

## AGENDA

### ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, FEBRUARY 2, 2022 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3<sup>RD</sup> FLOOR

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

#### CALL TO ORDER

##### 1. MINUTES:

- a) Minutes for the meeting held on January 5, 2022
- b) Minutes for the meeting held January 19, 2022

##### 2. PUBLIC HEARINGS:

- a) Request of Diana Torres for the following special exception and variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 11 ft. into the 25 ft. front yard setback for an existing metal carport measuring approximately 111 ft. by 13 ft., **2)** an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring approximately 111 ft. by 13 ft., **3)** an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal garage measuring approximately 15 ft. by 13 ft., and **4)** an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing metal garage measuring approximately 15 ft. by 13 ft., at the North 60 feet of Lot 15, of the Southeast ¼ of Section 9, Hidalgo Canal Company-McAllen Subdivision, Hidalgo County, Texas; 817 North 5th Street. **(ZBA2021-0073) (TABLED: 01/19/22)**
- b) Request of Juan Gama for the following special exception to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 12 ft. into the 20 ft. front yard setback for a proposed metal carport measuring 15 ft. by 31 ft., and **2)** encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for a proposed metal carport measuring 15 ft. by 31 ft., at Lot 10, Block 4, Nelson Addition to McAllen, Hidalgo County, Texas; 900 South 15th Street. **(ZBA2021-0074)**
- c) Request of Lucas Castillo for the following special exception to the City of McAllen Zoning Ordinance to allow 4 parking spaces instead of 11 required parking spaces for a proposed office building at Lot 6A, McAllen Townsite Lot6-A, Block 47 Subdivision, Hidalgo County, Texas; 500 South 11th Street. **(ZBA2021-0075)**

##### 3. INFORMATION ONLY:

- a) ELECTIONS OF OFFICERS

##### 4. FUTURE AGENDA ITEMS

- a) 3013 Covina Avenue

#### ADJOURNMENT:

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

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

**The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, January 5, 2022 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>Hugo Avila</b>	<b>Alternate</b>
	<b>Rebecca Millan</b>	<b>Alternate</b>
	<b>Rogelio Rodriguez</b>	<b>Alternate</b>
<b>Absent:</b>	<b>John Millin</b>	<b>Vice-Chairperson</b>
	<b>Ann Tafel</b>	<b>Member</b>
	<b>Mark Talbot</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Austin Stevenson</b>	<b>Assistant City Attorney</b>
	<b>Michelle Rivera</b>	<b>Assistant city</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Omar Sotelo</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 December 15, 2021.

The minutes for the meeting held on December 15, 2021 were approved. The motion to approve the minutes was made by Mr. Jose Gutierrez. Ms. Sylvia Hinojosa seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a)** Request of Ruben Escobedo for the following Special Exception to the City of McAllen Zoning Ordinance: to allow: 1) an encroachment of 19 ft. into the 20 ft. front yard setback for an existing metal carport measuring 21 ft. by 13.5 ft., and 2)

an encroachment of 1 ft. into the 6 ft. side yard setback along the west property line for an existing metal carport measuring 21 ft. by 13.5 ft. at Lot 45, La Lomita Estates Subdivision, Hidalgo County, Texas; 3000 La Vista Avenue. **(ZBA2021-0071)**

Mr. Escamilla stated the applicant was requesting a special exception to allow the existing carport to remain at its current location. The applicant was unaware that a building permit was never obtained by the builder at the time of construction. The applicant would like the structure to remain because the existing carport provides shade and protection for his vehicles during inclement weather. The carport also accommodates the applicant's larger vehicles

The property was located along the north side of La Vista Avenue, approximately 150 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 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 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. As per plat, the front yard setback shall be 20 ft., the side yard setback shall be 6 ft., and the rear yard setback shall be 10 ft. According to Hidalgo County Appraisal District records, the residential home was built in 1984. A stop work order was issued by Buildings and Inspections Department staff on November 05, 2021 for the construction of a carport without a building permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department on November 16, 2021. An application for a special exception request was submitted to the Planning Department on November 22, 2021 for the existing carport.

The special exception request was for an existing metal carport measuring 21 ft. by 13.5 ft. over an existing driveway. The existing carport is open all sides. The 21 ft. by 13.5 ft. carport is encroaching 19 ft. into the 20 ft. front yard setback and 1 ft. into the 6 ft. side yard setback along the west property line.

The current home utilizes tandem parking which would allow one car to be parked in the garage while another in the driveway, a common characteristic of homes constructed during that period. There also is no alley access on the subject property.

There are no utility easements on the subject property.

During a site visit, staff noticed similar structures that seem to be encroaching into setbacks. There is a total of 8 carports located within the front yards in the neighborhood, 5 of them along this street.

A review of Planning Department records revealed that there were two special exception

cases that were approved between 2016 and 2019 (lot 22 and lot 53), while another case (lot 23) was withdrawn along this subdivision. The most recent special exception case (lot 44) for a carport was approved by the Board at the Zoning Board of Adjustments and Appeals meeting of December 1, 2021.

All measurement were taken without the benefit of a survey or surveyor.

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 no one else in favor of the special exception.

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

Board member Ms. Hinojosa asked staff how many carports were in the neighborhood. Mr. Escamilla stated there were eight carports and five along that street. He stated the neighbor to the west of this property had received an approval at the December 1, 2021 meeting.

Board member Mr. Avila asked staff if they advised the applicant of the special exception process. Mr. Escamilla stated they did.

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

- b)** Request of Sahara Vasquez for the following Special Exception to the City of McAllen Zoning Ordinance: to allow: **1)** an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 20 ft. by 22 ft., and **2)** an encroachment of 5 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring 20 ft. by 22 ft. at Lot 4, Harvey Terrace Subdivision Unit 2- Phase I & II, Hidalgo County, Texas; 2721 North 27th Lane. **(ZBA2021-0072)**

Mr. Escamilla stated Sahara Vasquez was requesting the following special exception to the City of McAllen Zoning Ordinance: to allow: **1)** an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 20 ft. by 22 ft., and **2)** an encroachment of 5 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring 20 ft. by 22 ft. The applicant would like the carport to remain because it provides protection for her vehicles. 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 2015.

The subject property was located along the west side of North 27<sup>th</sup> Lane, south of Harvey Drive. The subject property has 51 feet of frontage on North 27<sup>th</sup> Lane and a depth of 100 feet for a lot area of 5,100 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 April 08, 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 November 28, 2021. According to the Hidalgo County Appraisal District, the carport was constructed in 2009.

The special exception request is for an existing metal carport measuring 20 ft. by 22 ft. over an existing driveway. The existing carport is open all sides. The 20 ft. by 22 ft. carport is encroaching 20 ft. into the 20 ft. front yard setback and 5 ft. into the 6 ft. side yard setback along the north property line.

The subject property does not have access to an alley that would allow for relocation of the carport. It also does not have a garage available to store and protect their vehicles as the applicant purchased the home in 2015 with the "enclosed" garage.

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. However, a site visit by the Planning Department staff revealed there are 10 existing carports built around the Harvey Terrace Unit 2 Subdivision Phase 1 & 2, a total of 3 along this street.

A review of Planning Department records revealed that there were two special exception cases that were approved within Harvey Terrace Unit 2 Subdivision Phase 1 & 2 for similar front yard setback encroachments. The most recent case was approved by the Zoning Board of Adjustment and Appeals at the meeting of December 1, 2021 at Lot 125 and the other on May 19<sup>th</sup>, 2021 for Lot 9.

During the site visit, staff noticed other structures that may be encroaching, one being a storage building, the applicant stated that they would be removing the storage building at future time and pursuing the other encroachments at a later date.

All measurement were taken without the benefit of a survey or surveyor.

Staff had not received any phone calls or emails in opposition to the 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 no one else in favor of the special exception.

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

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

- 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 32<sup>nd</sup> Street. **(ZBA2021-0060) (TABLED: 12/01/2021) (REMAIN TABLED: 12/15/2021)**

This item was withdrawn by the applicant.

- d) Request of Donato Pantoja for the following Variance to the City of McAllen Zoning Ordinance: to allow an encroachment of 5.67 ft. into the 10 ft. rear yard setback for an existing angled accessory structure 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 structure. The applicant is requesting the variance in order to keep the structure that was built over 16 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 5.67 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 specified a 10 ft. rear yard setback.

The existing structure 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 was 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 5.67 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 received one phone call in opposition 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 footprint shown on the site plan.

Mr. Donato Pantoja, the applicant stated he built the garage to protect his vehicles. He stated he was not aware of the easements at the time. He stated there was an alley and his property was in the corner. There was no obstruction.

Board member Jose Gutierrez explained to the applicant (in Spanish) that the variance he was requesting runs with the land and if he sold the house, the new owner could enclose the structure. Mr. Pantoja stated he understood.

Chairperson Diaz asked the applicant if he had thought about modifying the structure so as not encroach. Mr. Pantoja stated he had not because it was made of steel.

Board member Sylvia Hinojosa asked staff if there were any utility easement. Chairperson Diaz stated no because they were probably out in the alley.

Board member Hugo Avila stated he had concern that the applicant could possibly enclose it in the future.

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

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

Board member Rogelio Rodriguez asked what the door on the side lead to on the west side. Mr. Camacho stated it led to the side yard.

Following discussion, Ms. Sylvia Hinojosa moved to approve the variance request limited to the footprint as shown on the site plan. There was no second motion so the motion died.

Mr. Jose Gutierrez **moved** to disapprove the variance request. Mr. Rogelio Rodriguez seconded the motion. The Board voted with four members voting aye and Ms. Sylvia Hinojosa voting nay.

- e) 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)**

This item was to remain tabled until the meeting of January 19, 2022.

- f) Request of Alicia Peralez for the following Variances to the City of McAllen Zoning Ordinance: **1)** to allow an encroachment of 10 feet into the 10 feet rear yard setback for a wooden canopy measuring 12 feet by 14 feet and **2)** to allow an encroachment of 6 feet into the 6 feet east side yard setback for a wooden canopy measuring 12 feet by 14 feet at Lot 4, Block 4, Colonia Del Norte Subdivision, Hidalgo County, Texas; 2415 Hackberry Avenue. **(ZBA2021-0069)**

Ms. Sanchez stated the applicant was requesting an existing wooden canopy to remain in its current location encroaching into the rear and side yard setbacks at the rear of the subject property. As per the applicant, the existing wooden canopy shelters her pets from inclement weather and is used to store household items.

The subject property was located on the south side of Hackberry Avenue between North 24<sup>th</sup> and 25<sup>th</sup> Streets. The property has 50 feet of frontage along Hackberry Avenue and a depth of 140 feet for a total lot size of 7,000 square feet. The zoning for the property and adjacent zoning is R-2 (duplex-fourplex residential) District in all directions. Surrounding land uses include residential houses, La Paloma Lounge, and Westside Motors.

Colonia Del Norte Subdivision was recorded on February 5, 1948. On November 03, 2021, the Building and Inspections department issued a stop work order for construction without a building permit. An application for a building permit was submitted on November 05, 2021 for an existing wooden canopy and is pending outcome of the variance requests. An application for a variance request was submitted on November 2, 2021. The applicant purchased the residence in 2001, and subsequently built the existing wooden canopy in 2021.

Variance request #1 is to allow an encroachment of 10 feet into the 10 feet rear yard setback. The proposed canopy measures 12 feet by 14 feet for a total area of 168 square feet. The alley provides a buffer to the property to the south.

Variance request #2 is to allow an encroachment of 6 feet into the 6 feet side yard setback along the east side of the subject property. The property to the east of the subject property

(Lot 1, Block 4), is vacant. A cedar fence obscures and buffers the view of the rear yard and the wooden canopy. A 20 feet alley is located along the rear property that provides additional separation for public safety purposes to the residence to the south.

As per the applicant, there is no room to relocate the wooden canopy, as there is a large tree in the rear yard of the subject property.

According to the applicant, the existing wooden canopy shelters and protects her pets from the heat of the sun. The existing wooden canopy was also used to store household items such as storage boxes and pet feed supply.

During a site visit, staff noticed other encroachments for Lots 1 and 2, Block 4 and along the front and rear yards within Colonia Del Norte Subdivision. A review of Planning Department records did not reveal any approved variance or special exceptions in the area.

There are no utility easements along the rear or side of the subject property.

Staff had not received any phone calls in opposition to the variance requests.

Staff recommended approval of the variance requests since there are existing encroachments which are characteristic to the area, the existing tree in the rear yard prevents the relocation of the wooden canopy out of the setbacks, a 20 feet alley provides separation to the south, a 6 feet cedar fence obscures and buffers the rear yard and canopy, and financial cost of compliance is greater than 50 percent of the value of the structure.

Chairperson Diaz asked staff how this variance request differed from the previous item. Ms. Sanchez stated there was a financial cost of compliance that may be greater than 50% of the value of the structure. There was also no room for relocation.

Board member Avila asked staff if the variance was to be granted at any point they could modify this canopy into something else was there, limitations that would regulate it through building or through other codes possibly into a guesthouse. Ms. Sanchez stated it would have to undergo building permit review and would require a Conditional Use Permit. Mr. Avila asked if the canopy had any electricity. Ms. Sanchez stated no.

