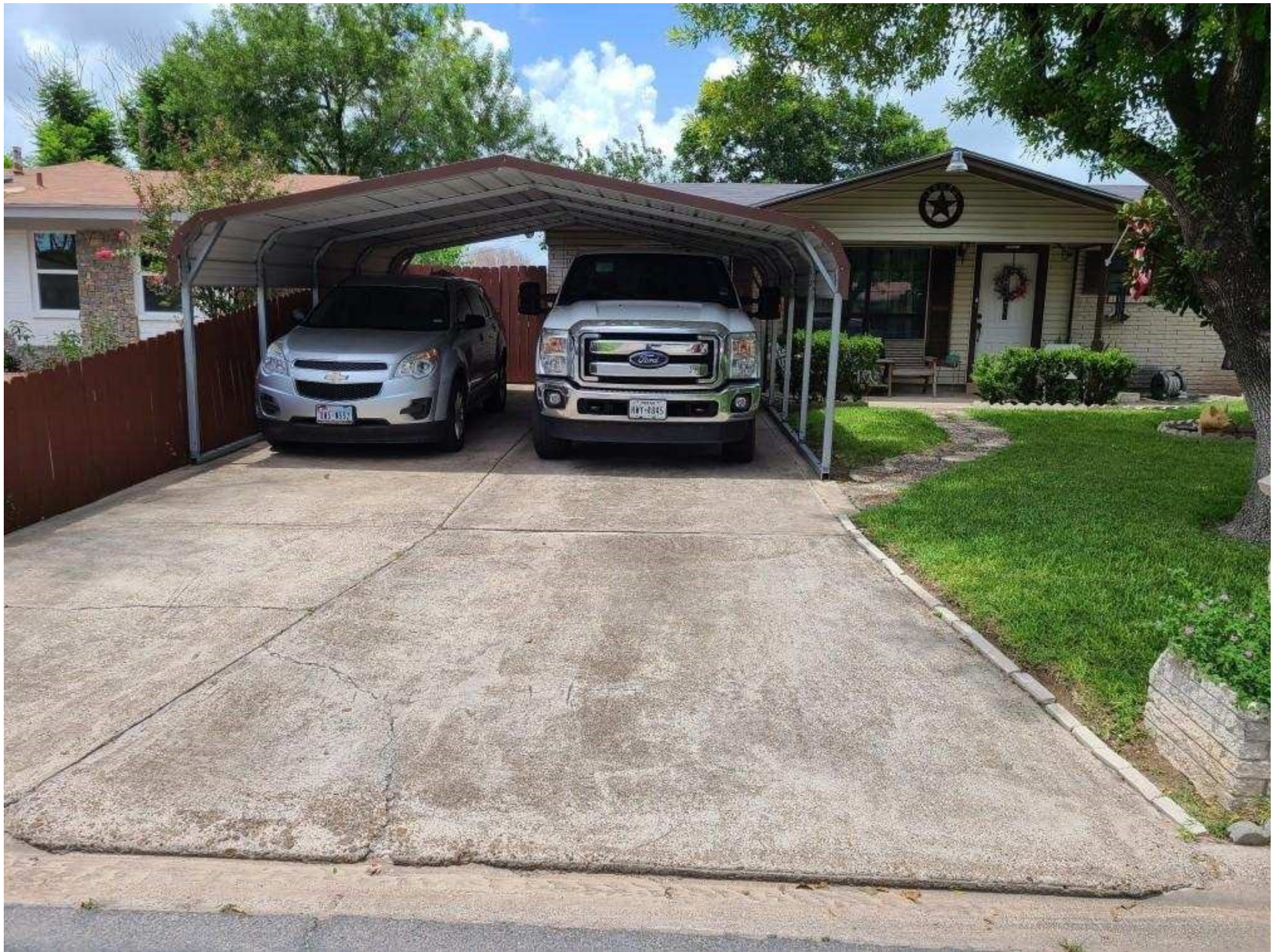
$\uparrow$  17' From CARPORT TO CURB  
Street

RECEIVED  
Date: 5/19/21

















NOTICE  
VARIANCE  
FOR  
THIS PROPERTY  
ZBA2021-0020

☆2908☆





MAP  
OF  
OLIVAREZ SUBDMISION No. 5  
HIDALGO COUNTY, TEXAS.

BEING A SUBDIVISION OF THE NORTH 14.91 ACRES OF THE EAST  
25.16 AC. OF LOT 142, LA LOMITA IRRIG. & CONST. CO'S SURV.  
OF PORCIONES 61, 62, 63 & 64, HIDALGO CNTY, TEXAS.  
Lying South of Canal R.O.W.

APPROVED  
FOR RECORDING  
Hidalg Co. 1000 1st St. S.W.  
by [Signature]  
Date 2-1-72

NOTE 2  
STANDARD PLANE ELEVATION SHALL NOT BE  
LESS THAN 10' U.S.C. & F.S. OVER THE  
ANY LESS THAN 10' ABOVE TOP OF HIGHEST  
ADJACENT CURB WHENEVER IS THE MINIMUM  
ELEVATION.

FILED FOR RECORD THIS DATE  
At 4:32 o'clock on 11/11/1964

FEB 1 1972

SANTOS SALDIVAR  
 Captain Clerk, Inspector, Sheriff, Texas  
 - *Santos Saldivar*

PREPARED BY :  
FABIAN, NELSON & MEDINA INC.  
IRVING, TEXAS

ANSWERS: 1.  $\frac{1}{2} + \frac{1}{2}i$  2.  $10 - 6 - \pi$

I, C. L. FARMAN, A REGISTERED PUBLIC SURVEYOR, DO HEREBY CERTIFY THE FOREGOING MAP TO BE A TRUE AND CORRECT REPRESENTATION OF THE LAND HEREON SHOWN AS PLATTED, BY ME FROM THE SURVEY OF THE OUTSIDE BOUNDARIES OF SAME.

STATE OF TEXAS:  
COUNTY OF HENDALSO:

KNOW ALL MEN BY THESE PRESENTS, THAT CHARLES OLIVANZE CONSTRUCTION, INC., OWNER OF THE LAND HEREON MAPPED AND PLATTED, DO HEREBY DEDICATE THE SURFACE USE OF THE STREETS AND ALLEYS SHOWN ON THE ABOVE MAP TO THE USE OF THE PUBLIC AND UNTO THE CITY OF SPALLER, TEXAS, SO LONG AS IT SHALL ACCEPT, MAINTAIN AND PROTECT THE SAME FOR THE USE AND BENEFIT OF THE PUBLIC.

IN TESTIMONY WHEREOF, ENRIQUE OLIVAREZ CONSTRUCTION, INC., HAS CAUSED THESE PRESENTS TO BE EXECUTED ON THIS 6TH DAY OF December A.D. 1971.

STATE OF TEXAS -  
COUNTY OF MEDALCO

NOTED BY THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED ABOVE NAMED OWNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED, GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 24 DAY OF DECEMBER A.D. 1971.

THIS PLAN APPROVED BY THE SMALLER ZONING AND PLANNING BOARD ON THIS THE 14<sup>th</sup> DAY OF December AD 1977

THIS PLAT APPROVED BY THE CITY COMMISSIONER OF THE CITY OF MARLBOROUGH, MASSACHUSETTS ON THIS THE 28<sup>th</sup> DAY OF December A.D. 1977

THIS PLAT, APPROVED BY THE HUMBOLDT COUNTY WATER IMPROVEMENT DISTRICT NO. 1 ON THIS THE 23<sup>rd</sup> DAY OF October, A.D. 197

18m 16 April

**File 82-8**

## **Memo**

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

**FROM:** Planning Staff

**DATE:** July 30, 2021

**SUBJECT: REQUEST OF IGNACIO GUERRA III FOR THE FOLLOWING SPECIAL EXCEPTION AND VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. REAR YARD SETBACK FOR A PROPOSED IRREGULAR SHAPED METAL CARPORT, 2) TO NOT REQUIRE A 5 FT. SEPARATION FOR AN ACCESSORY BUILDING TO THE MAIN BUILDING FOR A PROPOSED IRREGULAR SHAPED METAL CARPORT, 3) TO ALLOW AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. CORNER SIDE YARD SETBACK ALONG THE WEST PROPERTY LINE FOR AN EXISTING JACUZZI, AND 4) TO ALLOW AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. CORNER SIDE YARD SETBACK ALONG THE WEST PROPERTY LINE FOR A PROPOSED PORCH CANOPY MEASURING 17 FT. BY 34 FT., AT LOT 82, LAS VILLAS SUBDIVISION UNIT NO. 2, HIDALGO COUNTY, TEXAS; 101 EAST MARIGOLD AVENUE. (ZBA2021-0032)**

