

AGENDA

**ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING
WEDNESDAY, JANUARY 20, 2021 - 4:30 PM
MCALLEN CITY HALL, 1300 HOUSTON AVENUE
CITY COMMISSION CHAMBERS, 3RD FLOOR**

Web: <https://zoom.us/join> or phone: (346) 248-7799
Meeting ID: 672 423 1883

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

CALL TO ORDER

1. MINUTES:

- a) Minutes for the meeting held on January 6, 2021

2. PUBLIC HEARINGS:

- a) Request of Laura E. Alvarez for the following variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 3.5 ft. into the 6 ft. east yard setback for an existing wooden storage shed measuring 10 ft. by 16 ft. with a wooden canopy measuring 6 ft. by 16 ft. and **2)** to not require a 5 ft. separation for an accessory building to the main building, for an existing wooden storage shed measuring 10 ft. by 16 ft. with a wooden canopy measuring 6 ft. by 16 ft. at Lot 74, Oaks Place Subdivision, Hidalgo County, Texas; 2812 Jay Avenue. **(ZBA2020-0088)**

3. DISCUSSION: NONE

4. INFORMATION ONLY: NONE

5. FUTURE AGENDA ITEMS

- a) 1106 North 17th Street
- b) 7913 North 1st Street
- c) 4915 North 46th lane
- d) 1808 Harvard Avenue
- e) 602 North 11th Street

ADJOURNMENT:

IF ANY ACCOMMODATIONS FOR A DISABILITY ARE REQUIRED, PLEASE NOTIFY THE PLANNING DEPARTMENT (681-1250) 72 HOURS BEFORE THE MEETING DATE. WITH REGARD TO ANY ITEM, THE 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 6, 2021 at 4:30 p.m. in the City Commission Meeting Room with the following present:

Present:	Erick Diaz	Chairperson
	John Millin	Vice- Chairperson
	Sylvia Hinojosa	Member
	Juan F. Jimenez	Member
	Jose Gutierrez	Member
	Ann Tafel	Alternate
	Hugo Avila	Alternate
	Rebecca Millan	Alternate

Absent:	Rogelio Rodriguez	Alternate
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Staff Present:	Victor Flores	Assistant City
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Omar Sotelo	Senior Planner
	Liliana Garza	Planner II
	Carlos Garza	Planner II
	Hebert Camacho	Planner I
	Porfirio Hernandez	GIS Technician II
	Carmen White	Secretary

CALL TO ORDER – Chairperson Erick Diaz

At this time, Chairperson Diaz introduced and welcomed Ms. Ann Tafel to the Board.

1. MINUTES:

- a) Minutes for the meeting held on December 17, 2020.

The minutes for the meeting held on December 17, 2020 were approved. The motion to approve the minutes was made by Mr. John Millin. Ms. Sylvia Hinojosa seconded the motion, which carried unanimously with five members present and voting.

At this time, Chairperson Diaz introduced Luis Estrada and Veronica Garza from Code Enforcement to speak about the “It’s Time Texas Community Challenge”

2. PUBLIC HEARINGS:

- a) Request of Douglas and Rosalia LaRoque for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 10 ft. into the 20 ft. front yard setback for an existing wooden carport with an aluminum roof measuring 10 ft. by 10 ft. at Lot 33, El Rancho Santa Cruz Subdivision Phase I, Hidalgo County, Texas; 800 East Pineridge Avenue. **(ZBA2020-0084)**

Mr. Garza stated Douglas and Rosalia LaRoque are requesting the following special exception to allow an encroachment of 10 ft. into the 220 ft. front yard setback for an existing gazebo structure measuring 10 ft. by 10 ft. The existing gazebo was used as a sitting area that helps the applicant spend time outdoors in order to cope with a medical condition.

The subject property had 50.81 of frontage on Pineridge Avenue and a depth of 110 ft. for an area of 5,538 sq. ft. The property was zoned R-1 (single family residential) District. The surrounding land uses are single-family residences.

El Rancho Santa Cruz Subdivision was recorded on January 06, 1986. A stop work order for building without a permit was issued on September 29, 2020. The applicant submitted an application for a building permit on October 06, 2020. The variance request was submitted on October 07, 2020.

The variance request was to allow an encroachment of 10 ft. into the 20 ft. front yard setback. There is a 5 ft. utility easement adjacent to the front property line. The existing gazebo does not encroach into the utility easement. 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.

The applicant had submitted a letter that relates to the request to keep the gazebo for medical reasons.

Accessory buildings were customarily located in the rear yard.

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

Staff recommended approval of the special exception request.

Ms. Sylvia Hinojosa asked staff if they had received any additional information other than the special exception. Mr. Garza stated the measurements were the same and that they had pictures to show that a vehicle fits under the carport.

Ms. Michelle LaRoque asked the Board to take in consideration the special exception for her father due to this medical conditions that was discussed at the last meeting in December.

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

Chairperson Diaz asked if there was anyone present or on Zoom in opposition of the variance request. There was one present in opposition of the variance request.

Ms. Ernestina Cerda, 720 N. 32nd Street, stated at the last meeting it was acknowledge that the applicant needed the carport for medical purposes. She stated that it was mentioned the slab for parking was there previously. That land was purchased by her parents which was agricultural property which at some point the applicants had put the concrete slab. Ms. Cerda had stated that someone had asked if the gazebo was an

eyesore she did not know because the tree's limbs had covered it. But she drove by recently and said the gazebo was not an eyesore. She stated she had received the first two legal notices that stated it was for a gazebo. The third one stated for a carport which was fine.

Vice-Chairperson John Millin moved to approve the special exception as per staff's recommendation. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously to approve the special exception with five members present and voting.

