AGENDA
ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING
WEDNESDAY, FEBRUARY 15, 2017 - 5:30 PM
MCALLEN CITY HALL, 1300 HOUSTON AVENUE
CITY COMMISSION CHAMBERS, 3RD 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 Planning & Zoning Board 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 Planning and Zoning Commission 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 - JORGE SALINAS, CHAIRPERSON

1. MINUTES:
   a) Minutes for regular meeting held on February 1, 2017.

2. PUBLIC HEARINGS:
   a) Request of Esponjas Development, Ltd. to allow the following variances to the City of McAllen Zoning and Vegetation Ordinance: 1) to allow a landscape area less than the required 50% in the required front yard, 2) to allow a building separation of 10 feet instead of 12 feet, for 23.23 acres out of Lot 1, Block 16, Steele & Pershing Subdivision (proposed The Heights at McColl Subdivision), Hidalgo County, Texas; 2701 South McColl Road. (ZBA2017-0004)

   b) Request of Victor Trevino for a variance to the City of McAllen Zoning Ordinance to allow a rear yard setback on a double fronting lot of 10 feet instead of 20 feet for a proposed swimming pool for Lot 32, Villa Valencia Subdivision, Hidalgo County, Texas; 7206 North 56th Lane. (ZBA2016-0002)

   c) Request of Ivan Garcia to allow the following variance and special exception requests to the City of McAllen Off-street Parking and Loading Ordinance: 1) to not provide a 10 foot landscape strip along 11th Street, 2) a front yard setback of 44 feet instead of 50 feet along South 10th Street, and 3) to allow 60 parking spaces instead of the required 72 parking spaces, for Lot 1, H.L.H. Enterprise, Inc. Subdivision, and Lot 1, Laredo National Bank Subdivision, Hidalgo County, Texas; 1804 South 10th Street. (ZBA2017-0003)

3. DISCUSSION:

4. INFORMATION ONLY:
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, February 1, 2017 at 5:37 p.m. in the City Commission Meeting Room with the following present:

Present: Jorge Salinas Chairperson
Mike Harms Vice-Chairperson
Erick Diaz Member
Terry Perez Member
Jose R. Gutierrez Alternate
Sylvia Hinojosa Alternate

Absent: Rolando Ayala Member

Staff Present: Austin Stevenson Assistant City Attorney
Ed Taylor Senior Planner
Rodrigo Sanchez Planner II
Carmen White Secretary

CALL TO ORDER – Jorge Salinas, Chairperson

1) MINUTES:

a) Minutes for Regular Meeting held on January 18, 2017.

The minutes for the meeting held on January 18, 2017 were approved. The motion to approve the minutes was made by Ms. Terry Perez. Mr. Erick Diaz seconded the motion which carried unanimously with five members present and voting.

2. ELECTION OF OFFICERS:

a) Chairperson

b) Vice-Chairperson

The board agreed to do the Elections towards the end of the meeting.

PUBLIC HEARINGS:

a) Request of Mario Rodriguez to allow the following special exception to the City of McAllen Off-Street Parking and Loading Ordinance: to allow 12 parking spaces instead of the required 48 parking spaces, for Lots 23-24, North East Crossing
Subdivision, Hidalgo County, Texas; 101 & 103 Nolana Avenue. (ZBA2017-0001)

Mr. Sanchez stated the applicant requested a special exception to reduce the parking requirement from 48 to 12 parking spaces for a kid’s party place.

The property was located at the southwest corner of Nolana Avenue and 1st Street. The tract had 65 feet of frontage along Nolana Avenue and a depth of 270 feet for a tract size of 17,550 square feet. The property was zoned C-3 (general business) District. Adjacent zoning was C-3 (general business) District to the north, east and west, and R-1 (single family residential) District to the south. A building was under construction on the subject property. Other commercial uses within the North East Crossing Subdivision are retail, personal services, restaurants and vacant commercial suites.

North East Crossing Subdivision plat was recorded on December 19, 1993. Common parking, access, ingress, egress and landscaping areas for the subdivision were established by plat note. A site plan was approved on October 19, 1993 for a proposed building on Lots 2-24 that contained 53,200 square feet of general commercial requiring 136 parking spaces and 148 parking spaces were provided for a surplus of 12 parking spaces. A building permit for a shell building for general commercial use was issued on September 14, 2016 for a parking requirement of 13 parking spaces with a variance requirement for a kid’s party place. A variance application was submitted on January 4, 2017 for the kid’s party place requiring 48 parking spaces. A variance on Lots 22 and 23 for a restaurant to allow 18 spaces instead of the required 40 spaces was disapproved on October 18, 2006 after business owners within the subdivision were concerned about the shortage of parking during peak hours.

