

AGENDA

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, JANUARY 5, 2022 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3RD FLOOR

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

CALL TO ORDER – Chairperson Erick Diaz

1. MINUTES:

- a) Minutes for the meeting held on December 15, 2021

2. PUBLIC HEARINGS:

- a) Request of Ruben Escobedo for the following Special Exception to the City of McAllen Zoning Ordinance: to allow: **1)** an encroachment of 19 ft. into the 20 ft. front yard setback for an existing metal carport measuring 21 ft. by 13.5 ft., and **2)** an encroachment of 1 ft. into the 6 ft. side yard setback along the west property line for an existing metal carport measuring 21 ft. by 13.5 ft. at Lot 45, La Lomita Estates Subdivision, Hidalgo County, Texas; 3000 La Vista Avenue. **(ZBA2021-0071)**
- b) Request of Sahara Vasquez for the following Special Exception to the City of McAllen Zoning Ordinance: to allow: **1)** an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 20 ft. by 22 ft., and **2)** an encroachment of 5 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring 20 ft. by 22 ft. at Lot 4, Harvey Terrace Subdivision Unit 2- Phase I & II, Hidalgo County, Texas; 2721 North 27th Lane. **(ZBA2021-0072)**
- c) Request of Donato Pantoja for the following Variance to the City of McAllen Zoning Ordinance: to allow an encroachment of 3 ft. into the 10 ft. rear yard setback for an existing angled carport at Lot 81, Montebello Unit No. 3 Subdivision, Hidalgo County, Texas; 2116 North 32nd Street. **(ZBA2021-0060) (TABLED: 12/01/21) (REMAINED TABLED 12/15/21)**
- d) Request of Donato Pantoja for the following Variance to the City of McAllen Zoning Ordinance: to allow an encroachment of 5.67 ft. into the 10 ft. rear yard setback for an existing angled accessory structure at Lot 81, Montebello Unit No. 3 Subdivision, Hidalgo County, Texas; 2116 North 32nd Street. **(ZBA2021-0060)**
- e) Request of Eladio Ayala Jr. for the following Variances to the City of McAllen Zoning Ordinance: **1)** to allow an existing secondary structure (garage) remain in its current location with no primary structure and **2)** to allow an encroachment of 2 feet into the 6 feet side yard setback along the south side for an existing irregular shaped steel garage at Lot 47, Bonham Subdivision Unit No. 2, Hidalgo County, Texas; 2209 South 28th Street. **(ZBA2021-0065) (TABLED: 12/15/2021)**
- f) Request of Alicia Peralez for the following Variances to the City of McAllen Zoning Ordinance: **1)** to allow an encroachment of 10 feet into the 10 feet rear yard setback for a wooden canopy measuring 12 feet by 14 feet and **2)** to allow an encroachment of 6 feet into the 6 feet east side yard setback for a wooden canopy measuring 12 feet by 14 feet at Lot 4, Block 4, Colonia Del Norte Subdivision, Hidalgo County, Texas; 2415 Hackberry Avenue. **(ZBA2021-0069)**

- g) Request of Marcy Edwards for the following special exception and variances to the City of McAllen Zoning Ordinance: to allow: **1)** an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 20 ft. by 22 ft., **2)** an encroachment of 1 ft. into the 6 ft. side yard setback along the south property line for an existing metal carport measuring 20 ft. by 22 ft., **3)** an encroachment of 9.5 ft. into the 20 ft. front yard setback for an existing porch canopy measuring 9 ft. by 17.1 ft., **4)** an encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for an existing porch canopy measuring 9.7 ft. by 73 ft., **5)** an encroachment of 2.9 ft. into the 10 ft. rear yard setback for an existing porch canopy measuring 8 ft. by 40 ft., **6)** an encroachment of 1ft. into the 6 ft. side yard setback along the south property line for an existing porch canopy measuring 14 ft. by 11.3 ft., **7)** an encroachment of 6 ft. into the 6 ft. side yard setback for an existing storage building measuring 8.2 ft. by 10.2 ft. **8)** to not require a 5 ft. separation for an accessory building to the main building for an existing storage building measuring 8.2 ft. by 10.2 ft., at Lot 139, Harvey Terrace Subdivision Unit 2- Phase I & II, Hidalgo County, Texas; 2728 North 27th Lane. **(ZBA2021-0068)**
- h) Request of Pedro "Pete" Ramirez for the following Variances to the City of McAllen Zoning Ordinance: **1)** to allow an encroachment of up to 3.92 feet into the 6 feet south side yard setback for an existing wooden storage shed measuring 12 feet by 12 feet, **2)** to allow an encroachment of up to 7.92 feet into the 10 feet rear yard setback for an existing wooden storage shed measuring 12 feet by 12 feet, **3)** to allow an encroachment of 10 feet into the 10 feet rear yard setback for an existing wooden hobby-related covered patio measuring 9 feet by 12 feet, **4)** to allow an existing wooden hobby-related patio to have a distance of less than 5 feet of separation from an accessory building to the main building, **5)** to allow an encroachment of up to 2.50 feet into the 10 feet rear yard setback for an existing detached accessory wooden structure, **6)** to allow an existing detached accessory wooden structure to have a distance of less than 5 feet of separation to the main building, and **7)** to allow an encroachment of 6 feet into the 6 feet north side yard setback for an existing wooden porch measuring 7.25 feet by 18 feet at Lot 53, Gardenia Terrace Unit No. 2 Subdivision, Hidalgo County, Texas; 3300 North 27 ½ Street. **(ZBA2021-0070)**

3. INFORMATION ONLY:

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

4. FUTURE AGENDA ITEMS

- a) 817 North 5th 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, December 15, 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
	Jose Gutierrez	Member
	Ann Tafel	Member
	Hugo Avila	Alternate
	Rebecca Millan	Alternate
	Mark Talbot	Alternate
Absent:	Rogelio Rodriguez	Alternate
Staff Present:	Issac Tawil	City Attorney
	Austin Stevenson	Assistant City Attorney
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Omar Sotelo	Senior Planner
	Hebert Camacho	Planner II
	Katia Sanchez	Planner I
	Porfirio Hernandez	Planning Technician II
	Julian Hernandez	Planning Technician I
	Carmen White	Administrative Assistant
	Natalie Martinez	Administrative Assistant

CALL TO ORDER – Chairperson Erick Diaz

1. MINUTES:

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

The minutes for the meeting held on November 17, 2021 were approved. The motion to approve the minutes was made by Ms. Sylvia Hinojosa. Mr. Jose Gutierrez seconded the motion, which carried unanimously with five members present and voting.

- b)** Minutes for the meeting held on December 1, 2021.

The minutes for the meeting held on December 1, 2021 were approved. The motion to approve the minutes was made by Mr. Jose Gutierrez. Ms. Ann Tafel seconded the

motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

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

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

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

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

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

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

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

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

During a site visit, staff noticed other similar encroachments, specifically carports located

at the front yard, along Hibiscus Avenue and the neighboring streets of 22nd Street and Iris Avenue. The metal carport on the subject property is characteristic of construction along the area. A review of Planning Department records did reveal one special exception on Iris Avenue, which was approved, by the Zoning Board of Adjustment and Appeals on October 21, 2020.

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

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

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

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

Board member Ann Tafel asked staff that they had a garage but were not using it as a garage. Ms. Sanchez stated that is correct. Ms. Tafel asked if the roof was any kind of solid roof it was just a blue tarp on top. Ms. Sanchez stated there was a blue tarp that falls along the sides and the front on the carport not on the roof itself. Chairperson Diaz asked Ms. Sanchez if it was visible when staff went to photograph. Ms. Sanchez stated they did a site inspection today and did not see a blue tarp nor did Planning Department staff see a blue tarp during the inspection.

Ms. Adelina Alexander, the applicant stated they built the carport because they put some exercise equipment in the garage. She stated due to medical conditions and during Covid she could not go the gym. The carport was for the vehicles. Chairperson Diaz asked the applicant if she obtained a permit before the carport was built. She stated she went several times to get the permit but was informed she needed measurements and that she was missing certain things so they suddenly just built it. She stated there were two other carports in the same neighborhood. Chairperson Diaz asked about the tarp. Ms. Alexander stated when the person was changing their tire on the car the sun was in their face so they put it up to cover the sun. After he was done, they removed the tarp.

Board member Jose Gutierrez asked the applicant if the carport was attached to the house. Ms. Alexander stated no, it was close to the house but not attached.

Chairperson Diaz asked if there was an alley in the back. She stated yes. Chairperson Diaz asked if there was a reason she did not want to put the carport in the backyard. She stated they have a porch in the backyard. She had to submit an application for the porch after they are finished with this request. She stated the porch was leaking and the roof was damaged so she had to repair it. She did not have the necessary financial means to relocate the carport to the back.

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

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

Chairperson Diaz asked if there was any oppositions for this request, phone calls or emails. Ms. Sanchez stated there were four phone calls and one email in opposition of the request.

Board member Sylvia Hinojosa asked staff if they filed an application over a year ago. Ms. Sanchez stated yes. A stop work order was issued on June 8, 2020 for a carport built without a building permit. An application for a building permit was submitted on June 11, 2020 for an existing metal carport and an application for a variance request was submitted to the Planning Department on November 5, 2021. The permit was placed on hold until they applied for this special exception process until applicant submitted more information and completed special exception process. The building permit was under review until this special exception was approved. It took the applicant over a year to submit the special exception application.

Board member Hugo Avila asked staff if they informed the applicant that this was a special exception and not a variance. In addition, if the special exception was not approved they would have to remove the carport. Ms. Sanchez the applicant was aware of the process.

Board member Ms. Hinojosa asked staff if there were similar situations in the neighborhood. Ms. Sanchez stated there was one carport located along Hibiscus Avenue as well as on Iris Avenue. Only one was granted a special exception on Iris Avenue.

Board member Ann Tafel asked if it was a two-car garage. Ms. Sanchez stated yes.

