

## AGENDA

### ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, DECEMBER 15, 2021 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3<sup>RD</sup> FLOOR

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

#### CALL TO ORDER – Chairperson Erick Diaz

#### 1. MINUTES:

- a) Minutes for the meeting held on November 17, 2021
- b) Minutes for the meeting held on December 1, 2021

#### 2. PUBLIC HEARINGS:

- a) Request of Adelina Alexander for the following Special Exception to the City of McAllen Zoning Ordinance: to allow an encroachment of 20 feet into the 20 feet front yard setback for an existing metal carport measuring 19.9 feet by 22.5 feet at Lot 43, Apollo Gardens Subdivision, Hidalgo County, Texas; 2001 Hibiscus Avenue. **(ZBA2021-0064)**
- b) Request of Gabriela Mosquera, on behalf of Interplan LLC for the following Variances to the City of McAllen Zoning Ordinance: **1)** to allow an encroachment of 44 ft. into the 60 ft. front yard setback for a proposed canopy measuring 27 ft. by 48 ft. and **2)** to allow an encroachment of 19 ft. into 30 ft. the side setback for a proposed canopy measuring 32 ft. by 71 ft. at Lot 1, Nolana Crossing Subdivision, Hidalgo County, Texas; 2709 Nolana Avenue. **(ZBA2021-0063) (TABLED: 12/01/2021)**
- c) Request of Donato Pantoja for the following Variance to the City of McAllen Zoning Ordinance: to allow an encroachment of 3 ft. into the 10 ft. rear yard setback for an existing angled carport at Lot 81, Montebello Unit No. 3 Subdivision, Hidalgo County, Texas; 2116 North 32nd Street. **(ZBA2021-0060) (TABLED: 12/01/2021)**
- d) Request of Eladio Ayala Jr. for the following Variances to the City of McAllen Zoning Ordinance: **1)** to allow an existing secondary structure (garage) remain in its current location with no primary structure and **2)** to allow an encroachment of 2 feet into the 6 feet side yard setback along the south side for an existing irregular shaped steel garage at Lot 47, Bonham Subdivision Unit No. 2, Hidalgo County, Texas; 2209 South 28th Street. **(ZBA2021-0065)**
- e) Request of Edward De La Tejera on behalf of Terra Homes Corporation for the following Variances to the City of McAllen Zoning Ordinance: to allow an encroachment of 10 feet into the 25 feet front yard setback for proposed single-family residences at Lots 5, 6, 19, 30, and 31, Sun Gate Subdivision, Hidalgo County, Texas; 2917 North 36th Street, 2920 North 36th Street, 2916 North 35th Street, 2921 North 34th Street, and 2920 North 34th Street. **(ZBA2021-0067)**

#### 3. INFORMATION ONLY:

- a) Election of Officers to be held on January 19, 2022

#### **4. FUTURE AGENDA ITEMS**

- a)** 2728 North 27th Lane
- b)** 2415 Hackberry Avenue
- c)** 3300 North 27th 1/2 Street
- d)** 3000 La Vista Avenue
- e)** 2721 North 27th Lane

#### **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 Wednesday, November 17, 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</b>
	<b>Jose Gutierrez</b>	<b>Member</b>
	<b>Ann Tafel</b>	<b>Alternate</b>
	<b>Hugo Avila</b>	<b>Alternate</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>Rogelio Rodriguez</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Issac Tawil</b>	<b>City Attorney</b>
	<b>Evaristo Garcia</b>	<b>Assistant City Attorney</b>
	<b>Michelle Rivera</b>	<b>Assistant City Manager</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Norma Yado</b>	<b>Chief Building Official</b>
	<b>Steven Kosato</b>	<b>Director Health/Environmental</b>
	<b>Cesar Sanchez</b>	<b>Assistant Director Health/Environmental</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</b>
	<b>Hebert Camacho</b>	<b>Planner I</b>
	<b>Katia Sanchez</b>	<b>Planner I</b>
	<b>Porfirio Hernandez</b>	<b>Planning Technician II</b>
	<b>Jacob Salazar</b>	<b>Planning Technician I</b>
	<b>Carmen White</b>	<b>Administrative Assistant</b>

**CALL TO ORDER – Chairperson Erick Diaz**

**1. MINUTES:**

- a)** Minutes for the meeting held on October 20, 2021.

The minutes for the meeting held on October 20, 2021 were approved. The motion to approve the minutes was made by Ms. Sylvia Hinojosa. Mr. Jose Gutierrez seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a)** Request of Fidel Felix, for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 2 ft. into the 6 ft. side yard setback for a proposed carport measuring 10 ft. by 22 ft., at Lot 36, Block 2, Maravillas Subdivision

Unit 1, Hidalgo County, Texas; 2420 Jonquil Avenue. **(ZBA2021-0054) (TABLED: 11/3/2021)**

Ms. Sylvia Hinojosa **moved** to remove from the table. Ms. Ann Tafel seconded the motion. The Board voted unanimously with five members present and voting.

Mr. Camacho stated the applicant was requesting a special exception to allow the construction of a carport on the east side of the property. The carport will protect the applicant's truck from inclement weather since it was too narrow to fit his vehicle.

The property was located along the north side of Jonquil Avenue, approximately 202 feet east of North 25<sup>th</sup> Lane. The property has 50 feet of frontage along Jonquil Avenue with a depth of 120 feet for a total area of 6,000 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 and C-3 (general business) District to the northeast. The surrounding land use is single family residential.

Maravillas Subdivision Unit 1 was recorded on November 28, 1977. The plat specifies a 6 ft. side yard setback and a 20 ft. front yard setback. An application for the special exception request was submitted on October 6, 2021. There is no building permit on file.

The proposed 10 ft. by 22 ft. carport is to be built over an existing 8 ft. by 14 ft. concrete driveway that will be expanding 2 ft. to the east and 8 ft. to the north for a total of a 10 ft. by 22 ft. concrete driveway. The submitted site plan shows a proposed carport attached to the house encroaching 2 ft. into the 6 ft. side yard. The proposed construction would not encroach into the front yard.

The applicant was proposing to use WonderBoard Lite Backer Board under the carport's ceiling. The board is a fiberglass mesh reinforced-cement backer board for residential applications. See attached Product details.

Additionally, as per Building Dept. requirement, when a structure is 5 ft. or closer to the property line, the structure must be fire rated.

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

During a site visit, staff noticed other structures that seem to be encroaching into setbacks.

A 7.5 ft. CMU wall is in place along the east property line for a distance of 14 ft., after the 14 ft. mark, the wall drops to 7 ft. all the way to the rear property line.

A review of Planning Department records did not reveal any variances granted along this subdivision.

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

The case was presented there was no one in opposition of the request. The board discuss with the applicant about proposing to relocate the proposed carport to the front yard, reducing the 2 ft. encroachment or changing the material of the carport. The concern of one of the

Board members was about the material not being fire rated and the proximity to the property line (4 ft.). After some further discussion, the board voted to table the item, to let the applicant change his site plan or proposed a different type of material.

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.

Chairperson Diaz asked staff if the City would require a one hour rated assembly if it is five feet or closer. Mr. Camacho stated yes.

Ms. Sylvia Hinojosa asked staff what was the footage of the overhang on the neighbor's property. Mr. Camacho stated the structure itself to the wall was 6 feet and the overhang into the setback can be up to 2 feet.

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

Chairperson Erick Diaz asked if there was anyone present in opposition of the special request. There was no one in opposition of the special request.

Ms. Sylvia Hinojosa **moved** to approve the 2 ft. encroachment into the 6 ft. side yard setback per site plan. Ms. Ann Tafel seconded the motion. The Board voted to table the special exception with five members present and voting.

- b)** Request of Felipe Martinez for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 25 feet into the 25 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet at the north 40 feet of Lots 13 and 14, Block 7, College Heights Subdivision, Hidalgo County, Texas; 915 South 22nd Street. **(ZBA2021-0045) (TABLED: 10/6/2021) (REMAIN TABLED: 10/20/2021, 11/3/2021)**

**This item was to be withdrawn.**

- c)** Request of Felipe Martinez for the following special exception to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 20 feet into the 20 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet and 2) an encroachment of 3 feet into the 6 feet side yard setback along the south side yard setback for a proposed metal carport measuring 20 feet by 20 feet at the north 40 feet of Lots 13 and 14, Block 7, College Heights Subdivision, Hidalgo County, Texas; 915 South 22nd Street. **(ZBA2021-0045)**

Ms. Sanchez stated the applicant was requesting the special exception to shelter his vehicles from inclement weather.

The subject property is located along the east side of South 22<sup>nd</sup> Street, north of Jackson Avenue. The subject property has 40 feet of frontage along South 22<sup>nd</sup> Street and a depth of 100 feet for a total area of 4,000 square feet. The property is zoned R-2 (duplex-fourplex) District. The adjacent zoning is R-2 (duplex-fourplex) District in all directions. Surrounding land uses are multi-family residences.

College Heights Subdivision was recorded in 1926. According to Hidalgo County Appraisal District records, a residential home was built on the property in 2019. An application for a special exception request for a carport was submitted to the Planning Department on August 30, 2021. The applicant modified the application for a special exception on October 18, 2021 by adding a second request for an encroachment of 3 feet into the 6 feet side yard setback for the same carport.

The special exception request is for a proposed metal carport that will be anchored to an existing concrete driveway. The submitted site plan shows a proposed metal carport encroaching 20 feet into the 20 feet front yard setback. The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view. Buildings are not permitted to be located within the front yard setback.

The second special exception variance request is for an encroachment of the proposed metal carport into the side yard setback. The submitted site plan shows an encroachment of 3 feet into the 6 feet side yard setback at the south side of the subject property. Buildings are not permitted to be located within the side yard setbacks.

The tract fronts South 22<sup>nd</sup> Street while the house orientation is north. The orientation of the house does not affect the setbacks for this property. The proposed carport will be open on all sides, which will allow for visibility during egress and ingress into the street or for oncoming traffic. The residence does not have a garage. There is no alley at the rear of the property that would provide access and allow for relocation of the proposed carport to the rear yard area.

During a site visit, staff noticed other similar encroachments in the area. A review of Planning Department records revealed other variances have been approved for carports in this subdivision between 1981 and 2020.

Staff had received a phone call in opposition to this special exception request. The individual in opposition indicated that any proposed construction should comply with setback requirements.

Staff recommended approval of the special exception request.

Chairperson Erick Diaz asked if there was anyone present in favor of the special exception. There was no one in favor of the special exception.

Chairperson Erick Diaz asked if there was anyone present in opposition of the special request. There was no one in opposition of the special request.

Ms. Hinojosa asked staff if there were any problems with utilities in the back yard. Ms. Sanchez stated no.

Ms. Sylvia Hinojosa **moved** to approve the special exception as per staff's recommendation. Mr. Rogelio Rodriguez seconded the motion. The Board voted to approve the special exception with five members present and voting.

- d) Request of Micaela R. Corcoran for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 10 feet rear

yard setback for an existing metal carport measuring 17 feet by 20 feet at Lot 9, Block 2, The Village Townhouse Subdivision, Hidalgo County, Texas; 410 Zinnia Avenue.  
**(ZBA2021-0056)**

Ms. Sanchez stated the applicant was requesting the variance for an encroachment into the rear yard setback in order to allow an existing metal carport to remain in its current location. The carport measure 17 feet by 20 feet. According to the applicant, the house was built in 1982 and the carport was constructed in 1995 prior to the applicant purchasing the home in 2013.

The subject property is located along the north side of Zinnia Avenue, west of North 4<sup>th</sup> Street. The subject property has 4,830 square feet. The property is zoned R-3T (multifamily residential townhouse District. The adjacent zoning is R-3T (multifamily residential townhouse) District in all directions. Surrounding land uses are townhouse and single-family residences.

The Village Townhouse Subdivision was recorded in May 1981. An application for a building permit was submitted on October 28, 2021 for an existing metal carport. An application for a variance request was submitted to the Planning Department on October 15, 2021. The Hidalgo County Appraisal District record indicates the house was built in 1982 and the carport was constructed in 1995. The metal carport existed on the subject property prior to the applicant purchasing the home.

This request is for an existing metal carport measuring 17 feet by 20 feet that would encroach 10 feet into the 10 feet rear yard setback. The metal carport has access from the alley at the rear of the subject property. The carport is not enclosed which allows for visibility during egress and ingress into the alley or for oncoming traffic. The 20 feet alley serves as a buffer to the property to the north.

There was an existing garage that is used to park one vehicle, and is used to store household items and hobby-related supplies.

During a site visit, staff noticed other similar encroachments, specifically carports, in the area along the alley. The metal carport on the subject property is characteristic of construction along the alley in this block. A review of Planning Department records did not reveal any variances or special exceptions along the block.

The standard rear yard setback in R-3T (multifamily residential townhouse) District is 10 feet.

There are no utility easements along the rear of the property.

The Planning Department has received one email in support of the special exception request for the existing metal carport.

The applicant would like the carport to remain since the carport was built before she purchased the property.

Special exceptions are issued to an individual and recorded however; special exception may not require a showing of hardship.

Staff recommended disapproval of the special exception request since buildings are not

allowed to be built within setbacks.

Chairperson Erick Diaz asked if there was anyone present in opposition of the special request. There was no one in opposition of the special request.

Ms. Micaela Corcoran, the applicant stated when she purchased the house in 2013 the carport existed until she received a letter from the City about the encroachments. She went to Title Company to see when it was built and was informed 1995. She stated that there were three other carports like hers in the area. Ms. Corcoran did not see anything problems with the carport at the time.

Chairperson Erick Diaz asked if there was anyone present in favor of the special exception. There was someone else in favor of the special exception.

Mr. Martin Canales, 414 Zinnia Avenue, stated he was in favor of the carport and said that it was one of the nicest carports in the neighborhood. He stated he never had an issue with encroachments.

Chairperson Diaz asked how this special exception came before the Board. Ms. Sanchez stated the applicant had received a letter from the Municipal Court that she had to go before the Court for the existing carport. Ms. Corcoran did go to the Building Department and from there to the Planning Department.

Following a brief discussion, Ms. Sylvia Hinojosa **moved** to approve the special exception as it stands. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the special exception with five members present and voting.

- e) Request of Jimmy Ring for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 13.67 feet into the 20 feet front yard setback for an existing metal carport at Lot 125, Harvey Terrace Subdivision Unit 2-Phase I & II, Hidalgo County, Texas; 2724 North 27th Street. **(ZBA2021-0057)**

Ms. Sanchez stated this item was to be tabled until the December 1, 2021 meeting as he was out of town. However, there were individuals that were in favor of the special exception.

Marcy Edwards, 2728 North 27<sup>th</sup> Lane stated she was in favor of the special exception. She stated they had their carport about 20 years, which has helped their vehicles during the hailstorm.

Mr. Candalaria Gonzalez, 2725 North 27<sup>th</sup> Lane stated he was in favor of the special exception. He stated the neighbor's carport did not bother him.

Ms. Sylvia Hinojosa **moved** to the item until December 1, 2021. Mr. Jose Gutierrez seconded the motion. The Board voted to table the item with five members present and voting.

- f) Request of Cesar Cepeda for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 5 feet into the 25-foot front yard setback for a proposed single family residence at Lot 19, Antigua Subdivision, Hidalgo County, Texas; 3001 Zenaida Avenue. **(ZBA2021-0055)**

Ms. Sanchez stated the applicant was requesting the variance to encroach into the front yard setback in order to construct a proposed 3,920 square feet single-family residence of stucco construction.

The subject property was located along the southwest side of Trenton Road, northwest of 29<sup>th</sup> Street. The subject property has 146 feet of frontage and a total area of 16,478 square feet. The property is zoned R-1 (single-family residential) District. The adjacent zoning is C-3L (light commercial) District to the northeast, C-2 (neighborhood commercial) District to the south, and R-1 (single-family residential) District to the south, and west. Surrounding land uses are single-family residences and vacant land.

Antigua Subdivision was recorded on July 06, 2006. The applicant is proposing a new single-family residence on the subject property. The Zoning Board of Adjustment and Appeals approved a variance request at Lot 2 of Antigua Subdivision on October 07, 2021, to allow an encroachment of 10 feet into the 25 feet rear yard setback. An application for a building permit was submitted on September 28, 2021 for a proposed single-family residence. An application for a variance request was submitted to the Planning Department on October 12, 2021.

This request is for a proposed single-family residence that would encroach 5 feet into the 25 feet front yard setback on an irregular triangular-shaped lot. The proposed area that would encroach into the front yard setback would be a portion of a 2-car garage and storage area. The encroachment comprises 5 feet by 29.08 feet area or approximately 145.4 square feet. It should be noted that the percentage of the area of encroachment compared to the area of the front yard is only 4.43%. The lot has building setbacks and utility easement lines on all sides, which reduces the building site area to 6,741 square feet.

Front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view. Approval of the variance request will allow the proposed construction as depicted on the site plan, but would be in conflict with the front yard setback requirement for this subdivision.

There was an eight feet masonry wall along the street right-of-way frontage that will screen off any encroachments.

The Planning Department had not received any calls in opposition to the variance request.

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

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

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

Mr. Cesar Cepeda, the applicant stated they were planning to build their single-family homestead on that lot. They had a 16,000 square foot lot which they had a 6700 square foot buildable area. They were surrounded by easements. They also have an 8 ft. wall on both

sides. Their lot was an irregular shape. The 5 ft. variance would give them enough access to place the home and not encroach.

Following a brief discussion, Mr. Hugo Avila moved to approve the variance request as the proposed site plan. Ms. Sylvia Hinojosa seconded the motion. The Board voted to approve the variance request with five members present and voting.

- g) Appeal of Jack and Hilda Edwards appealing issuance of Certificate of Occupancy to Tacos El Plebe operating at 1017 North Main Street. **(TABLED: 11/03/2021)**

Vice-Chairperson John Millin moved to remove the item from the table. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously with five members present and voting.

Mr. Mario Castellion, with Atlas, Hall & Rodriguez, 818 Pecan Boulevard, attorney for the Jack and Hilda Edwards. He stated they were appealing the Certificate of Occupancy for Tacos El Plebe. Mr. Castellion stated that this was not the first time their clients have raised the issues created by this establishment. Last December 2020, their clients filed a petition to Commissioner Haddad. Pursuant to the application, the City Commission passed an ordinance prohibiting mobile food vendor from preparing and selling food on premises within 150 feet of residential zoning district. Mr. Castellion then stated Tacos El Plebe was within 150 feet of a residential zoning district. Mr. Castellion proceeded to go over the City ordinance's requirements for mobile food vendor. In Exhibit 1, a picture of Tacos El Plebe showing wheels. Exhibit 2 has the current advertisement of Tacos El Plebe as a food truck. Exhibit 3, the Building permit issued on May 19, 2021. Under item 15, "a food truck being used for cooking food" then on item 40, it stated, "this permit was for the commercial addition of a food truck and outdoor seating and outdoor restroom". On Exhibit 4, inspection request for interior seating, food truck, food cooking, outdoor seating and outdoor being proposed. Exhibit 5 has the City ordinance for your reference, it defined mobile food vendors as a mobile food truck or concession trailers. Same ordinance Section C, page 3, stated mobile food vendors operating within 150 feet of a residential zoning district should only offer food for off premise consumption to go and shall not set up or place tables, chairs or other seating for on premise consumption. Mr. Castellion then stated State law prohibits any alteration or modification to a mobile food unit that would affect its mobility. On Exhibit 8, there were pictures that they were trying to depict their concerns. Mr. Castellion stated on the videos presented, it showed vehicles backing out of the parking lot onto oncoming traffic. Mr. Castellion stated he believed that visibility was obstructed, the infrastructure there was not allowed for that type of establishment and that there was not enough parking spaces for customers, which had vehicles parking in neighboring businesses without authorization.

Chairperson Diaz asked Mr. Castellion if this was every night. Mr. Castellion stated no it was not every night but it was occurring.

Ms. Sylvia Hinojosa asked Mr. Castellion when this video was taken. Mr. Castellion stated he was not sure but he believed it was within several weeks.

Mrs. Hilda Edwards, 1321 Jasmine Avenue, stated she took those videos. The food truck that was in front of the property with the artwork on it was relocated a few days ago. The current food truck that was serving on site food was behind the building. It was a larger food trailer and was enclosed completely with an 8-foot fence.

Ms. Sylvia Hinojosa asked if it was no longer there. Mrs. Edwards stated everything was there except for the food truck with the artwork, which was relocated to the rear of the building a few days ago.