The parking requirement for the proposed building of 5,315 square feet for general commercial based upon 1 parking space per 400 square feet of floor area was 13 parking spaces as required for the shell building. The parking requirement for a kid’s party place was 48 parking spaces based upon 1 parking space per 100 square feet of open area. Twelve parking spaces are provided for a deficit of 36 parking spaces. The request involved an existing business by the name of Kidz Party City that was planned to relocate from a building approximately 4,700 square feet in size to a 4,730 square foot building (a difference of 3 spaces) under construction on lots 23 and 24. The subject property comprised 2 lots out of a common parking area containing 23 lots with 148 parking spaces. The hours of operation for the kid’s party place were to be Fridays from 7-10 p.m., Saturday and Sunday from 3-10 p.m. There was no special exception on file for the existing business and this special exception was to cover any parking overlap deficiencies between tenant operating hours.

Staff recommended disapproval of the special exception, but if the Board considers approving the special exception it should be limited to the use as a kid’s party place for the specified hours of operation or other weekday hours after 7 p.m.

Board member Sylvia Hinojosa inquired if the applicant had an agreement with the rest of the strip. Staff stated it was shared parking. There were able to park in the other
parking spaces of the subdivision especially when the other businesses were closed.

Chairperson Jorge Salinas inquired if on the picture it showed having additional parking in the rear. Staff stated there was enough space for additional parking.

Board member Erick Diaz inquired if a building permit could be obtained without having the adequate parking. Staff stated at the beginning when the application for a building permit was submitted the parking calculations were done for general commercial use. That would be one for every 400, permit stating it required 13 spaces. A more specific use, of a party place required 48 parking spaces.

Mr. Mario Rodriguez, the applicant, stated they were renting before at 131 East Nolana Avenue and recently purchased a lot on the corner of the property which was vacant. They were relocating their existing business to a larger building on lots 23 and 24. They would have more space to put games and have 8 tables plus a kitchen to be used for employees. He was asked how many employees. He stated 3 employees would be working.

Chairperson Jorge Salinas inquired if there was anyone present to speak against the special exception request. There was no one to speak in opposition of the special exception request.

Chairperson Jorge Salinas inquired if there was anyone else present to speak in favor of the special exception request. There was no one else to speak in favor of the special exception request.

Board member Ms. Sylvia Hinojosa stated the parking spaces needed to be striped.

Ms. Terry Perez moved to approve the special exception request as per staff’s recommendation. Mr. Erick Diaz seconded the motion. The board voted unanimously to approve the special exception request with five members present and voting limited to the use as a kid’s party place for the specified hours of operation or other weekday hours after 7 p.m. Approval was granted subject to the parking spaces being striped.

2. ELECTION OF OFFICERS:

Ms. Terry Perez made a motion to remove from the table. Mr. Jose Gutierrez seconded the motion. The board voted unanimously to remove from the table with five members present and voting.

Ms. Terry Perez made a motion to continue the status quo with Mr. Mike Harms as Vice-Chairperson. Mr. Erick Diaz seconded the motion. The board voted unanimously with four members present and voting.

Mr. Erick Diaz made a motion to continue the status quo with Mr. Jorge Salinas as Chairperson. Ms. Terry Perez seconded the motion. The board voted unanimously with
four members present and voting.

3. DISCUSSION:

ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Ms. Sylvia Hinojosa moved to adjourn the meeting. Ms. Terry Perez seconded the motion which carried unanimously with five members present and voting.

The meeting was adjourned at: 5:57 p.m.

_________________________
Chairperson
Jorge Salinas

_________________________
Carmen White, Secretary
Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: February 9, 2017

SUBJECT: REQUEST OF ESPONJAS DEVELOPMENT, LTD. TO ALLOW THE FOLLOWING VARIANCES TO THE CITY OF McALLEN ZONING AND VEGETATION ORDINANCE: 1) TO ALLOW A LANDSCAPE AREA LESS THAN THE REQUIRED 50% IN THE REQUIRED FRONT YARD, 2) TO ALLOW A BUILDING SEPARATION OF 10 FEET INSTEAD OF 12 FEET, FOR 23.23 ACRES OUT OF LOT 1, BLOCK 16, STEELE & PERSHING SUBDIVISION (PROPOSED THE HEIGHTS AT MCCOLL SUBDIVISION), HIDALGO COUNTY, TEXAS; 2701 SOUTH MCCOLL ROAD. (ZBA2017-0004)

GOAL:
The Board shall have the power to authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. McAllen Code of Ordinances Section 138-43(4).