Ms. Hinojosa asked staff there was a notation that the Planning Department did not receive any emails or phone calls in opposition. Ms. Sanchez stated after the memo was finalized and uploaded that was when they started receiving those phone calls. Two of phone calls were within the 200 feet radius. The three other calls that were in opposition were along Hibiscus Avenue.

Following discussion, Ms. Ann Tafel moved to disapprove the special exception as proposed. Mr. Jose Gutierrez seconded the motion. The Board voted to disapprove the special exception with five members present and voting.

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

Subdivision, Hidalgo County, Texas; 2709 Nolana Avenue. **(ZBA2021-0063)(TABLED: 12/01/2021)**

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

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

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

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

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

Variance # 1:

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

Variance #2:

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

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

During the Zoning Board of Adjustment and Appeals meeting of December 1, 2021 the authorized agent requested to table the item until next meeting of December 15, 2021.

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

Mr. Stan DeMille, 509 N. Havenwood Lane, Dallas stated regarding the canopies was during Covid, which had a profound effect on everybody's drive thru business. Chik-fil-a had a larger beneficiary of that. They had people outside to take orders and get people through the line faster in order to avoid backup traffic from the street. It helped with inclement weather of rain or the heat in the summer time. Luis stated in order to comply with both Chik-fi-la, Inc. and OSHA regulations they needed to keep their Team members safe. This canopy was of most important to keep their Team members safe during the inclement weather. It is a standard canopy. It is based on cost depending on how large the canopy will be. In addition, there is calculations where you cannot stack vehicles in the driveway any longer than X and if it gets longer than that, you do whatever needs to be done to reduce the stack of vehicles because it starts to impact customer experience and food quality. The canopy covers three or four vehicles per lane.

Ms. Hinojosa asked the applicant the purpose of the canopy was to do the coverage of the two lanes as you enter and taking the order then proceeding to the side of the building. Mr. DeMille stated yes. Luis stated the only they had an issue was the overflow that extends out either towards 27 ½ Street or overflows towards Blue Car Wash and them.

Board member Hugo Avila asked the applicant hypothetically they were to build a new Chik-fil-a that would be their standard design. If there were setbacks or requirements that they would need to meet, they could need a variance. Mr. DeMille stated if they were to build, a store in the same situation there would be a couple of options. Apply for a variance or go through a replat process to reduce the setbacks but that would take months and effort on everybody's staff.

Vice-Chairperson Millin asked the applicant if Chik-fil-a leases the building. Mr. DeMille stated the property was leased but the building was owned by Chik-fil-a. Vice-Chairperson Millin stated their concern was that if it is a variance it does run with the property. If the property sells and someone else comes in with a different type of business, they can now build on the footprint of both canopies.

Board member Ann Tafel asked staff should Chik-fil-a vacate the property this would allow another tenant occupies it in the future would that be considered a special exemption.

Austin Stevenson, Legal stated given his understanding that it was cars passing underneath the canopy and not store anything they could do it as a special exception. Chik-fil-a would have to amend the application for the record before the Board to ask for a special exception. In addition, if it were to go to anyone else they would have to tear it

down.

Mr. DeMille stated he would change the application to a special exception in lieu of a variance.

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

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

Following discussion, Vice-Chairperson John Millin **moved** to approve the special exception as amended in the meeting. Ms. Sylvia Hinojosa seconded the motion. The Board voted to approve the special exception with five members present and voting.

- c) Request of Donato Pantoja for the following Variance to the City of McAllen Zoning Ordinance: to allow an encroachment of 3 ft. into the 10 ft. rear yard setback for an existing angled carport at Lot 81, Montebello Unit No. 3 Subdivision, Hidalgo County, Texas; 2116 North 32nd Street. **(ZBA2021-0060) (TABLED: 12/01/2021) (REMAIN TABLED: 12/15/2021)**

This item was to remain tabled until the meeting of January 5, 2022.

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

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

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

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

November 8, 2021.

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

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

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

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

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

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

Chairperson Diaz asked staff the application would not have been before the Board if he had not crossed the lot line. Ms. Sanchez responded yes. He did need a primary structure to be on that same lot.

Vice-Chairperson Millin asked if a primary structure considered being a resident house. Ms. Sanchez responded yes.

Chairperson Diaz asked if there was a stop work order. Ms. Sanchez stated there was a stop work order for a construction built without a building permit issued on October 29, 2021. An application for a building permit was submitted on November 8, 2021 for an

existing garage. In addition, an application for a variance request was submitted on November 8, 2021. Ms. Sanchez stated one of the neighbors east of the property were in support of the variance request.

Board member Hugo Avila asked staff the applicant was encroaching two feet into the side. Ms. Sanchez stated yes. Vice-Chairperson Millin asked was it because of the overhang. Alternatively, because the original pad was for a house. Ms. Sanchez stated the two feet into the 6-foot side yard setback was for the garage as a whole. In 1994, the previous owner had put a cement foundation and the applicant decided to build over the existing foundation.

Board member Avila stated denying the variance he would have to reduce the two feet and not another building to support it. Ms. Sanchez stated there were two variances. The first one would be for the 2-foot encroachment into the 6-foot side yard setback. The second variance would be the garage stands alone without a primary structure.

Mr. Eladio Ayala, Jr, the applicant stated the property where the house stands was purchased by his mother back in the 1970's. His grandfather purchased the other lot adjacent to it. In 1994, the concrete foundation was poured with 18-inch beams all around which was going to be his grandfather's blocked house. He stated that it was not a 2-foot encroachment it was a 1-foot. He had both properties surveyed along with the northwest side property. He had planned to leave the properties to his children for the future to build their homes. He wanted to keep this structure in order to store his auto parts and vehicles. Mr. Ayala stated this would be a financial hardship if he were to tear it down and rebuild. He stated he made of error in not obtaining a permit. He wanted to install electricity and air-condition. He stated he had 10.2 feet on the alley side.

Chairperson Diaz asked the applicant what materials were being used for the garage. Mr. Ayala stated it would be all metal, galvanized steel.

Vice-Chairperson Millin asked the applicant if he had considered replatting to make it all one property. Mr. Ayala stated he did but it would not work because he wanted his children to have their own property. Vice-Chairperson Millin had concerns with a garage made of metal in a residential neighborhood on a lot by itself in which someone could buy it keep that way and not build a house. He stated if the applicant was to replat it would take care of both variances. Vice-Chairperson Millin asked staff if there was a limit to the size of a secondary structure. Ms. Sanchez stated there was no limitations or restriction on it.

Board member Ann Tafel asked staff if they had considered a special exception. Ms. Sanchez stated special exceptions were only for carports and this would ultimately be a garage. He was to going to enclose it.

Mr. Ayala stated the house they were looking at was built by McAllen Affordable homes and the driveway was already encroaching into that property line of address 2213 into 2209. Chairperson Diaz stated it could be a fence encroaching but were not discussing fences or driveways. They were here to vote on what is before the Board on what is

allowed or not.

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

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

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

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

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

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

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

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

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

Vegetation ordinance requires 50% of the front yard to be landscape area. Reduction of

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

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

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

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

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

Vice-Chairperson Millin asked staff if the shape of the property considered a hardship. Lots that were built on cul-de-sac someone could build a smaller residence that would be within the setbacks. Mr. Austin Stevenson, Legal stated what the statute stated it was not supposed to be self-inflicted so if the applicant who made the lots the shape that they are. In addition, under the new rule you can take into account compliance would cost 50% more than the cost of an existing structure. The Board could consider up to a certain extent and that they could consider these lots are on cul-de-sacs as a reason to making a decision.

Board member Sylvia Hinojosa asked if they planned a neighborhood gathering area or park. Ms. Sanchez responded no. Ms. Hinojosa asked if they had an Association. Ms. Sanchez stated it is not a part of the neighborhood and it did not fall within the 200-foot radius. Someone had seen the sign and called to see what it was regarding. Ms. Sanchez informed them of what was occurring the person who called in opposition stated the variances would hinder their property values.

Board member Avila asked staff he saw various lots but not Lots 17 or 18. Ms. Sanchez stated nothing had been constructed.

Edward De La Tejera, 128 Rio Grande Avenue, Mission and Lucila Duran, 8424 North 26th Street, representatives for Terra Homes. Mr. De La Tejera stated the 25-foot setback pushed the house so far back that the rear back yard will be very limited. A three bedroom two bathroom home went all the way back to the rear setback, which gave only 10 feet for a backyard. He recalled that for cul-de-sacs, it was 15-foot setbacks but now the City had changed the standards mainly because of the vehicles. If you had the vehicle at 15 feet, it would encroach into the sidewalk. He stated his designer; Ms. Lucila Duran had

pushed the garage to 22 or 23 feet from the setback to be at least 25 feet from the sidewalk. The driveway remained long enough for oversized vehicles.

Chairperson Diaz asked the applicant was that a standard house that they built or designed this blueprint to this lot. Mr. De La Tereja stated they were designing the houses.

Ms. Duran stated she had been designing homes for 20 years and it was a narrow lot. She tried to fit smaller homes but when you go all the way to the setback which you have only 10 feet.

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

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

Chairperson Diaz asked staff regarding the landscaping if the applicant will be return before the Board. Ms. Sanchez stated they would not know until they see more information on the landscaping. It may not comply with the 50% of front yard setback to be landscaped area.

Mr. De La Tejera stated they did not show the options that they had for the two story homes and bought the properties. If they were not granted the setbacks, they would build and design whatever fits. However, the family that resides there will pay the price because the backyard would be small.

Following discussion, Vice-Chairperson John Millin **moved** to approve the variance request to the footprint of the encroachment on the site. Ms. Sylvia Hinojosa seconded the motion. The Board voted with two members voting aye and Mr. Hugo Avila and Ms. Ann Tafel voting nay. Chairperson Erick Diaz voted in favor but the variance disapprove with a 3-2 vote.