Ms. Alicia Peralez, the applicant stated she built the wooden canopy for her dog to protect from the heat. The trees were destroyed from the heat and there was no more shade for the dog. She stated none of the neighbors around her had anything against her wooden canopy. Chairperson Diaz asked the applicant when the wooden canopy was built. She stated it was built during the Pandemic. Chairperson Diaz explained to Ms. Peralez that perhaps not her but the next new owners could possibly build something else. Ms. Peralez stated she would never sell the property. Mr. Avila explained to the applicant that each property had limitations in regards to the neighbors around her especially with structures made of wood. Chairperson Diaz asked if there was another location, she could move the structure. She stated that there was no other place to move it because of the different

trees she had surrounding the area.

Chairperson Diaz asked staff how this item came before the Board. Ms. Sanchez stated there was a stop work order issued for construction without a building permit.

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

Mr. Peralez, applicant's son, 2415 Hackberry Avenue, stated they could not enclose that particular shed. He stated he built the shed for the dogs. Chairperson Diaz explained to Mr. Peralez that though he may not intend to enclose the structure, this variance does run with the land. New owners would be able to build there. He asked the Mr. Peralez if there was any way to make it smaller in order to keep it there or relocate it. He stated he could minimize it but it would be costly.

Board member Avila asked staff if a stop work order was issued. Ms. Sanchez stated that on November 3, 2021 the Building and Inspections Department did issue a stop work order. Then an application for a building permit was submitted on November 5, 2021. Therefore, it was before this entire process.

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

Following discussion, Mr. Jose Gutierrez **moved** to approve the variances. Ms. Sylvia Hinojosa seconded the motion. The Board voted to approve the variances with four members voting aye and Mr. Rogelio Rodriguez voting nay.

- g)** Request of Marcy Edwards for the following special exception and variances to the City of McAllen Zoning Ordinance: to allow: **1)** an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 20 ft. by 22 ft., **2)** an encroachment of 1 ft. into the 6 ft. side yard setback along the south property line for an existing metal carport measuring 20 ft. by 22 ft., **3)** an encroachment of 9.5 ft. into the 20 ft. front yard setback for an existing porch canopy measuring 9 ft. by 17.1 ft., **4)** an encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for an existing porch canopy measuring 9.7 ft. by 73 ft., **5)** an encroachment of 2.9 ft. into the 10 ft. rear yard setback for an existing porch canopy measuring 8 ft. by 40 ft., **6)** an encroachment of 1ft. into the 6 ft. side yard setback along the south property line for an existing porch canopy measuring 14 ft. by 11.3 ft., **7)** an encroachment of 6 ft. into the 6 ft. side yard setback for an existing storage building measuring 8.2 ft. by 10.2 ft. **8)** to not require a 5 ft. separation for an accessory building to the main building for an existing storage building measuring 8.2 ft. by 10.2 ft., at Lot 139, Harvey Terrace Subdivision Unit 2- Phase I & II, Hidalgo County, Texas; 2728 North 27th Lane. **(ZBA2021-0068)**

Mr. Escamilla stated the applicant would like the carport to remain because it provides

protection for her vehicles. She also would like the porch canopies to remain since they provide shade and protection during inclement weather and are needed due to her medical condition.

The subject property was located on the southeast corner of the intersection of North 27<sup>th</sup> Lane and Harvey Drive. The corner lot has 50 feet of frontage along North 27<sup>th</sup> Lane and a depth of 100 feet at its deepest point for a lot area of approximately 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-foot front yard setback, 10-foot rear yard setback and a 6-foot side yard setback, except for corner lots, which shall be 10 feet. Hidalgo County Appraisal District records also indicate the structures were built from 2006 to 2010, however the structures do not appear in Google Earth aerial images until 2008 and 2009. The Building and Inspection Department issued a stop work order on April 08, 2021 for a carport built without a building permit. An application for a special exception and variance requests was submitted to the Planning Department on November 18, 2021 for an existing carport and front, side and rear yard encroachments.

Special exception request #1 and #2 are for an existing metal carport measuring 20 ft. by 22 ft. over an existing driveway. The existing carport is open all sides. The 20 ft. by 22 ft. carport is encroaching 20 ft. into the 20 ft. front yard setback and 1 ft. into the 6 ft. side yard setback along the south property line.

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. However, a site visit by the Planning Department staff revealed there are existing carports built around the Harvey Terrace Unit 2 Subdivision Phase 1 & 2.

A review of Planning Department records revealed that there were two special exception cases that were approved within Harvey Terrace Unit 2 Subdivision Phase 1 & 2 for similar front yard setback encroachments. The most recent case was approved by the Zoning Board of Adjustment and Appeals at the meeting of December 1, 2021 at Lot 125 and the other on May 19<sup>th</sup>, 2021 for Lot 9. There are a total of 10 carports located within Harvey Terrace Unit 2 Subdivision Phase 1 & 2, two of which have been properly permitted.

The subject property does not have access to an alley that would allow for relocation of the carport.

Variance request #3 is to allow an encroachment of 9.5 ft. into the 20 ft. front yard setback for an existing porch canopy measuring 9 ft. by 17.1 ft.

Variance request #4 is to allow an encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for an existing porch canopy measuring 9.7 ft. by 73 ft. The plat

for the subdivision specifies a 10 ft. corner side yard setback along the north property line.

Variance request #5 is to allow an encroachment of 2.9 ft. into the 10 ft. rear yard setback for an existing porch canopy measuring 8 ft. by 40 ft. The plat for the subdivision shows and specifies a 6 ft. utility easement running concurrently with the 10 ft. rear yard setback along the east property line.

Variance request #6 is to allow an encroachment of 1ft. into the 6 ft. side yard setback along the south property line for an existing porch canopy measuring 14 ft. by 11.3 ft.

Variance requests 3 through 6 are for porch canopies that surround the existing single-family residence. The encroachments could be reduced or eliminated by modifying the structure to be in compliance with setbacks. However, the financial cost of compliance ranges between \$71,200 to \$87,220, which is greater than 50 percent of the \$140,650 appraised value on the most recent appraisal roll, as presented by the Hidalgo County Appraisal District information. The information provided above was based on a \$40 dollar per square foot calculation as suggested by Building and Inspections Department staff and \$49 dollar per square foot cost, generated by the most recent appraised value.

Variance request #7 is to allow an encroachment of 6 ft. into the 6 ft. side yard setback for an existing storage building measuring 8.2 ft. by 10.2 ft.

Variance request #8 is to not require a 5 ft. separation for an accessory building to the main building for an existing storage building measuring 8.2 ft. by 10.2 ft.

Variance requests 7 and 8 are for an existing storage building that is located on the southeast corner of the property. The encroachments could be reduced or eliminated by modifying the structure to be in compliance with setbacks. However, compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement.

The property had a masonry wall along the north and south side yard.

All measurement were taken without the benefit of a survey or surveyor.

Staff had received one concern in opposition to the special exception and variance request.

Staff recommended approval of the special exception request and disapproval of variance request 3-8 as variances go with the land and approval would allow for future construction on the requested footprint. However, the Board may take into consideration financial cost of compliance for variance request 3 through 6 and that compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement for request 7 and 8; 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 when these structures were built. Mr. Escamilla stated as



per Google it ranged from 2008 to 2009. The Appraisal District had it from 2006 to 2010. He stated the applicant stated they had built it and was there for about 20-21 years. It was a Code Enforcement case for the carport. When staff went, they found other encroachments they informed the applicant and advised them if they would like to apply for the other variances.

Board member Avila asked staff off Harvey Avenue there was 10 feet (corner side yard) and on the rear, there was about 3 feet. Mr. Escamilla stated no actually it was about 7.1 feet from the rear property line. They were encroaching 2.9 feet into the rear 10-foot setback. There was no alley. There was a 6-foot utility easement along the rear property line but not encroaching into that easement.

Ms. Marcy Edwards, the applicant stated her husband had built the porch due to him confined to a wheelchair and he would sit outside. Later she took care of six foster children, which also served as protection from inclement weather in order for them to play outside. The carport served to protect her vehicles from the hailstorm.

Chairperson Diaz explained to Ms. Edwards as presented previously in the agenda items was that in the future someone else who owns the property would be able to enclose it and add the house larger and basically build up to the property line along Harvey Avenue. Chairperson Diaz had concerns with #3 and #4 but more #4, the porch along Harvey Avenue. Ms. Edwards stated the porch along Harvey Avenue was the least of the problem because she had a block fence all they around her property which existed when they bought the house. Chairperson Diaz explained that the carport did extend all the way to the property line and that was the reason they have buffers for safety issues. Ms. Edwards the reason it was built to the property line was because when it rained the water would fall inside and would enter through the side door. She stated the carport had been there for 20 years and was not aware if her husband had obtained any type of permits. Chairperson Diaz asked the applicant if she need the storage unit and if she could remove it. Ms. Edwards stated she stored household items and decorations but she could probably remove it. The storage unit did not interfere with anything because they do not have alley.

Board member Millan asked the applicant who was Iris Ortiz. Ms. Edwards stated her sister who was the homeowner.

Chairperson Erick Diaz asked if there was anyone present in favor of these requests. There was one in favor of the requests.

Mr. Gabriel Acosta, 2708 North 27<sup>th</sup> Lane. He stated he was in favor of the requests. He moved there in 2006, he has seen the porch and carport, and that it was not an eyesore.

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

Ms. Sahara Vasquez, 2721 North 27<sup>th</sup> Lane stated she was in favor of the requests. She

stated it was a nice looking porch. She stated that was why she was there for her request as well.

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

At this point, Board member Avila gave his opinions on all the requests listed.

Board member Gutierrez asked staff the one that was in opposition was in writing or phone call. Mr. Escamilla stated it was a general walk in to the office inquiring about the request. The man stated he was going to attend the meeting once he received the legal notice. Mr. Gutierrez asked staff the reason for his opposition. Mr. Escamilla stated he just received the message nor did he give his address location.

Board member Rogelio Rodriguez stated that he agreed with staff's recommendation. His concern was that the actual applicant might have the intent of extending the actual footprint but the homeowner might consider if the variance was granted to build.

Chairperson Diaz stated that there was not a hardship until the State passed the financial hardship of removing it and more of a permanent structure. Reducing it could also be of a financial hardship as well.

Mr. Austin Stevenson, Legal, recommended to take action on each request that way it would be on the record who voted.

Following discussions, Mr. Hugo Avila **moved** to approve variance requests #1 and #2. Mr. Jose Gutierrez seconded the motion. The Board unanimously voted to approve the both variance requests with five members present and voting.

Mr. Jose Gutierrez **moved** to disapprove variance requests #3 and #4. Mr. Rogelio Rodriguez seconded the motion. The Board voted with four members voting aye and Ms. Sylvia Hinojosa voting nay.

Mr. Hugo Avila **moved** to approve variance request #5 for the 2.9 feet into the 10 ft. rear setback as shown on the site plan. Ms. Sylvia Hinojosa seconded the motion. The Board voted with two members voting aye and Mr. Rogelio Rodriguez and Mr. Jose Gutierrez voting nay. The motion failed and variance request #5 disapproved.

Mr. Jose Gutierrez **moved** to disapproved variance request #6. Mr. Rogelio Rodriguez seconded the motion. The Board voted with three members voting aye. Ms. Sylvia Hinojosa voted nay.

Mr. Rogelio Rodriguez **moved** to disapproved variance requests #7 and #8. Mr. Hugo Avila seconded the motion. The Board voted with four members voting aye. Ms. Sylvia Hinojosa voted nay.

**h)** Request of Pedro "Pete" Ramirez for the following Variances to the City of

McAllen Zoning Ordinance: **1)** to allow an encroachment of up to 3.92 feet into the 6 feet south side yard setback for an existing wooden storage shed measuring 12 feet by 12 feet, **2)** to allow an encroachment of up to 7.92 feet into the 10 feet rear yard setback for an existing wooden storage shed measuring 12 feet by 12 feet, **3)** to allow an encroachment of 10 feet into the 10 feet rear yard setback for an existing wooden hobby-related covered patio measuring 9 feet by 12 feet, **4)** to allow an existing wooden hobby-related patio to have a distance of less than 5 feet of separation from an accessory building to the main building, **5)** to allow an encroachment of up to 2.50 feet into the 10 feet rear yard setback for an existing detached accessory wooden structure, **6)** to allow an existing detached accessory wooden structure to have a distance of less than 5 feet of separation to the main building, and **7)** to allow an encroachment of 6 feet into the 6 feet north side yard setback for an existing wooden porch measuring 7.25 feet by 18 feet at Lot 53, Gardenia Terrace Unit No. 2 Subdivision, Hidalgo County, Texas; 3300 North 27 ½ Street. **(ZBA2021-0070)**

Ms. Sanchez stated the applicant was requesting the variance requests for encroachments into the rear and side yard setbacks, and to allow less than 5 feet of separation from an accessory building to the main building. The applicant requests the variances in order to allow the accessory use structures to remain.

The subject property is located on the south of Hibiscus Avenue between North 27<sup>th</sup> and North 28<sup>th</sup> Streets. The property has 80 feet of frontage along 27 ½ Street and a depth of 112.38 feet for a total lot size of 8,990.40 square feet. The zoning for the property and adjacent zoning is R-1 (single-family residential) District in all directions. Surrounding land uses include residential houses.