REASON FOR APPEAL
The applicant requests variances to allow a landscape area less than the required 50% in the required front yard, and to allow a building separation of 10 feet instead of 12 feet for 23.23 acres being subdivided as The Heights at Mccoll Subdivision.

PROPERTY LOCATION AND VICINITY:
The subject property is located along the east side of South McColl Road approximately 630 feet south of Yuma Avenue. The tract has 660 feet of frontage along South McColl Road and a depth of 1532 feet for a tract size of 23.23 acres out of the proposed Heights at McColl Subdivision. Surrounding land uses include single family residences, vacant land, Hearthstone Apartments, and La Estancia Apartments. The subject property is currently vacant and subdivision improvements are nearing completion.

BACKGROUND AND HISTORY:
The Heights at McColl Subdivision received final approval on February 16, 2016. The applicant proposes to construct two duplexes on each lot which is permitted under the current zoning of R-3A (multifamily residential apartments) District. The Board of Commissioners approved several variances for the approval of the subdivision. A typical site plan was submitted as part of the variance process. The typical site plan did not comply with landscape and building separation requirements. Subdivision improvements are nearing completion and were designed for a building footprint that did not comply with landscape and building separation...
requirements.

ANALYSIS:
Variance #1 is to Section 110-48 Vegetation Ordinance that requires a minimum of 50 percent of the area within the required front yard to be landscape material for new subdivisions. The site plan shows landscape within the front yard comprising 240 square feet. The required landscaping is 750 square feet for a deficit of 510 square feet. Section 110-49(d) requires a landscape strip of 5 feet with a hedge along a public street comprising 195 square feet. Additional 60 square feet of landscape area is available by reducing the parking aisle to 24 feet instead of 27 feet for a total landscape area of 495 square feet or a deficit of 255 square feet. The applicant is proposing landscape side yard adjacent to parking within the front yard comprising 315 square feet for a total of 810 square feet that exceeds the requirement of 750 square feet.

Variance #2 is to Section 138-356(3) (c) requires that multifamily units on the same parcel shall be separated by at least 12 feet. The applicant is requesting to provide a separation of 10 feet since the building code has been amended after the zoning ordinance to allow a building separation of 10 feet. A 10 foot space requirement is allowed by the 2012 International Building Code subject to fire resistance rating of exterior wall and limitation on openings.

RECOMMENDATION:
Variance request #1: Staff recommends approval of the landscaping variance request since landscape area in the front yard exceeds the requirement.

Variance request #2: Staff recommends approval of the variance request since the 2012 International Building Code allows a building separation of 10 feet.
## City of McAllen
### Planning Department

**APPEAL TO ZONING BOARD OF ADJUSTMENT TO McALLEN ZONING ORDINANCE**

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<td><strong>Legal Description</strong></td>
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<td><strong>Subdivision Name</strong></td>
<td>Lots 78-150 of the Proposed The Heights at McColl</td>
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<td><strong>Street Address</strong></td>
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<td><strong>Number of lots</strong></td>
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<td><strong>Existing Land Use</strong></td>
<td>Vacant lots</td>
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<td><strong>Reason for Appeal</strong> (please use other side if necessary)</td>
<td>see other side please</td>
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- [✓] $300.00 non-refundable filing fee
- [ ] Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

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<tr>
<td><strong>Name</strong></td>
<td>Esponjas Development Ltd</td>
</tr>
<tr>
<td><strong>Phone</strong></td>
<td>956-800-1333</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td>2912 S. Jackson,</td>
</tr>
<tr>
<td><strong>City</strong></td>
<td>McAllen</td>
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<td><strong>Zip</strong></td>
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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.

<table>
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<tr>
<td><strong>Date</strong></td>
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<tr>
<td><strong>Print Name</strong></td>
<td>Eduardo Cantu</td>
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<tr>
<td><strong>Owner</strong></td>
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<tr>
<td><strong>Authorized Agent</strong></td>
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**Office**

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<td><strong>Date</strong></td>
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The document appears to be filled out, with some handwritten notes and stamps. The content includes the legal description of the tract, the number of lots, the existing zoning, and contact information for the applicant and owner. There is also a section for certification of ownership by the actual owner or an authorized agent, along with a space for payment confirmation.
1. The landscaping ordinance, Sec. 110-48 requires that 10% of any lot or parcel shall be devoted to landscape material. A minimum of 50% shall be in the front yard. City of McAllen defines the front yard to be the area within the front setback, in our case, its 20 feet by 75 feet, which is the width of most lots. 50% of the front yard equates to 750 feet. We are asking that the City of McAllen allow us to meet the required 750 feet by counting all the landscaping included in front of the building.