Vice-Chairperson Millin asked if Exhibit 1 was the trailer that was still there. Mrs. Edwards stated yes, it was from their Facebook page. Vice-Chairperson Millin asked if this was different from the one that was on the video adjacent to the street. Mrs. Edwards stated the one that was in the video adjacent to the street was the original trailer that they had in front of the building last Spring. They had it parked in front of the building on a parking lot and was in the front setback. Issues arose with the food truck in its place. She stated they voiced their concerns but was not addressed until the City saw their concerns and passed the ordinance to not allow on premise eating that was 150 feet from a residential area. Mrs. Edwards then stated the food truck had been on three locations. On the parking lot in front of the building. Then it had customers parking on a dirt lot next to the building, which was then paved by the owner of the property, Mr. Gonzalez. Then the truck was moved to the back of the parking lot, which had on premise eating. After they had passed the Ordinance, the applicants then applied for the current permit that had a larger food truck behind the building and enclosed it with a fence.

Vice-Chairperson Millin asked attorney Mario Castellion if the current food truck that was there was 150 feet of the residential area, was it measured by the truck itself or the property line. Mr. Castellion stated the statute stated within 150 feet from a residential zoning district. He stated that 1017 North Main Street was where the food truck was currently is across from the residence where Jack and Hilda Edwards resided.

Chairperson Diaz asked Mr. Castellion if the main thing was the traffic. Mr. Castellion stated that was additional to the Ordinance itself, which prohibits food trucks from serving food. Chairperson Diaz asked if there was no traffic issue or parking problem would we be complaining about the Ordinance. Mr. Castellion stated he was not sure. They were here to point out there was currently a violation. Mr. Castellion pointed out two weeks ago they were promoting the consumption of alcohol.

Mr. Jack Edwards, 1321 Jasmine Avenue wanted to clarify that it was not just their side of the street that had the residential neighborhood but also the residential neighborhood on the other side of the alley. There was an apartment building about 25 feet from the food truck. He stated his wife Hilda went around the neighborhood back when it was the first variety of food trucks operation, there were people on that street that had signed her petition that they were in opposition. Vice-Chairperson Millin asked Mr. Edwards when the videos were taken. Mr. Edwards stated he did not know when his wife had taken the videos. Some were recent. He stated that traffic problems had existed throughout all the new operations. Mr. Edwards stated Mr. Pena had generated a lot of business. His intentions was to make his business grow.

Mrs. Edwards stated there was a lot of loitering involved and that the video she gave to the City showed it. They were operating until 11:00 p.m. but if they have customers, they will be opened until midnight. She stated they planned to stay where they live and continue to video and complain if this continues. She feels the food trucks has been changing the character of the neighborhood.

Ms. Vicki Skaggs, of Altas, Hall & Rodriguez, 818 Pecan Avenue, attorney for Jack and Hilda Edwards. She stated the importance to this group is the safety with the traffic. These videos had been taken within the past month. They were advertising just for this past week BYOB, "come and see the fight". Customers are parking into the neighborhoods. The complaint was it was not a place you can come and get your food. However, because it was now a mobile food truck and were permitting eating there with tables. There was traffic throughout Main Street at the time of night which was they were appealing this as the safety concerns for that entire area and the City of McAllen. It violates the City's ordinance because of the housing across the street as well as the housing across the alley. Further, she believes there are Texas Administrative Code violates since a food truck cannot be altered to affect mobility.

Mr. Edwards stated about a month ago he was saw a car backing out when he saw a child on his bike a few feet away from where the food truck was located. He went on to describe the layout of the streets in the neighborhood.

City Attorney Isaac Tawil stated he was going to let staff explain to the Board the analysis the process they go through in issuing an Occupancy permit. This property is zoned C-3 and a restaurant on this location was proper. The issue before the Board and what this Board was considering was whether was within the purview of the Building Official to issue an Occupancy permit for the establishment at the location. There was currently not a mobile truck at that location under the definition found in either the McAllen Code of Ordinances or the Texas Administrative Code. The appeal of the Edwards to the issuance of a Certificate of Occupancy not to the issuance of a permit for a mobile food truck. There is currently a restaurant on the location.

Ms. Norma Yado, Building Official stated on April 4, 2021 a building application was submitted for review for a commercial addition with permitted plumbing, electrical, outside seating and restroom. She stated the way Building reviews it is that this structure is considered a module building, based on the building code that is how it's been adopted by the City of McAllen. It was strapped down not movable and based on that that is what they classified it as a kitchen within that module building. In addition, they remodeled the front structure proposed for the dining area. A building permit was issued on May 19, 2021. A final inspection was approved on September 3, 2021. Based on that, Ms. Yado signed a Certificate of Occupancy the same day. They had complied with all requirements. Chairman Diaz asked Ms. Yado concerning the parking issue that she would not have signed the Certificate if they did not have enough parking. Ms. Yado stated yes. Chairperson Diaz asked if they barely complied or if they had extra parking spaces. Mr. Edgar Garcia, Planning Director stated they had an access of seven parking spaces. Mr. Garcia indicated on the slide it showed indoor seating area and outdoor seating area how much parking they needed which was 24 and have 31 with a parking agreement they have next door. Chairperson Diaz asked concerning the traffic if that something that the business owner addressed. Ms. Yado stated she only addresses the issuance of the Certificate of Occupancy. Because they review the application with all the submittal documents and based on that, other departments review and put in their conditions. Once all the departments have finalized their inspections, Ms. Yado then signs the Certificate of Occupancy.

Board member Hugo Avila asked since this was a permanent structure, if the power is also permanent and that is how it was defined stationary. Ms. Yado agreed with the statement and stated all utilities were permanent.

Board member Sylvia Hinojosa asked Ms. Yado the food truck that was there previously all of that had been removed and this was more a permanent facility. Ms. Yado stated yes. Ms. Hinojosa mentioned she had seen those structures and the mobile units. Were they removed? Ms. Yado stated there was a module building in the back that was being used for a kitchen and that was considered a permanent structure. Ms. Hinojosa asked if they were using the old Guthrie's as a sit in. Ms. Yado stated yes as an interior dining area.

**At this time, Vice-Chairperson John Millin recused himself from this item.**

Board member Ann Tafel asked if there were restroom facilities for the customers. Ms. Yado stated yes.

Board member Rogelio Rodriguez asked when it came down to the parking lot and it becomes a nuisance where people are parking in the residential area, who enforces will it have a repercussion when it comes down to the Certificate of Occupancy.

City attorney Issac Tawil stated occupancy was based on the structure and the analysis under the building code. Parking would be an issue with the Traffic Department. When you have a C-3 District adjacent to a residential zone, you will have C-3 District traffic. As long as parking requirements are met, Building Official has purview to issue permit.

Ms. Vicki Skaggs stated on Exhibit 3, which was the building permit with red arrows on various pages specifically on page 5. This permit was for the commercial addition of a food truck. On section 4 it stated for inspection request for service. Food truck for cooking and outdoor seating. She stated of the definition on Exhibit 5 mobile food vendors included concession trailers of vending unit, which was pulled by a motorized unit that had no power to move on its own.

Mr. Tawil stated it was not uncommon for the Development Center, the Building Official and Planning and Zoning to have an application come looking like something and come out looking like something different. After working with staff to resolve issues that may be had with an initial application, plans and concepts change and what was ultimately approved was final. He stated the Building Official would only approve what the building code authorizes her to do. Had this had been a mobile food truck it would have not been issued a Certificate of Occupancy. It would have been a different type of permit under a different code and gone through a different analysis.

Mrs. Edwards stated as far as she was concerned it remained a mobile food unit as per Texas law. She stated she spoke with an employee at the City of Harlingen Health Department to ask their stand on something like this and he informed me that in 2016 they stopped allowing mobile food units to be fixed establishment because of issues. Chairperson Diaz reminded Mrs. Edwards the issue at hand was the Certificate of Occupancy not what is happening in Harlingen or what may at City Commission.

Mr. Edwards stated he spoke to Code Enforcement and was informed that there had to be a Conditional Use Permit issued. He stated at the end of the building permit report it stated not a food truck no Conditional Use permit needed. In the picture of the food truck, it showed wheels as a tandem trailer.

Mr. Jesus Gonzalez, property owner of several restaurants on Main Street came up. He stated this had been going on for years with the Edwards. Every restaurant that had been opened on Main Street had been an issue with them and the neighbors. Mr. Gonzalez stated the neighbors thought it was going to be like on 17th Street with loud music. He stated his admiration of Mr. Pena, owner of Tacos El Plebe, on how he proceeded on with his business. He wanted to grow but had to shut down for a while during the Pandemic. At the time, he had to find finances to convince the neighbor, which was a tenant of Mr. Gonzalez, to share some of the building space for him to make it the legal way. Since then his business had flourished. He stated El Plebe was just that, another restaurant. Just like all the other restaurants on Main Street.

Board member, Hugo Avila stated as an engineer he works on facilities all the time. His analogy was he takes a building and turns it upside down everything that falls he is not responsible as an engineer. He asks if the power is permanent. Ms. Yado responded yes. He also sees the grease trap requirements. If the structure was attached, then it was permanent.

Board member Hinojosa asked since it is a kitchen is food served to the public from the window, for order and pick up of food. Chairperson Diaz asked the owner of Tacos El Plebe to answer the question.

Mr. Luis Pena, 2308 Jay Drive, San Juan stated it was not a concession window. They have five servers where you place your order with them and bring your food to you. This is why we have outdoor seating to comply with the protocol for Covid-19.

Chairperson Diaz mentioned to Mr. Pena that he has heard concerns with traffic, if there was in any way to help with these concerns. Mr. Pena stated in the past what would happen with the traffic congestion they would have a chain where the alley access was located. It did not allow customers to enter through the back of the alley, which since then had been removed for the sake of customers not backing up or if they needed to turnaround. They did have excess of parking when it came down to the 28 parking spaces and 8 other parking spaces in front of the facility. Like any other business, there will be peak times. The truck that was parked in the front was being used for advertising purposes. Mr. Pena stated he had been in the business for a year and a half but had not been able to approach the Edwards to see what else he could do in order to be in accordance with the neighbors.

Mrs. Edwards stated she did see that they took the chain down from the alley. She stated she still saw vehicles parking in the businesses parking lots. Irma's Beauty Shop and The Baby store have asked her to put cones down in their parking lot to keep vehicles from parking there when it gets busy. She reiterated her belief there was there was not enough parking for El Plebe.

Mr. Edwards stated Mr. Gonzalez' first purchase was behind my house. A 7,000 square office space, which he remodeled into a furniture showroom and without a building permit.

Mr. Jovani Nunez, 1006 North 15<sup>th</sup> Street stated he lived behind Tacos El Plebe and had no issues with them. He never heard music. The only issue he had was with the Edwards going to his house whenever they wanted to have a meeting to go and help them with their issues. He stated that Mrs. Edwards had inserted wooden sticks in the alley at the same time he was

reversing his truck one of the sticks entered the truck's motor. He stated there was no traffic other than usual. There would be times there was a few vehicles and other times none at all.

Ms. Mari Lisa Waggoner, 1206 N. Main Street stated she appreciated the business that Mr. Pena had begun but was concerned with traffic. The street was not as wide as it is in the Art District. Board member Hinojosa stated it was a C-3 District that could be any type of business as long as they comply with the requirements and go through the process to be approved before opening. Ms. Waggoner asked if customers could park across on Main Street. Chairperson Diaz stated it was City property and was public Right-a-Way.

Mr. Edwards stated he had submitted some Public Information Requests to the Health Department requesting inspection reports. Chairperson Diaz stated according to the building permit report Mr. Edwards gave staff if they received a building permit they had those items.

Chairperson Diaz asked Ms. Yado if it had a 3-compartment sink, grease trap, a pan washing station, exhaust, a hood, and a self-suppression. Ms. Yado responded yes to all these. She stated he submitted a P.I.R. with the Building Department and it provided him with the floor plan, which indicated a 3-compartment sink and a hand sink.

Chairperson Diaz opened the floor for discussion.

Following discussion, Mr. Jose Gutierrez **moved** to affirm the Certificate of Occupancy by the City Building Official. Ms. Sylvia Hinojosa seconded the motion. The Board voted to affirm the Certificate of Occupancy with five members present and voting.

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

- a) 2724 North 27<sup>th</sup> Street
- b) 8008 North 3<sup>rd</sup> Street
- c) 417 Cornell Avenue
- d) 2116 North 32<sup>nd</sup> Street
- e) 3004 La Vista Avenue
- f) 2709 Nolana Avenue
- g) 11504 North Taylor Road

### **ADJOURNMENT**

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

---

Chairperson Erick Diaz

---

Carmen White, Administrative Assistant

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

**The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, December 1, 2021 at 4:32 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</b>
	<b>Jose Gutierrez</b>	<b>Member</b>
	<b>Ann Tafel</b>	<b>Member</b>
	<b>Hugo Avila</b>	<b>Alternate</b>
	<b>Rogelio Rodriguez</b>	<b>Alternate</b>
	<b>Rebecca Millan</b>	<b>Alternate</b>
<b>Absent:</b>	<b>John Millin</b>	<b>Vice-Chairperson</b>
<b>Staff Present:</b>	<b>Austin Stevenson</b>	<b>Assistant City Attorney</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Hebert Camacho</b>	<b>Planner II</b>
	<b>Mario Escamilla, Jr.</b>	<b>Planner II</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 I</b>
	<b>Carmen White</b>	<b>Administrative Assistant</b>

**CALL TO ORDER – Chairperson Erick Diaz**

**1. MINUTES:**

- a)** Minutes for the meeting held on November 17, 2021.

The minutes for November 17, 2022 will submitted at the next meeting of December 15, 2021.

**2. PUBLIC HEARINGS:**

Mr. Jose Gutierrez **moved** to remove the item from the table. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously with five members present and voting.

- a)** Request of Jimmy Ring for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 13.67 feet into the 20 feet front

yard setback for an existing metal carport at Lot 125, Harvey Terrace Subdivision Unit 2- Phase I & II, Hidalgo County, Texas; 2724 North 27<sup>th</sup> Street. **(ZBA2021-0057) (TABLED: 11/17/2021)**

Ms. Sanchez stated the applicant was requesting the special exception for a metal carport to encroach 13.67 feet into the 20 feet front yard setback. The carport is used to shelter his vehicles from the inclement weather and potential damage from tree debris. The special exception request is to resolve an existing metal carport encroachment that existed on the property prior to the applicant purchasing the house in 2014.

The subject property was located along the east side of North 27<sup>th</sup> Street, south of Harvey Drive. The subject property has 50 feet of frontage on North 27<sup>th</sup> Street and a depth of 100 feet for a lot area of 5,000 square feet. The property is zoned R-1 (single family residential) District. The surrounding land uses are single-family residences.

Harvey Terrace Unit 2 Subdivision Phase 1 & 2 was recorded on March 9, 1981. The plat specifies a 20 feet front yard setback and 6 feet side yard setbacks. The Building and Inspection Department issued a stop work order on July 19, 2021 for a carport built without a building permit. An application for variance request for a front yard setback encroachment for an existing carport was submitted to the Planning Department on October 14, 2021. According to the Hidalgo County Appraisal District, the carport was constructed in 2012.

The variance request was to allow an encroachment of 13.67 feet into the 20 feet front yard setback for a metal carport.

The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view of properties in a subdivision.

Approval of the special exception request will allow the proposed construction as depicted on the site plan, but would be in conflict with setback requirements for this subdivision.

The subject property does not have access to an alley that would allow for relocation of the carport. It does not have a garage available to store and protect their vehicles as the applicant purchased the home in 2014 with the "enclosed" garage. The applicant also purchased the house with the existing carport.

There is one approved special exception variance on file within Lot 9 in Harvey Terrace Unit 2 Subdivision Phase 1 & 2 for a similar front yard setback encroachment. The Zoning Board of Adjustment and Appeals approved the special exception variance on May 19, 2021. A site visit by the Planning Department staff revealed there are existing carports built around the Harvey Terrace Unit 2 Subdivision Phase 1 & 2.

The Planning Department had received a phone call in support of the variance request as they expressed "everybody had the right to protect their vehicles from the trees".

Staff recommended disapproval of the special exception request since buildings are not allowed within setbacks. However, if the Board approves the request it should be limited to the encroachment shown in the submitted site plan.

Mr. Jimmy Ring, the applicant stated they were filing for an exemption for the setback encroachment. He stated when they purchased the property on July 2014 the carport had already existed. The garage was already enclosed.

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

Chairperson Erick Diaz asked if there was anyone present in opposition of the special request. There was no one in opposition of the special request.

Chairperson Diaz asked staff if the two people that were here at the last meeting were in opposition of the special exception. Ms. Sanchez stated they were in support of the special exception.

Mr. Hugo Avila **moved** to approve the special exception as proposed. Ms. Sylvia Hinojosa seconded the motion. The Board voted to approve the special exception with five members present and voting.

- b) Request of Beatriz Sarinana 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 an existing carport measuring 20 ft. by 12 ft. at Lot 44, La Lomita Estates Subdivision, Hidalgo County, Texas; 3004 La Vista Avenue. (ZBA2021-0061)**

Mr. Camacho stated the applicant was requesting a special exception to allow the existing carport to remain at its current location. The carport will serve as a garage, since the garage it is too small for her vehicle, additionally the carport will help the applicant's autistic grandson play outside and protect him from the sun and inclement weather.

The property was located along the north side of La Vista Avenue, approximately 100 feet east of North 31<sup>st</sup> Street. The property has 50 feet of frontage along La Vista Avenue with a depth of 110 feet for a total area of 5,500 SF. 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 and R-3A (multifamily apartments) District to the northwest. The surrounding land use is single family residential.

La Lomita Estates Subdivision was recorded on July 20, 1982. A stop work order was issued on November 1, 2021. A building permit application was submitted to the Building Inspections Department on November 3, 2021. An application for the special exception request was submitted on November 2, 2021.

The existing 20 ft. by 12 ft. carport was encroaching 20 ft. into the 20 ft. front yard setback. The submitted site plan shows a storage room that is encroaching into the rear setback; however, the structure will be removed. The plat specifies a 20 ft. front yard setback. There are no utility easements on the subject property.

There was no alley access for the subject property.

During a site visit, staff noticed other structures that seem to be encroaching into setbacks.

All measurements are without the benefit of a survey or surveyor.

A review of Planning Department records revealed that there are some special exceptions that were approved in 2019 and 2016, while other cases were withdrawn along this subdivision. There was a total of 7 front carports in the neighborhood.

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

Staff recommended approval 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.

Chairperson Erick Diaz asked if there was anyone present in favor of the special exception. There was someone else in favor of the special exception.

Chairperson Diaz did not specify the person in favor but was in the audience.

Chairperson Erick Diaz asked if there was anyone present in opposition of the special request. There was no one in opposition of the special request.

Ms. Sylvia Hinojosa **moved** to approve the special exception as recommended by staff. Mr. Hugo Avila seconded the motion. The Board voted to approve the special exception with five members present and voting.

- c) Request of Elizabeth Perez for the following variance to the City of McAllen Zoning Ordinance: to allow issuance of a building permit in excess of 10% replacement value for a non-conforming use at 1.58 (net) acres out of Lot 507, John H. Shary Subdivision, Hidalgo County, Texas; 11504 North Taylor Road. **(ZBA2021-0066)**

Ms. Sanchez stated the applicant was requesting to allow issuance of a building permit in excess of 10% replacement value for a non-conforming use. The applicant is proposing to conduct repairs to an existing single-family house on the subject property in order to preserve and restore their house to use it as a residence.

The subject property was located along the east side of North Taylor Road, south of State

Highway 107. The property has a total lot size of 68,824.80 square feet or 1.58 acres (net). The property is zoned R-1 (single-family residential) District. The surrounding land uses include vacant land and single-family homes.

There was an existing 1,893 square feet (living area) single family home on the subject property according to the Hidalgo County Appraisal District records. As per the Hidalgo County Appraisal District, the single-family residence was constructed in 1984. The subject property was annexed into the City of McAllen on August 13, 2012. An application for a variance request to allow a building permit in excess of 10% replacement value for a non-conforming use was submitted on November 9, 2021. An application for a building permit was submitted on May 5, 2021 in order to add and extend portions of the house such as a master bedroom, kitchen, front and rear porch, bedroom, and other repairs.

According to McAllen Code of Ordinances Section 138-89. Repairs and Maintenance (a) On any nonconforming structure or portion of a structure containing a nonconforming use, no work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of non-load-bearing walls, fixtures, wiring or plumbing to an extent exceeding ten percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure...". The submitted variance request is for the purpose of allowing the proposed repairs and additions to exceed ten percent of the current replacement cost. The issuance of any requested building permits depends on the outcome of the variance request.

According to the Hidalgo County Appraisal District records, the estimated improvement value of the subject building for the variance request is \$37,399 (10% of this amount is \$3,739.90). The proposed estimated improvements (as provided by the applicant) are \$40,700. The building would be improved from the current state and any such improvement would need to comply with applicable building codes.

As per the applicant, the residence is in "dire need of repair since it has water leaks from the roof itself, yet permits have not been obtained to be able to make this a safe and habitable home..."; the repairs and maintenance of the residence would allow for an issuance of a building permit to protect the health, safety, and public welfare of the residents living in the residence through regulation of construction in the City of McAllen.