Gardenia Terrace Unit No. 2 Subdivision was recorded on July 10, 1975. On November 22, 2019 the Building and Inspections department issued a stop work order for construction without a building permit. An application for a building permit was submitted on January 13, 2020 for the existing structures and is pending outcome of the variance requests. On June 14, 2021, the Building and Inspections department re-opened the case to confirm that “construction has come into compliance...”. An application for a variance request was submitted in November 2021. The applicant purchased the residence in 1995. Subsequent to the purchase of the home, the son (who is now deceased) of the applicant built the existing structures. The applicant states that the son was unaware that building permits were required.

The plat indicates a 10 feet utility easement that runs concurrently with the 10 feet rear setback along the rear property line. There is a 5 feet electrical easement that runs concurrently with the side yard setback along the south side property line, for which an abandonment request has been submitted is being processed.

Variance requests #1 and #2 is to allow an encroachment of up to 3.92 feet into the 6 feet south side yard setback and 5 feet electrical easement for an existing wooden storage shed measuring 12 feet by 12 feet. The encroachment at the rear setback will encroach up to

7.92 feet into the 10 feet rear yard setback and 10 feet utility easement for an existing wooden storage shed measuring 12 feet by 12 feet. If the existing wooden storage shed building is to remain at its current location, the easement abandonment process needs to be undertaken. The existing wooden storage shed are used to store tools, household items, and gardening supplies

Variance requests #3 and #4 is to allow an encroachment of up to 7.92 feet into the 10 feet rear yard setback and allow a distance of less than 5 feet of separation from an existing wooden hobby-related covered patio measuring 12 feet by 12 feet to the main building. If the existing wooden hobby-related covered patio is to remain, the easement abandonment process needs to be undertaken. The existing wooden hobby-related covered patio is used to store a stand for his hobby of woodwork

Variance requests #5 and #6 is to allow an encroachment of up to 2.50 feet into the 10 feet rear yard setback and allow a distance of less than 5 feet of separation from an existing detached accessory wooden structure to the main building. If the detached existing accessory wooden structure is to remain, the easement abandonment process needs to be undertaken. The existing detached accessory wooden structure is vacant and is preserved by the applicant as a memorial for his diseased son.

Variance request #7 is to allow an encroachment of 6 feet into the 6 feet north side yard setback for an existing wooden porch measuring 7.25 feet by 18 feet. A rain gutter may prevent rainfall from spilling into the neighbor's property. The existing wooden porch is attached to the main house and used to store tools, household items, and gardening supplies.

The size of the existing house, the 10 feet rear yard setback, the 6 feet side yard setbacks, and the separation distance requirement limit the amount of space for any accessory structures to be placed in compliance with setbacks. There is a large tree on the rear of the subject property, which hinders relocation of the accessory buildings out of the setbacks.

A cedar and block fence obscures the view of the rear yard and the existing accessory buildings located in the backyard.

During a site visit, staff noticed other encroachments along the front and rear yards within Gardenia Terrace No. 2 Subdivision.

Staff had received one email and six phone calls in favor of the variance requests. They stated that the structures are aesthetically pleasing, add value to the property, are not harmful to the neighbors, and are of excellent quality.

Staff recommended approval of the variance requests since there are other existing encroachments, which are characteristic to the area. The existing tree in the rear yard and the building separation requirement further prevents the relocation of the existing structures out of the setbacks. A 6 feet cedar and block fence obscures the rear yard and existing accessory structures. The financial cost of compliance may be greater than fifty

percent of the value of the structures.

Mr. Pedro Ramirez, the applicant stated his son had built the wooden storage shed and other structures for him. He suffered a tragic loss regarding his son and it was something that he wanted to keep for his memory. Chairperson Diaz asked the applicant if the structure that shown in the image was his son's room, which was variance #5. Mr. Ramirez stated he had another home but purchased this home for his son. Staff stated it was variance #5 but also #6 because of the proximity of the house.

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

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

Board member Sylvia Hinojosa asked staff if there was any problems with utility lines.

Mr. Stevenson stated some applicants who get their variances granted and do not realized they have to go through the abandonment process. It had to be explained that staff does not have the authority to waive third party right. The Board could still grant the variance they still have to go through the abandonment process. It could take up to two or three years as long as they follow through with it until it is completed. Ms. Sanchez stated the applicant knows that he still has to go through the abandonment process.

Ms. Hinojosa stated she had concerns with part of the roof that hits the property line. Ms. Sanchez stated it was variance #7. That neighbor called in favor. She stated that it was a great structure and was aesthetically pleasing and adds value to the property. The structure did not bother her or her husband at all.

Board member Rogelio Rodriguez asked staff what the actual side setback from the neighbor. Ms. Sanchez stated it was six feet.

Board member Avila asked if there was an alley. Ms. Sanchez responded no. He asked if there was any structure close to variance request #3. Ms. Sanchez responded no.

Following discussion, Mr. Hugo Avila moved to approve the variance requests subject to the site plan as it is shown. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the variance requests with five members present and voting.

### **3. INFORMATION ONLY:**

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

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

- a) 817 North 5<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.

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Chairperson Erick Diaz

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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, January 19, 2022 at 4:32 p.m. in the McAllen Development Center, Executive Conference Room with the following present:**

<b>Present”:</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>Rebecca Millan</b>	<b>Alternate</b>
	<b>Rogelio Rodriguez</b>	<b>Alternate</b>
<b>Absent:</b>	<b>Mark Talbot</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Austin Stevenson</b>	<b>Assistant City Attorney</b>
	<b>Michelle Rivera</b>	<b>Assistant city</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</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 – Acting Chairperson Sylvia Hinojosa**

**1. MINUTES:**

- a)** Minutes for the meeting held on December 15, 2021 will be for the next meeting of February 2, 2022.

**2. PUBLIC HEARINGS:**

- a)** Request of Diana Torres for the following special exception and variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 11 ft. into the 25 ft. front yard setback for an existing metal carport measuring approximately 111 ft. by 13 ft., **2)** an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring approximately 111 ft. by 13 ft., **3)** an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal garage measuring approximately 15 ft. by 13 ft., and **4)** an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing metal garage measuring approximately 15 ft. by 13 ft., at the North 60 feet of Lot 15, of the Southeast ¼ of Section 9, Hidalgo Canal Company-McAllen

Subdivision, Hidalgo County, Texas; 817 North 5th Street. **(ZBA2021-0073)**

Mr. Forghanparast stated the applicant was requesting a special exception request in order to allow encroachment into the front yard and north side yard setbacks for an existing metal carport for medical reasons. She was also applying for two variance requests to allow encroachments into the rear and north side yard setbacks for an existing metal garage. The rear portion of the carport was enclosed; therefore, it would be considered a garage and requires a variance.

The subject property was located on the west side of North 5<sup>th</sup> Street, 304.8 ft. south of Jasmine Avenue. The property had 60 ft. of frontage along North 5<sup>th</sup> Street and a depth of 138 ft. according to the submitted warranty deed for a lot size of 8,280 sq. ft. The surrounding land use was single-family residence.

Hidalgo County Appraisal District records showed that the residential home was built in 1966 and the carport and enclosed garage was constructed in 2016. In December 2021, the applicant came to the Planning Department and mentioned that she had received a notice from the City to apply for a building permit for a carport built without a permit. A building permit application for the existing metal structure was submitted on December 8, 2021. An application for special exception requests for the existing carport was submitted on December 10, 2021.

Request #1 was for a special exception to allow an encroachment of 11 ft. into the 25 ft. front yard setback for an existing metal carport measuring approximately 111 ft. by 13 ft. The carport was constructed over the existing drive way and attached to the house. Front yard setbacks were 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. Carports were not permitted to be located within the front yard setbacks.

Request #2 was for a special exception to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring approximately 111 ft. by 13 ft. The carport was constructed over the existing driveway, attached to the house, and extends to the north property line, with no overhang to the adjacent property to the north according to the applicant. Carports are not permitted to be located within the side yard setbacks.

Request #3 was for a variance to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal garage measuring approximately 15 ft. by 13 ft. During the site visit, staff noticed that approximately the rear 15 ft. of the metal carport is enclosed; therefore, it would be considered a garage and requires a variance. A garage was not allowed to be located within the side yard setback.

Request #4 was for a variance to allow an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing metal garage measuring approximately 15 ft. by 13 ft. During the site visit, staff noticed that approximately the rear 15 ft. of the metal carport



is enclosed; therefore, it would be considered a garage and requires a variance. A garage was not allowed to be located within the rear setback.

Approval of the building permit application was pending approval of this application.

Staff had not received a phone call or email in opposition to the special exception and variance requests.

Staff recommended disapproval of the special exception and variance requests. If the Board chose to approve the requests, the approval should have been limited to the encroachments shown on the submitted site plan.

Mr. Forghanparast stated the applicant had submitted additional pictures, which were in the packets but were on the PowerPoint.

Acting Chairperson Hinojosa asked staff that this was an existing carport. Mr. Forghanparast stated this was an existing carport that was built without a building permit. According to the Appraisal District records, the carport was built in 2016. Acting Chairperson Hinojosa asked how it came before the Board. Mr. Forghanparast stated the applicant received a notice from the City to obtain a building permit in which we rejected it because it was encroaching into the setbacks.

Board member Ann Tafel asked staff if there were any utility lines. Mr. Forghanparast stated it was an old subdivision and there were no utility lines showing on the plat.

Acting Chairperson Hinojosa asked if there was an alley. Mr. Forghanparast stated yes, there was an alley. The carport started at the front (as staff was pointing out on the PowerPoint) and all the way to the alley. There was like a metal wall on the north side (as staff is pointing out on the PowerPoint). However, the south side there was only a short wall measured it as approximately 15 feet. Variance #3 and #4 are for the enclosed portion. Requests #1 and #2 Special Exception were for the front part that was not enclose and called a carport.

Board member Jose Gutierrez asked staff how many vehicles could fit under the carport. Mr. Forghanparast stated it could fit five vehicles tandem. Mr. Gutierrez asked the applicant why she needed so much space for vehicles. Ms. Torres, the applicant stated the situation was when they decided to build the carport was because they had a special needs child. He had medical issues. Mr. Gutierrez asked the applicant how many vehicles she used. Ms. Torres stated they used three vehicles.

Board member Tafel stated her concern was that there was no buffer on the side and the rear. There was nothing between the applicant and the neighbor. It was a fire hazard. Acting Chairperson Hinojosa asked what size were the lots. Mr. Forghanparast stated they were 60 by 138 feet. Mr. Forghanparast stated the carport was made of metal so it would not be a fire hazard. Acting Chairperson Hinojosa asked staff if they similar situations around this area. Mr. Forghanparast stated there were some existing structures that are encroaching in the setbacks.

Board member Avila explained to the applicant the difference between a variance and a special exception. Mr. Stevenson stated the variance ran with the land and that was why they created special exceptions for people with medical conditions.

Ms. Torres stated the walls to the carport are removable. The back and side are a sliding door for protection of the child.

Mr. Edgar Garcia, Planning Director stated he checked with the Building Inspections Department and even though the doors were sliders, they were still considered garage and not a carport.

Board member Rogelio Rodriguez stated his main concern was granting a variance that was built in 2016 without a permit. His other concern was the metal carport that it would have to comply with building code. There were some gaps in the structure along with electrical work being done.

Board member Gutierrez asked staff why it was recommended disapproval of the special exception. Mr. Forghanparast stated, as a policy because it was encroaching in the setbacks staff would recommend disapproval.

Board member Hugo Avila asked Legal on the item staff was recommending disapproval. What kind of vote does the Board need to have?

Mr. Austin Stevenson, Legal, stated to overturn staff's recommendation; it required a four vote in favor of approving. He suggested that item 2a was eligible to be discussed in Executive Session under the Attorney Client privilege. In addition, if the Board would be interested in doing so recommend a motion.

Mr. Hugo Avila **moved** to adjourn to Executive Session at 4:59 p.m. Mr. Jose Gutierrez seconded the motion. The Board adjourned to Executive Session with five Board members present and voting.

The Board members reconvened at 5:03 p.m. from Executive Session.

Following discussion, Mr. Hugo Avila **moved** to table variance #2 to discuss options with the applicant. Mr. Jose Gutierrez seconded the motion. The Board voted to table the request #2 with five members present and voting.

- b) 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) (TABLED: 12/15/2021) (REMAIN TABLED: 01/05/2022)****

Mr. Jose Gutierrez made a motion to remove from the table. Ms. Rebecca Millan seconded the motion. The Board voted unanimously with five members present and voting.

Mr. Rivera stated the applicant was 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.

The subject property was 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.

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.

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 were 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.

Staff recommended 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.

Mr. Eladio Ayala, Jr. the applicant stated he would withdraw variance #1 but would like the Board to grant him the 24 feet of the 2 feet.

Board member Avila asked staff if he was going to build structure there after all. Mr. Rivera stated he was going to be adding a structure inside the existing structure and the upper part will be living access. Mr. Ayala stated it was going to be single dwelling.

Board member Tafel asked what happens to the garage on the lot. Mr. Stevenson stated it was not going to be garage. The applicant withdrew variance #1. It was going to be a residence because he was adding living space.