2. We are requesting that the Board allow the lot owners to have a 10 foot separation between the duplexes, which meets the standard required by the building code not the ordinance.
TYPICAL DUMPSTER LOCATION EXHIBIT
NOTE: ONE LOCATION WILL SERVE 2 LOTS

Scale: 1' = 30'

QUINTANILLA, HEADLEY AND ASSOCIATES, INC.
CONSULTING ENGINEERS
124 E. STUBBS ST.
EDINBURG, TEXAS 78539
ENGINEERING REGISTRATION NUMBER F-1513
SURVEYING REGISTRATION NUMBER 100411-00

RECEIVED
SEP 02 2015
BY: [Signature]
This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at http://www.mcallen.net. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on-ground survey and represent approximate relative location of property on ground survey and represent approximate relative location of property boundaries.
Memo

TO: Zoning Board of Adjustment & Appeals
FROM: Planning Staff
DATE: February 10, 2017

SUBJECT: REQUEST OF VICTOR TREVINO FOR A VARIANCE TO THE CITY OF McALLEN ZONING ORDINANCE TO ALLOW A REAR YARD SETBACK ON A DOUBLE FRONTING LOT OF 10 FEET INSTEAD OF 20 FEET FOR A PROPOSED SWIMMING POOL FOR LOT 32, VILLA VALENCIA SUBDIVISION, HIDALGO COUNTY, TEXAS; 7206 NORTH 56TH LANE. (ZBA2017-0002)

GOAL:
The Board shall have the power to authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. McAllen Code of Ordinances Section 138-43(4).

REASON FOR VARIANCE REQUEST
The applicant is requesting a variance for a rear yard setback of 10 feet instead of 20 feet in order to construct a swimming pool on a double fronting lot.

PROPERTY LOCATION AND VICINITY:
The subject property is located along the east side of North 56th Lane, 190 feet south of Toucan Avenue. The property has 81 feet of frontage along North 56th Lane and has a maximum depth of 110 for a tract size of 7,766 square feet. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 District to the north, south and west, and outside city limits to the east. The lot is currently vacant. Surrounding land uses are single family residences, orchards, and vacant lots.

BACKGROUND AND HISTORY:
Villa Valencia was recorded on December 21, 2011. The plat for this subdivision indicates a rear yard setback of 20 feet for double fronting Lots 31 – 34. A building permit application for a swimming pool was submitted December 8, 2016 and a variance application was submitted January 9, 2017.

ANALYSIS:
Section 138-367(b) of McAllen Code of Ordinance requires the front yard setback on both streets for lots having double frontage. Section 138-366 indicates that Planning and Zoning has the authority to approve setbacks not in compliance with the Zoning Ordinance.

The purpose of the front yard setback on both street is to separate the residential structure from
traffic and noise from collector roadways. The front yard setback is 25 feet, but the rear yard setback is 20 feet.

A 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. A 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 (Section 138-1 Definitions).

The property is partially located on a 50 foot radius cul-de-sac creating an irregular lot on North 56th Lane. The lot area is 7,766 square feet but the buildable area is approximately 3,561 square feet. The applicant is proposing a swimming pool comprising 20 feet by 25 feet or 500 square feet. The encroachment includes 10 feet by 25 feet or 250 square feet within the rear yard setback.

The swimming pool is an accessory structure and not a main building. The rear yard setback for a standard lot in the R-1 (single family residential) District is 10 feet. The applicant meets the minimum R-1 District rear yard setback. A swimming pool in compliance with the rear yard setback is limited due to the main building coverage of the rear yard.