3. FUTURE AGENDA ITEMS:

- a)** 2728 North 27th Lane
- b)** 2415 Hackberry Avenue
- c)** 3300 North 27 ½ Street
- d)** 3000 La Vista Avenue
- e)** 2721 North 27th Lane

ADJOURNMENT

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

Chairperson Erick Diaz

Carmen White, Administrative Assistant

MEMO

TO: Zoning Board of Adjustment & Appeals

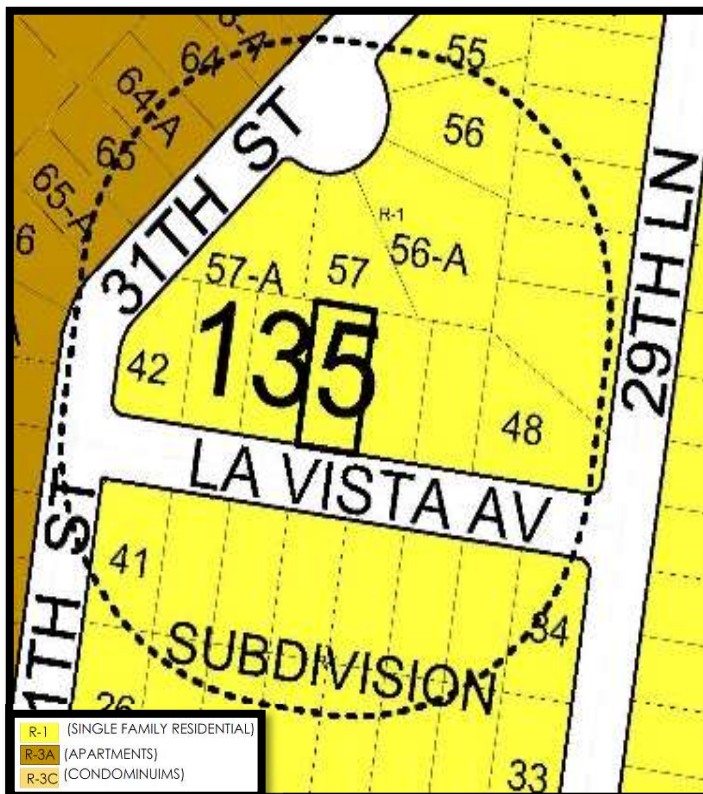
FROM: Planning Staff

DATE: December 29, 2021

SUBJECT: REQUEST OF RUBEN ESCOBEDO FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE: TO ALLOW: 1) AN ENCROACHMENT OF 19 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING 21 FT. BY 13.5 FT., AND 2) AN ENCROACHMENT OF 1 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE WEST PROPERTY LINE FOR AN EXISTING METAL CARPORT MEASURING 21 FT. BY 13.5 FT. AT LOT 45, LA LOMITA ESTATES SUBDIVISION, HIDALGO COUNTY, TEXAS; 3000 LA VISTA AVENUE. (ZBA2021-0071)

REASON FOR APPEAL:

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



PROPERTY LOCATION AND VICINITY:

The property is located along the north side of La Vista Avenue, approximately 150 feet east of North 31st Street. The property has 50 feet of frontage along La Vista Avenue with a depth of 110 feet for a total area of 5,500 square feet. There is a single-family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions and R-3A (multifamily apartments) District to the northwest. The surrounding land use is single family residential.

BACKGROUND AND HISTORY:

La Lomita Estates Subdivision was recorded on July 20, 1982. As per plat, the front yard setback shall be 20 ft., the side yard setback shall be 6 ft., and the rear yard setback shall be 10 ft. According to Hidalgo County Appraisal District records the residential home was built in 1984. A stop work order was issued by Buildings and Inspections Department staff on November 05, 2021 for the construction of a carport without a building permit. An application for a building permit for a carport was submitted to the Building Permits & Inspections Department on November 16, 2021. An application for a special exception request was submitted to the Planning Department on November 22, 2021 for the existing carport.

ANALYSIS:

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

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

There are no utility easements on the subject property.

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

A review of Planning Department records revealed that there were two special exception cases that were approved between 2016 and 2019 (lot 22 and lot 53), while another case (lot 23) was withdrawn along this subdivision. The most recent special exception case (lot 44) for a car port was approved by the Board at the Zoning Board of Adjustments and Appeals meeting of December 1st, 2021.

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

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

RECOMMENDATION:

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

ZBA0-11/5/22

ZBA2021-0071



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	LA LOMITA ESTATES LOT 45		
	Subdivision Name	LA LOMITA ESTATES		
	Street Address	3000 LA VISTA AVE		
	Number of lots	1	Gross acres	
	Existing Zoning	R1	Existing Land Use	HOUSE
Applicant	Reason for Appeal (please use other side if necessary) EXISTING METAL CARPORT MEASURING 20 X 13.6" INTO THE 20 FT FRONT YARD SETBACK ENCROACH 20 FT INTO THE FRONT			
	<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			
	Name	RUBEN ESCOBEDO	Phone	956-342-2120
	Address	3000 LA VISTA AVE	E-mail	
Owner	City	MCALLEN	State	TX
	Zip	78501		
Authorization	Name RUBEN ESCOBEDO Phone 956-342-2120			
	Address 3000 LA VISTA AVE E-mail -			
	City MCALLEN State TX Zip 78501			
	<p>To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.</p> <p>Signature <u>R Escobedo</u> Date <u>11-22-21</u></p> <p>Print Name <u>RUBEN ESCOBEDO</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent</p>			
Office	Accepted by _____		Payment received by _____	
	Date		Date	

ENTERED

Rev 10/18

NOV 22 2021

Initial:



City of McAllen
Planning Department
REASON FOR APPEAL & BOARD ACTION

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)</p> <p>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</p> <p>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</p> <p>1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:</p> <p>PROTECT VEHICLES FROM INCLEMENT WEATHER CARPORT MADE OF PAVED METAL - NO FIRE HAZARD</p>
	<p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p>PROTECT VEHICLES OWN 4 VEHICLES</p>
	<p>3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:</p> <p>NO CARPORT OPEN ON ALL SIDES - EASY VISIBILITY</p>
	<p>4. Describe special conditions that are unique to this applicant or property:</p> <p>NO ALLEY EXCESS NOT ABLE TO RELOCATE AND NOT TOLD BY THE BUILDER WE NEEDED A PERMIT CARPORT COST ME \$2,800</p>
Board Action	
	<p>Chairman, Board of Adjustment Signature _____</p> <p>Date _____</p> <p>Rev. 9/20</p>

LA LOMITA ESTATES

4000 ACRES TRACT OF LOT 135 AND THE NORTH 121 ACRE
OF LOT 142 LA LOMITA IRRIGATION CONSTRUCTION CO. SUBD.
HIDALGO COUNTY, TEXAS 25734

JUL 20 1960

STATE OF TEXAS
COUNTY OF HISSALE

THE OWNER OF THE LAND SHOWN ON THE PLAT HEREIN, HEREBY SURRENDERS HERETO, AND IN PERSON OR THROUGH A duly AUTHORIZED AGENT, HERETO, TO THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS, HWAYS, WATER COURSES, DRAINAGE, EASEMENTS AND PUBLIC PLACES THEREIN SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED
RAFAEL JIMENEZ, KNOWN TO ME TO BE THE PERSON
 WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO
 ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN
 EXPRESSED AND IN THE CAPACITY THEREIN STATED.

1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

APPROVAL BY WATER DISTRICT

THIS PLAT APPROVED BY HUALAHO COUNTY JEREMIAH DISTRICT NO. 1
24th June 1892

WILLIAM L. LOMITA S. WILLIAM L. LOMITA S.
PRESIDENT acting secretary
James H. Lomita
SECRETARY

1. THE UNDERSIGNED, SHERIFF OF THE CITY OF INGLETON, HEREBY CERTIFY THAT THIS SUBDIVISION PLAN CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY OF INGLETON AND APPROVAL IS REQUIRED.

THIS PLAN OF AN AMERICAN AIRPORT HAS BEEN
SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF
HOUSTON, TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION.

STATE OF TEXAS
COUNTY OF HILL

I HEREBY CERTIFY THAT THIS PLAN IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE-UNDER MY SUPERVISION ON THE GROUND.

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 15 DAY OF December
1981

NOTE:

USE RESTRICTIONS:

A. Lot 7-71 shall be limited to single Family dwellings.

B. Lots 72-122 shall be limited to multi-Family dwellings.

SETBACKS:

Setbacks shall be not less than:

FRONT: 20' except Cul-de-sac may be 10'