Mr. Hugo Avila **moved** to approve variance request for the encroachment of 2 feet into 6-foot side yard setback. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the special exception with five members present and voting.

### **3. INFORMTION ONLY:**

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

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

- a) 900 South 15<sup>th</sup> Street
- b) 500 South 11<sup>th</sup> Street

### **ADJOURNMENT**

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

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Acting Chairperson Sylvia Hinojosa

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Carmen White, Administrative Assistant

## Memo

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

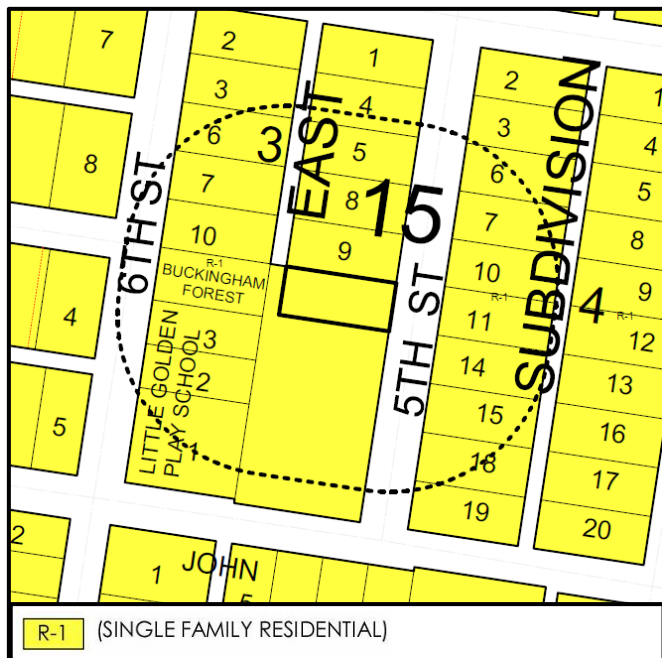
**FROM:** Planning Staff

**DATE:** January 27, 2022

**SUBJECT:** REQUEST OF DIANA TORRES FOR THE FOLLOWING SPECIAL EXCEPTION AND VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 11 FT. INTO THE 25 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING APPROXIMATELY 111 FT. BY 13 FT., 2) AN ENCROACHMENT OF 6 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE NORTH PROPERTY LINE FOR AN EXISTING METAL CARPORT MEASURING APPROXIMATELY 111 FT. BY 13 FT., 3) AN ENCROACHMENT OF 6 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE NORTH PROPERTY LINE FOR AN EXISTING METAL GARAGE MEASURING APPROXIMATELY 15 FT. BY 13 FT., AND 4) AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING METAL GARAGE MEASURING APPROXIMATELY 15 FT. BY 13 FT., AT THE NORTH 60 FEET OF LOT 15, OF THE SOUTHEAST ¼ OF SECTION 9, HIDALGO CANAL COMPANY-MCALLEN SUBDIVISION, HIDALGO COUNTY, TEXAS; 817 NORTH 5TH STREET. (ZBA2021-0073) (TABLED: 01/19/2022)

### REASON FOR APPEAL:

The applicant is requesting a special exception request in order to allow encroachment into the front yard and north side yard setbacks for an existing metal carport for medical reasons. She is also applying for two variance requests to allow encroachments into the rear and north side yard setbacks for an existing metal garage. The rear portion of the carport is enclosed; therefore, it will be considered a garage and requires a variance.



**PROPERTY LOCATION AND VICINITY:**

The subject property is located on the west side of North 5<sup>th</sup> Street, 304.8 ft. south of Jasmine Avenue. The property has 60 ft. of frontage along North 5<sup>th</sup> Street and a depth of 138 ft. according to the submitted warranty deed for a lot size of 8,280 sq. ft. The surrounding land use is single-family residence.

**BACKGROUND AND HISTORY:**

Hidalgo County Appraisal District records show that the residential home was built in 1966 and the carport and enclosed garage was constructed in 2016. In December 2021, the applicant came to the Planning Department and mentioned that she had received a notice from the City to apply for a building permit for a carport built without a permit. A building permit application for the existing metal structure was submitted on December 8, 2021. An application for special exception requests for the existing carport was submitted on December 10, 2021.

**ANALYSIS:**

Request #1 is for a special exception to allow an encroachment of 11 ft. into the 25 ft. front yard setback for an existing metal carport measuring approximately 111 ft. by 13 ft. The carport is constructed over the existing drive way and attached to the house. 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. Carports are not permitted to be located within the front yard setbacks.

Request #2 is for a special exception to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring approximately 111 ft. by 13 ft. The carport is constructed over the existing drive way, attached to the house, and extends to the north property line, with no overhang to the adjacent property to the north according to the applicant. Carports are not permitted to be located within the side yard setbacks.

Request #3 is for a variance to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal garage measuring approximately 15 ft. by 13 ft. During the site visit, staff noticed that approximately the rear 15 ft. of the metal carport is enclosed; therefore, it will be considered a garage and requires a variance. A garage is not allowed to be located within the side yard setback.

Request #4 is for a variance to allow an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing metal garage measuring approximately 15 ft. by 13 ft. During the site visit, staff noticed that approximately the rear 15 ft. of the metal carport is enclosed; therefore, it will be considered a garage and requires a variance. A garage is not allowed to be located within the rear setback.

Approval of the building permit application is pending approval of this application.

Staff has not received a phone call or email in opposition to the special exception and variance requests. Staff has received two letters in support of the request from the adjacent neighbors to the north and south of the subject property after the Zoning Board of Adjustment meeting of January 19, 2022.

**RECOMMENDATION:**

Staff recommends disapproval of the special exception and variance requests. If the Board chooses to approve the requests, the approval should be limited to the encroachments shown on the submitted site plan.

**ZONING BOARD OF ADJUSTMENTS MEETING OF JANUARY 12, 2022:**

At the Zoning Board of Adjustment meeting of January 19, 2022, the Board unanimously voted to table the item with 5 members present and voting after an executive session to give the applicant an opportunity to modify the request. After the meeting, the applicant provided two letters in support of the request from the adjacent neighbors to the north and south of the subject property.



ZBA 2021-0073



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

North 60.0 feet of Lot 15 of the Southeast 1/4  
of Section 9, Hidalgo Canal Company

Subdivision Name

Hidalgo Canal Company

Street Address

817 N 5th ST

Number of lots

1

Gross acres

0.19

Existing Zoning

R-1

Existing Land Use

Residential C

Reason for Appeal (please use other side if necessary)

Encroachment front-11 ft into 25 ft setback  
Rear-10 ft into 10 ft setback side North 6 ft into 6 ft - Aluminum Carport Existing  
12 ft L / 13 ft wide

☒ \$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

Diana Torres

Phone

Address

817 N 5th ST

E-mail

City

McAllen

State

TX

Zip

78501

Owner

Name

Marco Antonio / Diana Torres

Phone

Address

817 N 5th ST

E-mail

City

McAllen

State

TX

Zip

78501

Authorization

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

☐ Yes☒ No

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

Signature

Diana Torres

Date

12/10/21

Print Name

Diana Torres

☒ Owner☐ Authorized Agent

Office

Accepted by

KF

Payment received by

Date

Rev 10/18

DEC 10 2021

BY:

m





**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:

Only option to put carport no other space or land for parking house established before 1966.

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner: Request for variance to be accepted by the city are as followed

used for handicap child at home with special needs, used for therapy and able to keep child/adult from harm from elements

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: property in request Not detrimental to

Neighbors, city workers Access to property or any city utilities, No flooding zone in question structurally stable build with aluminum and iron posts.

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

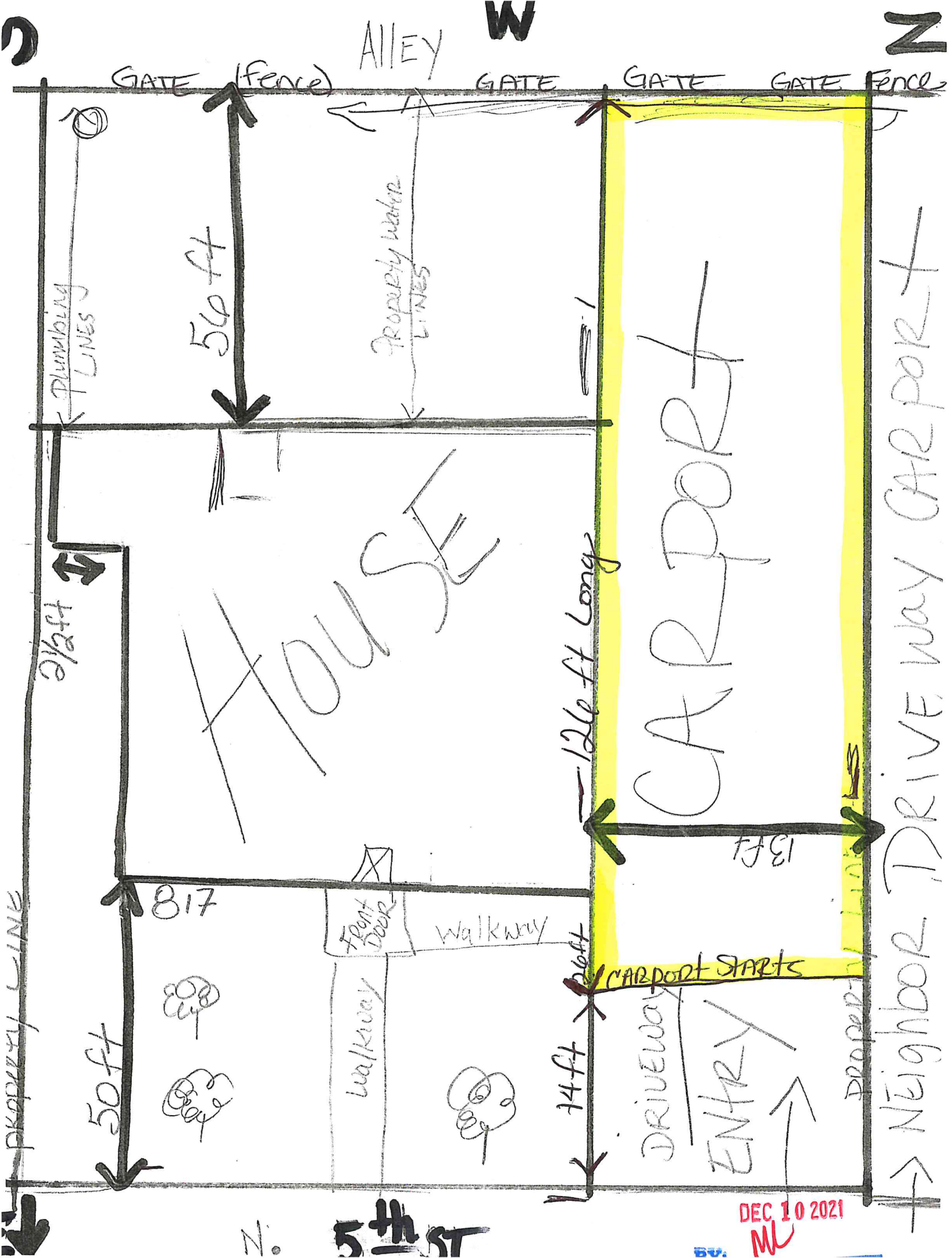
Not used for financial gain, Open carport front and back back is accessible with sliding (gate door).