Staff recommended approval of the variance request, as the repairs and maintenance of the residence are needed to make the residence safe and habitable.

Chairperson Diaz asked staff why it was nonconforming. Ms. Sanchez stated it was nonconforming because the house existed prior to the property being divided in the metes and bounds.

Board member Rogelio Rodriguez asked staff in trying to avoid subdividing would it require it if it was disapproved. Mr. Edgar Garcia, Planning Director stated it would get subdivided or get a variance then it would go to City Commission. Chairperson Diaz asked if there were other properties in the area subdivided. Mr. Garcia stated yes. Board

member Rodriguez asked if this would affect any future Master Plan for the City of McAllen as far as growth if it were not subdivided. Mr. Garcia stated this part of the City was expected to be zoned single family homes. At this point, it was to make sure the applicant to reside there safely.

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

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

Mr. Rogelio Rodriguez **moved** to approve the variance request as recommended by staff. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the variance request with five members present and voting

- d) Request of Eli Rene Ochoa for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 7 ft. into the 25 ft. front yard setback for a proposed single family residence at Lot 24, The Embers Subdivision (Gated Community), Hidalgo County, Texas; 8008 North 3<sup>rd</sup> Street. **(ZBA2021-0058)**

Mr. Escamilla stated the applicant was requesting a variance to encroach 7 ft. into the 25 ft. front yard setback for the proposed construction of a single-family residence. The applicant is requesting the encroachment since he has designed the home in a manner that will allow him to enjoy the property, given the restrictions of the lot.

The subject property was located on the east side of North 3rd Street. The tract had 101.38 ft. frontage along North 3rd Street with a tract size of approximately 11,581 sq. ft. The property is zoned R-1 (single family residential) District and was 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 October 05, 2021. An application for a variance request was submitted on November 01, 2021.

This request was for a proposed single-family residence that would encroach 7 feet into the 25 feet front yard setback. The proposed area that would encroach into the front yard setback would be a portion of the garage. The encroachment comprises 7 feet by 22 feet. It should be noted that the percentage of the area of encroachment compared to the required front yard is only 6.65%.

Lots 23-32 in The Embers Subdivision have double frontage to the rear and, as required by the recorded plat and zoning ordinance to have a 25-foot rear yard setback.

Front yard setbacks are important in establishing the character of a single-family

neighborhood by providing landscaping to enhance the residence and curb appeal of the street view. Approval of the variance request will allow the proposed construction as depicted on the site plan, but would be in conflict with the front yard setback requirement for this subdivision.

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).

On July 21, 2021, the Board voted to approve an encroachment of 10 ft. into the 25 ft. rear yard setback for a proposed single-family residence at 8100 North 3rd Street (lot 23).

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

Staff recommended disapproval of the variance request. However, if the Board chooses to approve the requests, the approval should be limited to the footprint shown on the submitted site plan.

Mr. Eli Rene Ochoa, 216 East Cornell Avenue, the applicant stated he wanted to move to a smaller home and in planning they ended up encroaching 7 feet to a 25 foot setback. They pulled the garage back from the north property line so they could have it enclosed as to not have anyone from the street look into the garage. The south side of the house was designed as a heat shield to have protection from the sun. The west side only had two windows in the courtyard. Chairperson Diaz asked Mr. Ochoa if it was a double fronting lot. Mr. Ochoa stated yes. Chairperson Diaz asked the applicant why it was a front yard setback. Mr. Ochoa stated no, the north and south were 6 feet, the rear was 25 feet and the front was 25 feet. Mr. Ochoa stated the subdivision plat did have an 18-foot garage setback unless there was something greater. There was nowhere on the subdivision plat where the name garage setback it was changed to make it greater. Chairperson Diaz mentioned on the plat notes it stated garage 18 feet except greater required and greater applied and then goes blank. Mr. Garcia stated that section of the code that speaks about 18 foot garages was a footnote. That footnote was attributable only to side and rear setbacks on R-1, R-2, R-3A, R-3C, and R-3T. Mr. Ochoa stated the Homeowners Association had approved it.

Board member Sylvia Hinojosa asked staff if the rest of the neighborhood developed. If they had similar situations already and were they going to set precedence. Mr. Escamilla stated it was being developed. The previous cases that were into the rear yard setbacks of 25 feet and those were both single-family residences and swimming pools.

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

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

Ms. Ann Tafel **moved** to approve the variance request limited to the footprint as shown. Ms. Sylvia Hinojosa seconded the motion. The Board voted to approve the variance request with five members present and voting

- e) Request of Issac Choutapalli & Xiaoqian Fang 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 5, The Embers Subdivision (Gated Subdivision), Hidalgo County, Texas; 417 Cornell Avenue. **(ZBA2021-0059)**

Mr. Camacho stated the applicants were requesting a variance to a double fronting lot for a house. The applicants are requesting the variance to build the proposed house in order to accommodate the needs for their growing family to have decent size bedrooms.

The subject property was located on a cul-de-sac along Cornell Avenue, at the intersection of N 5<sup>th</sup> Street and Cornell Avenue. The trapezoidal property has 62.04 ft. of frontage along both streets for a lot size of 11,878 SF. The property and adjacent zoning is R-1 (single family residential) District to the north, east and south, A-O (open-agricultural) District and R-3A (multifamily apartments) District to the west. Surrounding land use include single-family residential houses and vacant land.

The Embers Subdivision was recorded on June 6, 2016. The plat specifies that double fronting lots (Lots 1- 5) have a 25 ft. rear yard setback. An application for a variance request for encroachment for a proposed house was submitted to the Planning Department on November 2, 2021.

The variance request was to allow an encroachment of 10 ft. into the 25 ft. rear yard setback for proposed house. The plat for the subdivision specifies a 25 ft. rear yard setback for double fronting lots. Standard rear yard setback in R-1 Districts is 10 ft. There is a 15 ft. Utility Easement at the rear of the lot that will not be impacted by the proposed encroachment.

There are 3 variance requests on file, similar to the variance request; encroachment for swimming pool, house and other structures into the rear yard setback that were approved in 2019 and 2021, along the double fronting lots.

Staff had not received any phone calls or concerns in regards to the variance 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.

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

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

Mr. Issac Choutapalli, current address 216 Auburn Avenue, stated they had purchased a lot to build a larger house. The lot was shaped like a trapezoid on the backside it was 180 foot and the 25-foot setback was taking up nearly 4,500 square foot. If they add the 25 foot in the front, it would nearly take 5,800 square feet. They were requesting a 10-foot variance into the rear yard so it would allow them to have a good amount of living space and bedroom sizes. They were also respecting the utility easement.

Mr. Jose Gutierrez **moved** to approve the variance request based on the site plan submitted. Ms. Ann Tafel seconded the motion. The Board voted to approve the variance request with five members present and voting

- f) Request of Gabriela Mosquera, on behalf of Interplan LLC for the following Variances to the City of McAllen Zoning Ordinance: 1) to allow an encroachment of 44 ft. into the 60 ft. front yard setback for a proposed canopy measuring 27 ft. by 48 ft. and 2) to allow an encroachment of 19 ft. into 30 ft. the side setback for a proposed canopy measuring 32 ft. by 71 ft. at Lot 1, Nolana Crossing Subdivision, Hidalgo County, Texas; 2709 Nolana Avenue. **(ZBA2021-0063)**

This item would be tabled until the next meeting.

Mr. Jose Gutierrez moved to table the item until the next meeting. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously with five members present and voting.

- g) Request of Donato Pantoja for the following Variance to the City of McAllen Zoning Ordinance: to allow an encroachment of 3 ft. into the 10 ft. rear yard setback for an existing angled carport at Lot 81, Montebello Unit No. 3 Subdivision, Hidalgo County, Texas; 2116 North 32<sup>nd</sup> Street. **(ZBA2021-0060)**

Mr. Camacho stated the applicant was requesting a variance for a rear setback encroachment for an existing carport. The applicant is requesting the variance in order to keep the carport that was built over 9 years ago at its current location.

The subject property was located at the southeast corner of Vine Avenue and North 32<sup>nd</sup> Street. The property has 54 ft. of frontage along North 32<sup>nd</sup> Street and a depth of 100 ft. for a lot size of 5,400 SF. The property and adjacent zoning is R-1 (single family residential) District to the west, east and south, A-O (open-agricultural) District and R-3A (multifamily apartments) District to the west and north respectively. Surrounding land use include single-

family residential houses and vacant land.

Montebello Unit No. 3 Subdivision was recorded on October 21, 1981. A stop work order was issued on October 12, 2021. A building permit application was submitted to the Building Inspections Department on October 18, 2021. An application for a variance request for encroachment for an existing carport was submitted to the Planning Department on November 2, 2021.

The variance request was to allow an encroachment of 3 ft. into the 10 ft. rear yard setback for an existing angled carport that measures approximately 23 ft. by 17.5 ft. The plat for the subdivision specifies a 10 ft. rear yard setback.

The existing carport was at an angle that only part of the structure is encroaching into the setback. The pole at the south corner near the south property line is meeting both the rear and side setback, moving north along the structure the distance to the property line starts decreasing, leaving at the northern post a distance of 3 ft. hence the variance request.

All measurement are without the benefit of a survey or surveyor.

There are other structures that seem to be encroaching into setbacks; however, there are no files on records for variances.

Staff had not received any phone calls or concerns in regards to the variance 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.

Mr. Donato Pantoja, the applicant stated he started putting the roof on his house but started first with the floor then the beams. He then wanted to cover it, which he did. However, apparently the measurements were not what the City required. Mr. Pantoja stated he was in the section of the alley, which he said it would not affect anyone. He stated there were other structures like his in the area close to the fence.

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

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

Board member Sylvia Hinojosa asked staff if there were any utilities in the alley. Mr. Camacho stated there were no utilities shown on the setback. Ms. Hinojosa asked staff if they had checked the rest of the neighborhood for similar situation. Mr. Camacho stated if you go through the alley, you would see 5 or 6 carports, some that where the carport was all the way to the lot line.

Chairperson Diaz asked staff how was this particular property come before the Board. Mr. Camacho stated there was a Stop Work Order.

Board member Hugo Avila asked staff if the carport was there 9 years ago. Mr. Camacho stated that was what the applicant stated. Our aerials were not up to date; sometimes they had to refer to Google, especially there was no building permit on it.

Mr. Austin Stevenson, Legal stated that it was submitted as a variance; it was a carport and were allowed to be special exceptions. If the Board were to grant this request, it would be a special exception and not a variance.

Mr. Camacho mentioned that for staff it was an interpretation of a carport to be opened on three ends and it had three sides. That was why they ran it as a variance. Mr. Stevenson stated that would have to be re-advertised as a carport. He suggested to table the item.

Mr. Sylvia Hinojosa **moved** to table the item until the next meeting. Ms. Rebecca Millan seconded the motion. The Board voted to table the item with five members present and voting

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

- a) 3001 Zenaida Avenue
- b) 410 Zinnia Avenue
- c) 2724 North 27<sup>th</sup> Street

### **ADJOURNMENT**

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

---

Chairperson Erick Diaz

---

Carmen White, Administrative Assistant

## **Memo**

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

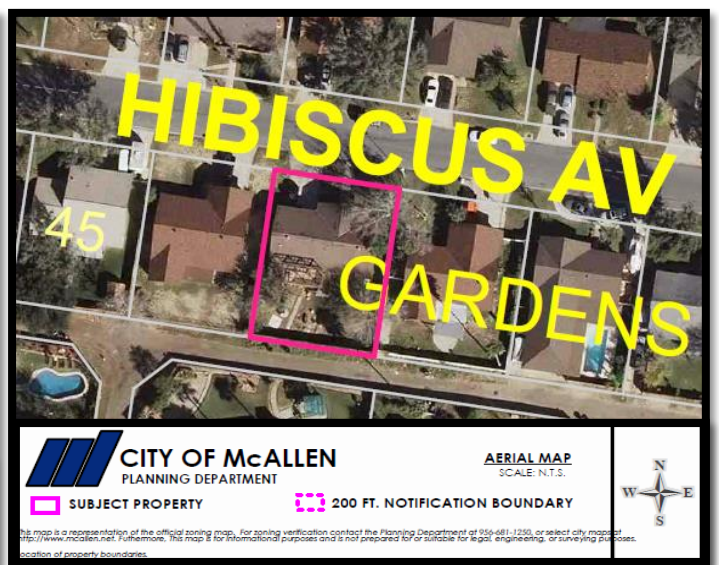
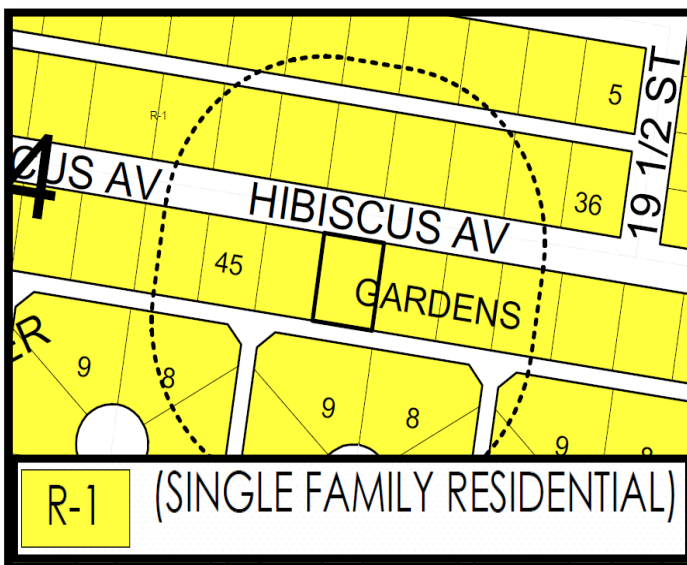
**FROM:** Planning Staff

**DATE:** December 7, 2021

**SUBJECT:** Request of Adelina Alexander for the following Special Exception to the City of McAllen Zoning Ordinance: to allow an encroachment of 20 feet into the 20 feet front yard setback for an existing metal carport measuring 19.9 feet by 22.5 feet at Lot 43, Apollo Gardens Subdivision, Hidalgo County, Texas; 2001 Hibiscus Avenue. (ZBA2021-0064)

### **REASON FOR APPEAL:**

The applicant is requesting the special exception for an encroachment into the front yard setback in order to allow an existing metal carport to remain in its current location. The carport measures 19.9 feet by 22.5 feet. According to the applicant, the carport was built as their garage is utilized to store gym equipment. An application for a building permit for a special exception request for the metal carport were not submitted due to it being at the peak of the COVID-19 pandemic. The applicant did not want to make in-person contact as the applicant has underlying health issues that could put her at a higher risk of contracting COVID-19.



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

The subject property is located along the south side of Hibiscus Avenue. The subject property has an area of 7,500 of square feet. The property is zoned R-1 (single-family residential) District. The adjacent zoning is R-1 (single-family residential) District in all directions. Surrounding land uses are single-family residences.

**BACKGROUND AND HISTORY:**

The Apollo Gardens Subdivision was recorded in June 1976. A stop work order was issued on June 08, 2020 for a carport built without a building permit. An application for a building permit was submitted on June 11, 2020 for an existing metal carport. An application for a variance request was submitted to the Planning Department on November 05, 2021.

**ANALYSIS:**

This request is for an existing metal carport measuring 19.9 feet by 22.5 feet that would encroach 20 feet into the 20 feet front yard setback. The metal carport has access from Hibiscus Avenue at the front of the subject property. The carport is not enclosed which allows for visibility during egress and ingress into Hibiscus Avenue or for oncoming traffic.

There is a 20 feet alley located at the rear of the subject property which serves as a buffer to the properties on the south and which may serve as an area for relocation of the existing metal carport.

There is an existing eight feet wooden fence surrounding the side and rear yard of the subject property.

There is an existing garage that is used to store gym equipment located at the front of the property. As per the applicant, the gym in the garage is needed per doctor recommendation for the exercise that helps with the applicant's poor health conditions.

During a site visit, staff noticed other similar encroachments, specifically carports located at the front yard, along Hibiscus Avenue and the neighboring streets of 22<sup>nd</sup> Street and Iris Avenue. The metal carport on the subject property is characteristic of construction along the area. A review of Planning Department records did reveal one special exception on Iris Avenue which was approved by the Zoning Board of Adjustment and Appeals on October 21, 2020.

There are no utility easements along the front of the property.

The Planning Department has not received any emails or phone calls in opposition of the special exception request.

Special exceptions are issued to an individual and recorded, however, special exceptions may not require a showing of hardship.

**RECOMMENDATION:**

Staff recommends disapproval of the special exception request since buildings are not allowed within setbacks. However, if the Board approves the request it should be limited to the encroachment shown in the submitted site plan.

ZBA 12/15/21

ZBA 2021-0004



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	<u>Apollo Garden Lots 43</u>		
	Subdivision Name	<u>Apollo Garden</u>		
	Street Address	<u>2001 Hibiscus Ave.</u>		
	Number of lots	_____	Gross acres	_____
	Existing Zoning	<u>R 1</u>	Existing Land Use	<u>Casa</u>
	Reason for Appeal (please use other side if necessary)	<u>Existing Carport</u>		
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input checked="" type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required			
Applicant	Name	<u>Adelina Alexander</u>	Phone	<u>956-884 6089</u>
	Address	<u>2001 Hibiscus Ave</u>	E-mail	_____
	City	<u>McAllen</u>	State	<u>TX</u>
			Zip	<u>78501</u>
Owner	Name	<u>Adelina Alexander</u>	Phone	_____
	Address	_____	E-mail	_____
	City	_____	State	_____
			Zip	_____
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>Adelina Alexander</u> Date <u>11/05/2021</u></p> <p>Print Name <u>Adelina Alexander</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent</p>			
Office	Accepted by _____	Payment received by _____	Date	<b>ENTERED</b>
	Rev 09/20		NOV 05 2021	Initial: <u>AW</u>

13

Initial: AW

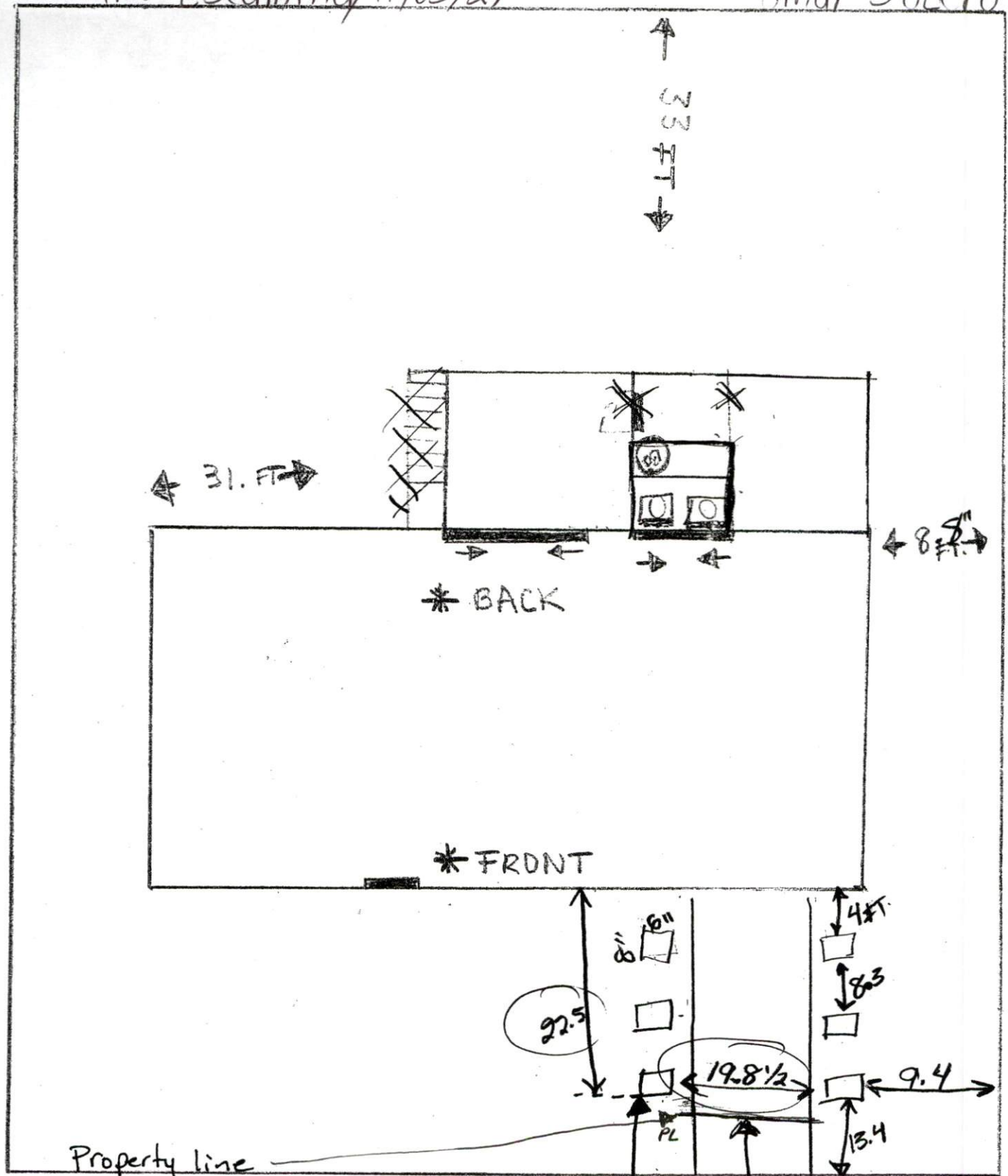


**City of McAllen**  
**Planning Department**  
**REASON FOR APPEAL & BOARD ACTION**

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 <b>any combination</b> of the following: (Please use an additional page if necessary to complete responses)</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>			
	<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:</p> <p>Special circumstance: COVID-19 Pandemic. Fear of in-person application leading to contraction of virus. Applicant not immunocompromised, but highly susceptible to upper respiratory infections (i.e. allergies, bronchitis, pneumonia, etc.)</p>			
	<p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p>Using garage to store gym equipment for use. Fear of contracting COVID-19 at Gym facility, due to upper respiratory infection susceptibility, smoker, obesity. Exercise necessary for health concerns &amp; maintenance of weight &amp; management of diabetes.</p>			
	<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:</p> <p>Porch/<sup>post</sup> does not obstruct public access (i.e. side walk). Not a safety hazard (does not obstruct power lines). Intact structural integrity: Posts anchored with cement. Built by a Framer with experience of +20 years. No noted gas/water/sewage in ground.</p>			
Board Action	<p>4. Describe special conditions that are unique to this applicant or property:</p> <p>High susceptibility to upper respiratory infections (14 varying allergies, bronchitis, pneumonia, etc.). Fear/Anxiety of contracting COVID-19 &amp; health concerns. Computer illiterate.</p>			
	<table border="0"><tr><td>Chairman, Board of Adjustment Signature</td><td>Date</td></tr><tr><td>_____</td><td>_____</td></tr></table> <p>Rev. 9/20</p>	Chairman, Board of Adjustment Signature	Date	_____
Chairman, Board of Adjustment Signature	Date			
_____	_____			

Mario Escamilla 11/03/21

Dmar Sotero.