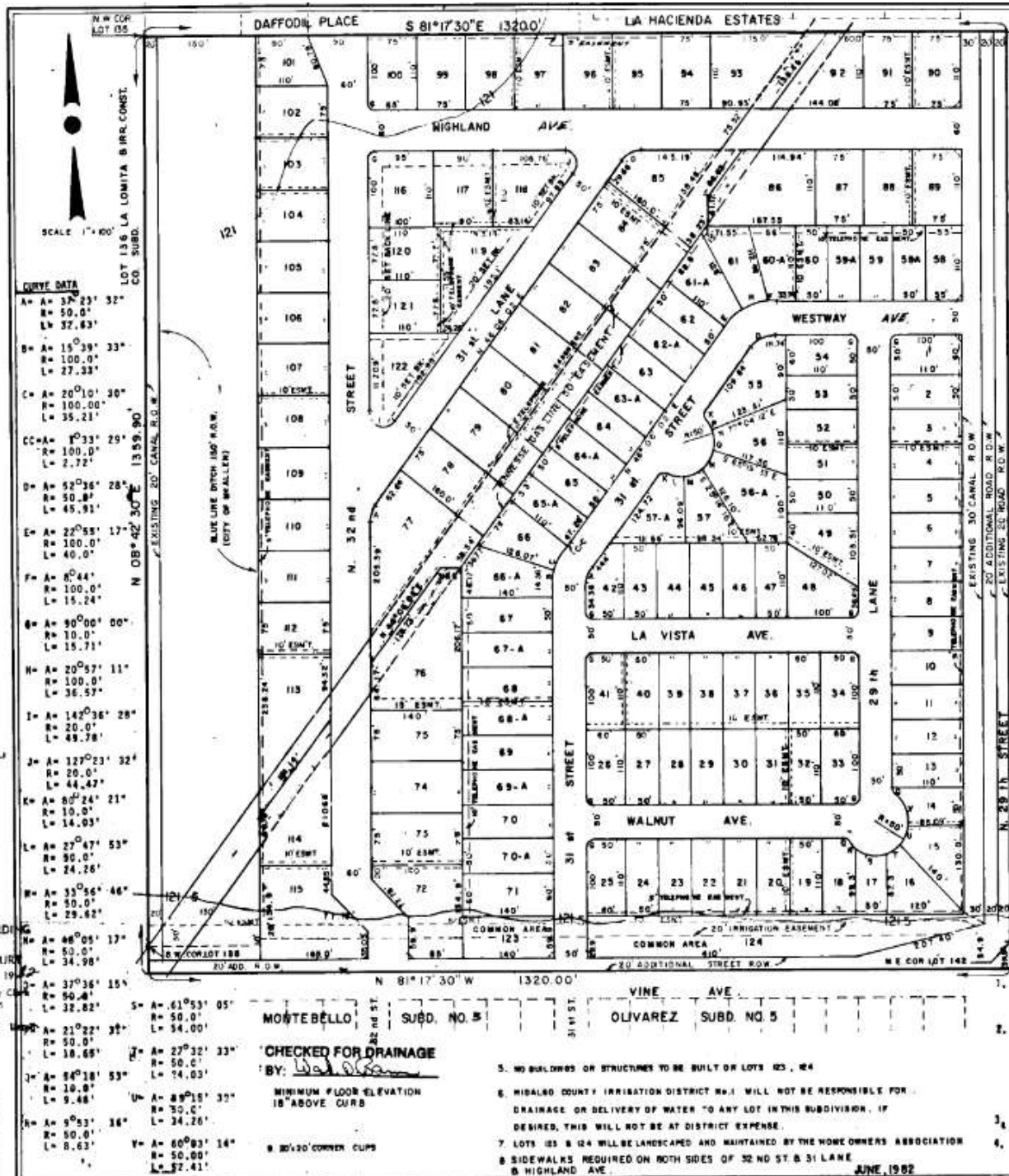
SIDE: 8' - 12' between structures & not exceeding 25' in height

Where a structure exceeds the 25' height, it shall be setback 1 additional foot for each foot above 25 feet.

C. Corner lots shall have a 10' side setback.

D. Rear setback shall be 10'

E. INDIVIDUAL LOT ACCESS FROM WEST AND JUNE AVE. ALTERNATELY, AND SIDEWALKS shall be constructed as follows: The east side of 29th and north side of Elm Street.



APPROVED FOR RECORDING

COMMISSIONERS' COURT

This the 2nd day of July 19
SANTO DOMINGO, D. R. County C

Blacksburg, Texas
O. B. ...

● 2014年12月14日

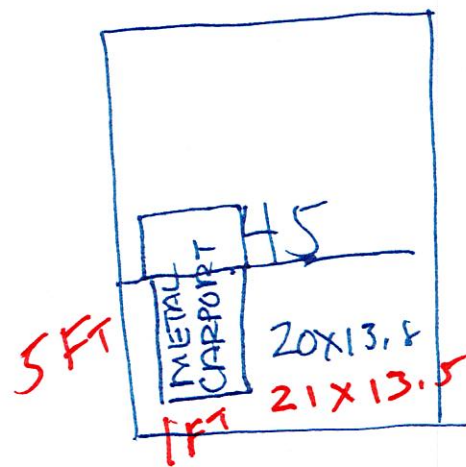
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APPROVED

APPROVED
FOR RECORDING

By James H. [illegible]

1-30-91



N
W
S
E

3000
LA VISTA AVE

RE
RESOL
~~12-15-21~~
12-15-21

ENTERED

NOV 22 2021

Initial: me

LA LOMITA ESTATES

4000 ACRES TRACT OF LOT 135 AND THE NORTH 1/2 ACRE
OF LOT 142 LA LOMITA & IRRIGATION CO. SUBD.
HIDALGO COUNTY, TEXAS 25734

JUL 26 1982

STATE OF TEXAS
COUNTY OF HIDALGO

THE SIGNED OF THE LAND SHOWN ON THIS MAP HAVE BEEN EXAMINED HERE-
TO, AND IN PERSON BY A NOTARY PUBLIC, AND ACKNOWLEDGED TO THE
USE OF THE PUBLIC FOR ALL PURPOSES, ALLIED, MARRIAGE, WATER COURSE, DRAINAGE,
EASEMENTS AND PUBLIC PLACES THEREIN SHOWN FOR THE PURPOSE AND CONSIDERATION
THEREIN EXPRESSED.

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED
RAPHAEL JIMENEZ, KNOWN TO ME TO BE THE PERSON
WHOSE NAME IS SUBMITTED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO
ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN
EXPRESSED AND IN THE CAPACITY THEREIN STATED.

A. S. 1982

APPROVAL BY WATER DISTRICT

THIS PLAN APPROVES BY HIDALGO COUNTY (IRIGATION) DISTRICT NO. 1
ON THIS 24th DAY OF June, A. S. 1982

Willie L. Tate
Secretary

1. THE UNDERSIGNED, SIGNED OF THE CITY OF HIDALGO, HEREBY CERTIFY THAT THIS
SUBDIVISION PLAN CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS
OF THIS CITY WHEN IN APPROVAL IS REQUIRED.

THIS PLAN OF LA LOMITA ESTATES
SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF
HIDALGO, TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION.
DATED THIS 22nd DAY OF July, A. S. 1982

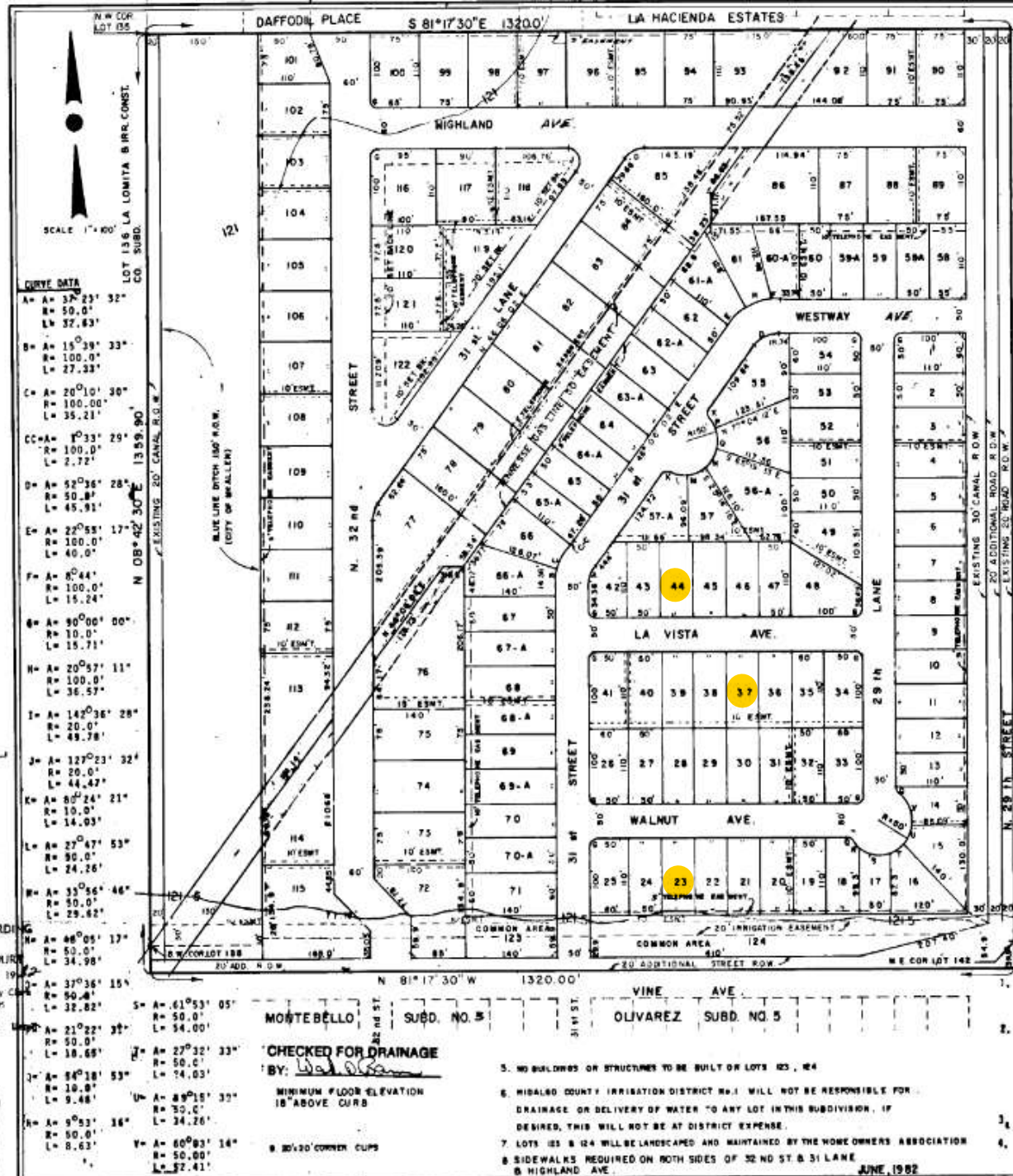
STATE OF TEXAS
COUNTY OF HIDALGO

I HEREBY CERTIFY THAT THIS PLAN IS TRUE AND CORRECT AND WAS PREPARED FROM
AN ACTUAL SURVEY OF THE PROPERTY HEREON BY SUPERVISION ON THE GROUND.