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date

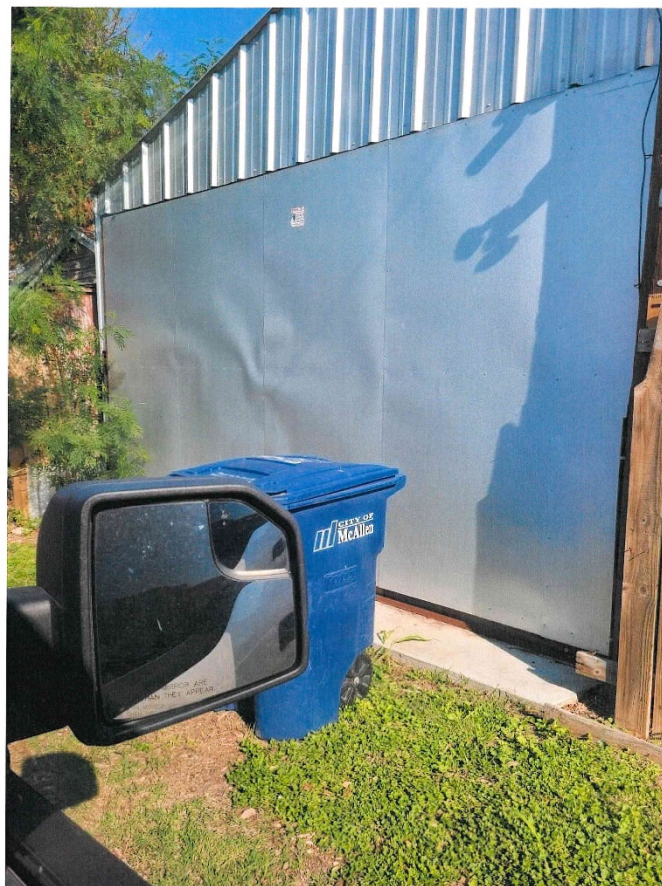


DEC 10 2021  
ML

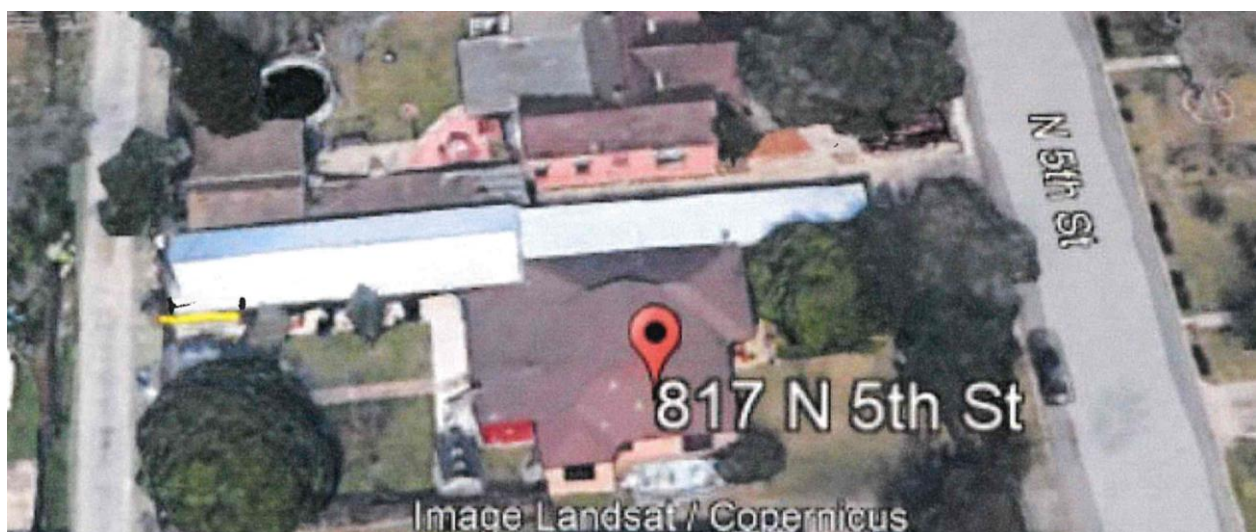












City of McAllen

This letter in refence to exemption on property

817 N 5<sup>th</sup> St McAllen, Texas 78501.

As property owner and neighbor at 901 N 5<sup>th</sup> or neighbor next to the carport

In question; we do not for see any issues whatsoever. The carport does not hinder any personal property or way of living on our behalf. As neighbors of over 25yrs we have seen the struggle since the beginning of their disabled son.

To better the life of a disabled individual, please consider the approval of the exemption.

A handwritten signature in black ink, appearing to read 'Claudia Carter', with a stylized flourish at the end.

Thank you

Claudia Carter  
956-227-6179.

City of McAllen

Como el vecino al Sur de la propiedad ,de la Senora Diana Torres

El driveway o sea el porton no es molestia en ninguna manera para nosotros .

Ayi ellos se la pasan con su muchacho discapacitado.

Gracias

Sergia A Elizondo  
c/d



## **Memo**

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

**FROM:** Planning Staff

**DATE:** January 26, 2022

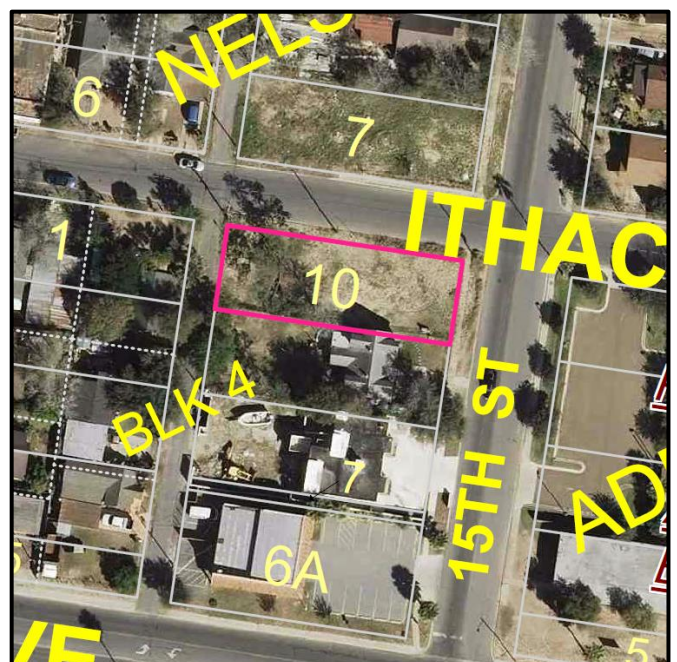
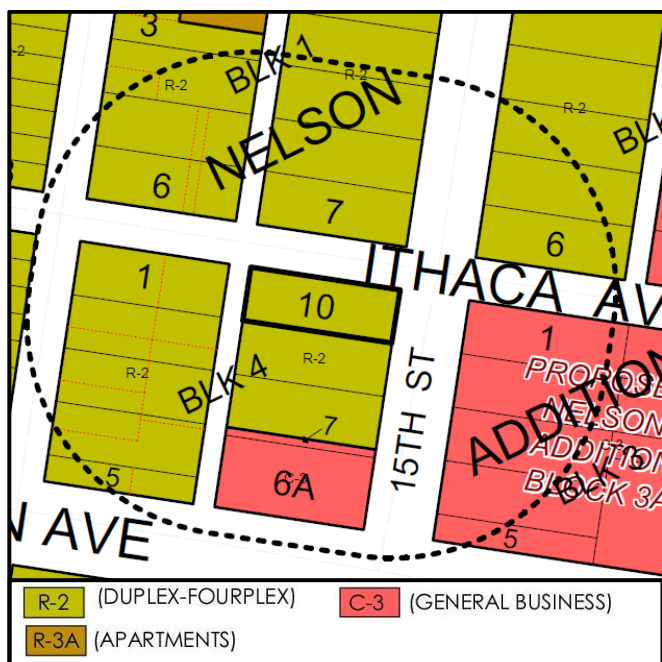
**SUBJECT:** REQUEST OF JUAN GAMA FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 12 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR A PROPOSED METAL CARPORT MEASURING 15 FT. BY 31 FT., AND 2) ENCROACHMENT OF 10 FT. INTO THE 10 FT. SIDE YARD SETBACK ALONG THE NORTH PROPERTY LINE FOR A PROPOSED METAL CARPORT MEASURING 15 FT. BY 31 FT., AT LOT 10, BLOCK 4, NELSON ADDITION TO MCALLEN, HIDALGO COUNTY, TEXAS; 900 SOUTH 15TH STREET. (ZBA2021-0074)

### **REASON FOR APPEAL:**

The applicant is requesting a special exception in order to allow encroachment into the front yard and north side yard setbacks for a proposed metal carport for an existing fourplex to protect the tenant's vehicles from the weather elements.

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

The subject property is located on the southwest corner of South 15<sup>th</sup> Street and Ithaca Avenue. The property has 50 ft. of frontage along South 15<sup>th</sup> Street and a depth of 140 ft. for a lot size of 7,000 sq. ft. according to the subdivision plat. The surrounding land use is residential and commercial.





**BACKGROUND AND HISTORY:**

A variance request for a lot size of 7,000 sq. ft. instead of 7,800 sq. ft. for a proposed fourplex for the subject property was approved on November 17, 2016 by the Zoning Board of Adjustment. Hidalgo County Appraisal District records show that the fourplex was built in 2018. A building permit for the existing metal carport covering 4 parking spaces on the south side of the subject property was approved and built in 2021 and in compliance with setback requirements. An application for a special exception request for the proposed carport to cover three parking spaces on the northeast side of the property was submitted on December 17, 2021.

**ANALYSIS:**

Request #1 is for a special exception to allow an encroachment of 12 ft. into the 20 ft. front yard setback for a proposed metal carport measuring 15 ft. by 31 ft. The carport is proposed to be constructed over three existing parking spaces. The carport will serve as an amenity for the existing fourplex on the property.

Request #2 is for a special exception to allow an encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for a proposed metal carport measuring 15 ft. by 31 ft. The carport is proposed to be constructed over existing three parking spaces, and extend to the north property line, with no overhang. Section 138-368(a) of the Zoning Ordinance requires that the width of the side yard along the street shall not be less than ten feet provided that the buildable width of such a lot of record shall not be reduced to less than 38 feet. The strict application of this requirement would create a possible hardship.

Staff has not received a phone call or email in opposition to the special exception request.

**RECOMMENDATION:**

Staff recommends approval of the special exception request limited to the encroachment shown on the submitted site plan since this is for an existing development, the carport is open on all sides and will not hinder the visibility for traffic, and strict application of 10 ft. corner setback would reduce the buildable area of the lot to less than 38 feet.

ZBA-02/02/22

ZBA2021-0074



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>Nelson Addition Lot 10 Blk 4</u>		
	Subdivision Name	<u>Nelson Addition</u>		
	Street Address	<u>900 S. 15<sup>th</sup></u>		
	Number of lots	<u>1</u>	Gross acres	<u>0.1607</u>
	Existing Zoning	<u>R-2</u>	Existing Land Use	<u>4 Plex housing</u>
Applicant	Reason for Appeal (please use other side if necessary) <u>Install steel carport to protect tenant's vehicle from the exterior elements. Encroachment of 12' into the 20' front yard setback 10' into the 10' north side setback</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			
	Name	<u>Juan Gama</u>	Phone	
	Address	<u>4451 S. Jackson, Suite "A"</u>	E-mail	
Owner	City	<u>Edinburg</u>	State	<u>TX</u>
	Zip	<u>78539</u>		
	Name	<u>Juan Gama</u>	Phone	
	Address	<u>4451 S. Jackson, Suite "A"</u>	E-mail	
	City	<u>Edinburg, TX</u>	State	<u>TX</u>
Authorization	Zip	<u>78539</u>		
	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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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	<u>12-13-21</u>
	Print Name	<u>Juan Gama</u>	<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent	
Office	Accepted by			
	Payment received by	<u>ENTERED</u> DEC 17 2021 		

Rev 09/20

125





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

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

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

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

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

Requesting variance to install a 15'x31'x9' high carport in order to provide a cover for the tenant's vehicles. The carport will be located along the east side parking stalls.

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

The carport will protect the tenant's vehicles from the outside/exterior elements. The carport will not obstruct any oncoming traffic views along 15<sup>th</sup> street or require removal of trees/plants.

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 will NOT be detrimental to the public health, safety or welfare or injurious to the legal rights of other property owners in the area.

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

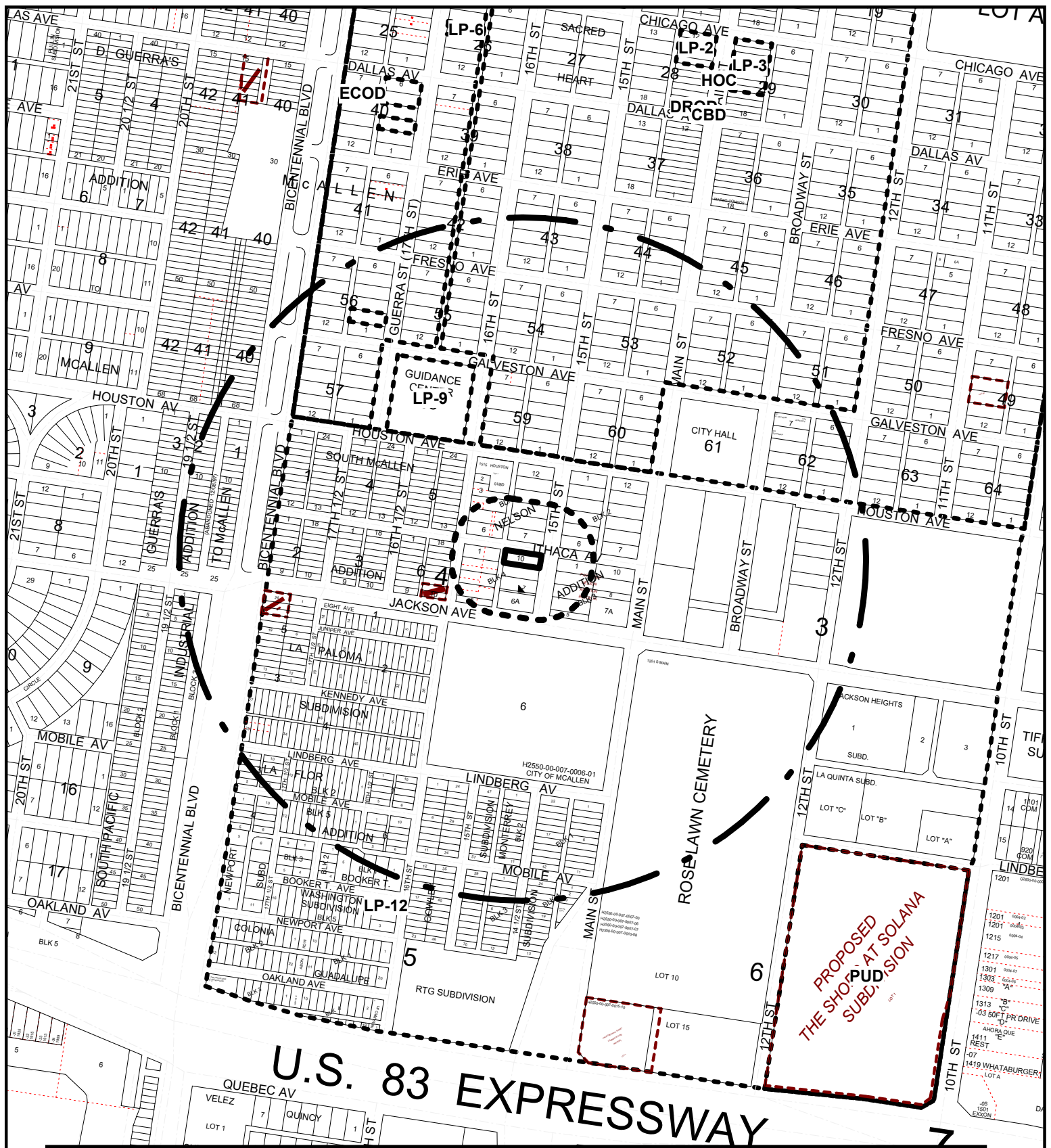
The canopy will encroach 12' into the 20' Front yard setback and 10' into the 10' north side setback

Reason for Appeal

Board Action

Chairman, Board of Adjustment  
Signature

Date



**CITY OF McALLEN**  
PLANNING DEPARTMENT

AREA MAP



**LEGEND**

SCALE: N.T.S.