Property line

27

Hibiscus

ENTERED

NOV 05 2021

Initial:







NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0064  
CITY OF MCALLISTER, ARIZONA  
DEPT. OF PLANNING AND COMMUNITY DEVELOPMENT  
WWW.MCALLESTER.UTZ

## Planning Department

### Memo

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

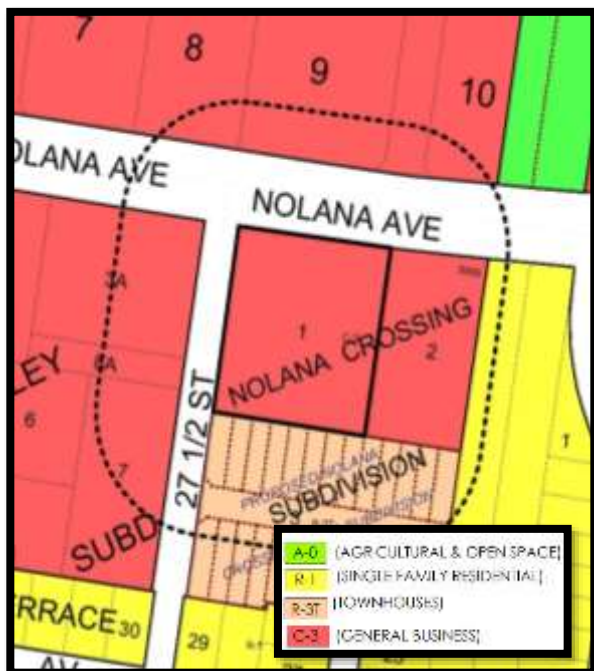
**FROM:** Planning Staff

**DATE:** December 10, 2021

**SUBJECT:** REQUEST OF GABRIELA MOSQUERA, ON BEHALF OF INTERPLAN LLC FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE: 1) TO ALLOW AN ENCROACHMENT OF 44 FT. INTO THE 60 FT. FRONT YARD SETBACK FOR A PROPOSED CANOPY MEASURING 27 FT. BY 48 FT. AND 2) TO ALLOW AN ENCROACHMENT OF 19 FT. INTO 30 FT. THE SIDE SETBACK FOR A PROPOSED CANOPY MEASURING 32 FT. BY 71 FT. AT LOT 1, NOLANA CROSSING SUBDIVISION, HIDALGO COUNTY, TEXAS; 2709 NOLANA AVENUE. (ZBA2021-0063)(TABLED: 12/1/21)

#### REASON FOR APPEAL:

The applicant is proposing to remodel the existing Chick-fil-a and add two canopies that will help increase the efficiency of their drive-thru by proposing a new Face-to-Face (F2F) and Order Meal Delivery (OMD) Canopy, since the establishment has an estimated 75% - 80% of its business occurring from drive thru traffic.



**PROPERTY LOCATION AND VICINITY:**

The subject property is located on the southeast corner of Nolana Avenue and North 27<sup>th</sup> ½ Street. The property has 239.95 ft. of frontage along Nolana Avenue for a total lot size of 79,262.4 SF. The property and adjacent zoning is C-3 (general business) District to the north, west and east, R-3T (multifamily townhouses) District to the south and R-1 (single-family) District to the west and south. Surrounding land uses include T-Mobile store, Walmart Supercenter, restaurants, McAllen Public Library, residential houses and vacant land.

**BACKGROUND AND HISTORY:**

Nolana Crossing Subdivision was recorded on June 3, 2015 and has a note indicating a Site plan approval by the Planning and Zoning Commission is required prior to building permit issuance. A site plan review is still in process, staff sent revision comments on October 22, 2021. These comment included that the proposed canopies were encroaching into setbacks and detention areas. An application for the variance request was submitted on November 2, 2021.

In 2015, a special exception to the parking requirement was approved for this location, the requirement was 77 parking spaces and only 71 parking spaces were being provided. The special exception was approved with the condition that the special exception will expire if there is a substantial change to the surface configuration. Parking requirement, at the time was being calculated under different ordinances, one parking space for every 75 SF.

**ANALYSIS:**

Variance # 1:

The variance request #1 is to allow an encroachment of 44 ft. into the 60 ft. front yard setback. The proposed canopy measures 27 ft. by 48 ft. for a total area of 1,296 SF. There is an existing 10 ft. and 20 ft. Utility Easement that will not be impacted by the proposed development.

Variance #2:

The variance request #2 is to allow an encroachment of 19 ft. into the 30 ft. side yard setback. The proposed canopy measures 32 ft. by 71 ft. for a total area of 2,272 SF. As per plat note, there is a 10 ft. Utility Easement that will not be impacted by the proposed development

Staff has not received any phone calls in opposition to the variances requests.

**ZONING BOARD OF ADJUSTMENTS MEETING OF DECEMBER 1, 2021:**

The authorized agent requested to table the item until next meeting.

**RECOMMENDATION:**

Staff recommends disapproval of the variance requests. If the board grants approval of the request, it should be limited to the footprint shown on the site plan and must comply with Site Plan Comments by the Development team and Engineering Detention requirements.

2B0A:12/1/21

2BA2021-0063



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 1, NOLANA CROSSING, ACCORDING TO THE PLAT THEREOF RECORDED IN INSTRUMENT NO. 2616811 OF THE MAP RECORDS OF HIDALGO COUNTY, TEXAS.

Subdivision Name Nolana Crossing

Street Address 2709 West Nolana Avenue, McAllen, TX 78504

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

Existing Zoning General Business (C-3) Existing Land Use Chick-fil-A Restaurant

Reason for Appeal (please use other side if necessary) Proposed canopies are encroaching into the building setbacks.

☒ \$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 Gabriela Mosquera, Interplan LLC C/O Chick-fil-A Inc.

Phone 407-645-5008 ext. 2214

Address 220 E. Central Parkway, Suite 4000

E-mail gmosquera@interplanllc.com

City Altamonte Springs

State FL

Zip 32701

Owner

Name Winward Investments LLC

Phone \_\_\_\_\_

Address 6025 Genoa Red Bluff

E-mail \_\_\_\_\_

City Pasadena

State TX

Zip 77507

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

Date 11/2/21

Print Name Gabriela Mosquera

☐ Owner

☒ Authorized Agent

Office

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

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

Date \_\_\_\_\_

Rev 09/20

RECEIVED  
NOV 04 2021

BY:



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

Reason for Appeal

\*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:

Should the Strict letter of the regulations be carried out on this site, it create more than a mere inconvenience. It would mandate for the CFA Facility to be considered for a relocation in lieu of these small proposed on-site enhancements. Current Chick-fil-A business has prompted the need to increase the efficiency and the amount of stacking in the drive-thru lanes but due to the size of the existing developed site, this cannot be achieved without the installation of a new Face-to-Face (F2F) and Order Meal Delivery (OMD) Canopy System, which allows primarily for employees to be safer from the elements, in a more effective and safer environment which then translates to a more drive-thru lane efficiency. Since Chick-fil-A has an estimated 75 – 80% of its business occurring from drive-thru traffic.

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

The proposed variance request is in effect not as a consideration based solely upon a desire to increase income potential. This variance is for allowing the facility to operate efficiently and maintain a level of customer service to the increased on-site traffic queue and to decrease any congestion off-site caused by the current site configuration in a more comfortable environment for both customers and employees.

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:

Granting the variance would not be detrimental to public health or adversely affect the rights of adjacent property owners. All the work will be performed on-site and other property owners would not be impacted in any way.

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

The conditions of this property are unique due to the configuration of the property and building type that currently resides on this property and would not generally apply to other property with the same zoning classification. This site is limited to the existing property boundaries and cannot deviate from those boundaries of the unique site.

Should the Strict letter of the regulations be carried out on this site, it creates more than a mere inconvenience. The small proposed on-site enhancements and consequential benefits are essential for this facility to operate at a level of efficiency that other sites operate at and outweigh any possible negative impacts from the upgrade.

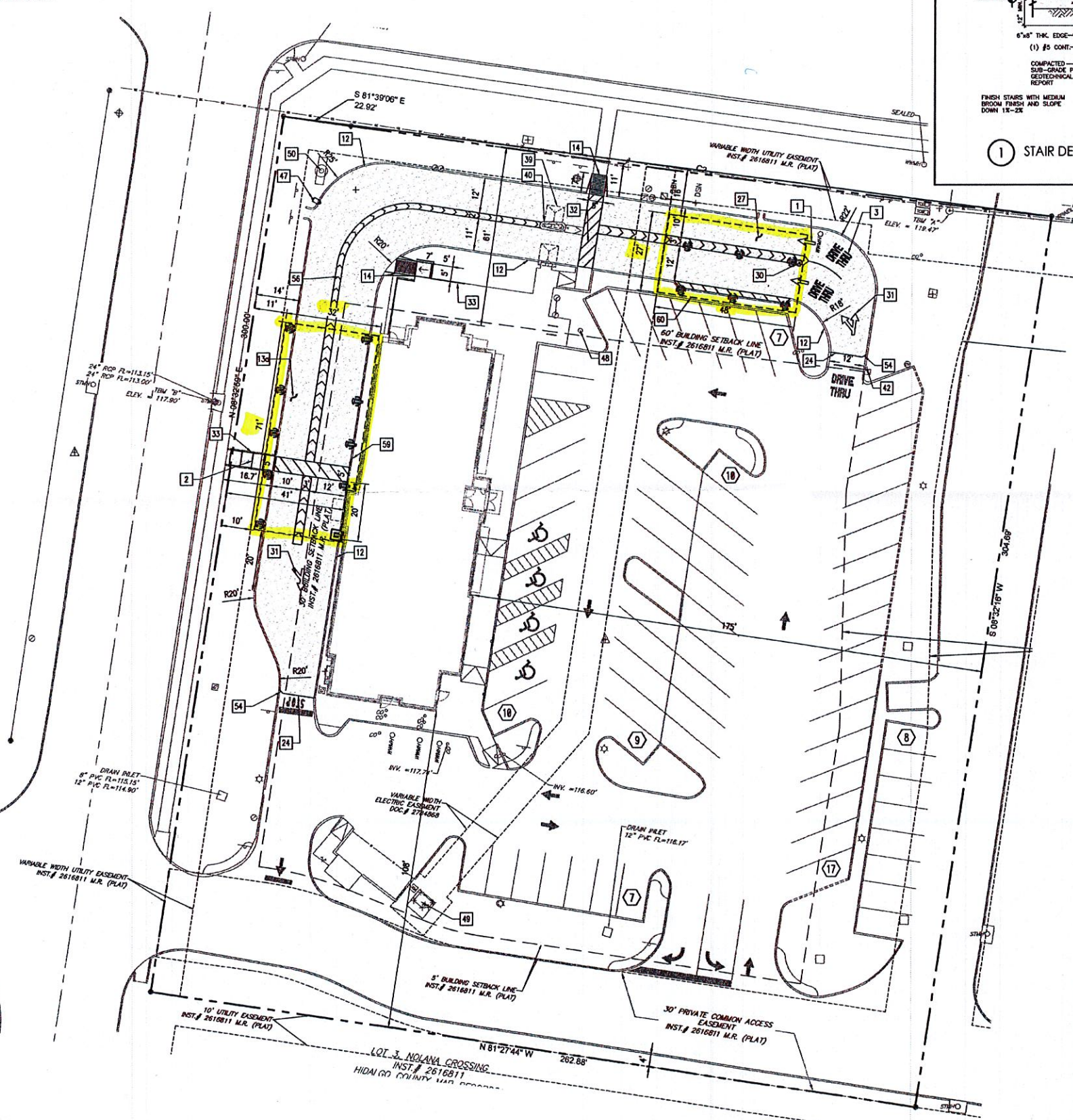
Board Action

Chairman, Board of Adjustment  
Signature

Date

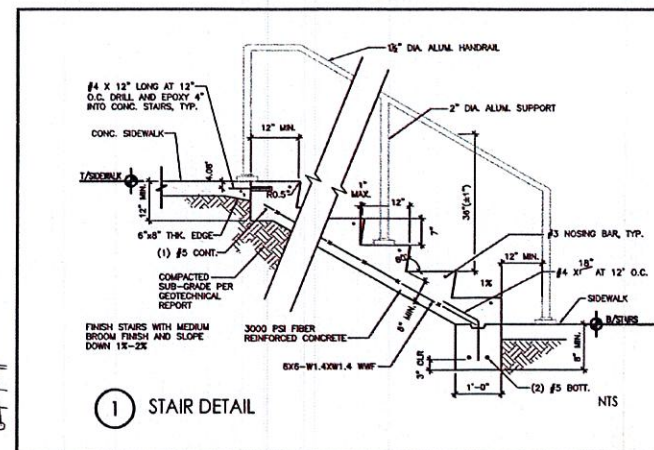
Diagram illustrating the symbols used in a site plan:

- PARKING SPACE TOTALS**: Represented by a hexagon containing the number 6.
- DETAIL NUMBER**: Represented by a circle containing the number 2.
- SHEET NUMBER**: Represented by a circle containing the number C4.
- ZONING**: Represented by a rectangle containing the text CG.
- CURRENT LAND USE**: Represented by a rectangle containing the text RETAIL.
- TRAFFIC DIRECTIONAL ARROW**: Represented by a left-pointing arrow.
- BUILDING BEARING**: Represented by a compass rose showing North (N), East (E), and a bearing of 00°00'00" E.



NOTE: CONTRACTOR SHALL ERADICATE EXISTING STRIPING WITH EITHER SAND BLASTING OR WATER PRESSURE. THEN SEAL EXISTING ASPHALT BEFORE APPLYING NEW STRIPING. DO NOT PAINT THE EXISTING STRIPING BLACK.

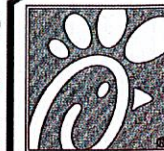
① STAIR DETAIL



1	DIRECTIONAL ARROW	1	C-4
2	PROPOSED STAR	1	C-20
3	DRIVE-THRU GRAPHICS	2	C-4
4	STOP LINE GRAPHIC (NOT USED)	2	C-4
5	STANDARD PARKING STALL (NOT USED)	3-4	C-4
6	BOLLARD MOUNTED SIGN	5	C-4
7	ACCESSIBLE PARKING SIGN (NOT USED)	6	C-4
8	DIRECTIONAL SIGNAGE	7	C-4

NOTES: 1. ALL SIGNS SHALL CONFORM TO THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" BY THE U.S. DEPARTMENT OF TRANSPORTATION.  
2. SIGNS SHALL BE PROVIDED AND INSTALLED BY CHICK-FL-A GENERAL CONTRACTOR.

8A	"CIRCLE BUILDING FOR DRIVE-THRU" SIGN (NOT USED)	8	C-4
8B	"LEFT TURN ONLY" SIGN (NOT USED)	9	C-4
8C	"RIGHT-TURN ONLY" SIGN (NOT USED)	10	C-4
8D	"CAUTION - WATCH FOR PEDESTRIAN" SIGN (NOT USED)	11	C-4
8E	"ONE WAY" WITH ARROW SIGN (NOT USED)	11	C-4
8F	"DO NOT ENTER" SIGN (NOT USED)	11	C-4
9	EXISTING "STOP" SIGN (NOT USED)	11	C-4
10	CONCRETE SIDEWALK (NOT USED)	11	C-4
11	SIDEWALK WITH CURB AND GUTTER (NOT USED)	11	C-4
12	24" CONCRETE CURB AND GUTTER	11	C-4
12A	SPILLING CURB AND GUTTER	11	C-4
12B	CATCHING CURB AND GUTTER	11	C-4
12C	DEPRESSED SPILLING CURB AND GUTTER	11	C-4
12D	DEPRESSED CATCHING CURB AND GUTTER	11	C-4
13	CONCRETE PAVEMENTS	11	C-4
13A	MEDIUM DUTY	11	C-4
13B	HEAVY DUTY (NOT USED)	11	C-4
14	CURB RAMP w/ SHORT FLARED SIDES	1	C-4
15	CURBED RAMP WITH FLARED SIDES (NOT USED)	2	C-4
16	SIDEWALK ACCESSIBLE RAMP (NOT USED)	3	C-4
17	TRUNCATED DOMES - CAST IN PLACE (NOT USED)	4	C-4
18	SOLID YELLOW PLASTIC WHEEL STOP (NOT USED)	5	C-4
19	EXPANSION JOINT	6	C-4
20	TRANSVERSE & LONGITUDINAL DOWELED CONST. JOINT	7	C-4
21	KEYED CONSTRUCTION JOINT	8	C-4
22	CONTRACTION JOINT	9	C-4
23	TRANSVERSE & LONGITUDINAL CONTRACTION JOINT	10	C-4
24	PAVEMENT EDGE	11	C-4
25	CONCRETE APRON AT DUMPFSTER ENCLOSURE (NOT USED)	12	C-4
26	LONGITUDINAL BUTT JOINT	1	C-4
27	CONCRETE PAVING AT DRIVE-THRU LANE	2	C-4
28	TYPICAL HMA (ASPHALT) PAVEMENT SECTION (NOT USED)	3	C-4
29	BUTT JOINT	4	C-4
30	CONCRETE BOLLARD	5	C-4
31	MULTI-LANE DIRECTIONAL GRAPHICS	6	C-4
32	CROSSWALK MARKINGS	7	C-4
33	ALUMINUM HANDRAIL	8	C-4
34	TYPICAL ADA RAMP AND HANDRAIL (NOT USED)	9	C-4
35	ENTRY DOOR FROST SLAB (NOT USED)	1	C-4
36	SCREENED REFUSE ENCLOSURE (NOT USED)	2	C-4
37	SCREENED REFUSE ENCLOSURE (ALT.) (NOT USED)	3	C-4
38	SCREENED REFUSE ENCLOSURE (ALT. DRAINAGE) (NOT USED)	4	C-4
39	EXIST. MENU BOARD LOOP DETECTION SYSTEM	5-6	C-4
40	EXIST. DRIVE-THRU ORDER POINT ISLD. CURB (M. BOARDS)	7	C-4
41	DRIVE-THRU PLAN (AUTOMATIC DOOR) (NOT USED)	8	C-4
42	EXIST. DRIVE-THRU CLEARANCE BAR	9	C-4
43	DRIVE-THRU ISOMETRIC (NOT USED)	10	C-4
44	ROLLOVER / MOUNTABLE CURB (1 FT. WIDE) (NOT USED)	10	C-4
45	DRIVE-THRU PLAN (PICK-UP WINDOW) (NOT USED)		
46	REFUSE/STORAGE BUILDING		
47	TYPICAL LIGHT POLE BASE		
48	EXIST. FLAGPOLE		
49	EXIST. PAD MOUNTED TRANSFORMER		
50	EXIST.CHICK-FL-A PRIME (MONUMENT) SIGN		
51	CASH MACHINE (ON 4" THICK, 3' x 5.5' CONCRETE PAD) (NOT USED)		
52	GREASE INTERCEPTOR		