**RECOMMENDATION:**
Staff recommends disapproval of the variance requested and alternatively, if the Board recommends approval, the variance should be limited to the footprint of the swimming pool as submitted on the site plan.
# City of McAllen

## Planning Department

### APPEAL TO ZONING BOARD OF

### ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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<td>Subdivision Name</td>
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<td>Lot Requires 20ft. more setbacks for room to build swimming pool</td>
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<td>$300.00 non-refundable filing fee</td>
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<td>Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required</td>
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<tr>
<td>Name</td>
<td>Victor Treino</td>
</tr>
<tr>
<td>Phone</td>
<td>(956) 500-1950</td>
</tr>
<tr>
<td>Address</td>
<td>2810 Vista del Viento</td>
</tr>
<tr>
<td>E-mail</td>
<td><a href="mailto:moris7979@yahoo.com">moris7979@yahoo.com</a></td>
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<td>Michelle Mary Anne Doran</td>
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<tr>
<td>Phone</td>
<td>(956) 802-1475</td>
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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 | Victor Treino |
Date | 1-9-16 |
Print Name | Victor Treino |

Owner | [ ] |
Authorized Agent | [ ] |

Accepted by | [ ] |
Payment received by | [ ] |
Date | [ ]

11/14

REVISED 9/11
Hidalgo CAD

Property Search Results > 819324 DORAN MICHAEL J & MARY ANNE M for Year 2017

Property

Account

Property ID: 819324
Geographic ID: V3697-00-000-0032-00
Type: Real
Property Use Code: 
Property Use Description: 
Legal Description: VILLA VALENCIA LOT 32
Agent Code: 

Location

Address: 7206 N 56TH LN
MCALLEN, TX
Mapsco:
Neighborhood: Map ID: CML DOC 2267085
Neighborhood CD: 
Owner

Name: DORAN MICHAEL J & MARY ANNE M
Owner ID: 1076329
Mailing Address: 1500 MERLIN DR
MISSION, TX 78572
% Ownership: 100.0000000000%

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<th>Improvement Non-Homesite Value</th>
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<th>Land Non-Homesite Value</th>
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Taxing Jurisdiction

Total Value: $34,849

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Total Tax Rate: 2.771100

Taxes w/Current Exemptions: $965.71
Taxes w/o Exemptions: $965.70
Improvement / Building

No improvements exist for this property.

Land

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Deed History - (Last 3 Deed Transactions)

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<td>LOGAM HOMES LLC</td>
<td>DORAN MICHAEL J</td>
<td>2710269</td>
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<td>10/3/2013 12:00:00 AM</td>
<td>WD WARRANTY DEED</td>
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Tax Due

Property Tax Information as of 01/23/2017

Amount Due if Paid on:  

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<th>Discount / Penalty &amp; Interest</th>
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NOTE: Penalty & Interest accrues every month on the unpaid tax and is added to the balance. Attorney fees may also increase your tax liability if not paid by July 1. If you plan to submit payment on a future date, make sure you enter the date and RECALCULATE to obtain the correct total amount due.

Questions Please Call (956) 381-8466

Website version: 1.2.2.2 Database last updated on: 1/22/2017 11:51 PM © 2017 True Automation, Inc. All Rights Reserved. Privacy Notice

This site only supports Internet Explorer 6+, Netscape 7+ and Firefox 1.5+.
January 12, 2017

to Whom it may concern,

I gave Victor Tenuto permission to represent us in the proceedings for the variance that we have requested.

If you have any questions, please feel free to contact us.

Sincerely,

[Signature]

Michael Alden
952-821-2215

[Signature]

Marianne Alden
952-802-1477

RECEIVED JAN 17 2017
BY 3:22pm 7BA:7200-N.50th Ln
This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at http://www.mcallen.net. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying purposes. It does not represent an on-ground survey and represents approximate relative location of property boundaries.
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STATE OF TEXAS
COUNTY OF HIDALGO

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

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 TEXAS WATER CODE 49.211 (D To C), THE DISTRICT HAS NOT REVIEWED AND DOES NOT CERTIFY THE DRAINAGE STRUCTURES DESCRIBED THEREIN TO BE APPROPRIATE FOR THE SPECIFIC SITE OR ZONING 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: 

DATE


23.- AS A MASTER DRAINAGE DETENTION PLAN, THE OFFSITE COMMON AREA/REGIONAL DETENTION POND/DRAINAGE EASEMENT SHALL BE ALLOCATED TO THE USE OF VILLA VALENCIA SUBDIVISION.