BEFORE ME AND SUBSCRIBED BEFORE ME THIS 15th DAY OF December,
A. S. 1982

NOTE:

- USE RESTRICTIONS:
A. Lot 1-71 shall be limited to single family dwellings.
B. Lots 72-122 shall be limited to multi-family dwellings.
- SETBACKS:
Setbacks shall be not less than:
A. FRONT: 20' except Cul-de-sac may be 10'
B. SIDE: 6' - 12' between structure & not exceeding 25' in height
Where a structure exceeds the 25' height, it shall be
setback 1 additional foot for each foot above 25 feet.
C. Corner lots shall have a 10' side setback.
D. Rear setback shall be 10'
- INDIVIDUAL LOT ACCESS FROM 29th AND VINE AVE. ALTERNATELY AND SHALL
be fenced along the street R.O.W. line.
- Sidewalks shall be constructed along the west
side of 29th and north side of Vine Street.



APPROVED FOR RECORDING
BY
COMMISSIONERS' COURT
This 24th day of July 1982
SANTOS B. LUNA, County Clerk
Hidalgo County, Texas

APPROVED
FOR RECORDING
Hidalgo County, Texas
By Santos B. Luna
County Clerk
Date 7-26-82

MONTIBELLO SUBD. NO. 5

CHECKED FOR DRAINAGE
BY: *W. L. O'Connell*

MINIMUM FLOOR ELEVATION
18' ABOVE CURB

8' 20' 20' COMMON CUPS

5. NO BUILDINGS OR STRUCTURES TO BE BUILT ON LOTS 123, 124

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

7. LOTS 123 & 124 WILL BE LANDSCAPED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION

8. SIDEWALKS REQUIRED ON BOTH SIDES OF 32ND ST & 31ST LANE
& HIGHLAND AVE.

JUNE, 1982

- Carport Locations



NOTICE
VARIANCE
SPECIAL EXCEPTION
FOR
THIS PROPERTY
ZBA2021-0071

Memo

TO: Zoning Board of Adjustment & Appeals

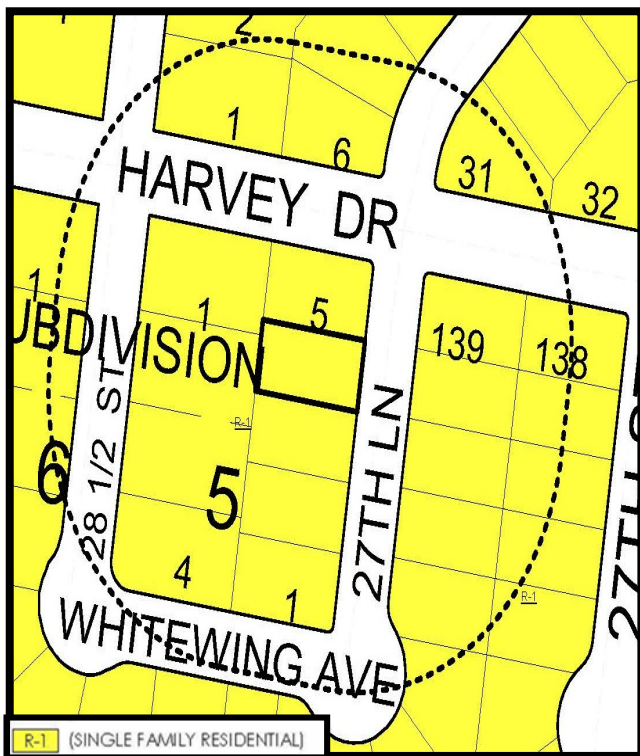
FROM: Planning Staff

DATE: December 29, 2021

SUBJECT: REQUEST OF SAHARA VASQUEZ FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE: TO ALLOW: 1) AN ENCROACHMENT OF 20 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING 20 FT. BY 22 FT., AND 2) AN ENCROACHMENT OF 5 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE NORTH PROPERTY LINE FOR AN EXISTING METAL CARPORT MEASURING 20 FT. BY 22 FT. AT LOT 4, HARVEY TERRACE SUBDIVISION UNIT 2- PHASE I & II, HIDALGO COUNTY, TEXAS; 2721 NORTH 27TH LANE. (ZBA2021-0072)

REASON FOR APPEAL:

Sahara Vasquez is requesting the following special exception to the City of McAllen Zoning Ordinance: to allow: 1) an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 20 ft. by 22 ft., and 2) an encroachment of 5 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring 20 ft. by 22 ft. The applicant would like the carport to remain because it provides protection for her vehicles. The special exception request is to resolve an existing metal carport encroachment that existed on the property prior to the applicant purchasing the house in 2015.



PROPERTY LOCATION AND VICINITY:

The subject property is located along the west side of North 27th Lane, south of Harvey Drive. The subject property has 51 feet of frontage on North 27th Lane and a depth of 100 feet for a lot area of 5,100 square feet. The property is zoned R-1 (single family residential) District. The surrounding land uses are single-family residences.

BACKGROUND AND HISTORY:

Harvey Terrace Unit 2 Subdivision Phase 1 & 2 was recorded on March 9, 1981. The plat specifies a 20 feet front yard setback and 6 feet side yard setbacks. The Building and Inspection Department issued a stop work order on April 08, 2021 for a carport built without a building permit. An application for variance request for a front yard setback encroachment for an existing carport was submitted to the Planning Department on November 28, 2021. According to the Hidalgo County Appraisal District, the carport was constructed in 2009.

ANALYSIS:

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

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

The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view of properties in a subdivision. However, a site visit by the Planning Department staff revealed there are 10 existing carports built around the Harvey Terrace Unit 2 Subdivision Phase 1 & 2, a total of 3 along this street.

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

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

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

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

RECOMMENDATION:

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

ZBDA-11/5/22

ZBA 2021-0072



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

Harvey terrace UT 2 PH 12 Lot 4

Subdivision Name

Harvey terrace UT 2 PH 12

Street Address

2721 N 27 Ln McAllen Texas 78501

Number of lots

1

Gross acres

Existing Zoning

R-1

Existing Land Use

CASG

Reason for Appeal (please use other side if necessary)

ENCROACHMENT EXISTING PORTION INTO THE
FRONT YARD SETBACK 20' INTO THE FRONT YARD SETBACK COCHERA DE META
☒ \$300.00 non-refundable filing fee + ☒ \$50.00 Recording Fee for Special Exception (carport)

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

Applicant

Name

Sahara Vasquez

Phone

956 562 97 83

Address

2721 N 27 Ln

E-mail

garcia-2059@hotmail.com

City

McAllen

State

TX

Zip

78501

Owner

Name

Ricarda Hernandez

Phone

52 834 301 10 74

Address

2721 N 27 Ln

E-mail

City

McAllen

State

TX

Zip

78501

Authorization

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

☐ Yes

☒ No

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

Signature

Sahara Vasquez

Date

11-22-21

Print Name

Sahara Vasquez

☐ Owner

☒ Authorized Agent

Office

Accepted by

Payment received by

ENTERED
Date

Rev 10/18

Initials

NOV 28 2021

am

22



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:

No Callejon

Ya estab cuando se compro la casa ase
7 años

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

Para los Autos Porque no ay
cochera es para Proteccion de los Autos

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:

Ningun Problema con la cochera con
Ningun Vecino y no existe ningun Problema
de que se baya a caer este bien Puesto

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

No hay garaje y no callejon

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

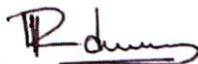
Date

Ciudad Victoria, Tamaulipas a 22 de noviembre de 2021

**City Of McAllen
Municipal Court.**

La que suscribe la presente **María Ricarda Hernández Martínez**, mexicana mayor de edad con domicilio en Calle Dr. Lavín Govea # 617 Fraccionamiento Doctores; por este conducto autorizo a la **C. Sahara Vázquez** para que me represente y haga todos los trámites correspondientes ante la ciudad respecto a la vivienda ubicada en 2721 N 27Ln McAllen TX 78501

Atentamente



María Ricarda Hernández Martínez

ENTERED

NOV 28 2021

Initial:



Ciudad Victoria, Tamaulipas a 22 de noviembre de 2021

**City Of McAllen
Municipal Court.**

La que suscribe la presente **María Ricarda Hernández Martínez**, mexicana mayor de edad; por este conducto autorizo a la **C. Sahara Vázquez** para que me represente y haga todos los trámites correspondientes ante la ciudad respecto a la vivienda ubicada en 2721 N 27Ln McAllen TX 78501