5200 Buffington Rd  
Atlanta Georgia,  
30349-2998

[illegible]

△ \_\_\_\_\_

△ \_\_\_\_\_

△ \_\_\_\_\_

△

△

SEAL

STUART ANDERSON, P.E.  
TX. REG. # 116598

--	--

1

[illegible]

7

7

**INTERPLAN**  
INTERPLAN II

ARCHITECTS

ENGINEERING  
PERMITTING

220 E. CENTRAL PKWY, STE 401  
ALTAMONTE SPRINGS, FL 32714  
407.645.5000

STORE  
NOLANA  
FSU 3556

0700 WEST NOLAN

2709 WEST NOLAN  
AVENUE, MCALLEN,  
TX 78504

SHEET TITLE
SITE DIMENSION

### SITE DIMENSION PLAN

VERSION: 00.00

ISSUE DATE: 08-20

Job No. : 21.0094  
Store : 3556

Date : 08.2022  
Drawn By : RA

Checked By: SH  
Sheet

530

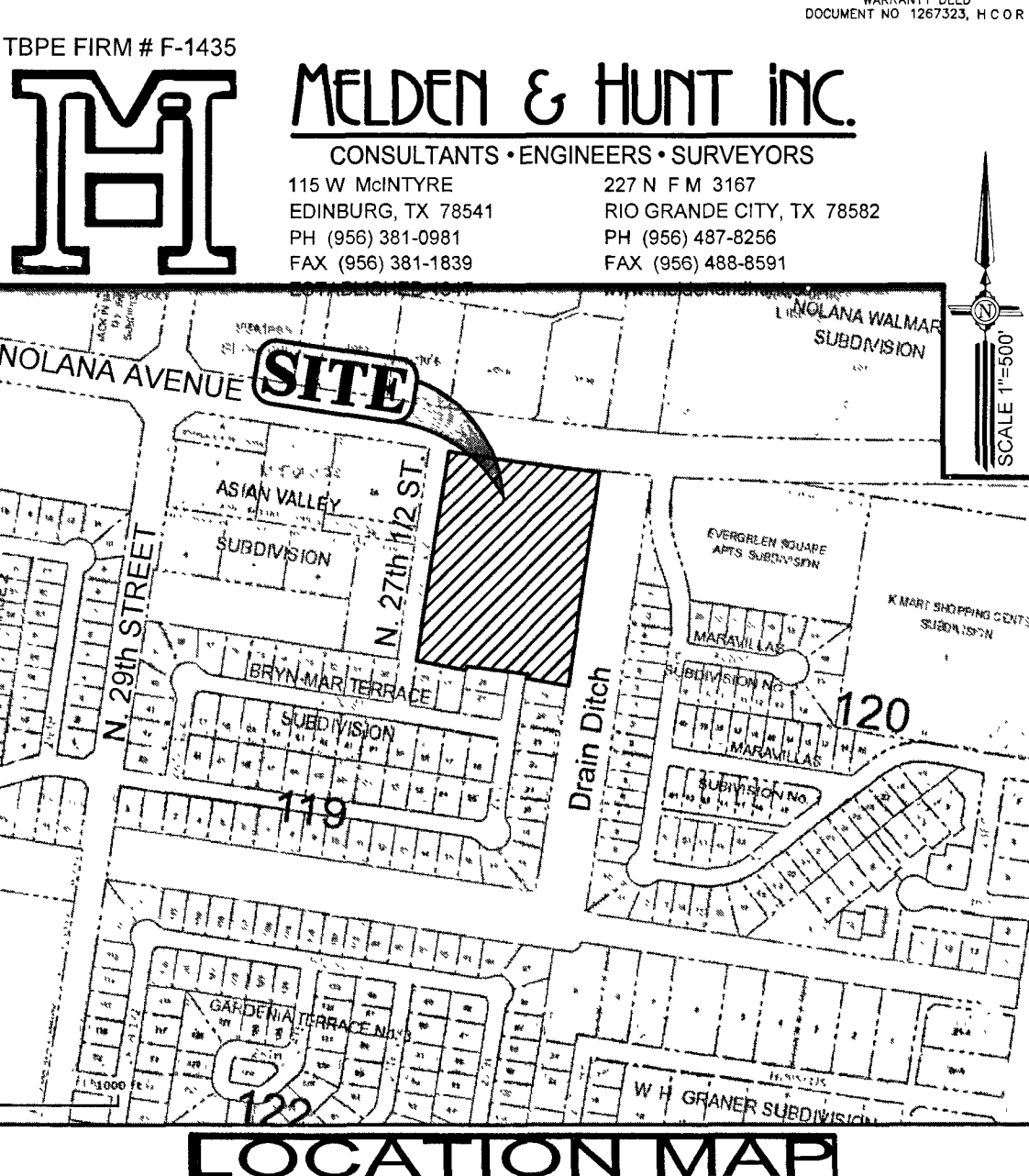
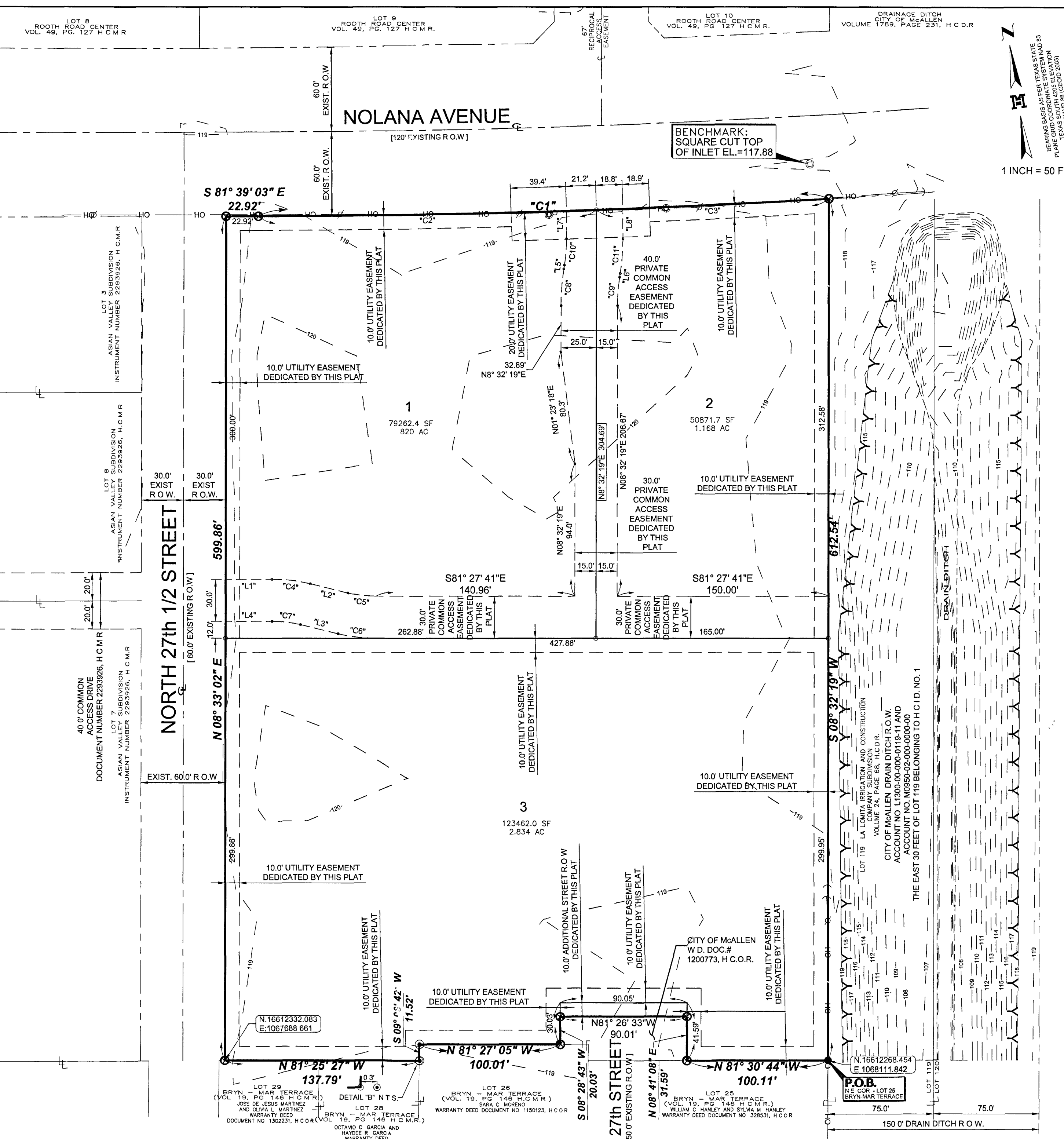
**C-2.0**

## SITE DIMENSION PLAN

 $1'' = 20'$ 

RECEIVED  
NOV 04 2021

## C-2.0



Lot Line Table			
Line #	Length	Direction	
*L1*	32.87'	S81° 39' 02"E	
*L2*	27.45'	S67° 52' 41"E	
*L3*	27.45'	S67° 52' 41"E	
*L4*	32.87'	S81° 39' 02"E	
*L5*	2.66'	N17° 09' 50"E	
*L6*	2.66'	N17° 09' 50"E	
*L7*	19.66'	N08° 32' 19"E	
*L8*	21.10'	N08° 32' 19"E	

Curve Table					
Curve #	Delta	Radius	Length	Tangent	Chord Direction
*C1*	003° 16' 43"	7,080.00'	405.14'	202.63'	S63° 13' 51"E
*C2*	001° 56' 31"	7,080.00'	239.95'	119.99'	S82° 33' 45"E
*C3*	001° 20' 13"	7,080.00'	165.19'	82.60'	S84° 12' 07"E
*C4*	013° 46' 21"	115.00'	27.64'	13.89'	N74° 45' 52"W
*C5*	013° 35' 00"	85.00'	20.15'	10.12'	S74° 40' 11"E
*C6*	013° 35' 00"	115.00'	27.26'	13.70'	S74° 40' 11"E
*C7*	013° 46' 21"	85.00'	20.43'	10.27'	N74° 45' 52"W
*C8*	008° 37' 31"	175.00'	26.34'	13.20'	S12° 51' 04"W
*C9*	008° 37' 31"	135.00'	20.32'	10.18'	S12° 51' 04"W
*C10*	008° 37' 31"	125.00'	18.82'	9.43'	N12° 51' 04"E
*C11*	008° 37' 31"	165.00'	24.84'	12.44'	N12° 51' 04"E

- LEGEND**
- FOUND NO 4 REBAR
  - SET NO 4 REBAR WITH PLASTIC CAP STAMPED MELDEN & HUNT
  - FOUND NO 5 REBAR
  - FOUND PIPE
  - FOUND ALUMINUM DISK
  - SET SQUARE CUT
  - POWER POLE
  - TRAFFIC LIGHT POLE
- H.C.D.R. - HIDALGO COUNTY DEED RECORDS  
N.E. COR. - NORTHEAST CORNER  
P.O.B. - POINT OF BEGINNING  
SF - SQUARE FEET  
H.C.O.R. - HIDALGO COUNTY OFFICIAL RECORDS  
H.C.I.D. NO. 1 - HIDALGO COUNTY IRRIGATION DISTRICT NO 1  
R.O.W. - RIGHT-OF-WAY  
H.C.M.R. - HIDALGO COUNTY MAP RECORDS  
VOL. - VOLUME  
PG. - PAGE  
OH - OVERHEAD POWER LINE  
CL - CENTER LINE OF STREET

DRAWN BY R.N. DATE 05-06-2014  
SURVEYED, CHECKED [Signature] DATE 3-13-15  
FINAL CHECK [Signature] DATE 3-13-15

PRINCIPAL CONTACTS	NAME	ADDRESS	CITY & ZIP	PHONE	FAX
OWNER	SPAZIO HOMES, LTD.	2201 S. JACKSON ROAD UNIT 43	PHARR, TX 78877	N/A	N/A
ENGINEER	MARIO A. REYNA, P.E.	115 W. MCINTYRE	EDINBURG, TX 78541	(956) 381-0981	(956) 381-1839
SURVEYOR	FRED L. KURTH, R.P.L.S.	115 W. MCINTYRE	EDINBURG, TX 78541	(956) 381-0981	(956) 381-1839

# SUBDIVISION MAP OF NOLANA CROSSING

BEING 5.842 ACRES OUT OF THE NORTH HALF OF LOT 119,  
LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION  
OF PORCIONES 61,62 & 63,  
VOLUME 24, PAGE 68 H.C.D.R.,  
CITY OF McALLEN, HIDALGO COUNTY, TEXAS

- METES AND BOUNDS DESCRIPTION:**  
A TRACT OF LAND CONTAINING 5.842 ACRES, SITUATED IN THE CITY OF McALLEN, HIDALGO COUNTY, TEXAS, BEING PART OR PORTION OUT OF LOT 119, LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 24, PAGE 68, HIDALGO COUNTY DEED RECORDS, SAID 5.842 ACRES ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS
- BEGINNING AT A NO. 4 REBAR FOUND (NORTHING 16612268 454, EASTING 1068111 842) AT THE NORTHEAST CORNER OF LOT 25, BRYN-MAR TERRACE SUBDIVISION RECORDED IN VOLUME 19, PAGE 146, HIDALGO COUNTY MAP RECORDS FOR THE SOUTHEAST CORNER OF THIS TRACT,
- THENCE, N 81° 30' 44" W ALONG THE NORTH BOUNDARY LINE OF SAID LOT 25, A DISTANCE OF 100.11 FEET TO A NO. 5 REBAR FOUND FOR AN OUTSIDE CORNER OF THIS TRACT,
  - THENCE, N 08° 41' 08" E ALONG A BOUNDARY LINE OF SAID BRYN-MAR TERRACE, A DISTANCE OF 31.59 FEET TO A NO. 5 REBAR FOUND FOR AN INSIDE CORNER OF THIS TRACT,
  - THENCE, N 81° 26' 33" W ALONG A NORTH BOUNDARY LINE OF SAID BRYN-MAR TERRACE, A DISTANCE OF 90.01 FEET TO A NO. 5 REBAR FOUND FOR AN INSIDE CORNER OF THIS TRACT,
  - THENCE, S 08° 28' 43" W ALONG A BOUNDARY LINE OF SAID BRYN-MAR TERRACE, A DISTANCE OF 20.03 FEET TO A NO. 5 REBAR FOUND ON THE NORTH BOUNDARY LINE OF LOT 26, OF SAID BRYN-MAR TERRACE SUBDIVISION FOR AN OUTSIDE CORNER OF THIS TRACT,
  - THENCE, N 81° 27' 05" W ALONG THE NORTH BOUNDARY LINE OF SAID LOT 26, A DISTANCE OF 100.01 FEET TO A PIPE FOUND AT THE NORTHWEST CORNER OF LOT 26, BRYN-MAR TERRACE SUBDIVISION FOR AN INSIDE CORNER OF THIS TRACT,
  - THENCE, S 09° 06' 42" W ALONG THE WEST BOUNDARY LINE OF SAID LOT 26, A DISTANCE OF 11.52 FEET TO A NO. 4 REBAR SET AT THE NORTHEAST CORNER OF LOT 26, OF SAID BRYN-MAR TERRACE SUBDIVISION, FOR AN OUTSIDE CORNER OF THIS TRACT,
  - THENCE, N 81° 25' 27" W ALONG THE NORTH BOUNDARY LINE OF SAID BRYN-MAR TERRACE SUBDIVISION, A DISTANCE OF 137.79 FEET TO A NO. 5 REBAR FOUND (NORTHING 16612332 083, EASTING 1067688 661) ON THE EXISTING EAST RIGHT-OF-WAY LINE OF N. 27th 1/2 STREET FOR THE SOUTHWEST CORNER OF THIS TRACT,
  - THENCE, N 08° 33' 02" E ALONG THE EXISTING EAST RIGHT-OF-WAY LINE OF N. 27th 1/2 STREET, A DISTANCE OF 599.86 FEET TO A NO. 5 REBAR FOUND ON THE EXISTING SOUTH RIGHT-OF-WAY LINE OF NOLANA AVENUE FOR THE NORTHWEST CORNER OF THIS TRACT,
  - THENCE, S 81° 39' 03" E ALONG THE EXISTING SOUTH RIGHT-OF-WAY LINE OF NOLANA AVENUE, A DISTANCE OF 22.92 FEET TO A NO. 5 REBAR FOUND FOR AN ANGLE POINT OF THIS TRACT,
  - THENCE, IN AN SOUTHEASTERLY DIRECTION ALONG THE EXISTING SOUTH RIGHT-OF-WAY LINE OF NOLANA AVENUE AND A CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 03° 16' 43", A RADIUS OF 7080.00 FEET, AN ARC LENGTH OF 405.14 FEET, A TANGENT OF 202.63 FEET, AND A CHORD THAT BEARS S 83° 13' 51" E A DISTANCE OF 405.09 FEET TO A NO. 5 REBAR FOUND TO A POINT ON THE WEST LINE OF AN EXISTING DRAIN DITCH RIGHT-OF-WAY FOR THE NORTHEAST CORNER OF THIS TRACT,
  - THENCE, S 08° 32' 19" W ALONG THE WEST LINE OF SAID EXISTING DRAIN DITCH RIGHT-OF-WAY, A DISTANCE OF 612.54 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.842 ACRES OF LAND, MORE OR LESS

- GENERAL NOTES.**
- THIS SUBDIVISION IS IN FLOOD ZONE "B" DEFINED AS AREAS BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD, OR CERTAIN AREAS SUBJECT TO 100-YEAR FLOODING WITH AVERAGE DEPTHS LESS THAN ONE(1) FOOT OR WHERE THE CONTRIBUTING DRAINAGE AREA IS LESS THAN ONE SQUARE MILE, OR AREAS PROTECTED BY LEVEES FROM THE BASE FLOOD
  - MINIMUM PERMISSIBLE FINISH FLOOR ELEVATION SHALL BE 18 INCHES ABOVE THE FRONT TOP OF CURB MEASURED FROM THE CENTER OF THE LOT ALONG NOLANA AVENUE
  - MINIMUM SETBACKS SHALL COMPLY WITH THE CITY OF McALLEN ZONING CODE
  - FRONT - NOLANA AVENUE 60 FEET OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS  
N. 27th 1/2 STREET 30 FEET OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS
  - REAR - IN ACCORDANCE WITH THE ZONING ORDINANCE, OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS, WHICHEVER IS GREATER.  
LOTS 1 & 2 SHALL HAVE 5 FEET REAR YARD FROM THE COMMON ACCESS EASEMENT/DRIVE
  - INTERIOR SIDES - IN ACCORDANCE WITH THE ZONING ORDINANCE, OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS  
EXCEPT 30 FEET FROM THE COMMON ACCESS EASEMENT LINE ON THE EAST SIDE OF LOT 1 AND THE WEST SIDE OF LOT 2
  - CORNER - N. 27th 1/2 STREET 30 FEET OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS, WHICHEVER IS GREATER  
N. 27th STREET 25 FEET OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS
  - REQUIRED DETENTION FOR STORM SEWER RUNOFF AS PER THE APPROVED DRAINAGE REPORT.  
LOT 1 = 18,103 CUBIC FEET, LOT 2 = 11,618 CUBIC FEET, LOT 3 = 28,391 CUBIC FEET
  - CITY OF McALLEN BENCHMARK "MC65" FROM THE CITY OF McALLEN G.P.S. REFERENCE MARKS LIST PREPARED BY ARANDA & ASSOCIATES IN OCTOBER, 1999 BEING LOCATED AT THE NORTHWEST CORNER OF 23rd STREET AND DAFFODIL STREET ELEVATION = 120.15 (NAVD83)
  - TEMPORARY BENCHMARK SQUARE CUT SET ON TOP OF INLET LOCATED CLOSE TO THE NORTHEAST CORNER OF THIS SUBDIVISION ALONG THE SOUTH SIDE OF NOLANA AVENUE. GEODETIC G.P.S. TEXAS STATE PLANE GRID COORDINATE SYSTEM NAD 83 TEXAS SOUTH 4205 ELEVATION PER NAVD 89 (GEOID 2003) N=16612900.525 E=10681193.104 ELEV = 117.88
  - AN ENGINEERED DRAINAGE DETENTION PLAN, APPROVED BY THE CITY OF McALLEN ENGINEERING DEPARTMENT, SHALL BE REQUIRED PRIOR TO ISSUANCE OF BUILDING PERMIT
  - NO BUILDING ALLOWED OVER ANY EASEMENT.
  - NO RECORDED EASEMENT FOUND FOR THE TRAFFIC CONTROL BOX, TRAFFIC LIGHT POLES, OVERHEAD ELECTRIC, AND POWER POLE ALONG THE NORTH LINE OF SUBJECT TRACT. A TEN FOOT UTILITY EASEMENT IS DEDICATED BY THIS PLAT TO COVER THESE UTILITIES
  - NO RECORDED EASEMENT FOUND FOR THE POWER POLE, OVERHEAD ELECTRIC, AND GUY WIRES FOUND CLOSE TO THE SOUTHEAST CORNER OF SUBJECT TRACT. A TEN FOOT UTILITY EASEMENT IS DEDICATED BY THIS PLAT TO COVER THESE UTILITIES
  - 6 FEET OPAQUE BUFFER REQUIRED FROM ADJACENT/BETWEEN MULTI-FAMILY RESIDENTIAL AND COMMERCIAL, OR INDUSTRIAL ZONES/USES
  - 8 FEET MASONRY WALL REQUIRED BETWEEN SINGLE FAMILY RESIDENTIAL AND COMMERCIAL, INDUSTRIAL, OR MULTI-FAMILY RESIDENTIAL ZONES/USES AND ALONG N. 27th STREET
  - 2 COMMON AREAS MUST BE MAINTAINED BY LOT OWNERS AND NOT THE CITY OF McALLEN
  - 4 FOOT WIDE MINIMUM SIDEWALK REQUIRED ON NOLANA AVENUE, N. 27 1/2 STREET AND ON BOTH SIDES OF N. 27th STREET
  - NO CURB CUT, ACCESS, OR LOT FRONTAGE PERMITTED ALONG N. 27th STREET
  - SITE PLAN MUST BE APPROVED BY THE PLANNING AND ZONING COMMISSION PRIOR TO BUILDING PERMIT ISSUANCE
  - PRIVATE, COMMON ACCESS EASEMENTS ARE FOR THE BENEFIT OF ALL LOTS
  - A 25' x 25' SITE OBSTRUCTION EASEMENT IS REQUIRED AT ALL STREET INTERSECTIONS