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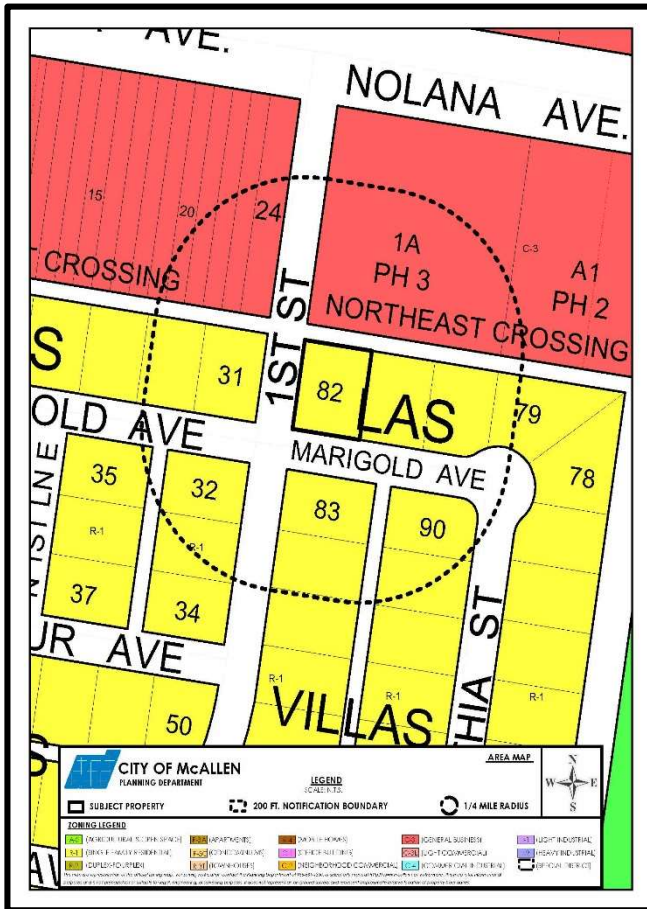
### **REASON FOR APPEAL:**

Ignacio Guerra III is requesting the following special exception and variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 10 ft. into the 10 ft. rear yard setback for a proposed irregular shaped metal carport, **2)** to not require a 5 ft. separation for an accessory building to the main building for a proposed irregular shaped metal carport, **3)** to allow an encroachment of 10 ft. into the 10 ft. corner side yard setback along the west property line for an existing jacuzzi, and **4)** to allow an encroachment of 10 ft. into the 10 ft. corner side yard setback along the west property line for a proposed porch canopy measuring 17 ft. by 34 ft. The applicant is requesting the special exception to provide shade for his vehicles during inclement weather. The variance requests are to provide shade for the family and a roof cover for the jacuzzi.

### **PROPERTY LOCATION AND VICINITY:**

The subject property is located at the northeast corner of the intersection of North 1<sup>st</sup> Street and East Marigold Avenue. The corner lot has 90 ft. of frontage along East Marigold Avenue and a depth of 110 ft. for a tract size of 9,900 sq. ft. The property is zoned R-1 (single-family residential) District. The adjacent zoning is C-3 (commercial business) District to the north and R-1 (single-family residential) District to the east, south and west. Surrounding land uses are single-family residences and commercial plazas.





## BACKGROUND AND HISTORY:

The Las Villas Subdivision Unit No.2 was recorded on January 18, 1983. The plat specifies a 20 ft. front yard setback, 6 ft. side yard setbacks except for corner lots which shall be 10 ft., and a 10 ft. rear yard setback. According to Hidalgo County Appraisal District records a residential home was built in 1990 and acquired by the applicant in 2003. An application for a special exception request and variances was submitted to the Planning Department on July 12, 2021.

## ANALYSIS:

**Special exception request:** The special exception request is for a proposed carport that is partially completed as a frame steel construction and is anchored to an existing concrete driveway. The submitted site plan shows a proposed carport encroaching 10 ft. into the 10 ft. rear yard setback. The plat indicates a 5 ft. utility easement that runs concurrently with the rear setback along the rear property line, for which an abandonment request has been submitted and is being processed.

**Variance request #2:** Variance request No. 2 is to not require a 5 ft. separation for an accessory building to the main building for a proposed irregular shaped metal carport. The supports of the structure sit approximately 1.16 ft. away from the single-family residence. Construction material is of steel which is noncombustible.

**Variance request #3:** Variance request No. 3 is to allow an encroachment of 10 ft. into the 10 ft. corner side yard setback along the west property line for an existing Jacuzzi. The Jacuzzi is portable however, the applicant would like for the Jacuzzi to remain in its current location. The Jacuzzi is mobile and can be re-located out of the setbacks.

Variance request #4: Variance request No. 4 is to allow an encroachment of 10 ft. into the 10 ft. corner side yard setback along the west property line for a proposed porch canopy measuring 17 ft. by 34 ft. Corner side yard setbacks are important in allowing for adequate building separation from roadways. Granting of a variance may allow a structure to be enclosed in the future.

There is an existing masonry fence that surrounds the subject property that serves as a buffer.

During a site visit, staff noticed similar encroachments into the side and rear yard setbacks in this block.

Staff has not received any phone calls or emails in opposition to this special exception and variance requests.

**RECOMMENDATION:**

Staff recommends approval of the special exception request for the carport as a buffer has been provided, and variance request #2 to not require a 5 ft. separation for an accessory building to the main building.

Staff recommends disapproval of variance request #3 for an encroachment for a jacuzzi since the jacuzzi is mobile and variance request #4 an encroachment for a porch canopy since such structures maybe enclosed. However, if the Board chooses to approve the requests, the approval should be limited to the footprint shown on the submitted site plan.



ZBOA  
3/4/2021

ZBA 2021 0032



City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street  
McAllen, TX 78501  
P. O. Box 220  
McAllen, TX 78505-0220  
(956) 681-1250  
(956) 681-1279 (fax)

Project

Legal Description Lot #82

Subdivision Name Las Villas #2

Street Address 101 E. Marigold Ave. McAllen, TX 78501

Number of lots (1) Gross acres \_\_\_\_\_

Existing Zoning \_\_\_\_\_ Existing Land Use \_\_\_\_\_

Reason for Appeal (please use other side if necessary) "Need to rear property line."  
Simple Carport not  
enough existing space in planned D-Way. Had to go to the (back yard) over →

☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

☐ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name Ignacio Guerra II Phone 956-655-0998

Address 101 E. Marigold Ave. E-mail ignacioguerra3@yahoo.com

City McAllen State TX Zip 78501

Owner

Name Ignacio Guerra II Phone 956-655-0998

Address 101 E. Marigold Ave. E-mail ignacioguerra3@yahoo.com

City McAllen State TX Zip 78501

Authorization

To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?

☐ Yes

☒ No

I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.

Signature

Ignacio Guerra II

Date

July 12, 2021

Print Name

Ignacio Guerra II

☒ Owner

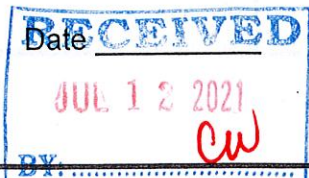
☐ Authorized Agent

Office

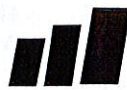
Accepted by [Signature]

Payment received by \_\_\_\_\_

Rev 09/20







# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

\*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)

\*\*Information provided here by the applicant does not guarantee that the Board will grant a variance.

\*\*\*Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.

1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:

I have no problem utilizing my property as per boundary lines are in place identifying my lot ownership and possession rights. (Simple construction of a carport is my goal.)

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:

I am at a reduced driveway distance from "alley," so much so a Full size vehicle will not fit in - pre-existing driveway. Rear of vehicle protrudes into alley. I've had to "occupy my yard!"

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:

No Encroaching. All will be properly constructed and built with structural integrity and will in no way obstruct or impede / clearances needed by travel through alley!