Atentamente



María Ricarda Hernández Martínez



ART SALINAS

ENGINEERING & SURVEYING

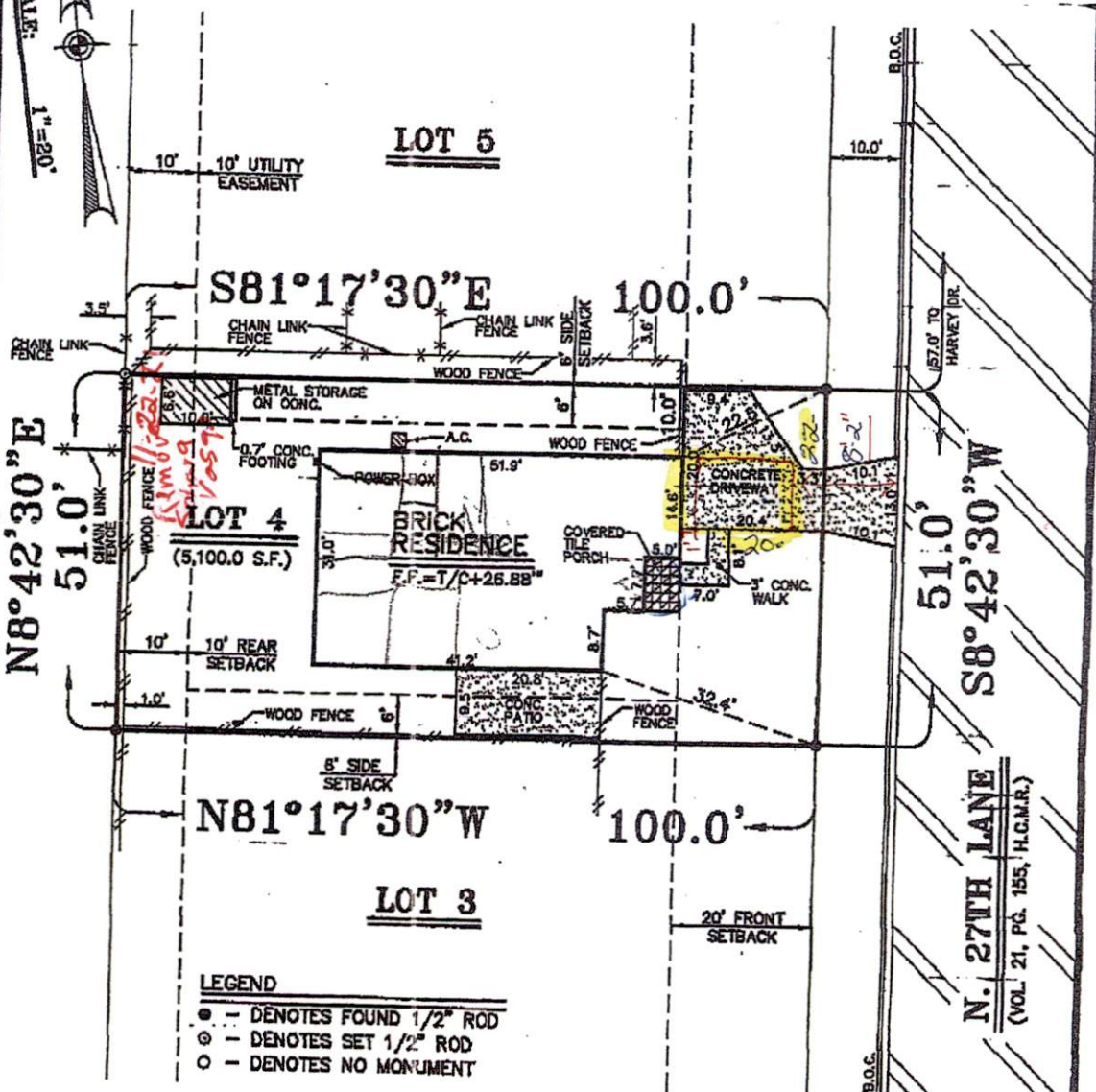
1524 DOVE AVENUE

McALLEN, TEXAS 78504

PH: (955) 618-5565

FAX: (950) 618-5540

SCALE:



LEGEND

- - DENOTES FOUND 1/2" ROD
- ⊙ - DENOTES SET 1/2" ROD
- - DENOTES NO MONUMENT

FLOOD CERTIFICATION: The property shown herein lies in Zone "5". Zone "9" areas lie between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding in excess of the 500-year flood; or areas of less than one foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood. MAP E.F.W. 4. Areas subject to 100-year flooding are shown in blue.

MAP NOTES:

PLANT NOTES:
1. *Thymus*

- There are no discrepancies, conflict or shortages in areas or boundary lines, any encroachments, or any overlapping of improvements except as shown or noted hereon, another party will also express written consent of the surveyor.
- If this survey does not bear an original seal and signature it is INVALID as per Section 601.48 and Section 603.19 of the "The Professional Land Surveying Practices Act" enacted under Article 5222c, Vernon's Texas Code Annotated.
- Right-of-Way Easement granted by A. B. Wilson, et al to Continental Pipe Line Company, by instrument dated May 30, 1952 recorded in Volume 754, Page 17, Deed Records of Hidalgo County, Texas. (Blanket; Gas main does not cross the property shown hereon.)
- Right-of-Way Easement granted by Hidalgo County Water Control and Improvement District No. 1 to Continental Pipeline Company by instrument dated August 14, 1952, recorded in Volume 132, Page 42, Oil and Gas Lease Records of Hidalgo County, Texas. (Blanket; Gas main does not cross the property shown hereon.)
- Right-of-Way Easement granted by Gloyd M. Ozment to Tennessee Gas Pipeline Company, by instrument dated September 12, 1973 recorded in Volume 1381, Page 128, Deed Records of Hidalgo County, Texas. (Blanket; Gas main does not cross the property shown hereon.)
- Right-of-Way Easement granted by Gloyd M. Ozment to Tennessee Gas Pipeline Company, by instrument dated September 12, 1973 recorded in Volume 1381, Page 128, Deed Records of Hidalgo County, Texas. (Blanket; Gas main does not cross the property shown hereon.)
- Right-of-Way Easement granted by Hidalgo County Water Control and Improvement District No. 1 to Continental Pipe Line Company by instrument dated August 14, 1952, recorded in Volume 132, Page 42, Oil and Gas Lease Records of Hidalgo County, Texas. (Blanket; Gas main does not cross the property shown hereon.)
- Right-of-Way Easement granted by Gloyd M. Ozment to Tennessee Gas Pipeline Company, by instrument dated September 12, 1973 recorded in Volume 1381, Page 128, Deed Records of Hidalgo County, Texas. (Blanket; Gas main does not cross the property shown hereon.)
- Right-of-Way Easement in favor of Central Power and Light Company on each Lot in said Subdivision as shown on plot recorded in Volume 24, Page 165, Map Records of Hidalgo County, Texas. (Blanket)
- Bearing Basis: "PHASE 1, HARVEY TEXAS CO SUBDIVISION, UNIT NO. 2"
- BORROWER: MICHAEL A. CERNA

THIS IS TO CERTIFY TO THAT I HAVE, THIS DATE, MADE A CAREFUL AND ACCURATE STANDARD LAND SURVEY ON THE GROUND OF PROPERTY WHICH IS LOCATED AT 2721 N. 27TH LANE, IN McALLEN, TEXAS, DESCRIBED AS FOLLOWS: LOT 4, PHASE 1, HARVEY TERRACE SUBDIVISION, UNIT NO. 2, AN ADDITION TO THE CITY OF McALLEN, HIDALGO COUNTY, TEXAS. ACCORDING TO MAP THEREOF RECORDED IN VOLUME 21, PAGE 155, MAP RECORDS OF HIDALGO COUNTY, TEXAS.

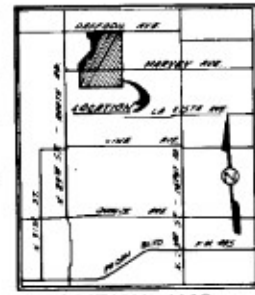
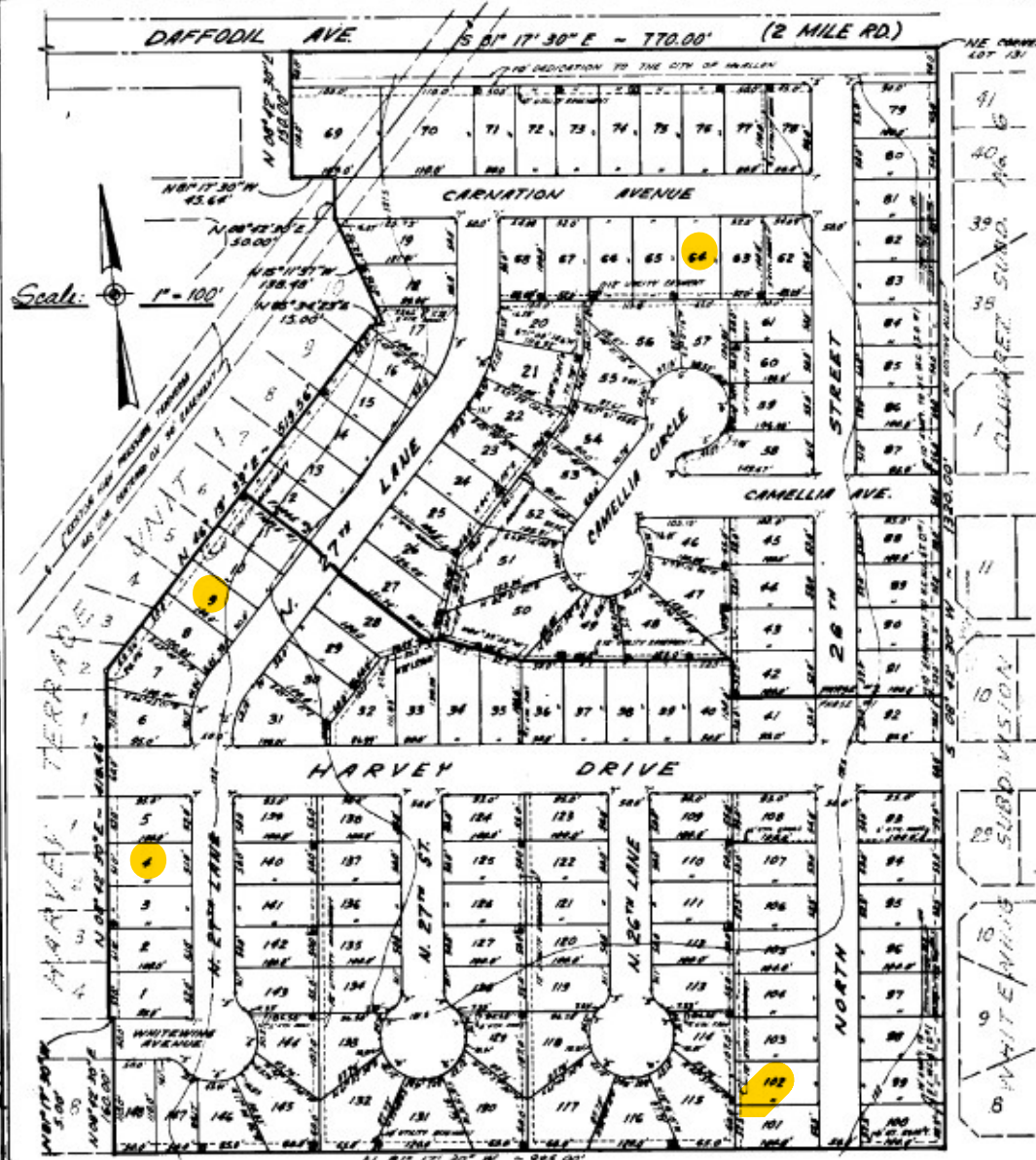
03-21380
Job No.