THIS PLAT APPROVED BY THE HIDALGO COUNTY IRRIGATION DISTRICT NO 1  
ON THIS THE 19th DAY OF March, 20 15

ATTEST  
[Signature]  
SECRETARY  
[Signature]  
PRESIDENT

NOTE: 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 THE DISTRICTS EXPENSE, ALSO THERE WILL NOT BE ANY PERMANENT STRUCTURES ON DISTRICT RIGHT-OF-WAYS AND/OR EASEMENTS

THE STATE OF TEXAS  
COUNTY OF HIDALGO

I, THE UNDERSIGNED, OWNER OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS THE NOLANA CROSSING SUBDIVISION TO THE CITY OF McALLEN, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, WATER LINES, SEWER LINES, STORM SEWERS, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH I (WE) WILL CAUSE TO BE INSTALLED THEREON, SHOWN OR NOT SHOWN, IF REQUIRED 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

[Signature]  
SPAZIO HOMES, LTD.  
LCC DEVELOPMENT, LLC AS GENERAL PARTNER  
JORGE PALAU, MANAGER  
2201 S. JACKSON ROAD  
UNIT 43-G  
PHARR, TEXAS 78877

DATE 4/1/2015

THE STATE OF TEXAS  
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED Jorge Palau KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 12th DAY OF April, 20 15

[Signature]  
NOTARY PUBLIC FOR THE STATE OF TEXAS  
MY COMMISSION EXPIRES

LISA SAEITZ  
NOTARY PUBLIC  
STATE OF TEXAS  
MY COMMISSION EXPIRES 10/20/17

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

[Signature]  
CHAIRMAN, PLANNING AND ZONING COMMISSION

DATE 5/14/2015

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

[Signature]  
MAYOR, CITY OF McALLEN

DATE 5/27/15

THE STATE OF TEXAS  
COUNTY OF HIDALGO

I, THE UNDERSIGNED, A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT

DATED THIS THE 13th DAY OF March, 20 15

[Signature]  
MARIO A. REYNA, PROFESSIONAL ENGINEER No 97421  
STATE OF TEXAS

DATE PREPARED 05-09-14  
ENGINEERING JOB NO 14071 00

MELDEN & HUNT, INC.  
TEXAS REGISTRATION F-1435

STATE OF TEXAS  
MARIO A. REYNA  
117355  
LICENSED PROFESSIONAL ENGINEER

THE 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 ON THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND

DATED THIS THE 16th DAY OF March, 20 15

[Signature]  
FRED L. KURTH, R.P.L.S. # 4750  
DATE SURVEYED 05-09-14  
DATE PREPARED 06-09-14  
1-972, PG. 12-13  
SURVEYING JOB NO 14071 08

STATE OF TEXAS  
REGISTERED  
FRED L. KURTH  
# 4750  
PROFESSIONAL LAND SURVEYOR

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 §49.24(c). 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. IT IS THE RESPONSIBILITY OF THE DEVELOPER OF THE SUBDIVISION AND ITS ENGINEER TO MAKE THESE DETERMINATIONS

HIDALGO COUNTY DRAINAGE DISTRICT NO 1  
BY [Signature]  
DATE 06/01/15

FILE FOR RECORD IN  
HIDALGO COUNTY  
ARTURO GUAJARDO JR.  
HIDALGO COUNTY CLERK

ON 6-3-15 AT 3:02 AM (P)  
INSTRUMENT NUMBER 2616811  
OF THE MAP RECORDS OF HIDALGO COUNTY, TEXAS  
BY [Signature] DEPUTY



  
**Dining Room  
Now Open!**  
We look forward to serving you. Safe service is our first priority.  
 Chick-fil-A 27th & Nolana

**NOTICE  
VARIANCE  
FOR  
THIS PROPERTY  
ZBA2021-0063**  
 CITY OF MCALLEN PLANNING DEPT.  
956-681-1250  
WWW.MCALLEN.NET 

**Chick-fil-A**

09

December 7, 2021

**Herbert Camacho**  
**City of McAllen Planning Department**

311 N 15th Street  
McAllen, TX 78501  
(956) 681-1250  
[HCamacho@mcallen.net](mailto:HCamacho@mcallen.net)

**Reference:** Chick-fil-A FSU #3556 27<sup>th</sup> & Nolana  
2709 West Nolana Avenue  
McAllen, TX 78504  
Letter of Authorization

Mr. Camacho:

Please accept this letter as authorization for Stan DeMille, to represent Interplan LLC in the Zoning Board of Appeals (ZBOA) meeting coming up on December 15, 2021

If you have any questions, please contact me at 407.645.5008 Ext. 2214 or via email at [gmosquera@interplanllc.com](mailto:gmosquera@interplanllc.com).

Sincerely,

Gabriela Mosquera  
Interplan, LLC

**ITEM 2B**

**TO REMAIN  
TABLED UNTIL THE  
MEETING OF  
JANUARY 5, 2022**

## **Memo**

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

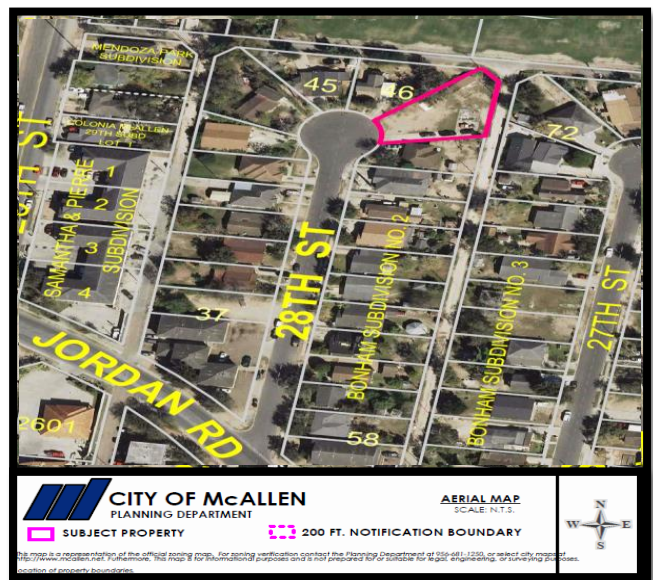
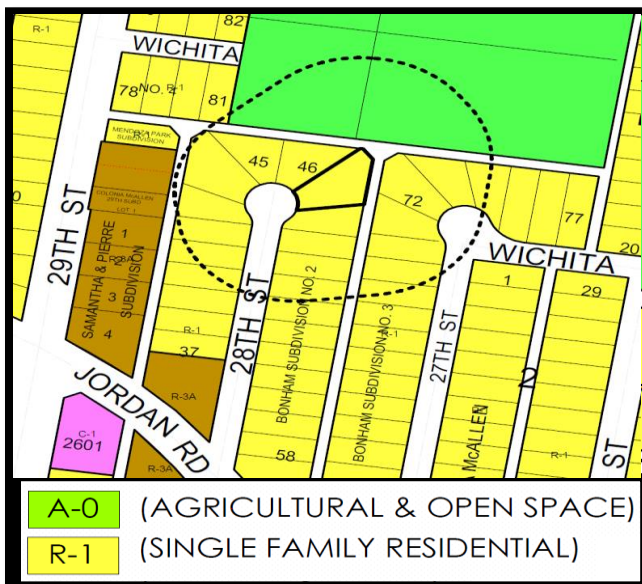
**FROM:** Planning Staff

**DATE:** December 7, 2021

**SUBJECT:** Request of Eladio Ayala Jr. for the following Variance to the City of McAllen Zoning Ordinance: 1) to allow an existing secondary structure (garage) remain in its current location with no primary structure and 2) to allow an encroachment of 2 feet into the 6 feet side yard setback along the south side for an existing irregular shaped steel garage at Lot 47, Bonham Subdivision Unit No. 2, Hidalgo County, Texas; 2209 South 28th Street. (ZBA2021-0065)

### **REASON FOR APPEAL:**

The applicant is requesting a variance to allow an existing steel garage to remain on a lot that does not have a primary building, and to allow an encroachment of 2 feet into the 6 feet side yard setback along the south side of Lot 47. The applicant built the existing steel garage in order to protect his vintage vehicles and use it as a building where he will be preserving his older model vehicles.



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

The subject property is located along a cul-de-sac on South 28<sup>th</sup> Street and has 10,400 of square footage. The property is zoned R-1 (single-family residential) District. The adjacent zoning is R-1 (single-family residential) District to the east, south, and west. The adjacent zoning to the north is A-O (agricultural and open space) District to the north. Surrounding land uses are single-family residences and vacant land.

**BACKGROUND AND HISTORY:**

Bonham Subdivision Unit No. 2 was recorded on September 1970. On October 29, 2021, the Building and Inspections department issued a stop work order for construction built without a building permit. An application for a building permit was submitted on November 8, 2021 for an existing garage and an application for a variance request was submitted on November 8, 2021.

**ANALYSIS:**

Variance request #1: This request is for an existing steel garage which remains without a primary building on the 10,400 square feet subject property. The applicant owns a single-family residence adjacent to the subject property on Lot 48. As per the applicant, the previous property owner was proposing to build a single-family residence in 1994 on Lot 47 but only the foundation was completed. The existing steel garage was subsequently constructed on the concrete foundation. The construction of the existing steel garage began in 2021. According to the applicant he was unaware that a building permit for a steel garage was necessary as it was not a residential home.

Variance request #2: This request is for an existing irregular shaped steel garage measuring 23.95 feet by 54.25 feet at its longest side that encroaches 2 feet into the 6 feet side yard setback along the south side of the subject property. The steel garage has access to a 20 feet alley at the rear of the subject property. The applicant owns a single family residence on the adjacent Lot to the south on Lot 48. Both lots are surrounded by a chain link fence. According to the applicant, he would like to ultimately turn the garage into a suitable building in which the garage would have amenities such as air conditioning and proper lighting for hobby-related use. Original construction of the concrete foundation was built encroaching 2 feet into the 6 feet side yard setback. The applicant constructed the garage structure over the foundation.

During a site visit, staff noticed other encroachments along the front yard and rear yard within Bonham Subdivision Unit No. 2. A review of Planning Department records did not reveal any variance or special exceptions in the area.

There are no utility easements along the side of the property.

The Planning Department has not received any emails or phone calls in opposition of both variance requests.

**RECOMMENDATION:**

Staff recommends disapproval of both variance requests as a secondary structure (garage) must be located within the same lot as the primary structure and buildings are not allowed within setbacks. However, if the Board approves the request it should be limited to the encroachment shown in the submitted site plan.

ZBA-12/15/21

ZBA2021-0065



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>Bonham UT No. 2 Lot 47</u></p> <p>Subdivision Name <u>Bonham UT No. 2.</u></p> <p>Street Address <u>2209 S. 28<sup>th</sup></u></p> <p>Number of lots <u>1</u> Gross acres _____</p> <p>Existing Zoning _____ Existing Land Use _____</p> <p>Reason for Appeal (please use other side if necessary) <u>SECONDARY Structure with NO PRIMARY structure &amp; ENCROACHING into SIDE YARD 2' set back of 2'.</u></p> <p><input checked="" 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>Eladio Ayala JR.</u> Phone <u>956-258-6112</u></p> <p>Address <u>2213 S. 28<sup>th</sup></u> E-mail <u>eladio.ayala@hotmail.com</u></p> <p>City <u>McAllen</u> State <u>TX</u> Zip <u>78503</u></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 _____</p> <p>Print Name <u>Eladio Ayala, Jr.</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent</p>
Office	<p>Accepted by _____ Payment received by _____ Date <u>ENTERED</u></p> <p>Rev 09/20</p> <p>NOV 08 2021</p> <p><u>[Signature]</u></p>

5



**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 would be able to use my garage for protection of my investment on automobile.

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

Be able to enjoy tinkering on my vintage cars.

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:

It will all be done according to city codes.

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

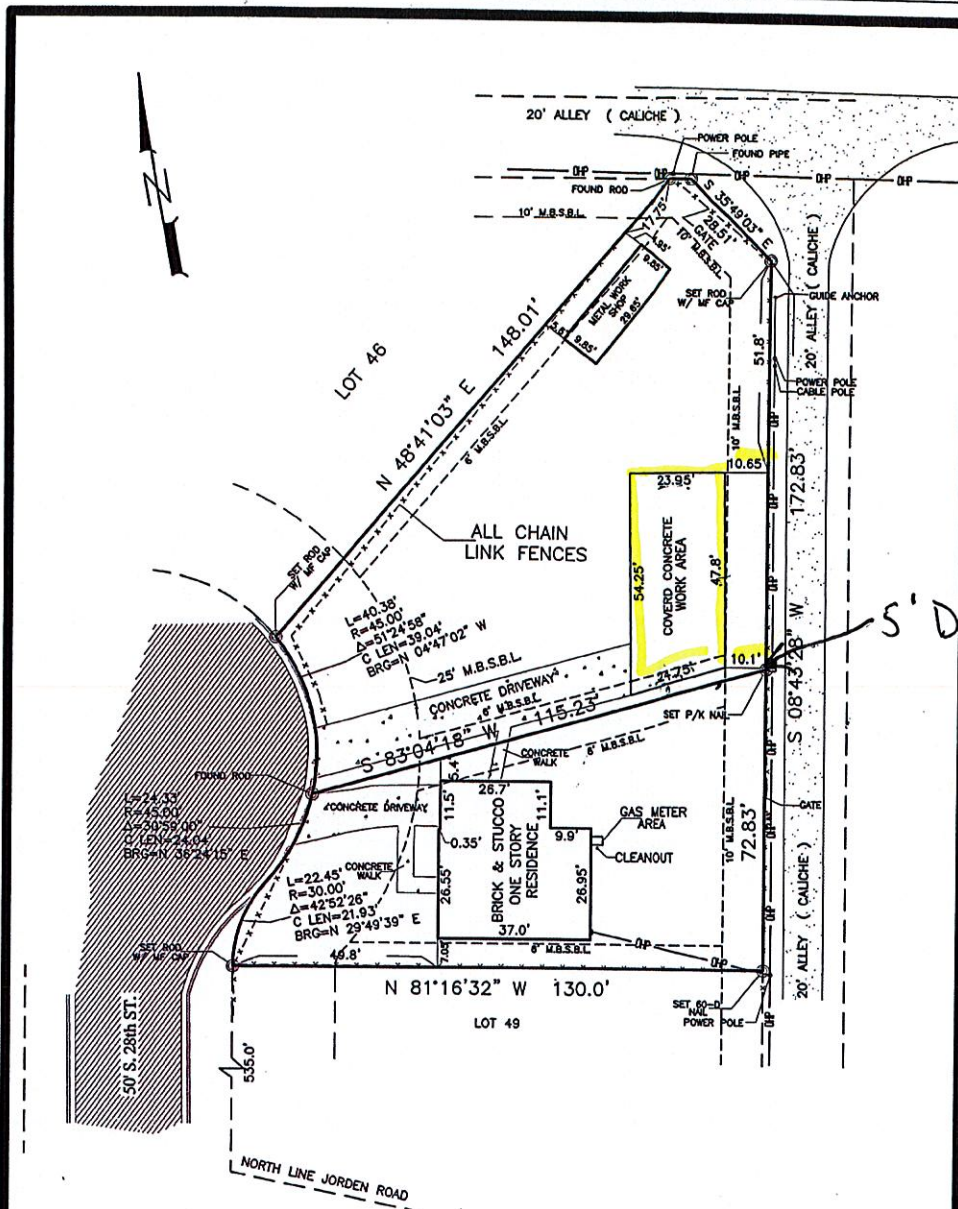
Being able to build my dream garage.

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date



NOTE:  
SURVEY DONE WITHOUT BENEFIT OF  
TITLE REPORT OR TITLE COMMITMENT

I, MICHAEL FABIAN, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE FOREGOING MAP IS A REPRESENTATION OF SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT THERE ARE NO VISIBLE AND APPARENT EASEMENTS, DISCREPANCIES, CONFLICTS, OR SHORTAGES IN AREA OR BOUNDARY LINES, OR ANY ENCROACHMENTS OR OVERLAPPING OF IMPROVEMENTS EXCEPT AS SHOWN ON THIS PLAT. THIS PROPERTY FALLS IN ZONE "B" OF THE FLOOD INSURANCE RATE MAPS.

*Michael Fabian*  
MICHAEL FABIAN  
REGISTERED PROFESSIONAL LAND SURVEYOR  
MCALLEN, TEXAS  
# 4893

COPYRIGHT MICHAEL FABIAN SURVEYING INC. 2021. NO LICENSE HAS BEEN CREATED.  
THIS MAP IS FOR THE EXCLUSIVE USE OF THE CLIENT. IT IS NOT TO BE REPRODUCED OR  
TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING  
PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM,  
WITHOUT PERMISSION IN WRITING FROM MICHAEL FABIAN SURVEYING INC.