**SUBJECT PROPERTY**

**200 FT. NOTIFICATION BOUNDARY**

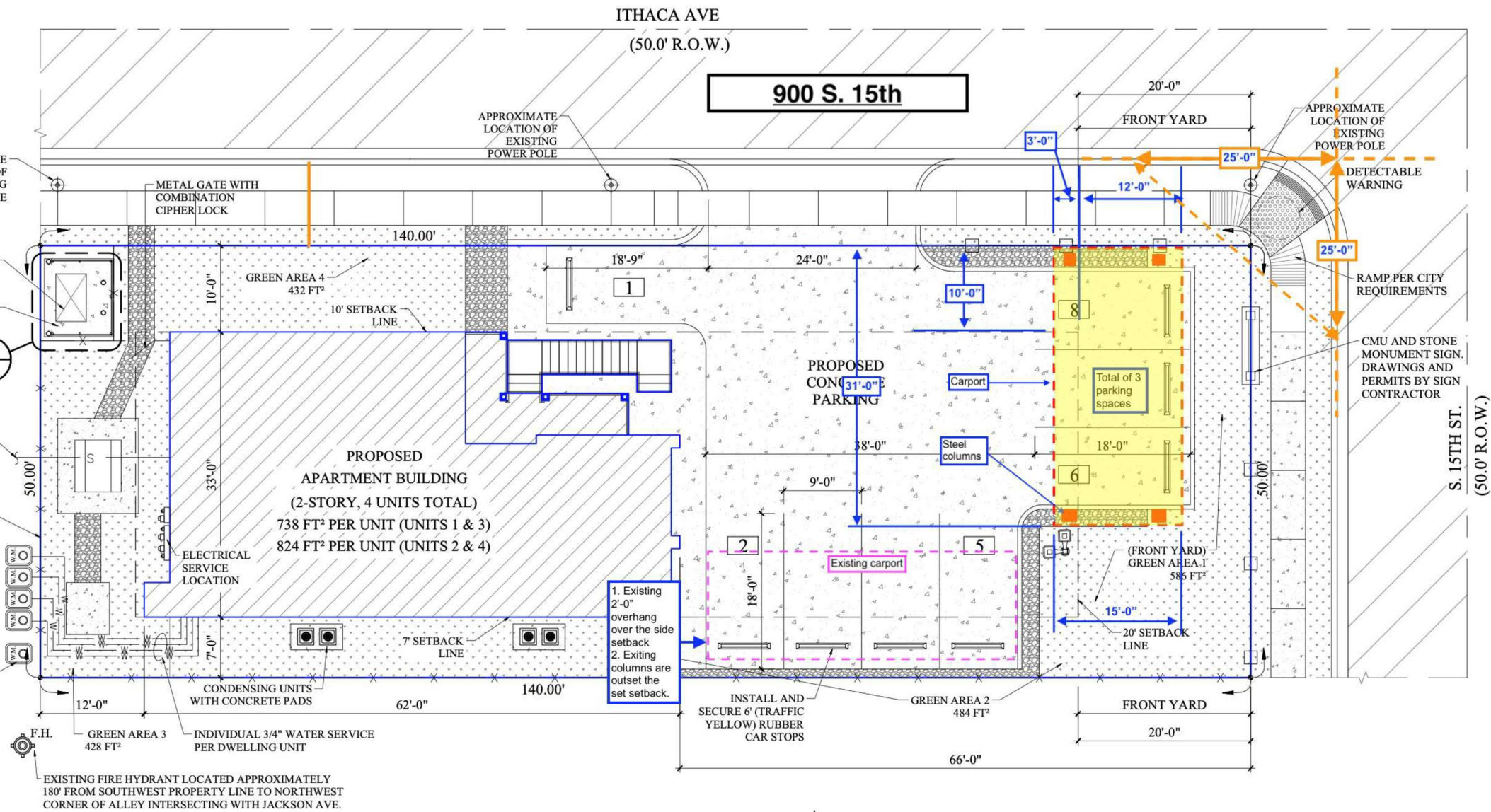
**1/4 MILE RADIUS**

**ZONING LEGEND**

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

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







900 S. 15th  
2 BR, 2 BATH APARTMENTS  
**FOR RENT**  
TEXT CALL 956-313-1177  
PROPERTY MANAGED BY  
**GAMA**  
PROPERTY MANAGEMENT

**NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0074**  
CITY OF MCALLEN PLANNING DEPT.  
1000-001-1200  
WWW.MCALLEN.NET





## **Memo**

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

**FROM:** Planning Staff

**DATE:** January 27, 2022

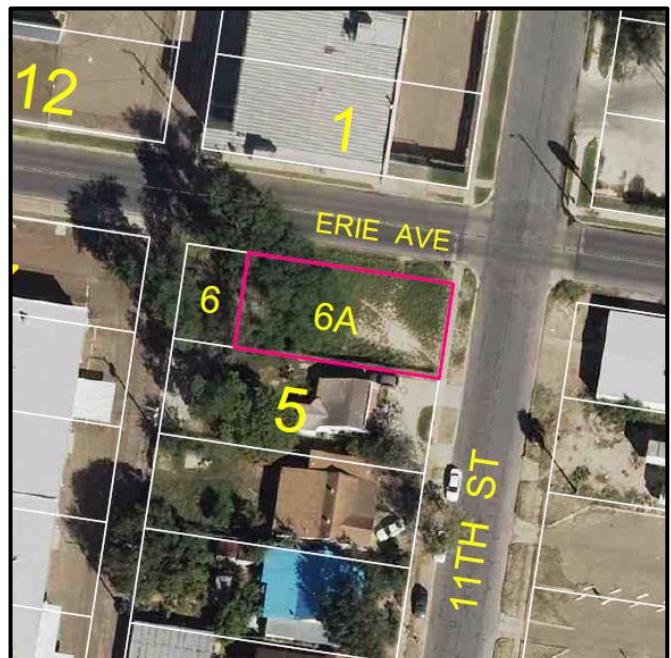
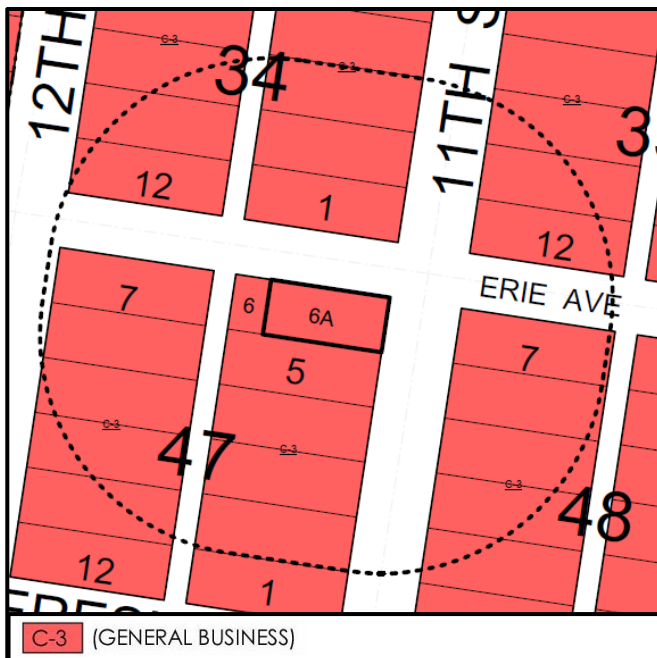
**SUBJECT: REQUEST OF LUCAS CASTILLO FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW 4 PARKING SPACES INSTEAD OF 11 REQUIRED PARKING SPACES FOR A PROPOSED OFFICE BUILDING AT LOT 6A, MCALLEN TOWNSITE LOT6-A, BLOCK 47 SUBDIVISION, HIDALGO COUNTY, TEXAS; 500 SOUTH 11TH STREET. (ZBA2021-0075)**

### **REASON FOR APPEAL:**

The applicant is requesting a special exception from the City of McAllen Off-street Parking and Loading Ordinance to provide 4 parking spaces instead of the required 11 parking spaces for an office building due to space limitation.

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

The property is located on the southwest corner of 11<sup>th</sup> Street and Erie Avenue. The lot has 50 ft. of frontage along South 11<sup>th</sup> Street and 108 ft. of depth for a lot size of 5,400 sq. ft. The property is zoned C-3 (general business) District and is currently vacant. The adjacent zoning is C-3 (general business) District on all directions. The surrounding land uses include Anny's Flower Shop, single-family residences, Taco Bell restaurant, and offices.





**BACKGROUND AND HISTORY:**

McAllen Townsite Lot6-A, Block 47 Subdivision was recorded on May 5, 2021. An application for a building permit for 1,600 sq. ft. of proposed office use for the subject property is pending the special exception request. An application for a special exception request was submitted on December 20, 2021.

**ANALYSIS:**

The establishment is proposed to have 1,600 sq. ft. of office space. Section 138-395 of the Zoning Ordinance requires four parking spaces for up to 200 square feet of floor area, plus one parking space for each additional 200 square feet of floor area. Therefore, 11 parking spaces for the proposed office use will be required. The request is to provide 4 parking spaces due to lot area limitation. Approval of 4 parking spaces will leave only one off-street parking space for the customers. The applicant stated that the proposed office will be for Atlas Engineering which has three employees and the customers will visit the office by appointments only. The applicant stated that he had tried leasing parking spaces from other properties in vicinity but was unsuccessful.

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

**RECOMMENDATION:**

Staff recommends disapproval of the special exception request since approval of 4 parking spaces will leave only one off-street parking space for the customers. However, the strict application of the Zoning Ordinance requirements to provide the minimum off-street parking on-site may create hardship to the applicant.

ZBA 2021-0075

ZBOA-  
2-2-22

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>0.124 Acre Tract of Land out of Lot 6, Block 47, save and except the west 32.00 feet, McAllen Addition Subdivision</u> Subdivision Name <u>McAllen Addition</u> Street Address <u>500 South 11th Street</u> Number of lots <u>1</u> Gross acres <u>0.124</u> Existing Zoning <u>C3 - General Business</u> Existing Land Use <u>Undeveloped</u> Reason for Appeal (please use other side if necessary) <u>The required parking spaces does not fit with the proposed plan. We are proposing four instead of the required 11.</u> <input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input checked="" type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required
	Applicant
Owner	Name <u>Lucas Castillo</u> Phone <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px;"></span> Address <u>2820 Gull</u> E-mail <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px;"></span> City <u>McAllen</u> State <u>TX</u> Zip <u>78504</u>
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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 <u>[Signature]</u> Date <u>12-20-21</u> Print Name <u>Lucas Castillo</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent
Office	Accepted by _____ Payment received by _____ Date _____ Rev 10/18 <div style="text-align: right;"> <b>ENTERED</b>  <b>DEC 20 2021</b>          Initial: <u>CS</u> </div>