4. Describe special conditions that are unique to this applicant or property:

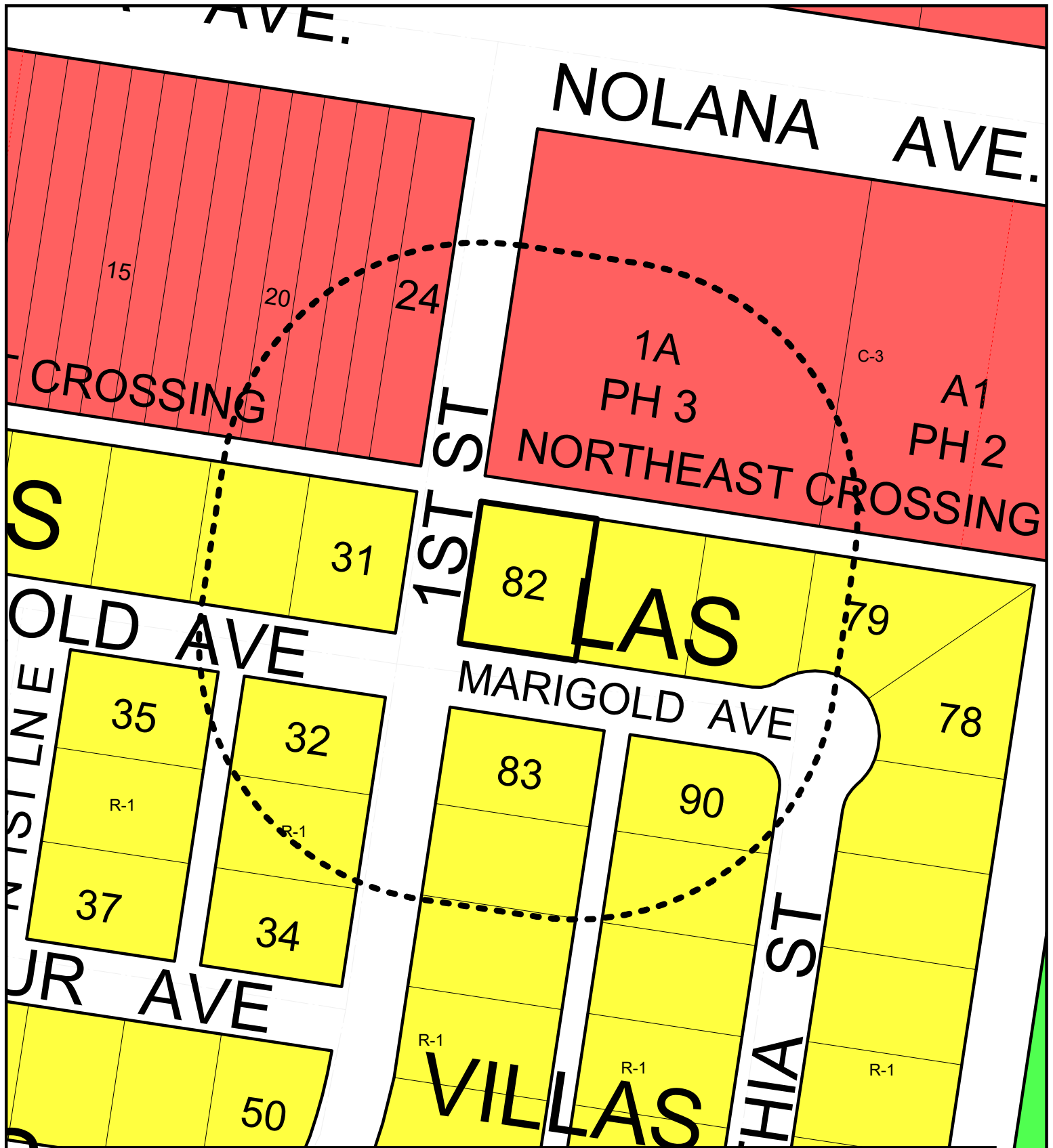
The planning during the mid-1980s was not practical due in part to the ever evolving growth of structures and expansion of homes etc. "30 years later." "Expansion (utilization) of my yard is needed!"


So that I can safely maintain the quality of live thus Removing Harmful UV Rays From the Sun's Ozone.

Chairman, Board of Adjustment  
Signature

Depletion! Date  
Depletion!










**CITY OF McALLEN**  
PLANNING DEPARTMENT


**LEGEND**  
SCALE: N.T.S.

**AREA MAP**

 **SUBJECT PROPERTY**

 **200 FT. NOTIFICATION BOUNDARY**

 **1/4 MILE RADIUS**



**ZONING LEGEND**

<p><span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>A-0</b> (AGRICULTURAL &amp; OPEN SPACE)</p> <p><span style="background-color: #FFFFE0; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-1</b> (SINGLE FAMILY RESIDENTIAL)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-2</b> (DUPLEX-FOURPLEX)</p>	<p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-3A</b> (APARTMENTS)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-3C</b> (CONDOMINIUMS)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-3T</b> (TOWNHOUSES)</p>	<p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-4</b> (MOBILE HOMES)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-1</b> (OFFICE BUILDING)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-2</b> (NEIGHBORHOOD COMMERCIAL)</p>	<p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-3</b> (GENERAL BUSINESS)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-3L</b> (LIGHT COMMERCIAL)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-4</b> (COMMERCIAL INDUSTRIAL)</p>	<p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>I-1</b> (LIGHT INDUSTRIAL)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>I-2</b> (HEAVY INDUSTRIAL)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>(SPECIAL DISTRICT)</b></p>
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This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, This map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on ground survey and represent approximate relative location of property boundaries.



**CITY OF McALLEN**  
PLANNING DEPARTMENT



**SUBJECT PROPERTY**

**AERIAL MAP**  
SCALE: N.T.S.



This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes.  
location of property boundaries.



Canal

Cynthia

Alley →

Alley →

Carport

Garage

House

Side walk

17' x 24' 17' x 34'

Side walk

1st

RECEIVED

JUL 12 2021

RECEIVED  
JUL 16 2021  
By













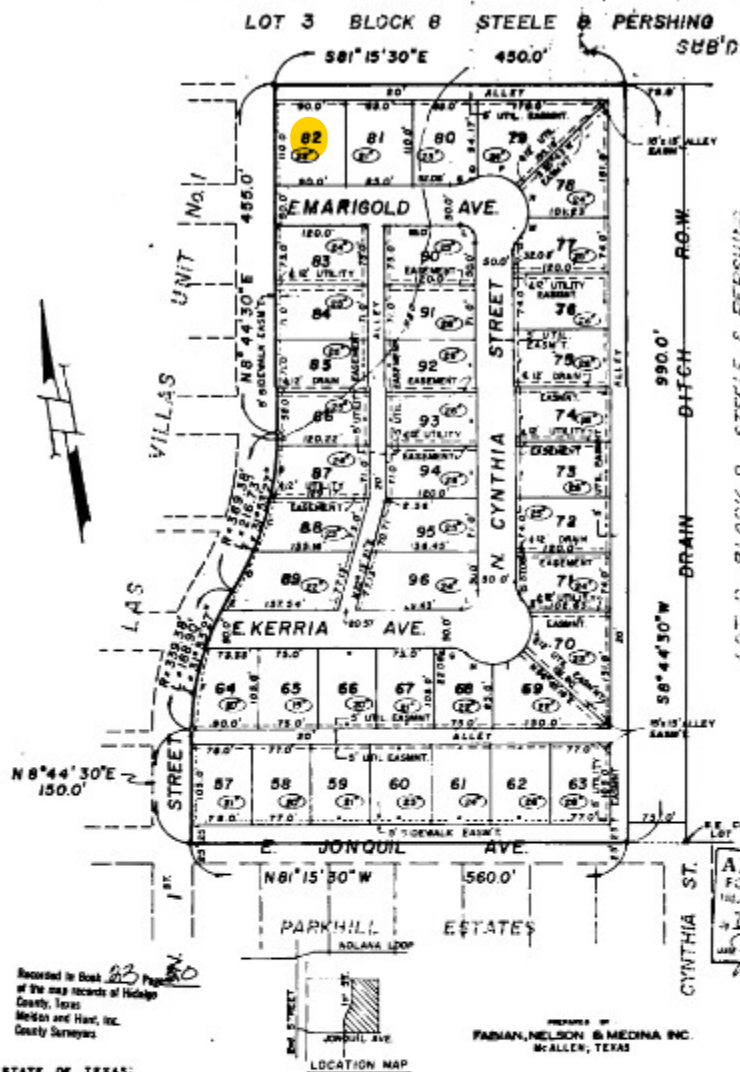






NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
THIS PROPERTY  
ZBA2021-0032





1. Front yard setback shall be 20 ft. minimum, except for lots fronting on Jewell Avenue. Front setback shall be 25 ft. minimum.
2. Sideyard setback shall be 8 ft. minimum except when adjacent lot is zoned R-1, then sideyard setback shall be 10 ft.
3. Rear yard setback shall be 10.0 ft. minimum except for lots on rear of blocks adjacent to 19 ft.
4. Minimum front setback shall be the corner of Adams above top of curb measured at front corner on stone on each lot.
5. A 15 ft. by 15 ft. corner ally for access easement is required at the corners of all lots which have abutting street right-of-way lines.
6. General Power & Light Co. is hereby granted an easement and right-of-way on each lot in said subdivision for an underground electric service line. Together with it, the right of ingress and egress for such purposes at their location where such service lateral is to be as is installed.
7. Side-ally is required on both ... 1st Street and on the north side of Jewell Avenue.
8. A 10 ft. by 10 ft. corner ally for access easement is required at the corners of all lots which have abutting street right-of-way and ally right-of-way lines.

CURVE DATA				
CURVE	DATE	LENGTH	CURVE	ANAL.
A	2/29/58	15.00	13.22	15.29 53
B	2/29/58	17.22	15.00	15.29 43
C	2/29/58	74.78	74.84	15.29 53
D	2/29/58	17.22	27.22	15.29 53
E	2/29/58	17.22	17.22	15.29 53
F	2/29/58	108.75	108.31	15.29 53
G	30.00	11.88	21.22	15.29 53
H	30.00	24.44	30.56	15.29 53
I	30.00	41.96	40.88	15.29 53
J	30.00	56.93	56.93	15.29 53
K	30.00	71.87	71.75	15.29 53
L	30.00	86.80	86.56	15.29 53
M	30.00	101.73	101.73	15.29 53
N	30.00	116.66	116.66	15.29 53
O	30.00	131.59	131.59	15.29 53
P	30.00	146.52	146.52	15.29 53

LAS VILLAS SUB'D.  
UNIT No.2

Mc ALLEN, TEXAS

BEING A SUBDIVISION OF 10.80 AC  
OUT OF LOT 3, BLOCK 8, STEELE  
PERSHING SUBDIVISION OF  
PORCIONES 66 & 67  
HIDALGO COUNTY, TEXAS

CHECKED FOR DRAINAGE  
BY: W. O. W.