04-02-03
Revised

© COPYRIGHT 2003 ART SALINAS ENGINEERING INC. THIS SURVEY WAS PROVIDED IN MULTIPLE ORIGINALS FOR A SINGLE TRANSACTION BY THE BORROWER NAMED HEREON. NO LICENSE HAS BEEN CREATED, EXPRESSED OR IMPLIED TO COPY THIS SURVEY.

Registered Professional Land Surveyor No. 4802

ENTERED



CURVE DATA

Sta.	Delta	Radius	Chord	Length
1	90° 00' 00"	5.00	5.00	7.85
2	90° 00' 00"	10.00	10.00	15.71
3	90° 00' 00"	25.00	25.00	39.27
4	90° 00' 00"	50.00	50.00	78.54
5	90° 00' 00"	100.00	100.00	157.08
6	90° 00' 00"	200.00	200.00	314.16
7	90° 00' 00"	400.00	400.00	628.32
8	90° 00' 00"	800.00	800.00	1256.64
9	90° 00' 00"	1600.00	1600.00	2513.28
10	90° 00' 00"	3200.00	3200.00	5026.56
11	90° 00' 00"	6400.00	6400.00	10053.12
12	90° 00' 00"	12800.00	12800.00	20106.24
13	90° 00' 00"	25600.00	25600.00	40212.48
14	90° 00' 00"	51200.00	51200.00	80424.96

CONSENT TO CONVEY
 I, the undersigned, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of this city when in effect at the time of recording of this plat.

CONSENT TO CONVEY
 I, the undersigned, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of this city when in effect at the time of recording of this plat.

TOTAL LOTS: 140
 TOTAL AREA: 26.043 Acs

WE, the undersigned, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of this city when in effect at the time of recording of this plat.

WE, the undersigned, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of this city when in effect at the time of recording of this plat.

SUBDIVISION PLAT OF HARVEY TERRACE SUBDIVISION UNIT 2 - PHASE I & II

BEING THE EAST 26.110 ACRES OUT OF LOT 131 LA LOMA IRRIGATION & CONSTRUCTION CO. SUBDIVISION, OF PORTIONES 61, 62 & 63 AS RECORDED IN THE MAP RECORDS, HIDALGO COUNTY, TEXAS.

Recorded in Book 21, Page 155
 County, Texas
 County of Hidalgo
 State of Texas

HOMECAST LAND DEVELOPMENT, INC.
 SENIOR VICE PRESIDENT

STATE OF TEXAS
 COUNTY OF HIDALGO
 I, the undersigned, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of this city when in effect at the time of recording of this plat.

APPROVED BY WATER DISTRICT
 THIS PLAT APPROVED BY HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 1

ON THIS 16th DAY OF December, A.D. 1980

APPROVED BY THE CITY OF HARVEY
 I, the undersigned, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of this city when in effect at the time of recording of this plat.

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GENERAL NOTES:

1. MINIMUM FLOOR ELEVATION FOR DWELLING UNITS SHALL BE IN ACCORDANCE WITH THE CITY OF HARVEY.
2. MINIMUM FLOOR ELEVATION FOR V.A. ROADS SHALL BE 4' ABOVE V.A. GROUND PLANE.
3. FRONTYARD SETBACK SHALL BE 20' MINIMUM, EXCEPT AROUND DRIVE-THRU GARAGES SHALL BE 10' MINIMUM UNLESS OTHERWISE SHOWN.
4. SIDEYARD SETBACK SHALL BE 5' & 10' MINIMUM, EXCEPT AT CORNER LOTS SIDEYARD SETBACKS SHALL BE 10' MINIMUM.
5. CITY OF HARVEY SHALL HAVE A 45-DEGREE AT ALL STREET INTERSECTIONS.
6. A 4' SIDEWALK SHALL BE REQUIRED ON BOTH SIDES OF DAFFODIL AVENUE.

7. CENTRAL POWER & LIGHT CO. IS HEREBY GRANTED AN EASEMENT AND RIGHT-OF-WAY ON EACH LOT IN THIS SUBDIVISION FOR AN UNDERGROUND ELECTRIC SERVICE LATERAL TOGETHER WITH THE RIGHT OF ACCESS AND EGRESS FOR EACH PURPOSE AT THE RIGHT LOCATION WHICH SUCH SERVICE LATERAL IS TO BE AS SHOWN ON THE MAP AND SHALL BE INSTALLED AT THE TIME OF RECORDING OF THIS PLAT.
8. ALL BUILDING PERMITS SHALL BE ISSUED ON PHASE I UNTIL ALL PUBLIC IMPROVEMENTS ARE INSTALLED.

ENGINEER AND ARCHITECT, INC.
 Consulting Engineers & Planners
 Dallas Texas

APPROVED FOR RECORDING
 H. J. Walker
 Notary Public
 in Texas
 on December 9, 1980

APPROVED FOR RECORDING
 COMMISIONER OF THE LANDS
 T. J. Walker
 on December 9, 1980

SANTOS SALDANA
 Hidalgo County, Texas

Notary Public

Notary Public

Notary Public

NOTICE
VARIANCE
SPECIAL EXCEPTION
FOR
THIS PROPERTY
ZBA2021-0072

2724

R6012911

TEXAS
UTV-DC10

TO BE WITHDRAWN

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

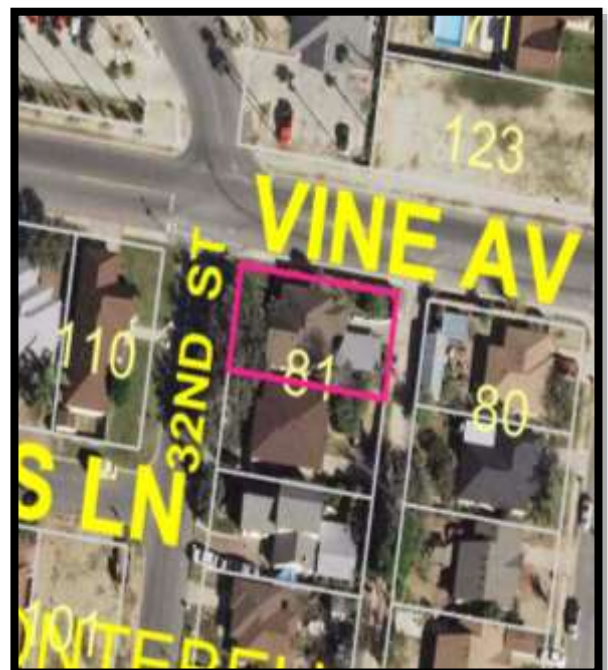
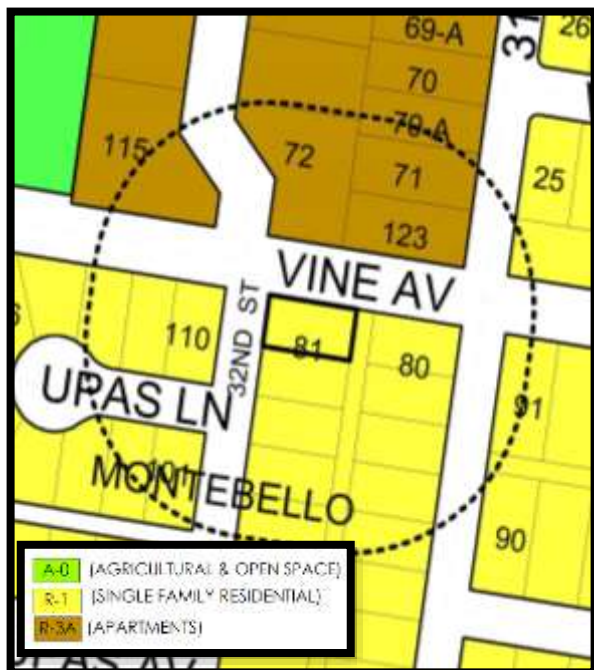
FROM: Planning Staff

DATE: December 29, 2021

SUBJECT: REQUEST OF DONATO PANTOJA FOR THE FOLLOWING VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE: TO ALLOW AN ENCROACHMENT OF 5.67 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING ANGLED ACCESSORY STRUCTURE AT LOT 81, MONTEBELLO UNIT NO. 3 SUBDIVISION, HIDALGO COUNTY, TEXAS; 2116 NORTH 32ND STREET. (ZBA2021-0060)

REASON FOR APPEAL:

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



PROPERTY LOCATION AND VICINITY:

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

BACKGROUND AND HISTORY:

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

ANALYSIS:

The variance request is to allow an encroachment of 5.67 ft. into the 10 ft. rear yard setback for an existing angled carport that measures approximately 23 ft. by 17.5 ft. The plat for the subdivision specifies a 10 ft. rear yard setback.

The existing carport is at an angle that only part of the structure is encroaching into the setback. The pole at the south corner near the south property line is meeting both the rear and side setback, moving north along the structure the distance to the property line starts decreasing, leaving at the northern post a distance of 5.67 ft. hence the variance request.