QUINTANILLA, HEADLEY AND ASSOCIATES, INC.
CONSULTING ENGINEERS • LAND SURVEYORS
124 E. STUBBS ST.
EDINBURG, TEXAS 78539
REGISTRATION NUMBER F-1513
Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: February 10, 2017

SUBJECT: REQUEST OF IVAN GARCIA TO ALLOW THE FOLLOWING VARIANCE AND SPECIAL EXCEPTION REQUESTS TO THE CITY OF McALLEN OFF-STREET PARKING AND LOADING ORDINANCE: 1) TO NOT PROVIDE A 10 FOOT LANDSCAPE STRIP ALONG 11TH STREET, 2) A FRONT YARD SETBACK OF 44 FEET INSTEAD OF 50 FEET ALONG SOUTH 10TH STREET, AND 3) TO ALLOW 60 PARKING SPACES INSTEAD OF THE REQUIRED 72 PARKING SPACES, FOR LOT 1A, H.L.H. ENTERPRISE, INC. SUBDIVISION AND LOT 1, THE LAREDO NATIONAL BANK SUBDIVISION, HIDALGO COUNTY, TEXAS; 1804 SOUTH 10TH STREET. (ZBA2017-0003)

GOAL:
The Board shall have the power to authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. McAllen Code of Ordinances Section 138-43(4). The Board may grant a 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. McAllen Code of Ordinances Section 138-43(2) (c).

REASON FOR APPEAL
The applicant requests variances to not provide a 10 foot landscape strip along 11th Street and a front yard setback of 44 feet instead of 50 feet along South 10th Street, and a special exception to allow 60 parking spaces instead of the required 72 parking spaces.

PROPERTY LOCATION AND VICINITY:
The property is located at the northeast corner of 11th Street and Savannah Avenue. The tract is comprised of two lots and have 231.29 feet of frontage along South 11th Street and a depth of 287.85 feet at its deepest point for a tract size of 1.43 acres. The property is zoned C-3 (general business) District. Adjacent zoning is C-3 (general business) District in all directions. There is an existing building on Lot 1A, H.L.H. Enterprise, Inc. Subdivision formerly the location for Eyear Optical and a parking lot on Lot 1, Laredo National Bank Subdivision. Other surrounding uses are Stripes convenience store, Starbucks, Furr’s Cafeteria, Old Navy, IHOP, Santa Fe Steakhouse, and Paseo Plaza commercial retail center.

BACKGROUND AND HISTORY:
H.L.H. Enterprise, Inc. Subdivision Lot 1A plat was recorded on December 17, 2014. There is a
vacant 6,367 square foot building that is to be demolished for a future restaurant. The Laredo National Bank Subdivision was recorded on November 28, 2005. There is an existing parking lot with 22 parking spaces on this property. A variance and special exception application was submitted on January 18, 2017 for construction of a restaurant on Lot 1A, H.L.H. Enterprise, Inc. Subdivision. An application for a building permit has not been submitted.

ANALYSIS:
Variance #1: A variance for a required 10 foot landscape strip along 11th Street is requested since a proposed drive thru on Lot 1, Laredo National Bank is located partially on the area for the landscape strip. The reduction in area of landscaping by not providing the 10 foot landscape strip, is off-set by providing 37% more overall landscaping than required and tree requirements are met.

Variance #2: A variance is requested for a front yard setback of 44 feet instead of 50 feet along South 10th Street. The existing building foundation is set at 44 feet and the developers would like to build the new building with the same front yard setback using the original foundation. The original plat from 1975 indicated a front yard setback of 34 feet.

Special Exception #3: The special exception to allow 60 parking spaces instead of 72 parking spaces for a restaurant with 4,974 square feet based upon 1 parking space per 75 square feet of floor area. Forty three parking spaces are provided on Lot 1A and 17 are provided on Lot 1 for a total of 60 and a deficit of 12 parking spaces. A written agreement for the 12 parking spaces on Lot 1, The Laredo National Bank complies with the 72 parking spaces. A special exception is required since business operations overlap between 5 to 10 PM for the 12 parking spaces.

RECOMMENDATION:
Approval of variance requests #1 and #2 as shown on the site plan.

Special Exception - request #3: Staff recommends approval since the actual parking shortage is only for 5 hours from 5 to 10 PM.
### Project

**Legal Description**: LOT 1, LAREDO NATIONAL BANK; LOT 1A H.L.H. ENTERPRISE, INC.

**Subdivision Name**: LOT 1, LAREDO NATIONAL BANK; LOT 1A H.L.H. ENTERPRISE, INC.

**Street Address**: 1804 S. 10TH ST.

**Number of lots**: 2  
**Gross acres**: 1.43

**Existing Zoning**: C-3  
**Existing Land Use**: Parking/Abandoned Building  
**Reason for Appeal**: (please use other side if necessary) See attached letter