STATE OF TEXAS:  
COUNTY OF MIDLAND:

PROPERTY OF: MOBILE MAP: 11-100 DATE: 11-1-78  
 PREPARED BY: LOCAL PURPOSE: THAT GRANTAS A QUIRYANA, INC., A TEXAS CORPORATION, THE OWNER OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED LAS VILLAS  
SUBDIVISION UNIT NO. 1, IN THE CITY OF MOBILE, TEXAS, (HEREINAFTER) DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATER COURSES, DRAINAGE  
RIGHTS, AND PUBLIC PLACES THEREIN SHOWN FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

IN TESTIMONY WHEREOF, CERALES & GUTIERA, INC. HAS CAUSED THESE PRESENTS TO BE EXECUTED THE

STATE OF TEXAS;  
COUNTY OF HALLAM

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED THE ABOVE NAMED PERSONS  
INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION  
GIVEN UNDER MY NAME AND SEAL OF OFFICE, THIS THE 10th DAY OF September, 1952

KNOWN TO ME  
THEY/HI STATED

I, THE UNDERSIGNED, CHAIRMAN OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF MAJALGA HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

STATE OF TEXAS:  
COUNTY OF HENDERO

I, THE UNDERSIGNED, A REGISTERED PUBLIC SURVEYOR <sup>#1290</sup> IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

I, THE UNDERSIGNED, MAYOR OF THE CITY OF SMALLER, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF SUBDIVISION REGULATIONS OF THIS CITY WHEREAS MY APPROVAL IS REQUIRED.

THIS PLAN APPROVED BY THE KIDALSO COUNTY

DISTRICT  
APPROVED FOR RECORDING

COMMISSIONERS' COURT

1. ECG 2. B12. Costa, C.

Michigan County, Tenn

*U. J. - The New York*

## CRITERIA FOR ZBOA DETERMINATIONS

### APPEALS

1. ZBOA may hear and decide appeals **where it is alleged there is error** in any order, requirement, decision or determination made by an administrative official **in the enforcement of Chapter 138** of the Code of Ordinances ("Zoning").
2. In conformity with the provisions of V.T.C.A., Local Government Code § 211.009 et seq. and Chapter 138 of the Code of Ordinances, the **ZBOA may reverse or affirm, wholly or partly, or may modify** the order, requirement, decision or determination appealed from.

### SPECIAL EXCEPTIONS

Authorized under Ord. Sec. 138-43 ("Powers") in the following instances:

1. Where the **street layout** actually on the ground varies from the street layout as shown on such maps.
2. To permit the **reconstruction of a nonconforming building** which has been damaged to the extent of more than 50 percent of its replacement cost.
3. To **waive or reduce the parking and loading requirements** whenever:
  - a. The character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities, OR
  - b. Where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
4. To allow a change **from an existing nonconforming use to another nonconforming use** of a structure, or a structure and premises in combination, if:
  - a. No structural alterations are made, AND
  - b. The Board finds that the proposed nonconforming use is not more nonconforming in the district as the existing nonconforming use.

#### **Ord. Sec. 138-86. – GENERAL POLICY.**

The general public, the board of commissioners, and the planning board are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, wherever and whenever possible, except:

- (1) When necessary to preserve property rights established prior to the date the ordinance from which this article is derived became effective as to the property in question, and
- (2) When necessary to promote the general welfare and to protect the character of the surrounding property.



## VARIANCES

Authorized only when ALL of the following applies:

1. Owing to special conditions, a literal enforcement of Zoning Ordinance provisions would result in **unnecessary hardship**.
2. **Applicant proves** to the Board the following:
  - a. Land in question cannot yield a reasonable return if used only for a purpose allowed in that zone,
  - b. **Plight is unique** and not shared in general by others in the neighborhood, and
  - c. Variance will **not alter the essential character of the locality**.
3. Variance would **not merely serve as a convenience** to the applicant.
4. Variance must be in **harmony with purpose and intent of Zoning Ordinance**.
5. Variance would **not be contrary to the public interest**.
6. **Surrounding property is be properly protected**.
7. **The spirit of this Zoning Ordinance is observed and substantial justice done**.

Definitions

Table of Contents

**Chapter 138-Zoning .....1**

    Section 138-1 Definitions .....1

**Chapter 110-Vegetation .....6**

    Section 110-26 Definitions .....6



## Chapter 138-Zoning

### Sec. 138-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory building* means a subordinate building, located on the same lot as the main building, the use of which is clearly incidental to and customarily found in connection with the main building or principal use of the property.

*Accessory use* means a use which is clearly incidental to and customarily found in connection with the principal use of the premises and which is located on the same lot as the principal use.

*Accessory use of building* means a subordinate use or structure customarily incident to and located on the lot occupied by the main use or structure and conforming with setback and other regulations concerning location.

*Alley* means a minor public right-of-way which is used primarily for vehicular and utility service access to the backs or sides of properties otherwise abutting on a public street.

*Apartment* means a room or suite of rooms located in a building with other such rooms or suites arranged, designed, or to be occupied as a residence by a family. (See Dwelling unit.)

*Associated recreation* means recreational uses which are an integral part of a common ownership or associated or high density residential development (example: homeowners' association with a private club or facility).

*Authorized agent* means an architect, builder, developer or other person empowered to act on behalf of such persons.

*Base station.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new base stations that are not eligible for Section 6409, need not be existing at the time of the application, nor does subsection 138-1.A(a)1.c. apply to a new base station.

*Boardinghouse* means a building other than a hotel where lodging and meals are provided for compensation.

*Building* means any structure designed to be built for the support, enclosure, shelter or protection of persons, animals, chattel or property of any kind. The word "building" includes the word "structure."

*Carrier on wheels or cell on wheels ("COW").* A portable self-contained mobile facility moved to a location and set up to provide wireless services on a temporary or emergency basis.

*Concealed or stealth design elements.* A design elements of any tower, base station or transmission equipment that allows it to be integrated as an architectural feature of a tower or base station or so that it is not readily apparent to a casual observer. It may be screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure so that it is not easily recognizable from other natural structures.

*Conditional use* means a use which may be suitable in certain locations in a zoning district if developed and operated under specific conditions and/or for a limited period of time.

*Depth of lot* means the mean horizontal distance between the front and rear lot lines. (See definitions of Front and Rear lot lines.)

*District* means a section of the city for which the regulations governing the areas, heights or uses of buildings are uniform.

*Dwelling unit* means any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boardinghouses or mobile homes.

- (1) *Single-family* means a building designed for and/or occupied exclusively by one family as a separate dwelling unit.

- (2) *Duplex* means a building designed for and/or occupied exclusively by two families living independently of each other.
- (3) *Triplex* means a building designed for and/or occupied exclusively by three families living independently of each other.
- (4) *Fourplex* means a building designed for and/or occupied exclusively by four families living independently of each other.
- (5) *Multiple* means a building designed for and/or occupied exclusively by five or more families living independently of each other.

The determination of whether one family is living independent of another is based on one or more of the following criteria: separate sanitary facilities; separate kitchen facilities; separate entrances; or separate utilities.

*Eligible facilities request.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Eligible support structure.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Existing.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Family* means one or more persons living together as a single housekeeping unit with common sanitary and kitchen facilities.

*Garage, commercial* means a building or premises used for storage, repair, rental or servicing of motor vehicles.

*Garage, private* means an accessory building, attached or detached, designed or used for the storage of motor-driven vehicles owned and used only by the occupants of the building to which it is accessory.

*Guesthouse* means an accessory building designed for the temporary occupancy of guests of the primary dwelling for which there is no remuneration. "Maids' quarters" means a portion of a dwelling unit, within the same enclosure and not a separate accessory building attached to the primary building, that may contain separate sanitary and/or kitchen facilities which is designed for or used for residential occupancy by an employee of the primary residence.

*Height* means, for a building or portion of a building, the vertical distance from grade to the highest point of the coping of a flat roof, the deck line of a mansard roof, and the mean height level between eaves and ridge for hip, gable or gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator bulkheads, mechanical rooms, tanks, water towers, radio towers, television antennas, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height. Heights authorized in this chapter are subordinate to the airport zoning ordinance, appendix A.

*Loading space* means a space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks and having a minimum dimension of 12 by 35 feet and a vertical clearance of at least 14 feet.

*Lot* means an undivided tract or parcel of land having frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record. The word "lot" includes the word "plot."

- (1) *Corner lot* means a lot abutting upon two or more public streets at their intersection.
- (2) *Building coverage* means percentage of the lot that is occupied by the ground area of a building and its accessory buildings.
- (3) *Lot, double frontage* means a lot abutting on two nonintersecting public streets as distinguished from a corner lot.



- (4) *Lot lines* means the lines bounding a lot as defined in this section.
- a. *Front lot line* means the property line between the front yard and the contiguous street right-of-way boundary.
  - b. *Rear lot line* means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
  - c. *Side lot line* means the property between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.