- b) Request of Karely Ochoa for the following Variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 10.09 ft. into the 25 ft. rear yard setback for a proposed swimming pool measuring 20 ft. by 30 ft. and **2)** an encroachment of 10.09 ft. into the 25 ft. rear yard setback for a proposed gazebo measuring 20 ft. by 10 ft. at Lots 1 & 2, Coronado Estates Subdivision Phase I, Hidalgo County, Texas; 2502 South 43rd Lane. **(ZBA2020-0085)**

Mr. Camacho stated the applicant was requesting a variance to allow a proposed pool that is encroaching into the rear setback of two double fronting lots. The applicant states that the approval of this request would allowed them to fully enjoy their backyard and be able to fulfill their toddlers' wish of having a swimming pool in their backyard.

The property was located on the southwest corner of South 43rd Lane and Yuma Avenue. The lots had approximately 115 ft. of frontage along South 43rd Lane and approximately 120 ft. of depth for lot size of 15,375 sq. ft. The properties are zoned R-1 (single-family residential) District. The adjacent zoning was R-1 (Single Family Residential) to the east, west, and south and R-3T (Multifamily Townhouses) District to the north. The surrounding land uses include single-family residences and vacant land.

Coronado Estates Subdivision Phase I was recorded on July 17, 2017. As per plat notes, Lots 1 through 10 are consider double fronting lots, as it fronts S. 43rd Lane and South Bentsen Road. Rear setback for double fronting lots its 25 ft. A swimming pool application has not been submitted; however, a building permit for the residence was submitted on December 2, 2020. Additionally, a gazebo was proposed, however, the gazebo was not part of the original building permit. An additional building permit will be needed. The proposed swimming pool is straddling both lots hence the variance request is for both Lots 1 & 2. The proposed Gazebo was only encroaching into rear setback of Lot 2.

Variance #1:

The variance request was to allow an encroachment of 10.09 into the 25 ft. rear setback for a proposed swimming pool measuring 20 ft. by 30 ft.

Variance #2:

The variance request was to allow an encroachment of 10.09 ft. into the 25 ft. rear setback for a proposed gazebo measuring 20 ft. by 10 ft.

As per plat, there was a 10 ft. Utility Easement at the rear of all lots in this subdivision and an existing 60 ft. ROW to the east of the subject's property line. Double fronting lots are not to be considered unique since 10 lots have this setback as per plat note. The pool and

gazebo are an accessory structure and not a primary building.

An 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 uses of buildings are located on a lot occupied by the main use conforming with setbacks and other regulations concerning the location.

There seem to be existing structures to be encroaching into setbacks, however no variances have been requested around the area.

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

Staff recommended disapproval of the variance request. If the Board chooses to grant the variance, it should be limited to the footprint of the submitted site plan and the uses shown on the proposed site plan.

Ms. Karely Ochoa, the applicant stated she bought two lots to have a larger backyard for the children. She wanted to build a swimming pool. When she contacted her builder he informed her that there was a 25-foot setback and the pool would not fit. Chairperson Diaz asked if the contractor was going to build the pool. Ms. Ochoa stated yes. Chairperson Diaz asked if they had looked at other options as to where to place the pool. She stated the contractor tried different options to where it would not be close to the house for safety reasons.

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

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

Vice-Chairperson Millin asked staff if at the front of the property they were at the limit for the front yard setbacks. Mr. Camacho stated yes they were at the 25-foot front yard setback. And the building permit was approved for the house because it was in compliance.

Ms. Hinojosa asked staff if it was affecting any utilities. Mr. Camacho stated no, there was a 10-foot utility easement however, it was 4 feet from it. They were leaving 14 feet 11 inches to the property line. Adding the buffer in between from Bentsen Road and the subdivision itself plus the Right-of-Way from Bentsen Road.

Chairperson Diaz mentioned that if it wasn't a double fronting lot, it would be a regular 10-foot setback and the request would not be before the Board. Mr. Camacho stated yes, a regular lot was typically a 10-foot setback.

Vice-Chairperson John Millin **moved** approve the variance request limited to the footprint of the encroachment. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously to approve the variance request with five members present and voting.

- c) Request of Alejandro Reyes Jr., for the following variances to the City of McAllen Zoning Ordinance: **1)** to not provide one required parking space beyond the front yard setback line and **2)** to allow an encroachment of 6 ft. into the 6 ft. side setback for an existing metal canopy measuring 6 ft. by 10 ft. at Lot 88, Los Encinos III Subdivision, Hidalgo County, Texas; 2716 Ursula Avenue. **(ZBA2020-0079) (TABLED: 12/17/2020)**

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

Ms. Garza stated the applicant was requesting a variance request to the parking requirement of one off-street parking space for single family uses beyond the front yard setback; as required by section 138-394(1) of the zoning ordinance. The applicant enclosed the garage to make an additional bedroom for one of his four children since the house only has four bedrooms. The bedrooms in his home are too small and enclosing the garage will help with additional space so that his son can have his own room. The applicant enclosed a single car garage and by doing so eliminated the one parking space beyond the front yard setback line. The applicant is also requesting an encroachment of 6 ft. into the 6 ft. east side setback for an existing metal canopy.

The subject property was located on the north side of Ursula Avenue, approximately 105 ft. west of South 27th Lane. The property has 50 ft. of frontage along Ursula Avenue and a depth of 100 ft. with a lot size of 5,000 square feet. The adjacent zoning is R-1 (single family residential) District in all directions. Surrounding land use include single-family residential.

Los Encinos III Subdivision was recorded on December 4, 2006. The Board of Commissioners amended the zoning ordinance in 1999 to require 1 parking space beyond the front yard setback in order to enhance the appearance of single family residential areas. The subject property and subdivision is subject to compliance with the zoning ordinance requirement of the one parking space beyond the front yard setback line. The application for the variance request was submitted on November 12, 2020 after building Inspection staff noticed the enclosed garage during an inspection for a different building permit for subject property.