- **$300.00 non-refundable filing fee**
- **$1/A** Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

### Applicant

**Name**: Ivan Garcia, P.E., R.P.L.S.  
**Phone**: (956) 380-5152

**Address**: 921 S. 10th ave.  
**E-mail**: riodelta2004@yahoo.com

**City**: Edinburg  
**State**: T.X.  
**Zip**: 78539

### Owner

**Name**: Fred Harms/ 1804 s. 10th, LLC  
**Phone**: (956) 453-5211/ 373-5298

**Address**: 3700 n. 10th st., suite 101  
**E-mail**: kzeigler@zeiglerco.com

**City**: McAllen  
**State**: T.X.  
**Zip**: 78501

### Authorization

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

- [ ] Yes  
  - [X] No

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

**Signature**: [Signature]  
**Date**: 1/18/17

**Print Name**: Ivan Garcia, P.E., R.P.L.S.  
**Owner**: [ ]  
**Authorized Agent**: [X]

---

**Accepted by**: [ ]  
**Payment received by**: Susy  
**Date**: 1/18/17

**RECEIVED**: JAN 8, 2017
**REVISED**: 9/11
January 18, 2017

Planning and Zoning Commission
City of McAllen
1300 Houston Ave.
McAllen, TX 78501

Re: Chick-Fil-A, 1804 S. 10th St, McAllen, TX (Lot 1 Laredo National Bank and Lot 1A H.L.H. Enterprise Inc.)

1) City requirements for minimum 10’ wide landscape strip inside property line along 11th Street,
2) Front (S. 10th Street) 50 feet setback,
3) Required number of parking spaces.

Dear Sirs,

On behalf of Fred Harms and 1804 S. 10th LLC, property owners of the proposed “Chick-Fil-A” restaurant to be located at 1804 S. 10th St. in the City of McAllen, TX, we are requesting the following subdivision variances to the city requirements of:

1) Required minimum 10’ wide landscape strip inside property line along 11th Street
2) Required front (S. 10th Street) 50 feet setback.
3) Required number of parking spaces

“Chick-Fil-A” restaurant is a 4,970 square foot proposed restaurant development to be located at 1804 S. 10th St. in the City of McAllen, TX, with legal description as follows:

1) Lot 1 of Laredo National Bank, recorded in instrument #1549073, Official Map Records of Hidalgo County, Texas
2) Lot 1A of H.L.H. Enterprise Inc. recorded in instrument #2572290, Official Map Records of Hidalgo County, Texas

This proposed development is located on the southwest corner of the intersection of 11th Street and Savannah Street. This property is zoned as C-3 General Business. There is an existing building/structure inside Lot 1A of the said H.L.H. Enterprise, Inc. (north lot) that will be remodeled and used as the new restaurant building. The proposed site plan was developed centered on the limitations of the lot dimensions and configuration; and also designed to comply with minimum City of McAllen development/ordinance standards.

1) Required minimum 10’ wide landscape strip inside property line along 11th Street (Lot 1 Laredo National Bank)

The reason why I am requesting this variance is because the developer would like to increase the buildable lot area by eliminating the required minimum 10’ wide landscape strip inside property line only along the side of 11th Street for the construction of a two-lane drive-thru entrance and drive for food ordering and pick up. This will allow for safer maneuvering because of the wider drive thru driving lanes, will also maximize the number of parking spaces, and comply with required width of interior drives inside the proposed parking lot. This will also allow for better site planning and will be in line with the developer’s proposed plan and configuration as shown on the attached site plan.
2) Required front (S. 10th Street) 50 feet setback (Lot 1A H.L.H. Enterprise Inc.)

The reason why I am requesting this variance is because the developer would like to try to maximize the buildable lot area for the proposed building inside Lot 1A. As it is right now, the proposed building would be approximately 44 feet from the west right-of-way line of 10th Street, which makes it not compliant with the required 50 feet front setback from 10th Street by 6 feet.

3) Required number of parking spaces (Lot 1 Laredo National Bank)

The reason why I am requesting this variance is because the developer would like to designate only a portion of all the parking spaces provided for the use of the Chick-Fil-A restaurant. The remaining parking spaces will be designated to be used by Santa Fe Steakhouse (across the street), as per a shared parking agreement between the two property owners that is being developed. The parking would be shared only in the south lot (Lot 1 Laredo National Bank), and all the parking spaces in the north lot (Lot 1A H.L.H. Enterprise Inc.) will be used only by the Chick-Fil-A restaurant. The total number of spaces required for the development is 72 spaces. The total number of spaces provided for the Chick-fil-A restaurant is 60 (43 in the north lot and 17 in the south lot), which would represent a shortage of 12 spaces total as shown on the attached exhibit.