*Lot of record* means a parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the county clerk; or a tract of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the county clerk prior to October 15, 1973, which has not been divided since recording.

*Maneuvering space* means the space entirely on private property required for maneuvering vehicles in such a manner as to preclude the backing of any vehicle into any street right-of-way.

*Mobile home* means a movable or portable dwelling originally constructed to be towed, on its own chassis, by a motor vehicle over public roads.

*Mobile home and modular home park* means a unified development of five acres or more for mobile homes arranged on a tract of land owned by an individual or a single business entity for the purpose of renting or leasing lots, and meeting the requirements of chapter 122, article II of this Code.

*Mobile home and modular home subdivision* means a unified development of five acres or more for mobile homes arranged on a tract of land in such a manner as to provide an individual lot (see definition of Lot) for each of the mobile homes.

*Modular home* means a dwelling unit in which more than 50 percent of the structure is constructed at other than the construction site, brought to the site in modules, and set on a permanent foundation.

*Ornamental feature* means an addition to a structure designed to enhance the appearance of the structure, in compliance with all of the following criteria:

- (1) Any space occupied by or enclosed by the ornamental feature should not be included in or made a part of the air conditioned, heated, or enclosed portion of the structure;
- (2) The feature should serve no purpose or function for the structure other than ornamentation. The building should be equally functional without the feature as with the feature; and
- (3) The feature shall extend no further than 24 inches into a required yard.

*Parking area* means a space used exclusively for the parking of vehicles and where no other business is conducted.

*Parking space* means an area, not closer than six feet from the back edge of the curb, the width and length of which shall exceed by a minimum of two feet the dimensions of the type of vehicle normally to be parked in the space, and connected with a street or alley by a driveway affording satisfactory ingress and egress. The minimum dimension of a parking space shall be in accordance with the city off-street parking requirements in article VII of this chapter.

*Planned unit development (PUD)* means and includes a combination of different dwelling types and/or a variety of land uses which creatively complement each other and harmonize with existing and proposed land uses in the vicinity, and which comply with the Planned Unit Development provisions of chapter 134, article IV of this Code.

*Portable building* means a temporary building that does not have a foundation and is transportable.

*Recreational vehicle or travel trailer* means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified as a travel trailer by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight feet and a body length not exceeding state maximums.

*Residential storage building* means any building, either portable or constructed onsite, utilized for storage purposes and not requiring plumbing and electrical wiring, and not used for living quarters.

*Restaurant* means a building or portion of a building where the primary business is the on-premises sale of prepared food, with adequate kitchen facilities for the preparation of the food to be sold, the adequacy of such kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered, and where alcoholic beverages may be sold under the following conditions:

- (1) At least 51 percent of the gross income shall be derived from the sale of prepared food.
- (2) Any outside entrances, outside separate identification, outside signs or other separate advertising for lounge or bar areas shall be permitted only as an accessory or secondary feature of the restaurant.
- (3) Live entertainment may be permitted.
- (4) Whenever the director of planning on the basis of a sworn complaint from any person determines that a violation of this section exists, he may require any person serving alcoholic beverages as an incidental use to provide the city, within 30 days of notification, a verified audit for each quarter of the calendar year, showing the gross income derived from the sale of food.

*Retail* means the sale of goods directly to a consumer; engaged in, pertaining to or relating to the sale of merchandise at retail; or selling by individual items, or by the piece, directly to a consumer.

*Right-of-way line* means a dividing line between a lot, tract or parcel of land and the public right-of-way.

*Street* means a public or private thoroughfare which affords the principal means of access to abutting property, excluding alleys.

*Structural alteration* means any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

*Structure* means anything constructed, erected or artificially built up; or composed of parts and joined together in a permanent manner.

*Substantial change.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Tower.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new towers that are not eligible for Section 6409, they need not be existing at the time of the application.

*Townhouse* means a single-family dwelling unit constructed in a series or a group of units having common walls, each on a separate lot.

*Transmission equipment.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Yard* means an open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the definitions of "yard" set out in this section. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

- (1) *Front yard* means a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the right-of-way line and wall of the main building or any projections thereof other than projections of the usual uncovered steps, uncovered balconies or uncovered porches. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension, except where corner lots may be square in dimension and/or have double frontage, in which case the front yard shall correspond to the lot's side adjacent to the longest block face in which it occurs and to which the majority of the existing structures front.



- (2) *Rear yard* means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than projections of uncovered steps, uncovered balconies or uncovered porches. On all lots, the rear yard shall be in the rear of the front yard.
- (3) *Side yard* means a yard between the main building and the side line of the lot, and being the minimum horizontal distance between a side lot line and the sides of the main buildings or any projections thereof.

(Code 1966, § 32-2; Ord. No. 1996-8, § I, 1-22-96; Ord. No. 1996-70, § I, 11-18-96; Ord. No. 1998-68, § 1, 2-27-98; Ord. No. 1999-69, § 1, 8-9-99; Ord. No. 2004-15, § 5, 2-9-04; Ord. No. 2015-38, § II, 5-11-15)

**Cross reference**— Definitions and rules of construction generally, § 1-2.

Footnotes:

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**Note**— 47 U.S.C. § 332(c)(7)(C) Definitions. For purposes of this paragraph—(i) the term "personal wireless services" means commercial mobile services [cellular service], unlicensed wireless services, and common carrier wireless exchange access services..."; 47 U.S.C. § 332(d) ....(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;..."

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**Note**— 47 U.S.C. § 332(c)(7)(C) Definitions for purposes of this paragraph... (ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services..."

## Chapter 110-Vegetation

### Sec. 110-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Buffer* means a screen constructed of wood, concrete block, masonry, a combination of wood and masonry, or landscape material with a chain link fence in such a manner that adjacent property is visually screened, and so that noise, solid waste or other objectionable influences will be avoided. Such buffer shall be perpendicular to the ground, a minimum of six feet in height, continuous and uninterrupted, and 100 percent opaque except where extraordinary circumstances exist where additional height will more adequately accomplish the desired end.

*Caliper* means the diameter of a tree measured 12 inches above the ground for trees up to and including eight inches in diameter and four and one-half feet above the ground for trees having a diameter of more the eight inches. The diameter of a multi-stem tree shall be measured at the point below branching or the sum of the two largest stems measured at four and one-half feet above the ground which ever is greater.

*Contiguous* means adjacent property whose property lines are shared, or are separated by only a street, alley, easement or right-of-way.

*Developed property* means that portion of a lot or parcel upon which a building, structure, pavement, or other improvements have been or are proposed to be placed.

*Diameter-at-breast-height (DBH)* means the tree trunk diameter measured in inches at a height of four and one-half feet (54 inches) above natural grade or the DBH measurement according to the latest edition of the Guide for Plant Appraisal as published by the Council of Tree and Landscape Appraisers, when the tree trunk branches out at a point lower than four and one-half feet.

*Frontage* means lineal distance measured along abutting street rights-of-way.

*Ground cover* means low growing plants planted in such a manner as to form a continuous cover over the ground, typical horizontal growth form with a maximum height of 24 inches, such as liriopse, low growing varieties of honeysuckle, confederate jasmine, English ivy or others.

*Landscape material* means trees, shrubs, ground cover, vines or grass installed in planting areas, including but not limited to those installed for the purpose of fulfilling the requirements of this article.

*Landscape strip area* means a planting area within the property lines of specified width and parallel to a public street, excluding driveways for ingress and egress.

*Paved ground surface area* (also referred to in this article as paved area or paved ground area) means any paved ground surface area (excepting public rights-of-way) used for the purpose of driving, parking, storing or displaying of vehicles, boats, trailers and mobile homes, including new and used car lots and other open lot uses. Parking structures, covered drive-in parking areas to the drip line of the covering or garages shall not be considered as paved ground surface areas.

*Planting area* means an area intended or used for landscaping that has a minimum of 40 square feet of actual plantable area and an inside dimension on any side of at least 36 inches.

*Reconstruction* means rehabilitation or replacement of structures on nonresidential or multifamily property to an extent exceeding 50 percent of the assessed valuation of such structures as shown on the most recent tax roll of the city.

*Shrub* means any woody plant of relatively low height, having several stems arising from the base and lacking a single trunk.

*Stormwater detention facility* means an impoundment on a lot or parcel reserved for detaining and controlling the release of stormwater runoff as required by City of McAllen Drainage Policy.

*Street line* means that line separating the right-of-way from any adjacent property.

*Tree* means any self-supporting woody plant of a single trunk and of a species which normally grows to an overall mature height of a minimum of 15 feet in the lower Rio Grande Valley of the state.

*Vine* means any of a group of woody or herbaceous plants which may climb by twining, by means of aerial rootlets or tendrils, or which may simply sprawl over the ground or other plants.

*Xeriscape* means landscape methods which conserve water through the use of drought-tolerant plants and planting techniques.