The variance request #1 was to not provide a parking space beyond the front yard setback by enclosing the garage measuring 11 ft. by 18 ft. The submitted site plan shows a driveway measuring 21 ft. by 20 ft. accommodating the number of two required parking spaces. The intent for the requirement of locating one parking space beyond the front yard setback line is to improve the street yard appearance of single-family residence areas by reducing the number of cars parked along the street and within the front yard.

There were no variance requests on file for garage enclosures in the subdivision; a site inspection confirmed that there are two visible garage enclosures on the same street and three more visible garage enclosures around the neighborhood (one on S 27th Ln. and two on Wanda Ave.)

- There was a Building Permit for a garage enclosure at 2701 Ursula Ave and was

approved by the Planning Department on June 29, 2017 with the condition that a driveway be built in the back of the property along S. 27th Street to comply with the one vehicle beyond the front yard setback requirement.

- The rest of the visible garage enclosures in the neighborhood do not have any building permits on file.

Should the request be approved, it may encourage other property owners to request a variance to enclose their garage. Approval of the request will allow the proposed construction to remain as depicted on the site plan.

The variance request #2 was to allow an encroach of 6 ft. into the 6 ft. side yard setback along the east property line for an existing metal canopy measuring 6 ft. by 10 ft. The standard side yard setback for a lot in R-1 (single family residential) district was 6 ft. A site inspection indicated that the existing canopy extends all the way to the east property line. As per City's ordinance no structures are allowed to be built on any setbacks.

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

Staff recommended disapproval of the variance request.

Mr. Juan Jimenez asked staff to reiterate on the enclosures of the garages in the neighborhood. Ms. Garza stated there were two variance requests. One was for the enclosure of the garage and the second one was for the canopy. Regarding the garage enclosure, Ms. Garza went to inspect to see if other neighbors had done the same. There were no permits on file but did see three visible enclosed garages but there were no permits for those three enclosed garages. The applicant wanted to remove the garage door and do what was shown on the photo but because he did receive a stop work order he would have to go through the process first. He started enclosing it from the inside. For the garage enclosure it was a special exception.

Mr. Alejandro Reyes, Jr., the applicant, stated he wanted to enclose the garage as a room for this eldest son. The metal canopy on the side was for protection from the sun for his dog. He stated he was not aware of having it done without a permit.

Mr. Juan Jimenez asked the applicant if he had gutters on the canopy or any complaints from his neighbor. Mr. Reyes stated he did not have gutters or complaint from his neighbor.

Chairperson Diaz explained to the applicant that their concern was that he could enclose the canopy in the future. Mr. Reyes stated he could remove the canopy but his main concern was to keep the enclosed garage.

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

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

Chairperson Diaz explained to the applicant that if he sells the house the new owner would have to come before the Board and request for the same requests because it did not run with the land.

Mr. Jose Gutierrez **moved** to approve the special exception and disapprove variance request #2. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously to approve the special exception and disapprove variance request #2 with five members present and voting.

- d) Request of Jorge Herrera for the following variance to the City of McAllen Off-Street Parking and Loading Ordinance to allow 8 parking spaces instead of the required 9 parking spaces at Lot 3, Block 54, McAllen Addition Subdivision, Hidalgo County, Texas; 612 South 15th Street. **(ZBA2020-0083) (TABLED: 12/17/2020)**

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

Mr. Garza stated Jorge Herrera on behalf of Ron Surprise, requests the following variance to allow 8 parking spaces instead of the required 9 parking spaces. The applicant indicated that he is requesting the above variance in order to comply with the city ordinance dumpster requirement.

The property was located on the west side of South 15th Street, 100 ft. north of Galveston Avenue. The property has 50 ft. of frontage along South 15th Street and 140 ft. of depth for a tract size of 7,000 sq. ft. The property was zoned R-3A (multifamily residential apartments) District. The adjacent zoning was C-3 (general business) District to the north and west, R-3A District to the east and south, and R-2 (duplex-fourplex residential) District to the northwest and southwest. The property is currently vacant.

The recorded map was McAllen Addition Subdivision. A variance application for the proposed 8 parking spaces instead of the required 9 was received on November 18, 2020.

On April 9, 2003, the Zoning Board of Adjustments & Appeals voted to grant a variance to allow 8 parking spaces instead of the required 9 parking spaces at Lot 10, Block 53, 613 South 15th Street in order to be used for trash pickup purposes.

The variance request was to allow 8 parking spaces instead of the required 9 spaces. Currently the lot was vacant, the owner was planning to build a six one-bedroom unit apartment complex on the lot. Based on the number of bedrooms the applicant was required to provide 9 parking spaces. Section 138-395 requires for an apartment/condominium building with five or more unites to provide 1.5 parking spaces for each efficiency, studio apartment, and on bedroom living unit.

The required parking was not being met because there was a dumpster occupying one of the parking spaces. Section 110-49 requires a buffer to be provided to screen refuse areas (including refuse dumpsters, compactors and contained compactors) from public streets.

The trash pickup was along the alley. In order to accommodate this arrangement, the applicant was proposing to occupy 1 parking space.

Planning Department had not received any calls in opposition to the requests.

At the Zoning Board of Adjustment and Appeals meeting of December 17, 2020, no one appeared in opposition to the variance request. The applicant was present. The Board unanimously voted to table the variance request in order allow Victor Flores, City Attorney, time to make a determination on the type of request that the application should be processed as. There were five members present and voting.

Staff recommended approval of the special exception request.

Vice-Chairperson Millin asked staff if this was a new ordinance that was allowed for a special exception. Mr. Garza stated it was advertised as a variance and in order to comply with the City they did it as a special exception.