The proposed site plan complies with all other City of McAllen development and construction requirements.

Your consideration of this request is greatly appreciated.

Respectfully submitted,

Ivan Garcia, P.E., R.P.L.S.
Agent
January 18, 2017

Zoning Board of Adjustment
City of McAllen
1300 Houston Ave.
McAllen, TX 78501

Re: Chick-Fil-A, 1804 S. 10th St., McAllen, TX – Appeal to Zoning Board of Adjustment to McAllen Zoning Ordinance

Dear Sirs,

We, Fred Harms and 1804 S. 10th, LLC, property owners of the lots where the proposed “Chick-Fil-A” restaurant is to be located at 1804 S. 10th St. in the City of McAllen, TX, with legal description as follows:

1) Lot 1 of Laredo National Bank, recorded in instrument #1549073, Official Map Records of Hidalgo County, Texas
2) Lot 1A of H.L.H. Enterprise Inc. recorded in instrument #2572290, Official Map Records of Hidalgo County, Texas

Grant permission to Rio Delta Engineering and their representatives to submit an appeal to Zoning Board of Adjustment to McAllen Zoning Ordinance application for this property, and act as agents on my behalf for this purpose.

Please call Rio Delta Engineering at (956) 380-5152 or E-mail at riodelta2004@yahoo.com if you have any questions, comments or need anything else regarding this matter.

Respectfully submitted,

[Signature]

Fred Harms

1804 S. 10th, LLC

[Signature]

Patrick Wilkins, Manager of Manager for 1804 S 10th LLC
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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.
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 Ordinance (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 551 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. Amendment 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
## 2017 Attendance Record for Zoning Board of Adjustment and Appeals

|                          | 01/04/17 | 01/18/17 | 02/01/17 | 02/15/17 | 03/01/17 | 03/15/17 | 04/05/17 | 04/19/17 | 05/03/17 | 05/17/17 | 06/07/17 | 06/21/17 | 07/05/17 | 07/19/17 | 08/02/17 | 08/16/17 | 09/06/17 | 09/20/17 | 10/04/17 | 10/18/17 | 11/01/17 | 11/15/17 | 11/29/17 | 12/13/17 | 12/22/17 |
|--------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| **Mike Harms - Vice-Chairperson** | A | A | P | | | | | | | | | | | | | | | | | | | | | | | |
| **Rolando Ayala** | A | P | A | | | | | | | | | | | | | | | | | | | | | | | |
| **Jorge Salinas - Chairperson** | A | P | P | | | | | | | | | | | | | | | | | | | | | | | |
| **Erick Diaz** | P | P | P | | | | | | | | | | | | | | | | | | | | | | | |
| **Terry Perez** | P | A | P | | | | | | | | | | | | | | | | | | | | | | | |
| **Sylvia Hinojosa (Alternate 3)** | A | P | P | | | | | | | | | | | | | | | | | | | | | | | |
| **Jose R. Gutierrez (Alternate 1)** | P | P | P | | | | | | | | | | | | | | | | | | | | | | | |
| **(Alternate 2)** | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **(Alternate 4)** | | | | | | | | | | | | | | | | | | | | | | | | | | |

P - Present  
A - Absent  
usahaan - New Appointment  
MC - Meeting Cancelled  
NRM - No Regular Meeting  
LOQ - Lack of Quorum  
RS - Resignation
PLANNING DEPARTMENT
1300 W. Houston Avenue McAllen, TX 78501
Phone: 956-681-1250 Fax: 956-681-1279

2017 CALENDAR

Meetings:
- City Commission
- Planning & Zoning Board
- Public Utility Board
- Zoning Board of Adjustment
- HPC - Historical Preservation Council

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

* Holiday - Office is closed

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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.
# 2017 Calendar

## Meetings:
- City Commission
- Planning & Zoning Board
- Public Utility Board
- Zoning Board of Adjustment
- HPC - Historical Preservation Council

## Deadlines:
- D - Zoning/CUP Application
- N - Public Notification

### July 2017

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**Holiday:** 4th of July

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**Holiday:** Labor Day

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**Holiday:** Labor Day

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**Holiday:** Veterans Day

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**Holiday:** Thanksgiving

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**Holiday:** Christmas

**Holiday:** New Year

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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.