(Code 1966, § 17 3/8 -4; Ord. No. 1993-88, § I, 12-13-93; Ord. No. 2006-118, § 1, 11-13-06; Ord. No. 2007-28, § 1, 3-26-07)

**Cross reference**— Definitions and rules of construction generally, § 1-2.



## Exceptions Cited within the Zoning Ordinance

### Exceptions pertaining to front yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Balconies, uncovered (*Section 138-1, Yard (1)*)
3. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
4. Cornices up to 2 feet (*Section 138-366 (c)*)
5. Eaves up to 2 feet (*Section 138-366 (c)*)
6. Fence not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)
7. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
8. Flues not to exceed 5 feet (*Section 138-366 (d)*)
9. Ornamental features up to 2 feet (*Section 138-366 (c)*)
10. Planting not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)
11. Porches, uncovered (*Section 138-1, Yard (1)*)
12. Projections up to 2 feet (*Section 138-366 (c)*)
13. Pumps, filling station not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d)*)
14. Pumps, gas and canopies not less than 9 feet from the property line or 10 feet from the curb, whichever greater (*Section 138-259*)
15. Pumps, islands not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d)*)
16. Sills up to 2 feet (*Section 138-366 (c)*)
17. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
18. Steps, uncovered (*Section 138-1, Yard (1)*)
19. Structure not to exceed 3 feet within 25 feet of a curb intersection in residential zones (*Section 138-367 (c)*)

### Exceptions pertaining to rear yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Balconies, uncovered (*Section 138-1, Yard (1)*)
3. Buildings, accessory may occupy no more than 30% (*Section 138-369*)
4. Carports, unenclosed abutting an alley may be built up to the rear property line within the R-3A and R-3C Districts (*Section 138-356, Footnote 5*)
5. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
6. Cornices up to 2 feet (*Section 138-366 (c)*)
7. Eaves up to 2 feet (*Section 138-366 (c)*)
8. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
9. Flues not to exceed 5 feet (*Section 138-366 (d)*)
10. Ornamental features up to 2 feet (*Section 138-366 (c)*)
11. Parking, unenclosed may occupy no more than 90% (*Section 138-369*)
12. Porches, uncovered (*Section 138-1, Yard (1)*)
13. Projections up to 2 feet (*Section 138-366 (c)*)
14. Sills up to 2 feet (*Section 138-366 (c)*)
15. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
16. Steps, uncovered (*Section 138-1, Yard (1)*)

Exceptions pertaining to side yard setbacks:

1. Balconies opening upon fire towers not to exceed 5 feet (*Section 138-366 (d)*)
2. Canopy, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d)*)
3. Chimneys not to exceed 5 feet (*Section 138-366 (d)*)
4. Cornices up to 2 feet (*Section 138-366 (c)*)
5. Eaves up to 2 feet (*Section 138-366 (c)*)
6. Fire escapes, open or lattice-enclosed not to exceed 5 feet (*Section 138-366 (d)*)
7. Flues not to exceed 5 feet (*Section 138-366 (d)*)
8. Ornamental features up to 2 feet (*Section 138-366 (c)*)
9. Porte-cochere, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d)*)
10. Projections up to 2 feet (*Section 138-366 (c)*)
11. Side yards can be reduced to 10% of the lot width provided the lot has a width less than 50 feet. However, no side yard shall be less than 3.5 feet (*Section 138-368 (f)*)
12. Sills up to 2 feet (*Section 138-366 (c)*)
13. Stairways, outside not to exceed 5 feet (*Section 138-366 (d)*)
14. Townhouses can be built up to the side property line with a firewall (*Section 138-356, Footnote 10*)

Exceptions pertaining to height measurements (*Section 138-1, Height*):

1. Chimneys
2. Cooling towers
3. Domes
4. Elevator bulkheads
5. Mechanical rooms
6. Ornamental cupolas
7. Parapet walls not exceeding four feet in height
8. Radio towers
9. Spires
10. Tanks
11. Television antennas
12. Water towers



## Exceptions as per Planning Department Policy

By policy the following are permitted:

1. AC Units
2. Clothes lines
3. Concrete slabs
4. Fire pits
5. Pergolas, arbors, and trellises as a landscape feature (legal opinion, 2009)
6. Playground equipment
7. Pool decks
8. Pool pumps
9. Portable grills
10. Sports equipment i.e. basketball hoop
11. Swimming pools prior to 2009 (legal opinion)
12. Umbrellas and patio furniture
13. Water features and fountains

Legal opinions:

1. In 2009 Assistant City Attorney Ignacio Perez made an interpretation to allow arbors, pergolas, and trellises within the required setbacks. The definition of landscape material is stated as trees, shrubs, ground cover, vines or grass installed in planting areas in Section 110-26 of the Vegetation Ordinance. The legal interpretation was if vines were allowed by code as a planting area and they cover vertical planes such as walls then the same logic could be applied to arbors, pergolas, and trellises as a planting area. Mr. Perez also cited Section 110-56 (g) of the Vegetation Ordinance stating architectural planters may be permitted to fulfill landscape requirements.
2. Prior to 2009 swimming pools were not considered a structure due to the fact they were constructed underground and the Zoning Ordinance defines a structure as anything constructed, erected or artificially built up or composed of parts and joined together in a permanent manner. However, an interpretation was made in 2009 to consider swimming pools as a structure to abide by setback requirements.

## **ZONING BOARD OF ADJUSTMENT AND APPEALS**

### **RULES AND PROCEDURES**

#### **CITY OF MCALLEN**

**The McAllen Zoning Board of Adjustment and Appeals adopts the following Rules and Procedures (hereinafter “Rules”) to govern the substance of all board matters.**

#### **I. ORGANIZATION AND OFFICERS**

##### **A. Members**

The McAllen City Commission created the Zoning Board of Adjustment and Appeals (hereinafter referred to as “Board”) pursuant to Chapter 211 of the Texas Local Government Code and Chapter 138, Article II, Division 3 of the City of McAllen, Texas Code of Ordinances (the “City Code”). The Commission appoints the members for that Board under Section 211.008 of the Texas Local Government Code (the “Code”).

The Commission composed the Board to sit five (5) members. Each member serves a two-year term. The Commission may renew a member’s term for a maximum of three total consecutive terms. The Commission also appoints four (4) alternate members to serve in the absence of a regular board member. Alternate members serve just as regular members and are subject to the same rules as regular members, unless otherwise provided in these Rules, but do not vote except in the absence of a regular member.

##### **B. Officers**

The Board shall elect a Chair and a Vice Chair from its own regular members by majority vote. The Chair and Vice Chair each serve one year. The Board shall accept an Executive Secretary appointed by the McAllen Planning Department. The Board shall adopt an attorney advisor appointed by the McAllen Legal Department. The Board shall only accept the appointment of personnel under the condition each person remains the employee and charge of the City of McAllen, with no employment relationship to the Board.

##### **C. Duties and Officers**

The Chair shall preside over the Board, hold meetings of the Board, decide points of order, and dispense the business of the Board. The Chair may administer oaths, compel the attendance of witnesses, and issue subpoenas as per Section 211.008 of the Code. The Chair shall sign the minutes of board meeting after the minutes have been approved by the Board.

In the absence of the Chair, the Vice Chair, or in both their absences the most senior member, according to the member’s appointment date, shall dispense the duties of the Chair.



## **II. POWERS OF THE BOARD**

### **A. General Powers**

The Board has those powers specified in Section 211.009 and 241.033 of the Code, and those powers granted by the City Commission under Chapter 138 (Zoning Ordinance) and Chapter 110 (Vegetation Ordinance) of the City Code, and those powers granted to the Board by ordinance.

### **B. Specified Powers**

As per city ordinance and state statute, the Board has those powers described in Section 211.009 of the Code and Section 138-43 of the City Code. Those powers described in Section 138-43 are:

1. Hear and decide appeals that allege an error in any order, requirement, decision or determination made by an administrative official or agency in the enforcement of applicable provisions of the Local Government Code, the City Ordinance;
2. Authorize variances to specific cases from the terms of the City Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of City Ordinance will result in unnecessary hardship, and so that the spirit of ordinances shall be observed and substantial justice done;
3. Grant special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot; and
4. Hear and decide any other matters authorized by the City Commission through ordinance.

## **III. DUTIES OF BOARD MEMBERS**

### **A. General Duties of Members**

1. All members of the Board should attempt to inspect the premises of each case which is under consideration at each meeting and become generally familiar with each case prior to Board meetings.
2. All members shall attend all meetings, provided, however, the member must provide 72 hours prior notice to the Executive Secretary in the event the member cannot attend.
3. All members of the Board shall arrive at a logical and fair decision on each case, except where a conflict may preclude a vote on the case.

### **B. Disqualification/Conflict of Interest**

All members of the Board of Adjustment are subject to the City of McAllen Ethics Ordinance (Chapter 2 of the City Code).

In all cases before the Board where a member of the Board has a conflict as described in the Ethics Ordinance, the member shall refrain from any discussion, deliberation or vote. When applicable, the member shall complete and submit a City Conflict of Interest form, but in all cases alert the Executive Secretary at least 72 hours prior to the meeting on which the conflict is at issue. The Executive Secretary shall submit all notices of conflict to the City's attorney.