MAP  
OF  
LOT 47, & LOT 48,  
BONHAM SUBDIVISION  
UNIT NO. 2,  
CITY OF MCALLEN,  
HIDALGO COUNTY, TEXAS  
RECORDED IN VOL. 17, PG. 24, M/R

PREPARED BY  
MICHAEL FABIAN SURVEYING, INC.  
1203 E. HACKBERRY AVE.  
MCALLEN, TEXAS 78501 (956) 835-1432 FAX (956) 837-4890

MICHAEL FABIAN  
REGISTERED PROFESSIONAL  
LAND SURVEYOR

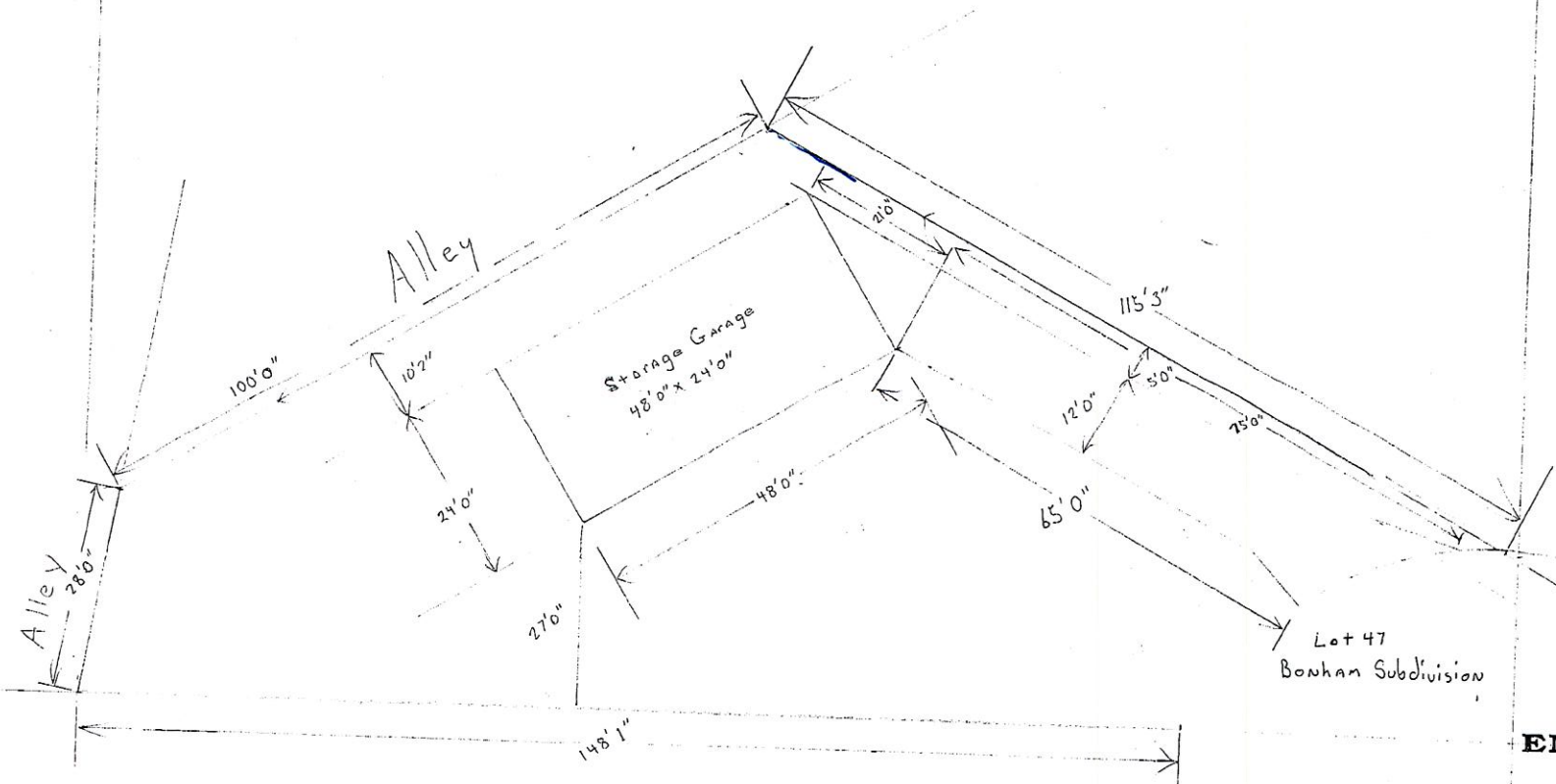
W.O.# 03884 CRD : SAME PRINT SIZE: LEGAL  
SCALE: 1" = 30' DATE: 04/14/2021  
EMAIL ADDRESS: SURVEY @ MFABIANSURVEYING.COM  
FIRM # 101938652

ENTERED

NOV 13 2021

Initial: *Am*

1 7/8 Steel Pipe  
12 gauge Structural Steel  
Concrete poured in 1994  
Building construction started in 2021

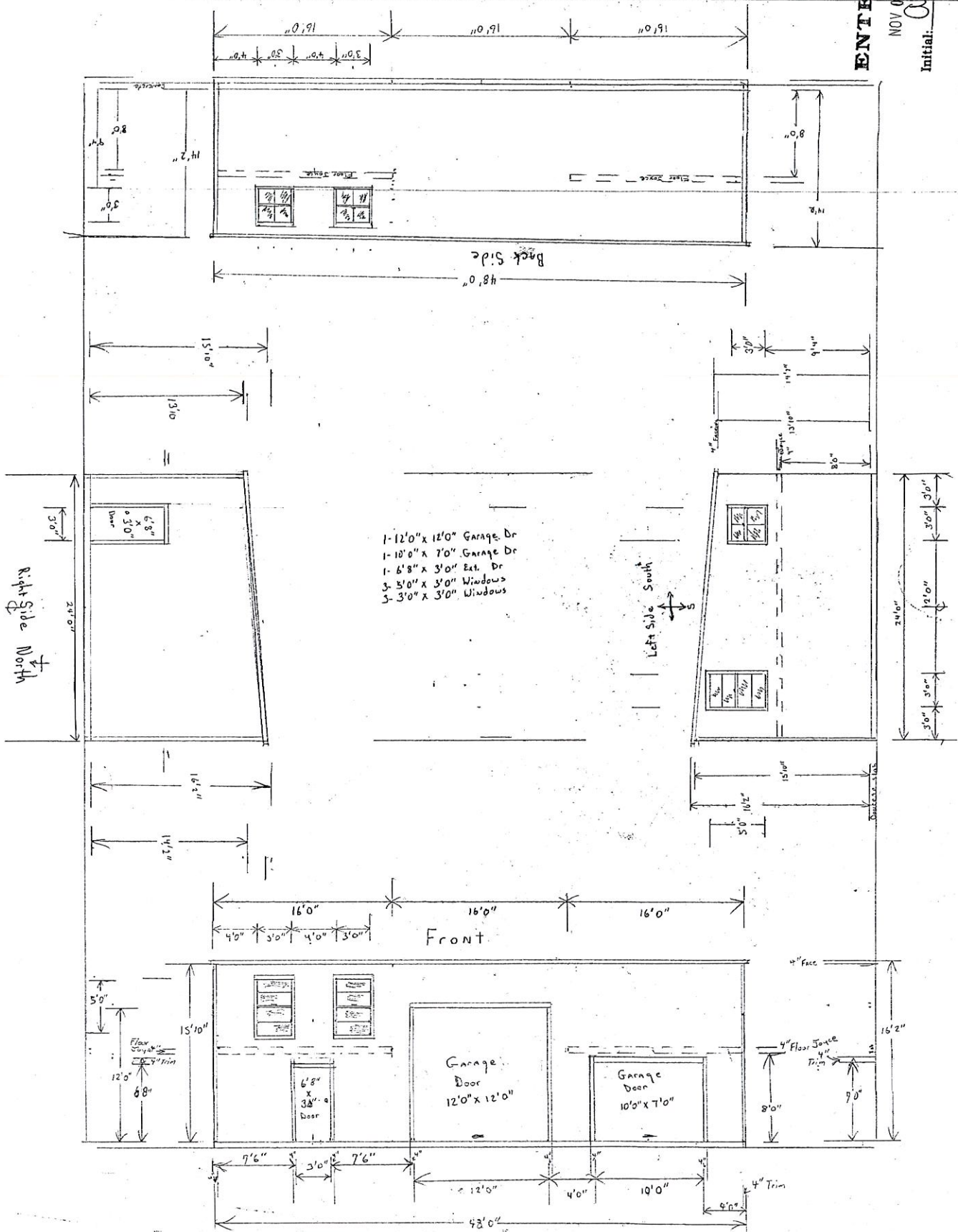


ENTERED

NOV 08 2021

Initial: *an*

**Initial: -**







**NOTICE  
VARIANCE  
FOR  
THIS PROPERTY  
ZBA 2021-0065**

CITY OF MCALLEN PLANNING DEPT.  
956.951.1180  
WWW.MCALLENNET

RECEIVED  
CITY OF  
MCALLEN  
PLANNING  
DEPT.



## Memo

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

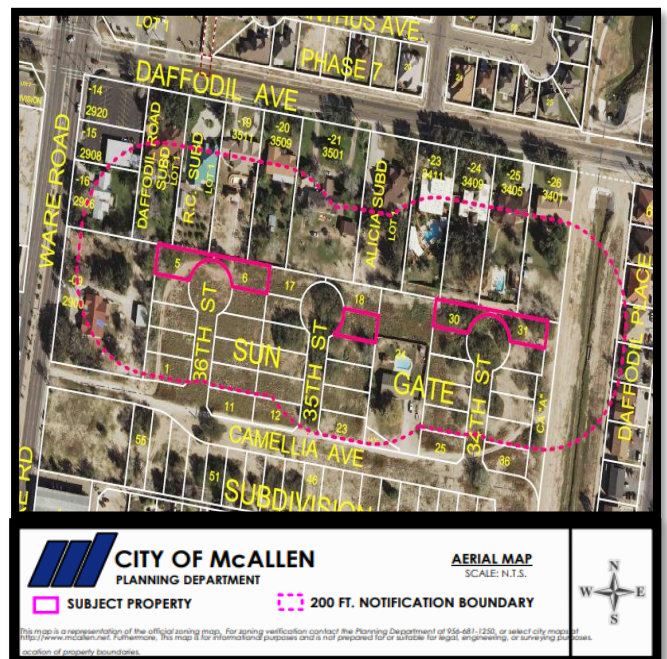
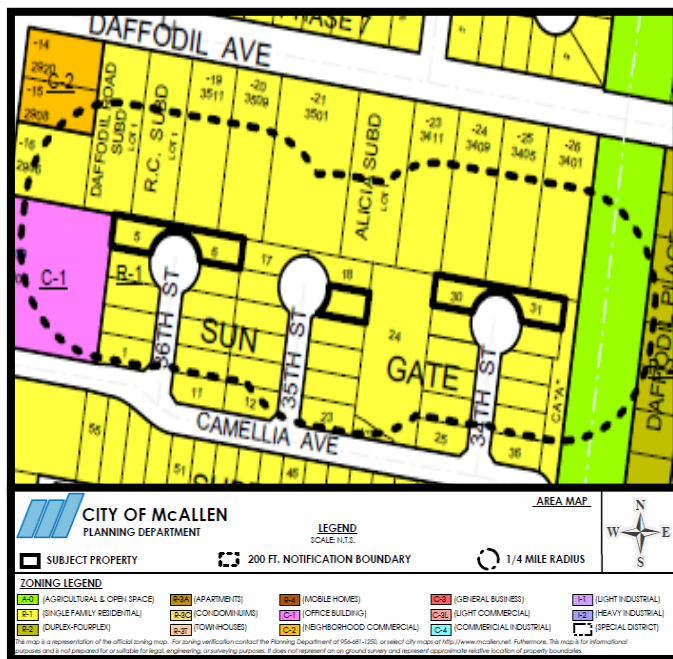
**FROM:** Planning Staff

**DATE:** December 8, 2021

**SUBJECT:** Request of Edward De La Tejera on behalf of Terra Homes Corporation for the following Variances to the City of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 25 feet front yard setback for proposed single-family residences at Lots 5, 6, 19, 30, and 31, Sun Gate Subdivision, Hidalgo County, Texas; 2917 North 36th Street, 2920 North 36th Street, 2916 North 35th Street, 2921 North 34th Street, and 2920 North 34th Street. (ZBA2021-0067)

### REASON FOR APPEAL:

The applicant is requesting the variance requests to encroach 10 feet into the 25 feet front yard setback to allow for more buildable area in order to construct single-family residences.



### PROPERTY LOCATION AND VICINITY:

The subject properties are located along cul-de-sacs at North 36<sup>th</sup> Street, North 35<sup>th</sup> Street, and North 34<sup>th</sup> Street. The subject properties are zoned R-1 (single-family residential) District. The total square footage of Lot 19 is 5,060.95. The total square footage of Lot 6, 30, and 31 is 6,017.32. The total square footage of Lot 5 is 6,376.76. The adjacent zoning is R-1 (single-family residential) District in all directions. Surrounding land uses are single-family residences.

### BACKGROUND AND HISTORY:

Sun Gate Subdivision was recorded on March 23, 2021. The plat indicates 25 feet of front yard setback. The applicant is proposing new single-family residences on the subject properties. An application for the variance requests was submitted to the Planning Department on November 17, 2021.

**ANALYSIS:**

This request is for five Lots for proposed single-family use. A submitted site plan proposes construction that would encroach 10 feet into the 25 feet front yard setback. The proposed area that would encroach into the front yard setback for Lots 5, 6, 30, and 31 would be a portion of a garage, a portion of the kitchen, and porch. The proposed area that would encroach into the front yard setback for Lot 19 would be a portion of a bedroom, a portion of the porch, and a portion of the garage. The purpose of the requests is to adjust the buildable area for each Lot.

The properties are located along a cul-de-sac and have an irregular shape.

Vegetation ordinance requires 50% of the front yard to be landscape area. Reduction of the front yard setback from 25 feet to 15 feet may not comply with the 50% of the front yard setback to be landscaped area.

Front yard setbacks are important in establishing the character of a single family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view. Approval of the variance request will allow the proposed construction as depicted on the site plan, but would be in conflict with the front yard setback requirement for this subdivision.

The plat shows 5 feet easements along the front of the subject properties that runs concurrently with the front yard setback. The requested variances if approved will not impact the easements.

The Planning Department has received one phone call in opposition of the variance requests as they expressed concern that property values will increase and should be built within setbacks.

**RECOMMENDATION:**

Staff recommends disapproval of the variance requests as buildings should not be built within setback requirements. However, should the Board approve the variance requests, it should be limited to the footprint shown on the submitted site plan.

ZBA 2021-0067

ZBA  
12-15-21

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 Lots 5, 6, 19, 30 & 31 SUN GATE  
SUBDIVISION  
Subdivision Name SUN GATE  
Street Address 2917 N 36<sup>th</sup> ST., 2920 N 36<sup>th</sup> ST, 2916 N 35<sup>th</sup> ST, 2921 N 34<sup>th</sup> ST AND 2920 N 34<sup>th</sup> STREET  
Number of lots 5 Gross acres \_\_\_\_\_  
Existing Zoning R1 Existing Land Use VACANT lots  
Reason for Appeal (please use other side if necessary) TO ENCRACH 10' FEET INTO THE 25 FT. FRONT SET BACK FOR PROPOSED NEW CONSTRUCTION HOUSES.  
☒ \$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 TERRA HOMES (EDUARDO DELATEJERA) Phone 956 522-7648  
Address 1705 OAK ALLEY DRIVE E-mail terrahomes3@gmail.com  
City MISSION State TX Zip 78572

Owner

Name TERRA HOMES CORPORATION Phone (956) 522-7648  
Address 128 RIO GRANDE E-mail tony.delatejara@gmail.com  
City MISSION State TX Zip 78572

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

Date

Nov 17 2021

Print Name

EDUARDO A. DELATEJERA☐ Owner☒ Authorized Agent

Office

Accepted by K. F

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

Date

**ENTERED**

Rev 10/18

NOV 17 2021

Initial: \_\_\_\_\_



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:

THE STANDARD SETBACK OF 25 ON THE FRONT OF THE LOTS IS TOO MUCH ON CUL D' SAC LOTS. CUL D' SAC LOTS ARE NORMALLY GIVEN 15' FRONT SETBACKS.

A 25' FRONT SETBACK DOES NOT ALLOW FOR A NORMAL HOUSE TO BE BUILT. AND THE BACK

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

ALL HOUSES NEED A DECENT BACKYARD. THE 25' FRONT SETBACK FORCES THE BACKYARD TO 10' DEPTH.

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 VARIANCE ALLOWS THE CUL D' SAC HOMES TO RETURN TO THE VISUAL LINE OF THE REST OF THE STREET AND WILL NOT INTERFERE WITH TRAFFIC OR PARKING

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

THIS VARIANCE IS ONLY FOR CUL D' SAC PROPERTIES

Reason for Appeal

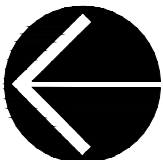
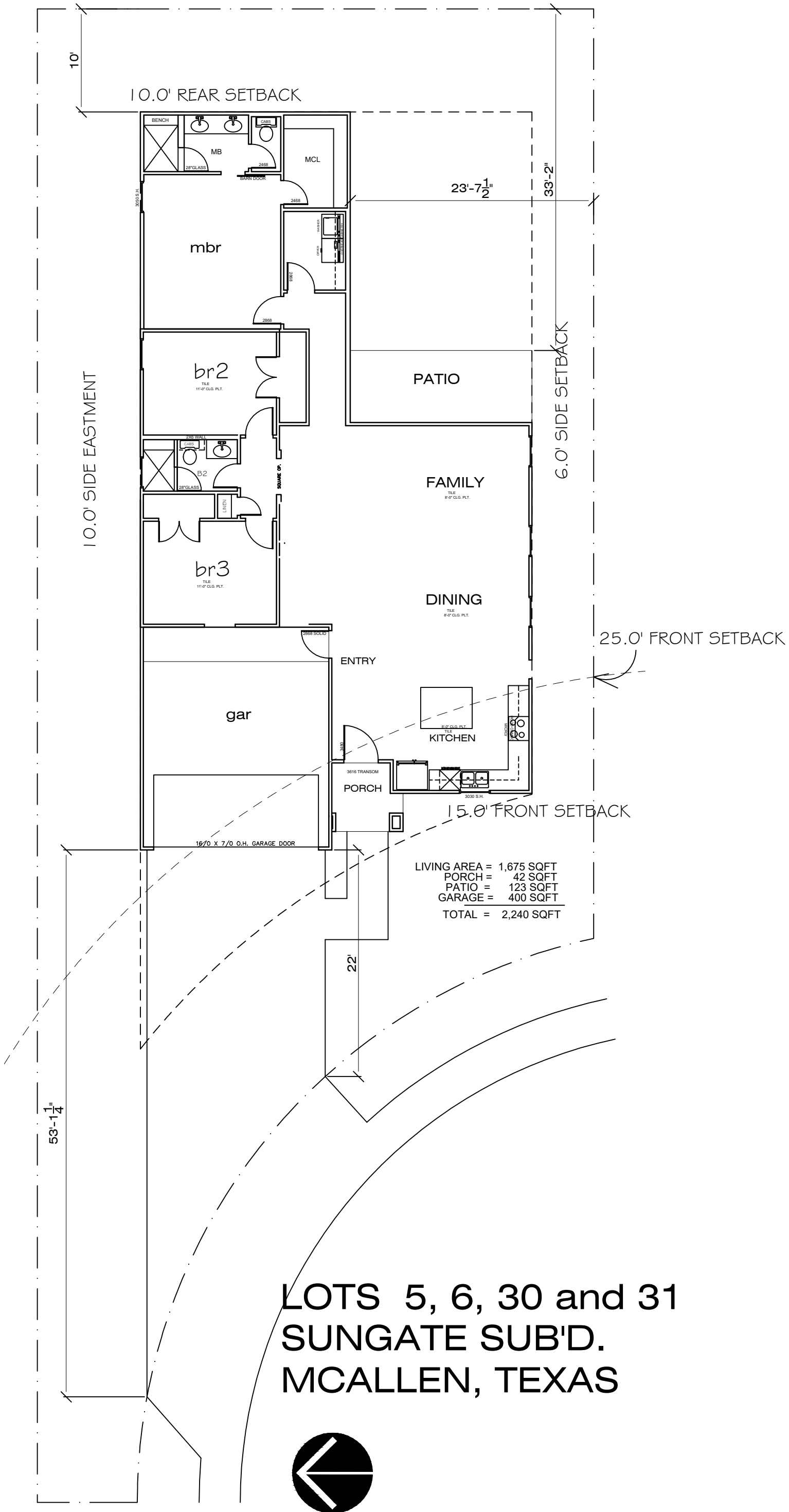
Disappears.