KS RS

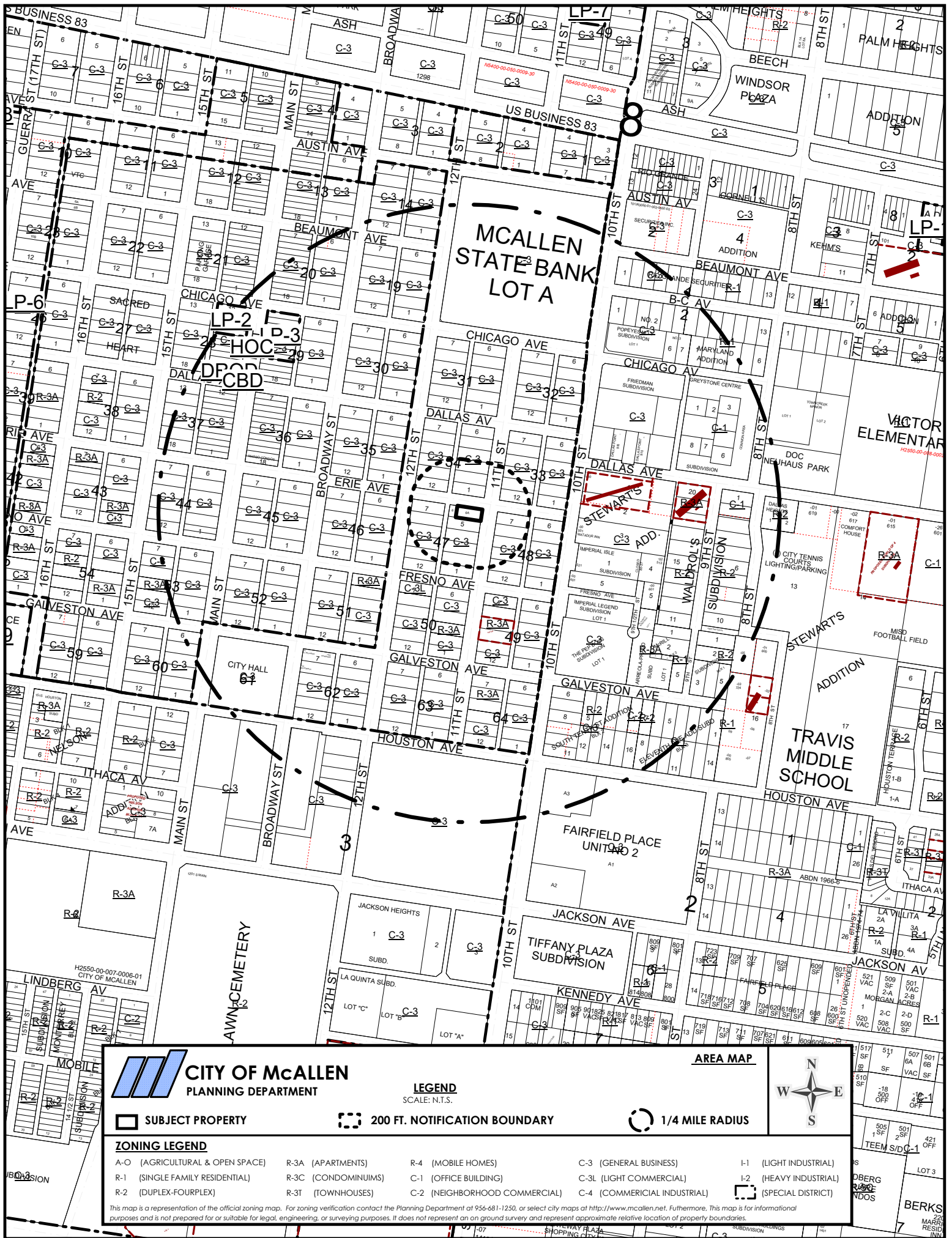
Initial: CS





**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: <i>(Please use an additional page if necessary to complete responses)</i></p> <p><b>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</b></p> <p><b>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</b></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>The proposed development consists of a 1600 square foot office building. The office will only occupy a total of 3 employees. We are proposing</p>
	<p>four (4) parking spaces which includes a handicap space with loading/unloading space. The code requires 11 parking spaces for the square</p>
	<p>footage of the proposed building.</p>
	<p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p>The proposed site plan does not allow for the placement of 7 additional parking spaces. Even if we reduce the floor plan to minimal office</p>
	<p>space, there will not be enough room to accommodate the site drainage, setback and parking requirements.</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>We are requesting to be allowed to have only four parking spaces. Not sure if this applies here.</p>
	<p>4. Describe special conditions that are unique to this applicant or property:</p> <p>The property is located in the downtown area. Our office will not be a retail facility or expect. people coming and going on a consistent basis.</p>
Board Action	<p>Chairman, Board of Adjustment Signature</p> <p>Date</p> <p>Rev. 9/20</p>





THE STATE OF TEXAS  
COUNTY OF HIDALGO

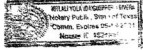
I, THE UNDERSIGNED OWNER OF THE LAND SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE McALLEN TOWNSITE, LOT 6-A, BLOCK 47 SUBDIVISION TO THE CITY OF McALLEN, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, WATER LINES, SEWER LINES, STORM SEWERS, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH I WILL CAUSE TO BE INSTALLED THEREON, SHOWN OR NOT SHOWN, IF REQUIRED OTHERWISE TO BE INSTALLED OR DEDICATED UNDER THE SUPERVISORY APPROVAL PROCESS OF THE CITY OF McALLEN, ALL THE SAME FOR THE PURPOSES THEREIN EXPRESSED, EITHER ON THE PLAT HEREOF OR ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE CITY OF McALLEN.

OWNER  
2820 GULL AVENUE  
McALLEN, TX 78504

STATE OF TEXAS  
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED, LUCAS CASTILLO JR. TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FORGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 8<sup>th</sup> DAY OF April 2021

NOTARY PUBLIC  
HIDALGO, TEXAS  
MY COMMISSION EXPIRES



I, THE UNDERSIGNED, CHAIRMAN OF THE PLANNING & 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.

CHAIRMAN  
PLANNING & ZONING

04/12/21  
DATE

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.

MAYOR  
CITY OF McALLEN

4/12/21  
DATE

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 HEREBY CERTIFIES THAT THE DRAINAGE PLANS FOR THIS SUBDIVISION COMPLY WITH THE MINIMUM STANDARDS FOR THE DISTRICT ADOPTED UNDER TEXAS WATER CODE 46.21(i). 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 AND HIS ENGINEER TO MAKE THEIR DETERMINATION.

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

RAUL E. BISH, P.E. (F.M.)  
GENERAL MANAGER

05-05-2021  
DATE

#### METES AND BOUNDS DESCRIPTION

BEING A 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT OF LAND, OUT OF LOT 6, BLOCK 47, SAVE AND EXCEPT THE WEST 32.00 FEET, McALLEN ADDITION SUBDIVISION, IS BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A FOUND NO. 4 REBAR FOR THE APPARENT NORTHEAST CORNER OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT AND THE INTERSECTION OF ERIE STREET EXISTING SOUTH RIGHT-OF-WAY LINE AND ELEVENTH STREET EXISTING WEST RIGHT-OF-WAY LINE IN THE CITY OF McALLEN, TEXAS AND FOR THE POINT OF BEGINNING OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT OF LAND HEREIN DESCRIBED,

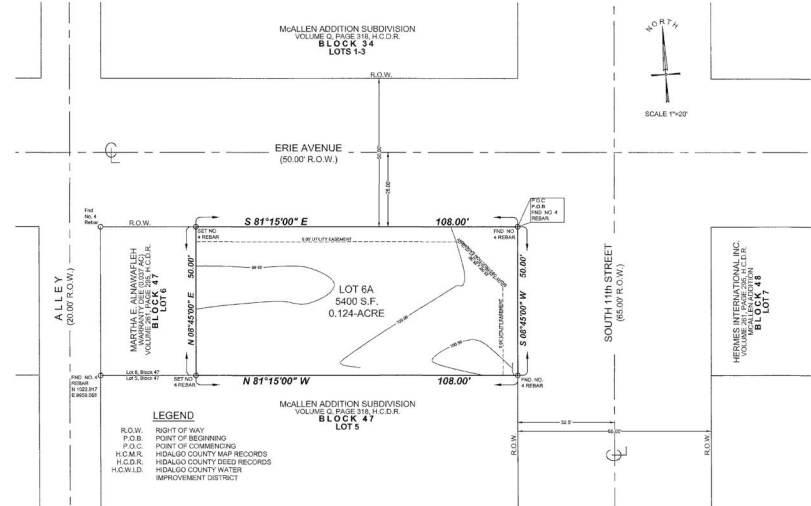
1. **THENCE**, SOUTH 08°45'00" WEST, WITH THE SAID ELEVENTH STREET EXISTING WEST RIGHT-OF-WAY LINE AND EAST LOT LINE OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT, A DISTANCE OF 50.00 FEET TO A FOUND NO. 4 REBAR FOR THE SOUTHEAST CORNER OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT OF LAND HEREIN DESCRIBED;
2. **THENCE**, NORTH 81°15'00" WEST, WITH THE APPARENT SOUTH LOT LINE OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT, A DISTANCE OF 108.00 FEET TO A FOUND NO. 4 REBAR FOR THE SOUTHWEST CORNER OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT OF LAND HEREIN DESCRIBED;
3. **THENCE**, NORTH 08°45'00" EAST, WITH THE APPARENT WEST LOT LINE OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT, A DISTANCE OF 50.00 FEET TO A FOUND NO. 4 REBAR FOR THE NORTHWEST CORNER OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT OF LAND HEREIN DESCRIBED;
4. **THENCE**, SOUTH 81°15'00" EAST, WITH THE SAID ERIE STREET EXISTING SOUTH RIGHT-OF-WAY LINE, BEING PARALLEL TO THE SAID SOUTH LOT LINE OF 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT AND WITH THE NORTH LOT LINE OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT, A DISTANCE OF 108.00 FEET TO A FOUND NO. 4 REBAR ON FOR THE APPARENT NORTHEAST CORNER OF SAID 0.124 OF AN ACRE (5,400 SQUARE FEET) TRACT HEREIN DESCRIBED, ALSO BEING THE POINT OF BEGINNING, CONTAINING 0.124 OF AN ACRE (5,400 SQUARE FEET) OF LAND, MORE OR LESS.

#### GENERAL NOTES

1. FLOOD ZONE DESIGNATION ZONE "C"  
ZONE "C" IS DEFINED AS AREAS OF MINIMAL FLOOD HAZARD  
COMMUNITY PANEL NUMBER 48043 00SC  
MAP REVISED NOVEMBER 02, 1982
2. MINIMUM PERMISSIBLE FINISH FLOOR ELEVATION IS 18' ABOVE TOP OF CURB MEASURED AT THE CENTER OF THE LOT.
3. SETBACKS:  
FRONT: 11th STREET: 32.5 FEET OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS, OR IN LINE WITH THE AVERAGE SETBACKS OF EXISTING STRUCTURES, WHICHEVER IS GREATER.  
ERIE AVENUE: 10 FEET OR GREATER FOR APPROVED SITE PLAN OR EASEMENTS OR IN LINE WITH EXISTING STRUCTURES.  
REAR: IN ACCORDANCE WITH THE ZONING ORDINANCE OR GREATER FOR EASEMENTS OR APPROVED SITE PLAN.  
SIDES: IN ACCORDANCE WITH THE ZONING ORDINANCE OR GREATER FOR EASEMENTS OR APPROVED SITE PLAN.  
CORNER: 10 FEET OR GREATER FOR EASEMENTS OR APPROVED SITE PLAN.
4. THE CONSTRUCTION OF ANY STRUCTURES ON OR WITHIN ANY EASEMENTS SHALL BE PROHIBITED.
5. BENCH MARK DOCUMENTATION FOR CITY OF McALLEN, BENCHMARK SYSTEM INDICATES INFORMATION FOR THE NEAREST MONUMENT AS BEING: POINT MC 82, NORTHING 155960361.33919, EASTING 1071202.78224 ELEV. = 125.01.
6. NO BUILDING ALLOWED OVER ANY EASEMENT GRANTED BY THIS PLAT.
7. DRAINAGE DETENTION IS 655.00 CUBIC FEET
8. THE DEVELOPER SHALL BE RESPONSIBLE FOR DETAINING AND ACCOMMODATING MORE THAN THE DETAINED VOLUME SHOWN ON THIS PLAT IF IT IS DETERMINED, AT THE DEVELOPMENT PERMIT STAGE, THAT THE DETENTION REQUIREMENTS ARE GREATER THAN STATED ON THIS PLAT, DUE TO THE IMPROVISED AREA BEING GREATER THAN THE PLAT ENGINEER CONSIDERED IN THE HYDRAULIC CALCULATIONS OF THIS SUBDIVISION.
9. 25 FT. x 25 FT. SIGHT OBSTRUCTION EASEMENT REQUIRED AT ALL STREET INTERSECTIONS.
10. 4 FEET WIDE MINIMUM SIDEWALK REQUIRED ON SOUTH 11th STREET AND ERIE AVENUE.
11. 6 FT. OPAQUE BUFFER REQUIRED FROM ADJACENT/BETWEEN MULTI-FAMILY RESIDENTIAL AND COMMERCIAL, AND INDUSTRIAL ZONES/USES.
12. 6 FT. MASONRY WALL REQUIRED BETWEEN SINGLE FAMILY RESIDENTIAL AND COMMERCIAL, INDUSTRIAL, OR MULTI-FAMILY RESIDENTIAL ZONES/USES.

## McALLEN TOWNSITE LOT 6-A, BLOCK 47 SUBDIVISION

PLAT OF A 0.124 ACRE TRACT OF LAND  
OUT OF LOT 6, BLOCK 47, SAVE AND EXCEPT THE  
WEST 32.00 FEET, McALLEN ADDITION SUBDIVISION  
VOLUME Q, PAGE 318, H.C.D.R.  
McALLEN TEXAS



LOCATION MAP SCALE: 1"=1000'



FILED FOR RECORD IN  
HIDALGO COUNTY  
ARTURO G. JARDO, JR.  
HIDALGO COUNTY CLERK

ON: May 5, 2021 AT 3:08 AM (M)

DOCUMENT NUMBER 3220512

OF THE MAP RECORDS OF HIDALGO COUNTY, TEXAS

BY: [Signature] DEPUTY

STATE OF TEXAS  
COUNTY OF HIDALGO

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER 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.