#### **IV. A BASIS FOR ACTION**

The Board shall decide each case based on the following:

1. Facts filed with application.
2. Testimony presented at the public hearing on the appeal.
3. The Planning Department's technical report on the appeal.
4. The Board's findings in its field inspection of the property may question all witnesses to assist the Board in arriving at a correct, logical and fair decision.
5. The applicable standards of review described in Section 138-43 of the City Code and Sections II.A., II.B. and VI. of these Rules.
6. All decisions shall be made on the Basis for Action. Neither the Board nor the individual members may use personal, first hand knowledge of any facts to make a determination, if such information has not been entered into the record or made available at the public hearing.

#### **V. APPLICANTS**

##### **A. Legally Vested Interest**

The Board shall not consider an application from any applicant who does not have a vested legal or equitable interest in the property in question. Applicants may appear on their own behalf or may be represented by counsel or agent. Any representation by someone other than an applicant must be accompanied with a written designation by the applicant for the agent to act on behalf of the applicant. (For example, the representative may produce a letter from the applicant to the Planning Department to authorize the representative to speak on behalf of the applicant; or, the representative may submit an application on behalf of a verifiable power of attorney.)

##### **B. Applications**

All applications for consideration by the Board must be on the prescribed form approved by the Planning Department and acceptable to the Board. The Board shall not consider applications for a variance or a special exception or any other Board action, if the application is not on a designated form. The Board shall approve the official application and the Chair shall implement it.

All applications for variances and special exceptions to commercial properties must be submitted with a current, valid "on the ground" survey. An applicant must submit a pauper form with their application if



they cannot proffer a valid survey; provided, however, the applicant illustrates their property with setbacks and encroachments as a survey would.

#### **C. Meetings**

Applicants have the right to be heard at all meetings where their applications are considered for a dispositive vote. Applicants not able to be present at the scheduled meeting to consider their application may submit to the Planning Department a written request for the Board to table the application. The Board will decide whether or not to grant the applicant's request to table. No application may be tabled at the request of applicant for more than two meetings prior to being considered for a dispositive vote. However, if the applicant requests for his/her application to be tabled because there are only four (4) board members present, such request shall not be counted against applicant's two (2) opportunities to table his/her request. Board action may proceed on any application despite the request of any applicant to table the application. The Board shall note on the record the reason(s) for the tabling of an agenda item. The reason(s) for each tabling, as well as the number of times an agenda item has been tabled, shall be reflected in an activity log in the meeting minutes at the end of each agenda item.

#### **D. Evidence**

Applicants should be prepared to present evidence necessary to prove their application. The burden of persuasion on seeking a remedy from the Board remains with the applicant at all times.

### **VI. HARDSHIP**

A. For an "unnecessary hardship" to apply to a variance, it must relate to the very property for which the variance is sought and be a condition unique, oppressive, and uncommon to other properties. An unnecessary hardship may not be self-created, or be solely financial.

B. "Hardship" must be based on hardship resulting from sharp changes in topography or unusual terrain features. The applicant may prove the topography with a plot plan which includes topographic information related to known base points or surveys, and profiles or particular problems involved, including relationships to topographic features of adjoining properties.

C. There is no unnecessary hardship if the property is suitable and useable for the uses permitted in the district in which it lies, although there will be a loss of profit or other economic disadvantage on account of such use.

### **VII. MEETINGS**

#### **A. Texas Public Information Act and Open Meetings Act.**

Except as permitted under the advice of the Board's attorney, all meetings of the Board are subject to the Texas Public Information Act and shall be open to the public. The minutes of the Board's meetings and records of its examination or other official actions are public records, unless excepted under law.

## **B. Quorum**

A quorum consists of seventy-five percent (75%) of the full complement of members. For a full complement of five (5) members, therefore, four (4) members present constitute a quorum. The Chair may declare a quorum does not exist fifteen (15) minutes following a posted meeting time, having found at least four (4) members and alternate members are not present; provided however, the Chair may not declare a quorum thirty (30) minutes from the posted time, should at least members and alternate members not be present.

## **C. Regular Meetings**

Regular meetings shall be held every first and third Wednesday at 5:30 P.M., or at other times as determined by the Board, in the City Commission Chambers. The Board by majority vote may change the place, day, and hour of the meetings; provided that, notice complies with the Texas Open Meetings Act (Chapter 511 of the Texas Government Code).

## **D. Special Meetings**

The Chair may call a special meeting. A special meeting shall have a lawful purpose and members and public shall be given at least seventy-two (72) hours notice prior to the meeting.

## **E. Order of Business**

The usual order of business shall be:

1. Call to Order
2. Approval of Minutes
3. Open Public Hearing
4. Other Statements
5. Introduction: New Information Recommendation
  - a) Presentation of recommendation by City Staff.
  - b) The Chair shall call the applicant or his representative(s) to present the case and answers any questions. If the applicant or representative is not present when called, the Chair may move a case to the end of the agenda.
  - c) The Chair shall then inquire if there are others who wish to address the Board in support of the case.
  - d) The Chair shall then inquire if there are those present who wish to address the Board who are opposed to the case.
  - e) The applicant or his representative may then give a rebuttal to any opposition.
  - f) If new facts are presented during this rebuttal, opposition shall be given the opportunity for rebuttal
  - g) Staff shall then have an opportunity to provide additional information, clarification or address questions from the Board.
  - h) Board discussion.
  - i) The Chair shall then declare that the discussion of the case is closed.



- j) In order to achieve an unambiguous decision, motions should be made in affirmative manner when possible.
- k) Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussion shall terminate whenever a member shall call for a vote upon the question or whenever the Chair shall so rule.
- l) Vote on a motion.
- 6. The Chair may move a case out of regular agenda order.
- 7. Staff Report
- 8. Other Business posted on the Agenda
- 9. Adjournment

#### **F. Staff Recommendations**

City staff shall provide recommendations on each case before the Board.

#### **G. Action by the Board**

The super-majority concurring vote of seventy-five percent of the full board compliment, i.e., four affirming members of the Board, shall be necessary to reverse an order, requirement, decision or determination of an administrative official or agency; to decide in favor of an applicant on a matter upon which the Board is required to pass under any such ordinance or regulation; to authorize a variation; or to recommend to the Director of Planning to uphold or modify the interpretation of the City Code. All other matters shall be decided by a majority vote, unless otherwise specified in the City Code. The Board on its own motion may table an application when an applicant does not appear; provided however, in no case may the board table an application, for failure of the applicant to appear, more than twice without taking a dispositive vote.

#### **H. Minutes of the Board**

The Board, through its designated appointee, shall keep minutes of all meetings that indicate the vote of each member on every question on which it is required to act, or the fact that a member is absent or fails to vote. The minutes shall be filed in the office of the Planning Department and are public record.

### **VIII. DECISIONS OF THE BOARD**

#### **A. Precedent**

There is not precedent. Any one case does not set a precedent for any future case. Each case shall be decided on its own merits and upon the circumstances of the case.

#### **B. Public Statements**

No Board member shall release any official statement to the public or the press. Only the Director of the Planning Department or her designated representative may make official statements on behalf of the Board.

**B. Parliamentary Procedure**

Any question regarding parliamentary procedure not covered by these rules shall be decided according to the latest edition of Robert's Rules of Order.

**IX. WITHDRAWAL OF APPEAL**

Any appeal or application may be withdrawn by the applicant upon written notice to the Director of Planning.

**X. ATTENDANCE**

Excessive absences cannot be tolerated, as the Board depends on a super majority of attendance in order to exercise decisions on applications for a variance. Three absences or more in a six-month period are excessive. If a Board member is excessively absent from regularly scheduled meetings, the Board may recommend to City Commission, by majority vote, that the Commission appoint an immediate replacement.

**XI. AMENDEMENT PROCEDURE**

Amendment to these rules and procedures may be made by the Board at any meeting, upon the affirmative vote of five (5) members, provided any such amendment is proposed at a preceding meeting and entered into the minutes of such meeting. However, board members may adopt through unanimous consent of all members an amendment at the meeting at which it was introduced; provided, however, the amendment shall not become effective until the next regular meeting.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014 as affirmed by the designated Executive Secretary assigned by the Planning Department of the City of McAllen.

\_\_\_\_\_  
**Executive Secretary**



**ORDINANCE NO. 2018- 70**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCALLEN AT CHAPTER 138 ("ZONING"), ARTICLE VI ("SUPPLEMENTARY DISTRICT REGULATIONS"), DIVISION 3 ("LOTS AND YARDS"), BY ADDING PROVISIONS REGULATING CARPORTS AND GRANTING THE ZONING BOARD OF ADJUSTMENTS TO GRANT SPECIAL EXCEPTIONS THERETO; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

**WHEREAS**, the City of McAllen desires to establish rules and regulations relating to the construction and maintenance of carports within the City,

**WHEREAS**, the City Commission finds that it is in the public interest to delegate the authority to regulate carports to the Zoning Board of Adjustments,

**WHEREAS**, the City of McAllen seeks to protect the value of property located within the corporal limits of the City,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MCALLEN, TEXAS, THAT:**

**SECTION I:** The Code of Ordinances, City of McAllen, Chapter 138 ("Zoning"), Article VI ("Supplementary District Regulations"), Division 3 ("Lots and Yards") is hereby amended to read as follows:

**Sec. 138-371. – Special Exception for carports.**

- (a) The Zoning Board of Adjustment may grant a special exception to the minimum setback requirements for a carport when, in the opinion of the board:
  - (1) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and

- (2) the carport will not have a detrimental impact on surrounding properties.
- (b) In determining whether to grant this special exception, the board shall consider the following factors:
  - (1) Whether the requested special exception is compatible with the character of the neighborhood.
  - (2) Whether the value of surrounding properties will be adversely affected.
  - (3) The suitability of the size and location of the carport
  - (4) The materials to be used in construction of the carport
- (c) Storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.
- (d) If the Zoning Board of Adjustmnet Grants a special exception as provided in this section, the site plan and the minutes of the Zoning Board of Adjustment meeting shall be officially recorded with Hidalgo County.
- (e) Any special exception granted under this chapter is granted solely to the applicant and may not be transferred, sold, inherited, bequeathed, or devised.
- (f) A new special exception shall be required upon any change or transfer in ownership of the underlying tract; a special exception granted to a previous applicant does not confer any right to any other individual or corporation to maintain the carport without approval from the Zoning Board of Adjustment.