Mr. Jorge Herrera, the applicant (via Zoom) stated he was requesting a variance for one less parking space in order to use it for the trash container. They were constructing apartments.

Ms. Hinojosa asked staff what was the area to the left of parking lot 5. Mr. Garza stated it was landscaping.

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

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

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

3. FUTURE AGENDA ITEMS:

- a) 1106 North 17th Street
- b) 2812 Jay Avenue
- c) 8300 North Ware Road

4. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE, SECTION 551.071 (CONSULTATION WITH ATTORNEY)

- a) Consultation with Attorney regarding Cause No. C-4270-20-J; Jack Edwards v. The City of McAllen, Texas, and Zoning Board of Adjustment and Appeals of the City of McAllen, Texas.

The board would be going into Executive Session at 5:18 p.m.

The Board reconvened at 5:24 p.m.

ADJOURNMENT

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

Chairperson Erick Diaz

Carmen White, Secretary

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: January 15, 2021

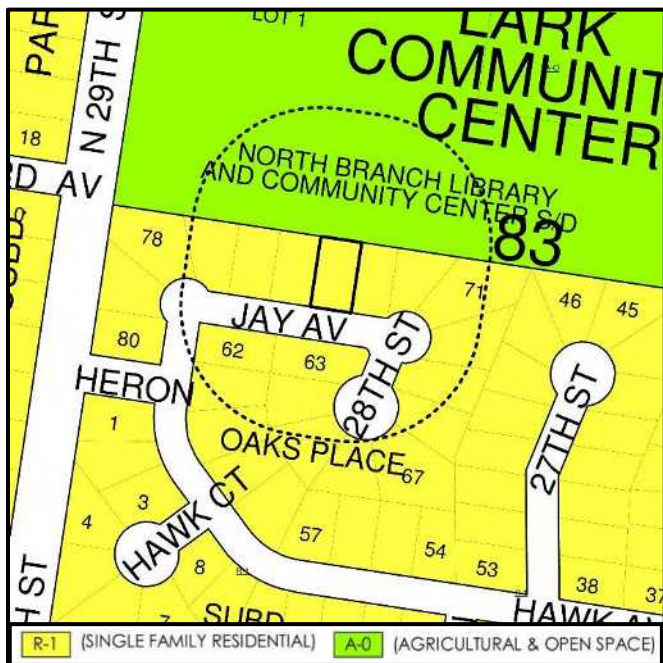
SUBJECT: REQUEST OF LAURA E. ALVAREZ FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 3.5 FT. INTO THE 6 FT. EAST YARD SETBACK FOR AN EXISTING WOODEN STORAGE SHED MEASURING 10 FT. BY 16 FT. WITH A WOODEN CANOPY MEASURING 6 FT. BY 16 FT. AND 2) TO NOT REQUIRE A 5 FT. SEPARATION FOR AN ACCESSORY BUILDING TO THE MAIN BUILDING, FOR AN EXISTING WOODEN STORAGE SHED MEASURING 10 FT. BY 16 FT. WITH A WOODEN CANOPY MEASURING 6 FT. BY 16 FT. AT LOT 74, OAKS PLACE SUBDIVISION, HIDALGO COUNTY, TEXAS; 2812 JAY AVENUE. (ZBA2020-0088)

REASON FOR APPEAL:

The applicant is requesting the variances to allow an existing wooden storage shed with a wooden canopy to remain at its current location. The wooden storage shed and wooden canopy require a variance for an encroachment into the east side yard setback and a variance for the distance from the main building.

PROPERTY LOCATION AND VICINITY:

The subject property is located on the north side of Jay Avenue, 325.6 ft. east of North 29th Street. The property has 64 ft. of frontage along Jay Avenue and a depth of 110 ft. with a lot size of 7,040 sq. ft. The adjacent zoning is A-O (agricultural and open space) District to the north and R-1 (single-family residential) District to the east, west and south. Surrounding land use include single-family residences, Reynaldo G. Garza Elementary School, and Lark Community Center and Library.



BACKGROUND AND HISTORY:

Oaks Place Subdivision was recorded on November 18, 1986. Hidalgo County Appraisal District records show that the residential home was built in 1987. The applicant stated that the storage shed was constructed in 2015 and replaced an older storage shed which was built in 1990 according to the Hidalgo County Appraisal District records. The applicant mentioned that they had verbally informed the City about the storage building before constructing it, but the staff had informed them that no building permit was required since it was less than 200 sq. ft. She stated that she was not aware of the setback and minimum separation requirement and located the storage shed where she had drainage issues from the adjacent property to the east. She included that the adjacent property's pool is built higher than their house, therefore the pool's water would come into their property when it rained, leaving their side and back yard muddy before they placed the storage shed there. In addition, she mentioned that if she moved it out of the side setback, it would encroach into the rear yard setback and easement. The applicant received a SWO (Stop Work Order) from the City of McAllen on November 16, 2020. An application for a building permit for the existing storage shed and a proposed porch was submitted on November 17, 2020, which was disapproved during the building permit review process due to the encroachment into the side yard setback. The application to request the variances was submitted on December 14, 2020.

ANALYSIS:

The plat indicates 6 ft. as the side yard setback.

Request #1 is for a variance to allow an encroachment of 3.5 ft. into the 6 ft. side yard setback along the east property line for an existing wooden storage shed measuring 10 ft. by 16 ft. with a wooden canopy measuring 6 ft. by 16 ft. The storage building is used to store household items. The storage building is located at the rear of the property and was built in 2015 according to the application. Storage buildings that are 200 sq. ft. or less in size do not require a building permit, but must respect the zoning district setbacks in which they are located. The applicant could reduce the canopy and relocate the storage shed to eliminate this code deficiency.