LUCAS CASTILLO JR.  
REGISTERED PROFESSIONAL ENGINEER  
P.E. REGISTRATION NO. 119990

4-8-21  
DATE



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.

HOMERO L. GUTIERREZ  
REGISTERED PUBLIC SURVEYOR  
RPLS NO. 2791  
DATE SURVEYED 10/24/2018



PROJECT NO. 2021.002



THE PROFESSIONAL ENGINEERS SEAL  
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SHEET. ALL DRAWINGS, INSTRUMENTS OR  
OTHER DOCUMENTS NOT EXHIBITING THIS  
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BY THIS ENGINEER, AND THIS ENGINEER  
EXPRESSLY DISCLAIMS ANY AND ALL  
RESPONSIBILITY FOR SUCH PLAN, DRAWINGS  
OR DOCUMENTS NOT EXHIBITING THIS SEAL.

## REVISIONS

1. SEE DRAWING SCHEDULE NOTES

AREA CALCULATIONS		
OFFICE:	1,600	SQ. FT.
PAVEMENT:	1,770	SQ. FT.
LANDSCAPE:	1,988	SQ. FT.

SCALE  $1/16'' = 1'-0''$ Drawing Title:  
SITE PLAN

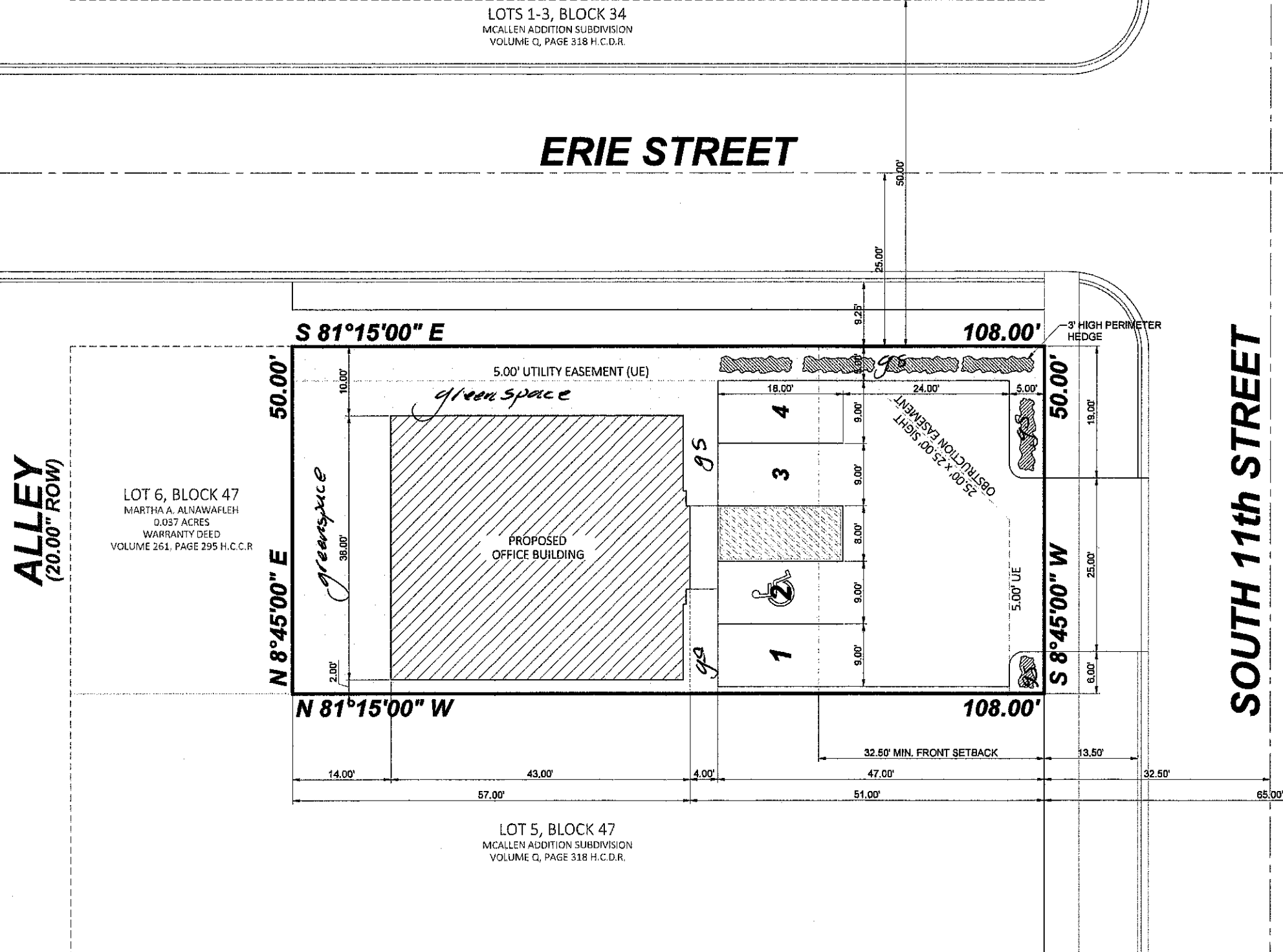
ENTERED

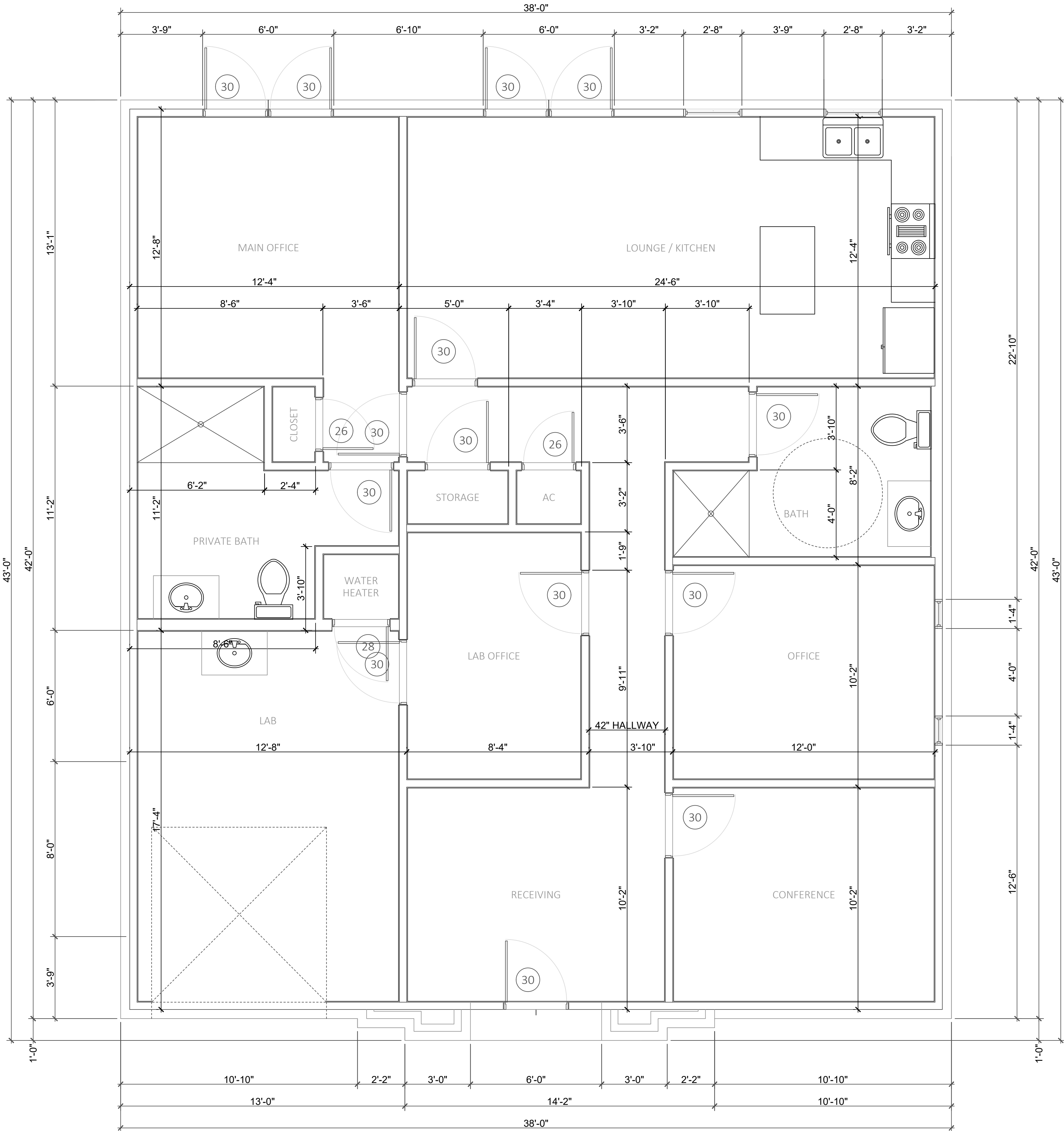
DEC 20 2021

SHEET NO. 01 ©2021

Initial: *AW*

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500 SOUTH  
11TH STREET  
MCALLEN, TX 78501

PROJECT NO. 2021.002

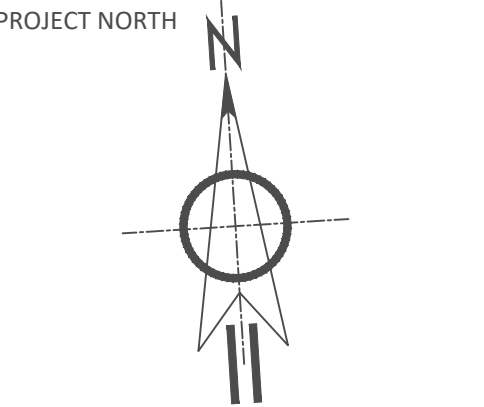


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SHEET. ALL DRAWINGS, INSTRUMENTS OR  
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RESPONSIBILITY FOR SUCH PLAN, DRAWINGS  
OR DOCUMENTS NOT EXHIBITING THIS SEAL.

REVISIONS


NOTES  
1. SEE DRAWING SCHEDULE NOTES

AREA CALCULATIONS	
OFFICE:	1,600 SQ.FT.
PAVEMENT:	1,770 SQ.FT.
LANDSCAPE:	1,988 SQ.FT.



SCALE 1/16" = 1'-0"

Drawing Title:  
DIMENSION/FINISH  
FLOOR PLAN

A2.01

SHEET NO. ©2021



**NOTICE  
VARIANCE  
FOR  
THIS PROPERTY  
ZBA2021-0075**



CITY OF MCALLEN PLANNING DEPT.  
956-681-1250  
[WWW.MCALLE.NET](http://WWW.MCALLE.NET)





**ELECTION FOR OFFICERS TO BE**

**HELD ON FEBUARY 2, 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

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## 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 Adjustmnet Grants a special exception as provided in this section, the site plan and the minutes of the Zoning Board of Adjustment meeting shall be officially recorded with Hidalgo County.
- (e) Any special exception granted under this chapter is granted solely to the applicant and may not be transferred, sold, inherited, bequeathed, or devised.
- (f) A new special exception shall be required upon any change or transfer in ownership of the underlying tract; a special exception granted to a previous applicant does not confer any right to any other individual or corporation to maintain the carport without approval from the Zoning Board of Adjustment.

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

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

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

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

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

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

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

**CITY OF McALLEN**

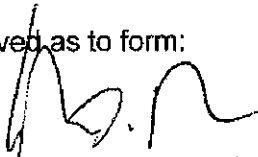
John Ingram, City Commissioner

Attest:



Perla Lara, TRMC/CMC, CPM  
City Secretary

Approved as to form:



Austin W. Stevenson, Assistant City Attorney



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

	01/05/22	01/19/22	02/02/22	02/16/22	03/02/22	03/16/22	04/06/22	04/20/22	05/04/22	05/18/22	06/01/22	06/15/22	07/07/22	07/20/22	08/03/22	08/17/22	09/08/22	09/21/22	10/05/22	10/19/22	11/02/22	11/16/22	12/07/22	12/21/22
ERICK DIAZ- <b>CHAIRPERSON</b>	P																							
<b>VICE-CHAIRPERSON</b>	A																							
SYLVIA HINOJOSA	P	P																						
JOSE GUTIERREZ	P	P																						
ANN TAFEL	A	P																						
HUGO AVILA (ALT 1)	P	P																						
ROGELIO RODRIGUEZ (ALT 2)	P	P																						
REBECCA MILLAN (ALT 3)	P	P																						
MARK TALBOT (ALT 4)	A	A																						

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



## 2022 CALENDAR

### Meetings:

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

HPC - Historic Preservation Council

### Deadlines:

D- Zoning/CUP Application      N - Public Notification

\* **Holiday** - Office is closed

### JANUARY 2022

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

### FEBRUARY 2022

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

### MARCH 2022

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

### APRIL 2022

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

### MAY 2022

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





### JUNE 2022

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

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

## 2022 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 2022

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






### AUGUST 2022

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





### SEPTEMBER 2022

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




### OCTOBER 2022

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

### NOVEMBER 2022

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

### DECEMBER 2022

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