**SECTION II:** The City Secretary of the City of McAllen is hereby authorized and directed to cause the caption of this ordinance to be published in a newspaper having general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of Ordinances of the City of McAllen, Section 2-56. Publication of ordinances.

**SECTION III:** The City Secretary of the City of McAllen is hereby authorized and directed to cause the language in Chapter 38, Article VI, Division 3, the McAllen Code of Ordinances, as amended by Section I, hereinabove, to be published in the appropriate location in the said Code of Ordinances.

**SECTION IV:** This Ordinance shall be and remain in full force and effect from and



after its passage by the Board of Commissioners, and execution by the Mayor.

**SECTION V:** If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

**CONSIDERED, PASSED and APPROVED** this 8<sup>th</sup> day of October, 2018, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code.

**SIGNED** this 9<sup>th</sup> day October, 2018.

**CITY OF McALLEN**

\_\_\_\_\_  
John Ingram, City Commissioner

Attest:

\_\_\_\_\_  
Perla Lara

Perla Lara, TRMC/CMC, CPM  
City Secretary

Approved as to form:

\_\_\_\_\_  
Austin W. Stevenson

Austin W. Stevenson, Assistant City Attorney



## 2021 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/06/21	01/20/21	02/03/21	02/17/21	03/03/21	03/17/21	04/07/21	04/21/21	05/05/21	05/19/21	06/02/21	06/17/21	07/07/21	07/21/21	08/04/21	08/18/21	09/01/21	09/15/21	10/06/21	10/20/21	11/03/21	11/17/21	12/01/21	
ERICK DIAZ- <b>CHAIRPERSON</b>	P	P	P	P	P	P	A	P	A	P	P	P	P	P										
JOHN MILLIN- <b>VICECHAIRPERSON</b>	P	A	P	P	P	P	P	P	P	P	A	P	P	A										
SYLVIA HINOJOSA	P	P	P	A	P	P	P	P	P	P	P	P	P	P										
JOSE GUTIERREZ	P	P	P	P	P	P	P	P	P	P	P	P	P	P										
JUAN F. JIMENEZ	P	A	P	P	P	A	P	P	P	P	A	A	A	A										
ANN TAFEL (ALT 1)	P	P	P	P	P	P	P	P	P	A	A	P	P	P										
HUGO AVILA (ALT 2)	P	P	P	P	P	A	P	P	P	A	P	P	A	P										
REBECCA MILLAN (ALT 3)	P	P	P	P	P	P	P	P	P	P	P	P	P	P										
ROGELIO RODRIGUEZ (ALT 4)	A	P	P	P	P	P	A	P	P	P	P	P	P	P										

P - PRESENT

A - ABSENT

☐ NEW APPOINTMENT

MC - MEETING CANCELLED

NRM - NO MEETING

LOQ - LACK OF QUORUM

RS - RESIGNATION





# PLANNING DEPARTMENT

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



## 2021 CALENDAR

### Meetings:

- City Commission
- Public Utility Board
- Planning & Zoning Board
- Zoning Board of Adjustment

HPC - Historic Preservation Council

### Deadlines:

D- Zoning/CUP Application N - Public Notification

\* **Holiday** - Office is closed

### JANUARY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1 <b>HOLIDAY</b>	2
3	4 A-1/19 & 1/20	5	6 N-1/19 & 1/20 D-2/2 & 2/3	7	8	9
10	11	12	13	14	15	16
17	18 A-2/2 & 2/3	19	20 <b>HPC</b> N-2/2 & 2/3 D-2/16 & 2/17	21	22	23
24	25	26	27	28	29	30
31						

### FEBRUARY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 A- 2/16 & 2/17	2	3 N- 2/16 & 2/17 D- 3/2 & 3/3	4	5	6
7	8	9	10	11	12	13
14	15 A-3/2 & 3/3	16	17 N-3/2 & 3/3 D-3/16 & 3/17	18	19	20
21	22	23	24 <b>HPC</b>	25	26	27
28						

### MARCH 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 A-3/16 & 3/17	2	3 N-3/16 & 3/17 D-4/6 & 4/7	4	5	6
7	8	9	10	11	12	13
14	15	16	17 D-4/20 & 4/21	18	19	20
21	22 A-4/6 & 4/7	23	24 <b>HPC</b> N-4/6 & 4/7	25	26	27
28	29	30	31			

### APRIL 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2 <b>HOLIDAY</b>	3
4	5 A-4/20 & 4/21	6	7 N-4/20 & 4/21 D-5/4 & 5/5	8	9	10
11	12	13	14	15	16	17
18	19 A- 5/4 & 5/5	20	21 <b>HPC</b> N- 5/4 & 5/5 D-5/18 & 5/19	22	23	24
25	26	27	28	29	30	

### MAY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3 A- 5/18 & 5/19	4	5 D: 6/1 & 6/2 N-5/18 & 5/19	6	7	8
9	10	11	12	13	14	15
16	17 A-6/1 & 6/2	18	19 N-6/1 & 6/2 D-6/16 & 6/17	20	21	22
23	24	25	26 <b>HPC</b>	27	28	29
30	31 <b>HOLIDAY</b>					

### JUNE 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 N-6/16 & 6/17 D-7/6 & 7/7	3	4	5
6	7	8	9	10	11	12
13	14	15	16 D-7/20 & 7/21	17	18	19
20	21 A-7/6 & 7/7	22	23 <b>HPC</b> N-7/6 & 7/7	24	25	26
27	28	29	30			

Deadlines and Meeting Dates are subject to change at any time. Please contact the Planning Department at (956) 681-1250 if you have any questions.



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### Deadlines:

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- N - Public Notification

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### JULY 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
					A-7/20 & 7/21	
4	5 <b>HOLIDAY</b>	6 PZ moved to 7/8	7 N-7/20 & 7/21 D-8/3 & 8/4	8 PZ MTG	9	10
11	12 	13 	14	15	16	17
18	19 A-8/3 & 8/4	20	21 HPC N-8/3 & 8/4 D-8/17 & 8/18	22	23	24
25	26 	27 	28	29	30	31

### AUGUST 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 Las Palmas Community	4 Exec Room N- 8/17 & 8/18 D-9/1 & 9/7	5	6	7
8	9 A- 8/17 & 8/18	10 	11 	12	13	14
15	16 A-ZBA 9/1	17 Library	18 Exec Room N-ZBA 9/1 D-9/15 & 9/21	19	20	21
22	23 	24 	25 HPC N-PZ 9/7	26	27	28
29	30 A-ZBA 9/15	31				

### SEPTEMBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 N-ZBA 9/15 D-10/5 & 10/6	2	3	4
5	6 <b>HOLIDAY</b>	7	8 N-PZ 9/21	9	10	11
12	13 	14 	15 D-10/19 & 10/20	16	17	18
19	20 A-10/5 & 10/6	21	22 HPC N-10/5 & 10/6	23	24	25
26	27 	28 	29	30		

### OCTOBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6 N-10/19 & 10/20 D-11/2 & 11/3	7	8	9
10	11 	12 	13	14	15	16
17	18 A- 11/2 & 11/3	19 PZ moved to 21st	20 N- 11/2 & 11/3 D-11/16 & 11/1	21 PZ MTG	22	23
24	25 	26 	27 HPC	28	29	30
31						

### NOVEMBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3 N-11/16 & 11/17 D-12/1 & 12/7	4	5	6
7	8 	9 	10	11	12	13
14	15 A-ZBA 12/1	16	17 N-ZBA 12/1 D-PZ-12/21	18	19	20
21	22 	23 	24 N-PZ 12/7	25 <b>HOLIDAY</b>	26	27
28	29 A-ZBA 12/15	30				

### DECEMBER 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			HPC N-ZBA 12/15 D-1/4 & 1/5	2	3	4
5	6	7	8 N- PZ 12/21	9	10	11
12	13 	14 	15 D-1/18 & 1/19	16	17	18
19	20 A- 1/4 & 1/5	21	22 N- 1/4 & 1/5	23 <b>HOLIDAY</b>	24 <b>HOLIDAY</b>	25
26	27	28	29	30	31 <b>HOLIDAY</b>	

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