Request #2 is for a variance is to not require 5 ft. separation for an existing wooden storage shed measuring 10 ft. by 16 ft. with a wooden canopy measuring 6 ft. by 16 ft. The storage shed is located at the rear of the property and its canopy overhangs the patio's canopy that is part of the house. The McAllen Code of Ordinance states that an accessory building shall be no closer than 5 ft. to the main building. The applicant could attach the accessory building to the main building or reduce the canopy and thus eliminate this code deficiency.

Approval of the variance requests will allow the storage shed to remain. Approval of the building permit application is pending approval of this application.

During the site visit, staff noticed that there are other existing storage buildings in the area that appear to be encroaching into the side and rear yard setbacks.

Staff has received a phone call in opposition to the request. The opposition stated that she is the adjacent property owner to the east and that she was concerned about possible fire hazards and property value reduction due to the location and appearance of the storage shed.

RECOMMENDATION:

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

ZBA2020-0088

ZBA 1-20-21



City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Project	Legal Description	<u>LOT 74</u>	
	Subdivision Name	<u>OAKS PLACE</u>	
	Street Address	<u>2812 JAY AVE. MCALLEN TX</u>	
	Number of lots	<u>1</u>	Gross acres _____
	Existing Zoning	<u>RESIDENTIAL</u>	Existing Land Use <u>RESIDENTIAL</u>
	Reason for Appeal (please use other side if necessary)	<u>Building is 2 1/2 Feet off of property line. NEEDS TO BE 6 FEET.</u>	
<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required			

Applicant	Name	<u>Laura E. Alvarez</u>	Phone	_____
	Address	<u>2812 Jay Ave</u>	E-mail	_____
	City	<u>Mc Allen</u>	State	<u>Tx</u>
	Zip	<u>78504</u>	_____	

Owner	Name	<u>Laura E. Alvarez</u>	Phone	_____
	Address	<u>2812 Jay Ave</u>	E-mail	_____
	City	<u>Mc Allen</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>Laura E. Alvarez</u> Date <u>12/01/20</u>
Print Name	<u>Laura E. Alvarez</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent	

Office	Accepted by _____	Payment received by _____	Date _____
	Rev 10/18		

RECEIVED
DEC 14 2020

BY: H.C.

05



City of McAllen

Planning Department

REASON FOR APPEAL & BOARD ACTION

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

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

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

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

The shed was placed in this area because it's a low area that water runs in and is always muddy. The slope of the property and the build up of the neighbors land created this.

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

With the property having a small back yard and the water problem with run off from rain was our reason for the location. We were not aware we need to be six ft. from property.

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 location of the shed is away from any structure in regards to our neighbors. It's the fence, grass and a swimming pool. Building has been in place for 5 years.

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

The special condition in this case is the property next door, the land is at least a foot higher do to a pool that was put in. The dirt taken out of the pool area was not removed but put around the pool to the property line. This means
See additional page