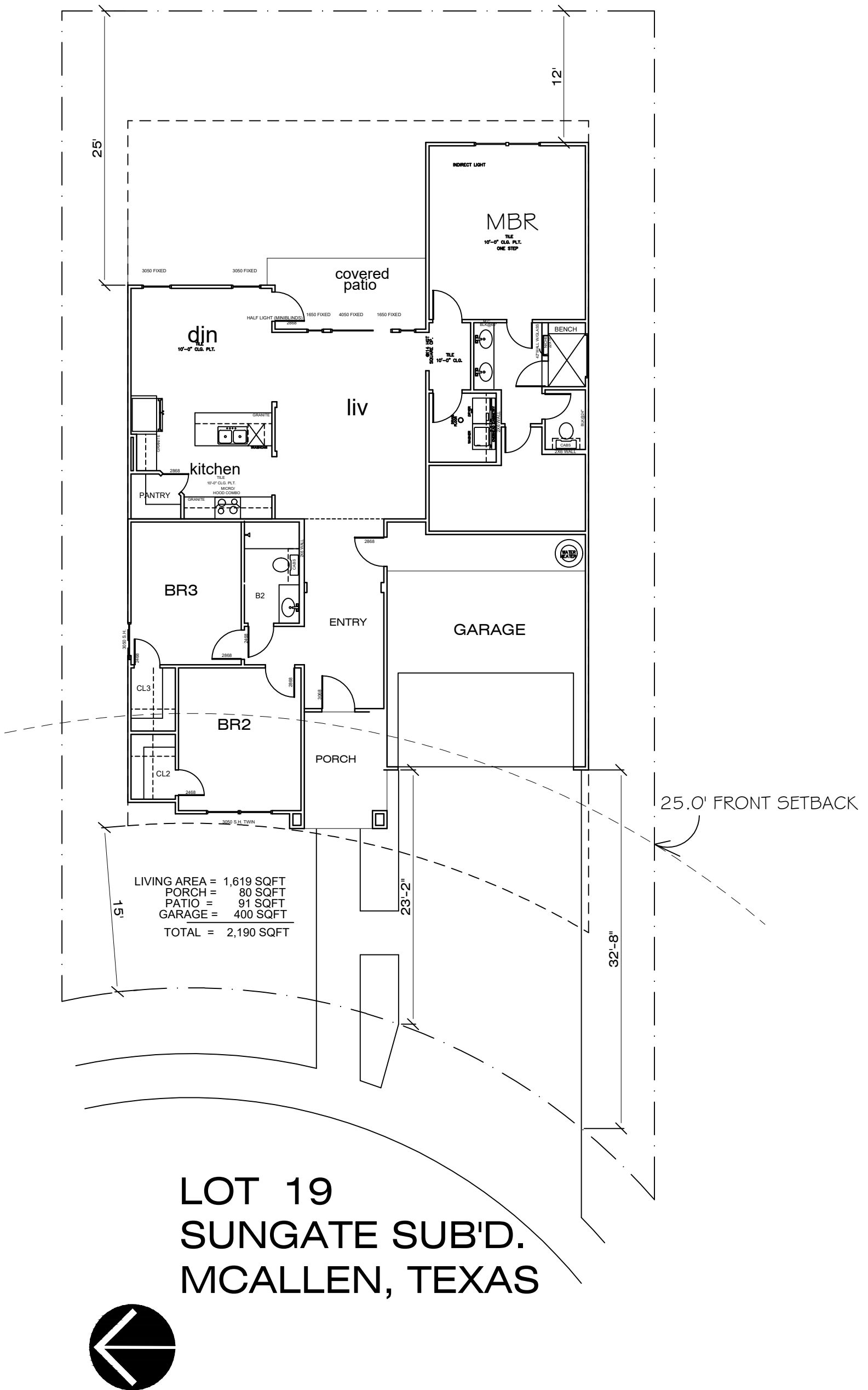
YARD

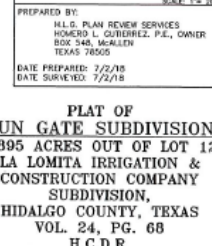
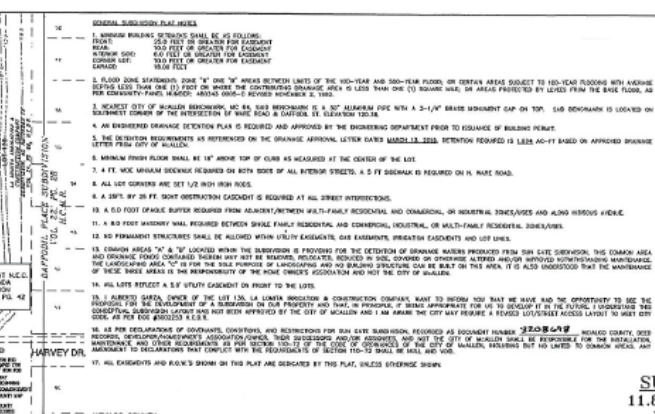
Board Action

Chairman, Board of Adjustment  
Signature

Date







STATE OF TEXAS  
COUNTY OF HIDALGO

I, HENRIKO LUIS GUTIERREZ, A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAN.

APPROVED AND FORWARDED:

\_\_\_\_\_  
HIDALGO COUNTY CLERK

NOTARY PUBLIC

EX-107 (REVISED) 1986  
L.S. GUSTAFSON  
L.S. GUSTAFSON  
L.S. GUSTAFSON  
L.S. GUSTAFSON  
L.S. GUSTAFSON

10' OF L.C.  
3/2" W.P.

HONORABLE LEIS GUTIERREZ, P.E.  
 LICENSED PROFESSIONAL ENGINEER No. 36638  
 STATE OF TEXAS  
 COUNTY OF HIDALGO

SCALE: 1"=100'  
 INSET "A"

I, THE UNDERSIGNED, CHAIRPERSON OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KUALA LUMPUR  
CERTIFY THAT THIS SUBDIVISION PLAN KNOWN AS SUN GATE SUBDIVISION CONFORMS TO ALL REQUIREMENTS OF  
THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

DATED THIS 23 DAY OF March, 2021

PLANNING & ZONING COMMISSION DISPOSITION 6/23/11  
DATE

**PEPE**

STATE OF TEXAS  
COUNTY OF HENDALGO

I, CARLOS M. CASAS AND, D.E.A. CASAS, OWN, THE UNDERWRITER, OWNER OF THE LAND SHOWN ON THIS PLAT, CERTIFY:

RECORDS UNDER DOCUMENT NO. 1633307. OFFICIAL RECORDS, HUALAHO COUNTY, TEXAS, AND SPECIFICALLY DESCRIBED IN VOLUME 2A, PAGES 87-89 HUALAHO COUNTY DEED RECORDS, PART OF SUN GATE GARDENWAY, AN ADDITION TO THE CITY OF HUALAHO, TEXAS, AND WHOSE NAME IS SUBSEQUENT HERETO, HEREBY DEDICATED TO THE USE OF THE PUBLIC ALI, STREETS, ALLEYS, PARKS, SEWER LINES, WATER COURSES, STORM SEWERS, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH HE WILL CAUSE TO BE INSTALLED ON INDICATED UNDER THE SUBSEQUENT APPROVAL PROCESS OF THE CITY OF HUALAHO, AND THE AIDE FOR THE PLANNING DEPARTMENT, WORKER ON THE PLAT ON ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE CITY OF HUALAHO.

STATE OF TEXAS

COUNTY OF HUALAISCO

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED FABIAN & ELSA CASAS

KNOWN TO ME BY THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO  
THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/IT SIGNED THE SAID(S) INSTRUMENT(S) FOR THE PURPOSES AND  
CONSIDERATIONS THEREIN STATED, AND SIGNED MY NAME AND SEAL OF OFFICE THIS THE 21<sup>ST</sup> DAY OF  
DECEMBER 2010

*[Signature]*

CLERK CLERK

CITY OF CHICAGO  
NOTARY PUBLIC  
MY COMMISSION EXPIRES ON: **01-08-2025**

COUNTY OF HIDE  
NOTARY PUBLIC  
STATE OF TEXAS  
COMPL. Exp. 03-09-2025

CITY OF CHICAGO  
COUNTY OF HIDE

CRJ: 04-01-2021 at 2:4

FILED FOR RECORD IN  
HUALAHOE COUNTY  
PAUL VALLERIE  
HUALAHOE COUNTY CLERK

**NUMERO** **FAX NUMBER**

359-0688 (956) 367-3687  
359-0688 (956) 367-3687

**TEL: 956-369-0988**

10/10/00 DATE  
12/1/00 DATE

1. THE UNDERSIGNED, HAZARD OF SECURITY INTEREST IN THE ABOVE DESCRIBED PROPERTY, BEING THE LAND SHOWN ON THIS PLAT AND EGRESSED HEREIN AS SUB-LEASE, SUBDIVISION OF THE CITY OF MANASSAS, TEXAS, DO HEREBY CONSENT TO THE SUBDIVISION OF THE PROPERTY AS PROVIDED FOR UNDER THE PLAT AND DO HEREBY THAT ANY FUTURE ACQUISITION RELATING TO THE SECURITY INTEREST ON THE ABOVE DESCRIBED PROPERTY SHALL BE SUBJECT TO THE PLATINGS OF THE PROPERTY AS PROVIDED FOR HEREIN.

*[Signature]* 12/17/2022  
BRIAN A. HARRIS JR. DATE  
WITNESSES FOR HAZARD OF SECURITY INTEREST

**CURTIS D. WATKINS**  
Notary Public  
STATE OF TEXAS  
Notary ID# 1340279-1  
My Comm. Exp. 1-23-2024

C9	56.00	60.77	6.00	47.44	W	56.94	C24	38.00	26.14	N	5.64
C10	56.00	78.18	8.00	64.18	W	75.44	C25	115.00	44.40	S	5.68
C11	56.00	78.18	5.47	73.20	C	72.44	C26	92.00	60.17	S	5.68
C18	56.00	58.72	5.37	57.17	N	56.94					
C19	56.00	74.10	1.84	66.26	W	74.00					
C20	56.00	46.10	6.07	43.48	W	45.00					
C21	278.00	50.00	8.00	29.00	W	80.81					
C22	56.00	14.14	6.40	34.03	W	34.00					

THE POINT OF BEGINNING (P.B.) BEING AT A 1/2" IRON ROD FOUND FOR THE APPARENT NORTHEAST CORNER OF ROAD SUBDIVISION, AS PER MAP RECORDED IN VOL. 13, PG. 42, MAP RECORDS, HEMLOCK COUNTY, TEXAS, POINT ALSO BEING ON THE EAST LOT LINE OF S4D 102E T23N LA LOMA SUBDIVISION & CONSTRUCTION COMPANY SUBDIVISION, RECORDED IN VOL. 34, PG. 60, OREGON RECORDS, HEMLOCK COUNTY, TEXAS, FOR THE APPARENT SOUTHEAST CORNER, SAID 11.005 ACRES OF LAND HEREIN DESCRIBED AND ALSO BEING THE POINT OF BEGINNING (P.O.B.) OF SAID 10.822 ACRES OF LAND HEREIN DESCRIBED.


THENCE, N 73°20'17" E, ALONG THE APPARENT EAST RIGHT-OF-WAY LINE OF WABE ROAD (9W 2290), A DISTANCE OF 50.92 TO A 1/2 INCH BORN BOD FOUND FOR AN EXTERIOR CORNER OF SAID 21.86 ACRES OF LAND HEREIN DESCRIBED;

LOT AREAS		
LOT	SQ. FT.	AC.
COMMON AREA "A"	13,454.84	0.30
COMMON AREA "B"	4,822.34	0.11
LANDSCAPING AREA "C"	3,282.55	0.07


21°41' E	15.89	1.4	3.2677°E	21.27	25.75/34.35	5.893/18	0.12
21°21' E	15.14	1.5	3.1421°E	20.44	15.12/25	5.267/30	0.16
21°31' E	14.76	1.6	3.2677°E	21.27	24	48.144/51	3.86
20°48' W	16.53	1.7	3.8173°E	16.67	26.27/34.35	6.076/50	0.13
20°51' E	22.30	1.8	3.50421°E	6.59	36	3.725/60	0.12
21°54' E	44.67	1.9	3.5842°E	37.60	29.78	6.080/66	0.16
21°05' E	36.87	1.10	3.5341°E	21.27	23	5.055/35	0.11

LOT AREAS			
	LOT	SQ. FT.	AC.
COMMON AREA	1	1,412.00	0.03
COMMON AREA	2	4,022.54	0.09
COMMON AREA	3	4,540.89	0.10
COMMON AREA	4	4,540.89	0.10
COMMON AREA	5	4,540.89	0.10
COMMON AREA	6	4,540.89	0.10
COMMON AREA	7	4,540.89	0.10
COMMON AREA	8	4,540.89	0.10
COMMON AREA	9	4,540.89	0.10
COMMON AREA	10	4,540.89	0.10
COMMON AREA	11	4,540.89	0.10
COMMON AREA	12	4,540.89	0.10
COMMON AREA	13	4,540.89	0.10
COMMON AREA	14	4,540.89	0.10
COMMON AREA	15	4,540.89	0.10
COMMON AREA	16	4,540.89	0.10
COMMON AREA	17	4,540.89	0.10
COMMON AREA	18	4,540.89	0.10
COMMON AREA	19	4,540.89	0.10
COMMON AREA	20	4,540.89	0.10
COMMON AREA	21	4,540.89	0.10
COMMON AREA	22	4,540.89	0.10
COMMON AREA	23	4,540.89	0.10
COMMON AREA	24	4,540.89	0.10
COMMON AREA	25	4,540.89	0.10
COMMON AREA	26	4,540.89	0.10
COMMON AREA	27	4,540.89	0.10
COMMON AREA	28	4,540.89	0.10
COMMON AREA	29	4,540.89	0.10
COMMON AREA	30	4,540.89	0.10
COMMON AREA	31	4,540.89	0.10
COMMON AREA	32	4,540.89	0.10
COMMON AREA	33	4,540.89	0.10
COMMON AREA	34	4,540.89	0.10
COMMON AREA	35	4,540.89	0.10
COMMON AREA	36	4,540.89	0.10
COMMON AREA	37	4,540.89	0.10
COMMON AREA	38	4,540.89	0.10
COMMON AREA	39	4,540.89	0.10
COMMON AREA	40	4,540.89	0.10
COMMON AREA	41	4,540.89	0.10
COMMON AREA	42	4,540.89	0.10
COMMON AREA	43	4,540.89	0.10
COMMON AREA	44	4,540.89	0.10
COMMON AREA	45	4,540.89	0.10
COMMON AREA	46	4,540.89	0.10
COMMON AREA	47	4,540.89	0.10
COMMON AREA	48	4,540.89	0.10
COMMON AREA	49	4,540.89	0.10
COMMON AREA	50	4,540.89	0.10
COMMON AREA	51	4,540.89	0.10
COMMON AREA	52	4,540.89	0.10
COMMON AREA	53	4,540.89	0.10
COMMON AREA	54	4,540.89	0.10
COMMON AREA	55	4,540.89	0.10
COMMON AREA	56	4,540.89	0.10
COMMON AREA	57	4,540.89	0.10
COMMON AREA	58	4,540.89	0.10
COMMON AREA	59	4,540.89	0.10
COMMON AREA	60	4,540.89	0.10
COMMON AREA	61	4,540.89	0.10
COMMON AREA	62	4,540.89	0.10
COMMON AREA	63	4,540.89	0.10
COMMON AREA	64	4,540.89	0.10
COMMON AREA	65	4,540.89	0.10
COMMON AREA	66	4,540.89	0.10
COMMON AREA	67	4,540.89	0.10
COMMON AREA	68	4,540.89	0.10
COMMON AREA	69	4,540.89	0.10
COMMON AREA	70	4,540.89	0.10
COMMON AREA	71	4,540.89	0.10
COMMON AREA	72	4,540.89	0.10
COMMON AREA	73	4,540.89	0.10
COMMON AREA	74	4,540.89	0.10
COMMON AREA	75	4,540.89	0.10
COMMON AREA	76	4,540.89	0.10
COMMON AREA	77	4,540.89	0.10
COMMON AREA	78	4,540.89	0.10
COMMON AREA	79	4,540.89	0.10
COMMON AREA	80	4,540.89	0.10
COMMON AREA	81	4,540.89	0.10
COMMON AREA	82	4,540.89	0.10
COMMON AREA	83	4,540.89	0.10
COMMON AREA	84	4,540.89	0.10
COMMON AREA	85	4,540.89	0.10
COMMON AREA	86	4,540.89	0.10</

NOT COMMISSION EXPIRES ON 1-29-2024


 DAWND DANDRIDGE  
 Notary Public  
 STATE OF TEXAS  
 Notary ID# 1340279-1  
 My Comm. Exp. 1-29-2024

3


 DAWND DANDRIDGE  
 Notary Public  
 STATE OF TEXAS  
 Notary ID# 1340279-1  
 My Comm. Exp. 1-29-2024

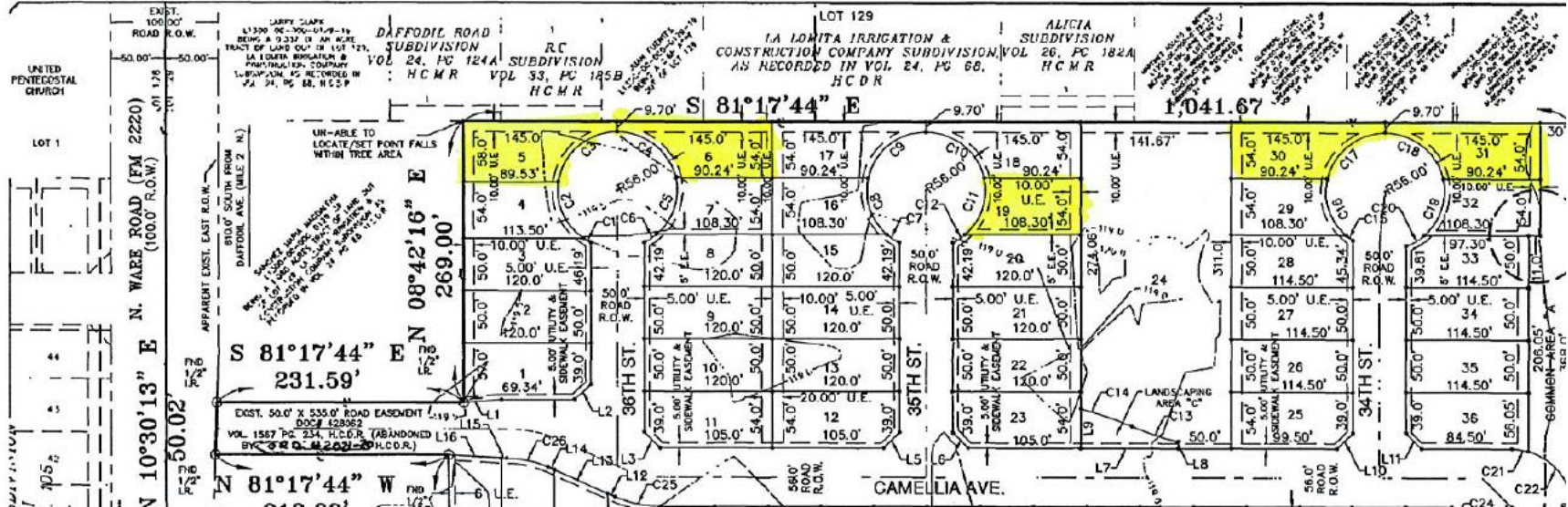
CURVE DATA TABLE

[illegible]

C9	56.00	60.77	6.00	47.44	W	56.94	C24	38.00	26.14	N	5.64
C10	56.00	78.18	8.00	64.18	W	75.44	C25	115.00	44.40	S	5.68
C11	56.00	78.18	5.47	73.70	C	72.44	C26	92.00	60.17	S	5.68
C10	56.00	58.72	5.37	53.35	N	56.94					
C12	56.00	74.10	1.84	66.26	W	74.00					
C13	208.00	46.10	6.00	40.10	W	45.00					
C14	278.00	50.00	6.00	44.00	W	50.81					
C15	56.00	14.14	6.00	8.14	W	14.00					

C18	55.00	55.72	N 09° 47' 44" W	55.01'
-----	-------	-------	-----------------	--------

100% Film Licensed No. F-10426



LOT AREAS

LOT	SQ. FT.	AC.
COMMON AREA "A"	13,454.84	0.302
COMMON AREA "B"	4,922.34	0.113
LANDSCAPING AREA "C"	2,032.53	0.047
1	6,420.99	0.147
2,9,10,13,14,21,22	6,000.00	0.138
3	5,996.99	0.137
4	5,144.70	0.118
5	6,376.78	0.146
6,17,18,30,31	6,017.32	0.138
7,16,19,29	5,060.95	0.116
8,15,20,28	5,950.18	0.137
11,12,23	6,367.50	0.146
24	42,168.51	0.968
25	6,070.50	0.139
26,27,34,35	5,725.00	0.131
36	6,080.66	0.140
29,32	5,060.95	0.116
33	5,625.35	0.129
37	5,698.24	0.131
38-51	5,800.00	0.133
52	6,005.07	0.138
53	6,980.43	0.160
54	7,933.12	0.182
55	8,175.00	0.188



NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0067

**ELECTION FOR OFFICERS TO BE**

**HELD ON JANUARY 19, 2022**

## 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:

--- () ---

**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;..."

--- () ---

**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 Adjustment 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	P	P	A	P	P	P	P	P	P	
JOHN MILLIN- <b>VICECHAIRPERSON</b>	P	A	P	P	P	P	P	P	P	P	A	P	P	A	P	A	P	P	P	A	P	P	A	
SYLVIA HINOJOSA	P	P	P	A	P	P	P	P	P	P	P	P	P	P	P	P	P	A	P	P	P	P	P	
JOSE GUTIERREZ	P	P	P	P	P	P	P	P	P	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	P	A	P	A	A	A	A	A	A	A		
ANN TAFEL	P	P	P	P	P	P	P	P	P	A	A	P	P	P	P	P	P	P	P	P	P	P	P	
HUGO AVILA (ALT 1)	P	P	P	P	P	A	P	P	P	A	P	P	A	P	P	P	P	P	P	P	P	P	P	
REBECCA MILLAN (ALT 3)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
ROGELIO RODRIGUEZ (ALT 2)	A	P	P	P	P	P	A	P	P	P	P	P	P	P	P	P	P	A	A	A	P	P	P	
MARK TALBOT (ALT 4)																								

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
-  Planning & Zoning Board
-  Public Utility Board
-  Zoning Board of Adjustment
- HPC - Historic Pres Council

### Deadlines:





- D- Zoning/CUP Application
- N - Public Notification

\* **Holiday** - Office is closed





### 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
					A-PZ 9/21	
5	6 <b>HOLIDAY</b>	7 Exec conf rm	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 A-10/19 & 10/20	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 & 11/17	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
	A-11/16 & 11/17					
7	8 	9 	10	11	12	13
14	15 A-ZBA 12/1	16	17 D-ZBA 12/15 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
	A-PZ 12/21					
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>	

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.