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

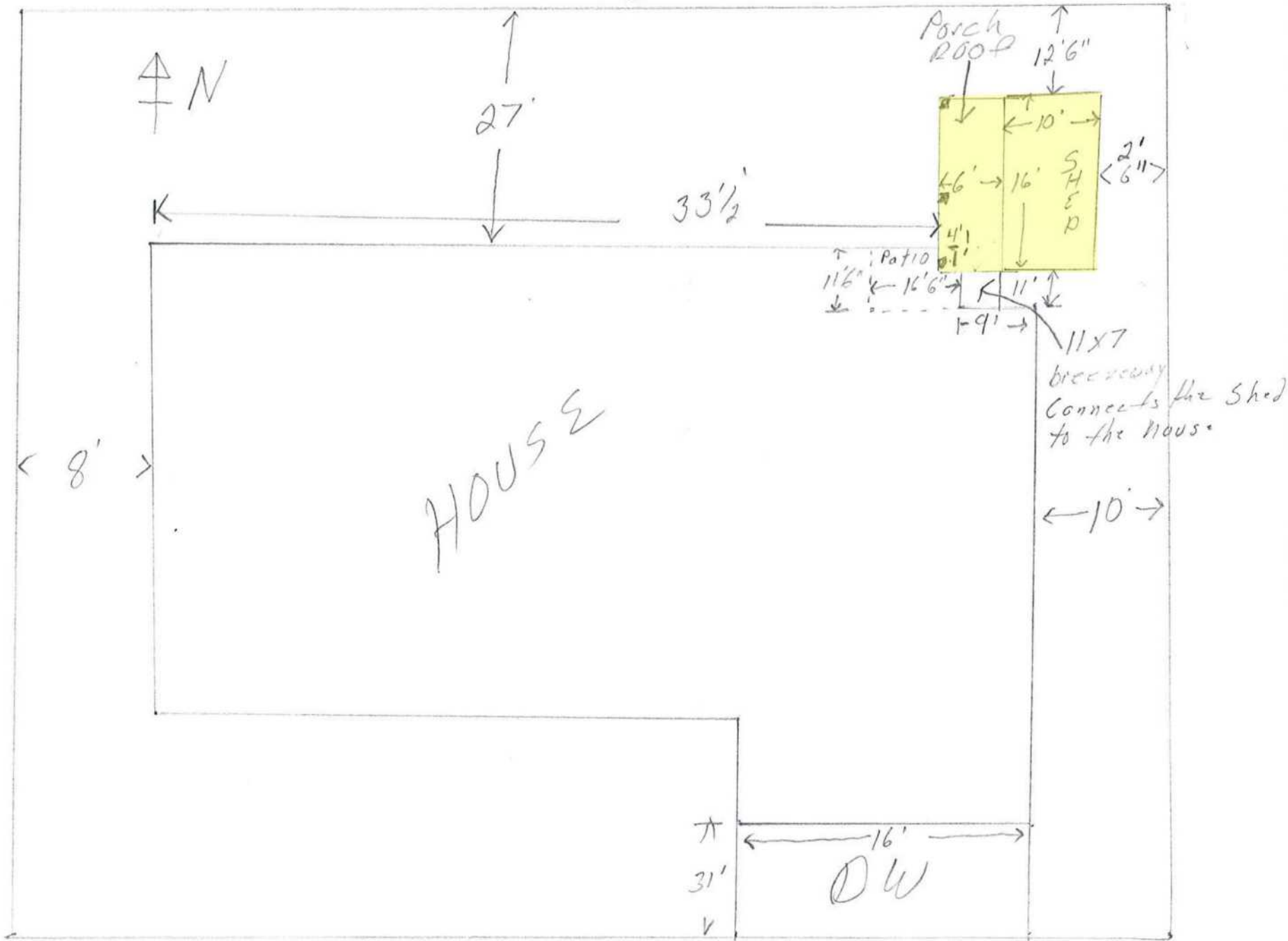
Date

#4 Continued.....

This means the rainwater drains from the neighbor's property to ours along with their irrigation and the slope of our property. The area stays wet for long periods of time. This leaves an area that cannot be used for everyday enjoyment. The placement of the shed covers this area and allows our grandchildren and ourselves to have an area of grass and playing.

In addition, we placed it in this location based on shed and other structures throughout McAllen. Structures are located at the property line or less than the required distance. We called the permitting department and they said the size of the shed was fine and we do not need a permit. Nothing was mentioned in regard to being too close to property lines. We took the time to go around McAllen and saw hundreds of structures at or on the property lines. We placed the shed in regards to our findings. Our building has been in place for 5 years and since then we have seen new structures placed less than our two and a half feet from the property line. We don't want to move our shed and I am sure that the hundreds of other homeowners in McAllen don't want to move their structures as well. We hope you understand that we respect the City and, in the future, will make sure we are to code before making changes. Thank you.

Site Plan



2812 JAY AVE

--- = House WALL

P.O. BOX 220 McALLEN, TEXAS 78505-0220
 APPLICATION MUST BE COMPLETE
 (Please type or print in black or blue ink)

PERMIT APPLICATION REFERENCE NUMBER RES2020-08549

GC104445

APPLICANT

NAME OWNER LAURA ALVAREZ PHONE
 ADDRESS 2812 JAY AVE
 CITY McALLEN STATE TX ZIP 78504
 CONTACT NAME: LAURA ALVAREZ PHONE
 OWNER CONTRACTOR TENANT OTHER

OWNER

NAME LAURA E. ALVAREZ PHONE
 ADDRESS 2812 JAY AVE *EMAIL:
 CITY McALLEN TX 78504 REQ'D STATE TX ZIP 78504

*OWNER INFORMATION NOT PROVIDED, INITIAL:

NEW ADDITION REMODELING REPAIR MOVE REMOVE BLDG. HGT. _____ NO. OF FLOORS _____
 BLDG SQ. FT. 6x16' NO. PARKING 272 SPACES _____ SQ. FT. LOT _____ LOT FRONT _____ FLOOR EL ABOVE CURB _____
 EXISTING USE OF LOT Residential NEW USE _____

SCOPE OF WORK TO BE DONE Build roof off of existing storage shed.
SWO Adding Porch (96sqft) Materials Only 297.87 + Tax.

PROJECT

RESIDENTIAL	NO. OF UNITS	NO. BDRMS	NO. BATHRMS	SQ. FT. NON-LIVING	SQ. FT. LIVING
NEW	_____	_____	_____	_____	_____

FOUNDATION <input type="checkbox"/> CONCRETE SLAB <input type="checkbox"/> CONCRETE PIER <input type="checkbox"/> CONCRETE BLOCK <input type="checkbox"/> CONCRETE BEAM <input type="checkbox"/> WOOD POSTS <input checked="" type="checkbox"/> <u>Ground</u>	EXT WALL <input type="checkbox"/> MASONRY VENEER <input type="checkbox"/> MASONRY SOLID <input type="checkbox"/> METAL SIDING <input type="checkbox"/> COMPOSITION <input type="checkbox"/> WOOD	ROOF <input type="checkbox"/> WOOD SHINGLE <input type="checkbox"/> COMPOSITION <input type="checkbox"/> METAL <input type="checkbox"/> BUILD UP <input type="checkbox"/> CLAY OR CONCRETE TILE	UPGRADES/OTHER <input type="checkbox"/> GRANITE COUNTERTOPS <input type="checkbox"/> MARBLE TUBS/FLOORS <input type="checkbox"/> CUSTOM WINDOWS <input type="checkbox"/> POLYURETHANE INSULATION <input type="checkbox"/> OTHER UPGRADES _____ <input type="checkbox"/> SEPTIC TANK EXISTING OR PROPOSED <input type="checkbox"/> YES <input type="checkbox"/> NO
---	---	--	--

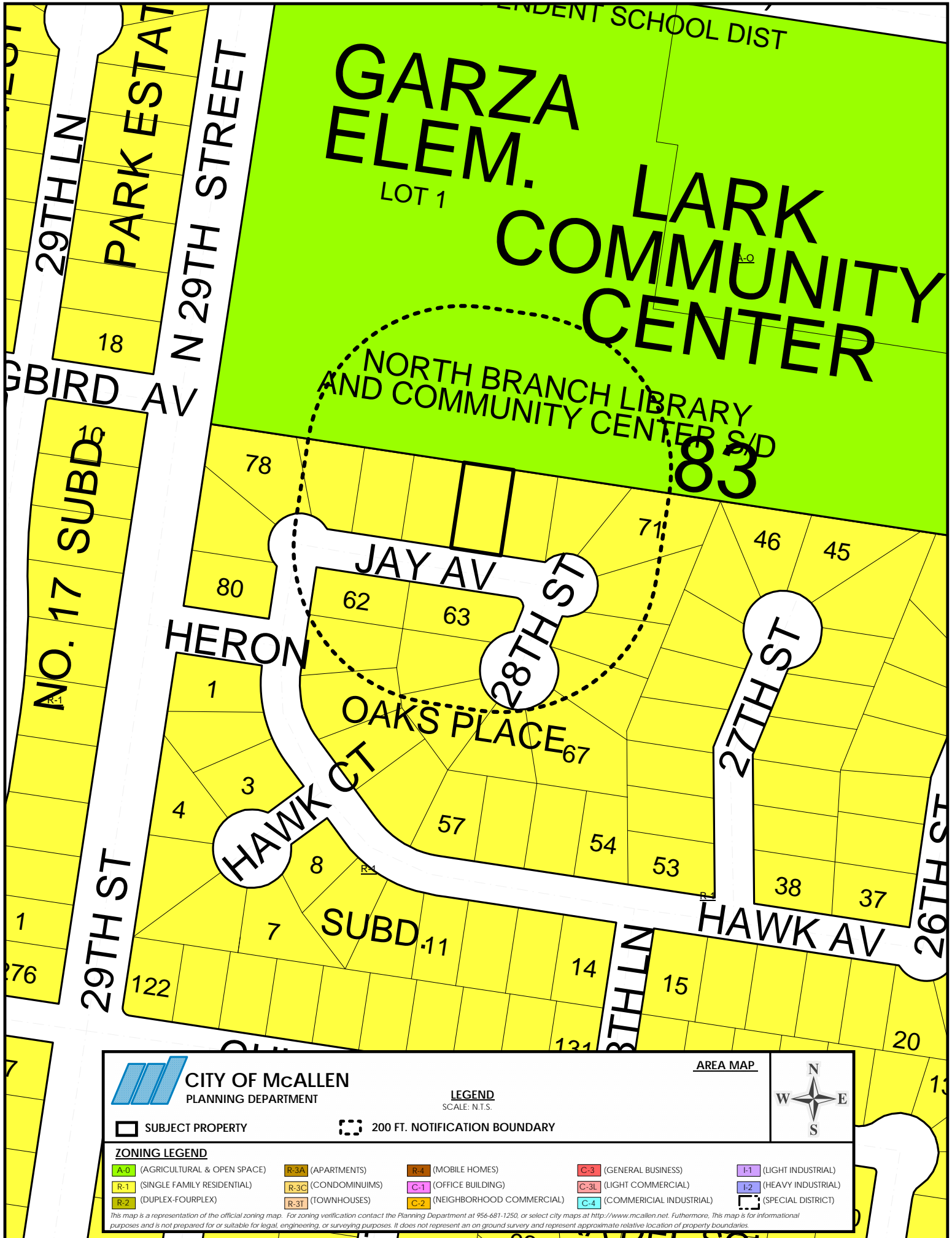
LOT 74 BLOCK _____ SUBDIVISION OAKS PLACE
 SITE ADDRESS ST. NO. 2812 ST. NAME JAY AVENUE

CITY USE ONLY

Construction Cost _____ Permit Fee \$ 48.00 Rec'd by [Signature]
 Value \$ _____ Double Fee \$ 48.00 Date 11/17/20
 Zoning _____ Total Fee \$ 96.00 Time 10:01
 Park Development Fee \$ _____ Park Zone _____

The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant hereby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the improvements shall not be occupied until a Certificate of Occupancy has been issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.

Laura E. Alvarez PRINT (AUTHORIZED AGENT/OWNER) Laura E. Alvarez SIGNATURE EMAIL ADDRESS (required) 11/17/20 DATE



CITY OF McALLEN
PLANNING DEPARTMENT

LEGEND
SCALE: N.T.S.

AREA MAP

ZONING LEGEND

SUBJECT PROPERTY	200 FT. NOTIFICATION BOUNDARY	A-0 (AGRICULTURAL & OPEN SPACE)	R-3A (APARTMENTS)	R-4 (MOBILE HOMES)	C-3 (GENERAL BUSINESS)	I-1 (LIGHT INDUSTRIAL)
R-1 (SINGLE FAMILY RESIDENTIAL)	R-3C (CONDOMINIUMS)	C-1 (OFFICE BUILDING)	C-3L (LIGHT COMMERCIAL)	I-2 (HEAVY INDUSTRIAL)	I-2 (HEAVY INDUSTRIAL)	(SPECIAL DISTRICT)
R-2 (DUPLIX-FOURPLEX)	R-3I (TOWNHOUSES)	C-2 (NEIGHBORHOOD COMMERCIAL)	C-4 (COMMERCIAL INDUSTRIAL)			

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.

NORTH BRANCH LIBRARY
AND COMMUNITY CENTER



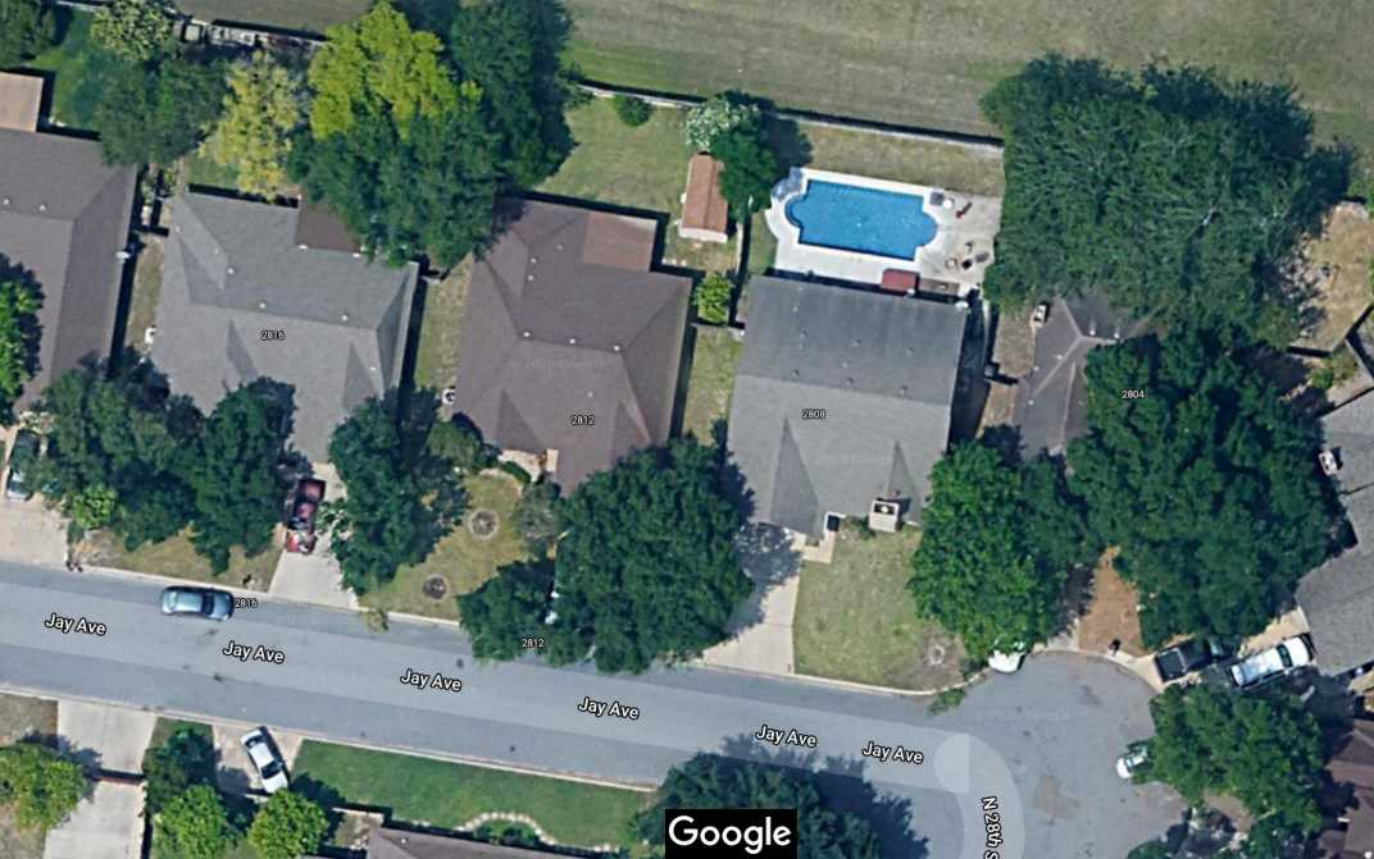
CITY OF McALLEN
PLANNING DEPARTMENT

AERIAL MAP
SCALE: N.T.S.

 SUBJECT PROPERTY



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



2816

2812

2808

2804

2816

2812

Jay Ave

Jay Ave

Jay Ave

Jay Ave

Jay Ave

Jay Ave

Google

N 28th S



**NOTICE
VARIANCE
FOR
THIS PROPERTY
ZBA2020-0088**
CITY OF McALLEN PLANNING DEPT.
804-941-1230
WWW.MCALLEN.NET

JESUS
I TRUST
IN YOU

282















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:

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

--- () ---

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 lirioppe, 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.

CRITERIA FOR ZBOA DETERMINATIONS

APPEALS

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

SPECIAL EXCEPTIONS

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

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

Ord. Sec. 138-86. – GENERAL POLICY.

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

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

VARIANCES

Authorized only when ALL of the following applies:

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

Exceptions Cited within the Zoning Ordinance

Exceptions pertaining to front yard setbacks:

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

Exceptions pertaining to rear yard setbacks:

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

Exceptions pertaining to side yard setbacks:

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

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

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

Exceptions as per Planning Department Policy

By policy the following are permitted:

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

Legal opinions:

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

ZONING BOARD OF ADJUSTMENT AND APPEALS

RULES AND PROCEDURES

CITY OF MCALLEN

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

I. ORGANIZATION AND OFFICERS

A. Members

The McAllen City Commission created the Zoning Board of Adjustment and Appeals (hereinafter referred to as “Board”) pursuant to Chapter 211 of the Texas Local Government Code and Chapter 138, Article II, Division 3 of the City of McAllen, Texas Code of 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 8th 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 9th day October, 2018.

CITY OF McALLEN

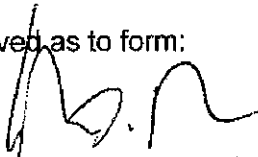
John Ingram, City Commissioner

Attest:



Perla Lara, TRMC/CMC, CPM
City Secretary

Approved as to form:



Austin W. Stevenson, Assistant City Attorney



2021 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/06/21	01/20/21																					
ERICK DIAZ- CHAIRPERSON	P																						
JOHN MILLIN- VICECHAIRPERSON	P																						
SYLVIA HINOJOSA	P																						
JOSE GUTIERREZ	P																						
JUAN F. JIMENEZ	P																						
ANN TAFEL (ALT 1)	P																						
HUGO AVILA (ALT 2)	P																						
REBECCA MILLAN (ALT 3)	P																						
ROGELIO RODRIGUEZ (ALT 4)	A																						

- P - PRESENT
- A - ABSENT
- NEW APPOINTMENT
- MC - MEETING CANCELLED
- NRM - NO MEETING
- LOQ - LACK OF QUORUM
- RS - RESIGNATION