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

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

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

RECOMMENDATION:

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

ZBOA
12-1-21



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)

ZBA2021-0060

Project	Legal Description	<u>Lote 81. Montebello Subdivision</u>		
	Subdivision Name	<u>Unit H-3 McAllen TEX</u>		
	Street Address	<u>Montebello Subdivision</u>		
		<u>2116 W32. ST.</u>		
	Number of lots	<u>1</u>	Gross acres	
	Existing Zoning		Existing Land Use	<u>Residencia</u>
	Reason for Appeal (please use other side if necessary)	<u>INVADIENDO LAS</u>		
	<u>RESTRICCION DE 10' PARTE DE ATRAS.-</u>			
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + L. \$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>Donato Pantoja</u>	Phone	<u>956 225-6326</u>
	Address	<u>2116 W-32. ST</u>	E-mail	
	City	<u>McAllen</u>	State	<u>TEX</u>
			Zip	<u>78501</u>
Owner	Name	<u>Donato Pantoja</u>	Phone	<u>956. 225-6326</u>
	Address	<u>2116 W32 ST.</u>	E-mail	
	City	<u>McAllen.</u>	State	<u>TEX.</u>
			Zip	<u>78501</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>Donato Pantoja</u>	Date	
Office	Print Name	<u>Donato Pantoja</u>	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Authorized Agent
	Accepted by	<u>H.C.</u>	Payment received by	
		Date		

Rev 09/20

NOV 02 2021

BY:

CW



City of McAllen
Planning Department
REASON FOR APPEAL & BOARD ACTION

12-7-2021
12-1-21

*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:

A structural lt sound car Port was built 9 Years ago Recently I was advised by the city of McAllen that car Port was built over the easement and now am in a position to need to Court

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

Granting the variance will allow us to continue to use the car Port without the need to demolish the structure due to the overstep of the easement if not variance is granted it will

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

The car Port was built on my property in the back yard. My back yard is fenced with a lock gate and in no way affects surrounding neighbors. In addition it is structurally stable and has stood the test of time.

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

What is unique about this property is that we are a corner lot have had this structure for years now with no issues or complications. we have been McAllen residents for over 36 years. As long time residents, I am humbly asking

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date

(1)

this circumstances
without demolishing
the structure

(2)

have dire financial con-
sequences on me

(3)

hurricanes, high winds
and snow fall without any
issues not the structure
proper or unknown

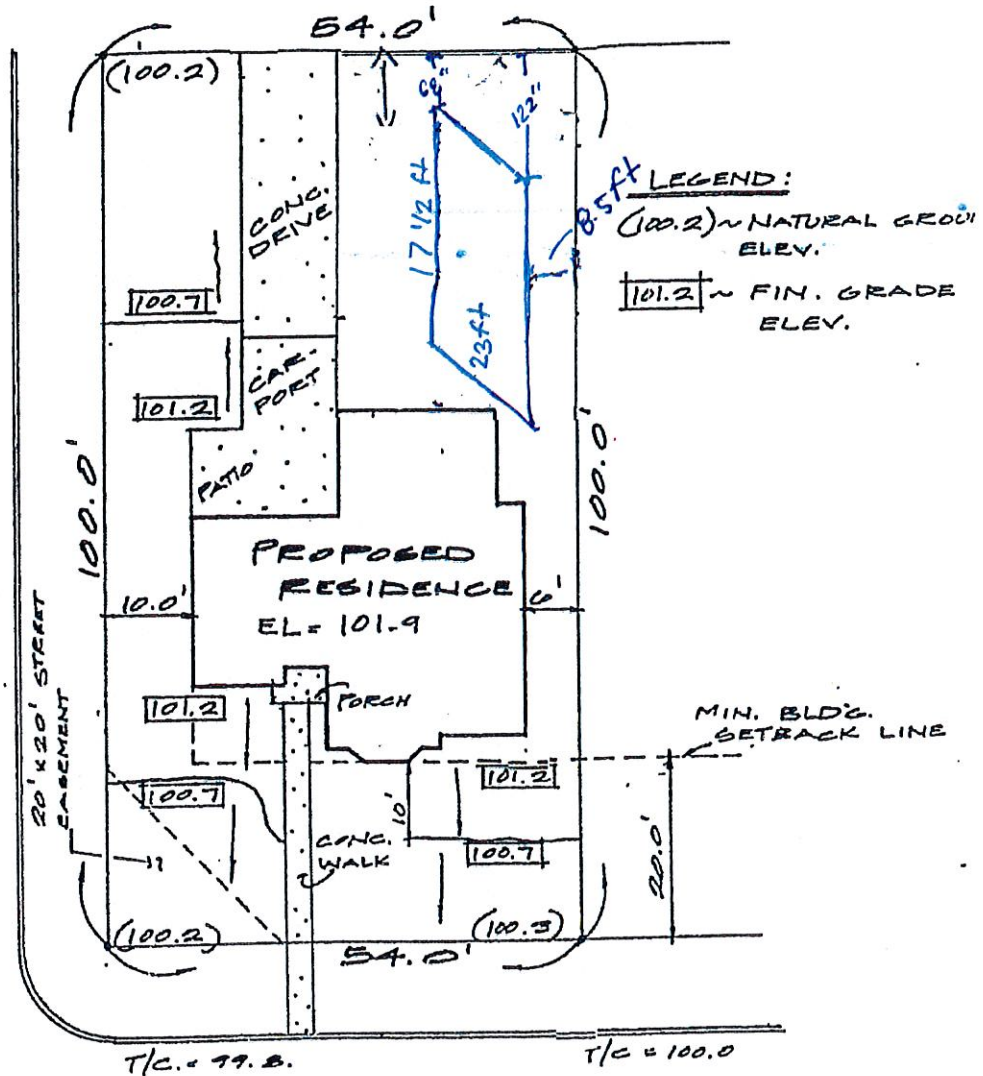
(4)

annual consideration
for this variance

1" = 20'

20' ALLEY

VINE AVE.



N. 32 ND. ST.

PLOT PLAN

LEGAL:

LOT 81, MONTEBELLO SUBDIVISION
UNIT NO. 3, MCALLEN, TEXAS;

CURVE DATA

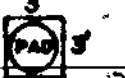
CURVE	RADIUS	ANGLE	ARC	TAN	CHORD
A	30'	46°34'03"	24.38'	12.91'	23.72'
B	30'	26°04'49"	22.76'	11.56'	22.56'
C	50'	55°14'15"	48.20'	26.16'	46.38'
D	50'	55°14'59"	48.21'	26.17'	46.37'

NOTES:

- MINIMUM FLOOR ELEVATION SHALL BE 15" ABOVE TOP OF CURB MEASURED AT FRONT CENTER OF LOT.
- FRONTYARD SET-BACK SHALL BE A MINIMUM OF 20 FT. EXCEPT AT CUL-DE-SACS IT SHALL BE 10 FT.
- SIDEYARD SET-BACK SHALL BE 6 FT. MINIMUM EXCEPT SIDEYARDS ADJACENT TO STREET SHALL BE 10 FT.
- REARYARD SET-BACK SHALL BE 10 FT. MINIMUM.
- UNLESS SHOWN OTHERWISE ALL SIDEWALKS ARE 4 FT. WIDE AND LOCATED WITH INNER EDGE OF WALK ON PROPERTY LINE. SIDEWALK ON WEST SIDE OF N. 31st STREET.



6'x6' EASEMENT TO CENTRAL POWER & LIGHT CO. FOR TRANSFORMER SPACE. SPECIFIC LOCATION SHOWN IN MAP BY THIS SYMBOL.



3'x3' EASEMENT TO CENTRAL POWER & LIGHT CO. FOR PEDESTAL SPACE. SPECIFIC LOCATION SHOWN IN MAP BY THIS SYMBOL.

NOTE: CENTRAL POWER & LIGHT CO. IS HEREBY GRANTED AN EASEMENT & RIGHT-OF-WAY ON EACH LOT IN SAID SUBDIVISION FOR AN UNDERGROUND ELECTRIC SERVICE LATERAL TOGETHER WITH THE INGRESS & EGRESS FOR SUCH PURPOSE AT THE RIGHT LOCATION WHERE SUCH SERVICE LATERAL IS TO BE OR IS INSTALLED & MAINTAINED FROM TIME TO TIME.

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

- A 10 FT. x 10 FT. CORNER CLIP FOR STREET EASEMENT IS HEREBY RESERVED FROM ALL LOTS AT ALL INTERSECTIONS OF STREETS AND ALLEYS.

APPROVED FOR RECORDING
BY
COMMISSIONERS' COURT
This 20 day of October 1981
SANTOS SALDANA, County Clerk
Hidalgo County, Texas
Santos Saldana
County Surveyor

Recorded in Book 22 Page 19
of the map records of Hidalgo
County, Texas
Charles L. Malden
County Surveyor

MAP OF MONTEBELLO SUBDIVISION UNIT No. 3

McALLEN, TEXAS.

BEING A SUBDIVISION OF 7.94 ACRES OF LAND
OUT OF LOT 142,
LA LOMITA IRRIGATION & CONST. CO'S. SUBDIVISION,
OF PORCIONES 61, 62 & 63, HIDALGO COUNTY, TEXAS.

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

SCALE: 1"=100' DATE: 9/26/78
REVISED 10-81

APPROVED
FOR RECORDING
Hidalgo Co. Right of Way Dept.
By *John Walker*
Date 10-20-81

STATE OF TEXAS:
COUNTY OF HIDALGO:

WE THE UNDERSIGNED, OWNERS OF THE LAND SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE "MONTEBELLO SUBDIVISION UNIT No. 3" SUBDIVISION TO THE CITY OF McALLEN, TEXAS, AND WHOSE NAMES ARE SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATER COURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES THEREON SHOWN. FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

MONTEBELLO DEVELOPERS, Inc.

Felipe V. Ramon
President FELIPE V. RAMON

Antonio Salinas Jr.
Secretary ANTONIO SALINAS, JR.

STATE OF TEXAS:
COUNTY OF HIDALGO:

BEFORE ME, THE UNDERSIGNED, AUTHORITY, ON THIS DAY PERSONALLY APPEARED THE ABOVE NAMED OWNERS, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 22nd DAY OF September, 1978.

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

STATE OF TEXAS:
COUNTY OF HIDALGO:

I, THE UNDERSIGNED, A REGISTERED PUBLIC SURVEYOR 1599 IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

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

THIS PLAT APPROVED BY THE HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 ON THE 25th DAY OF June, 1981.

ATTEST: *John Walker*
COUNTY CLERK

Plinio C. Medina
REGISTERED PUBLIC SURVEYOR
McALLEN, TEXAS

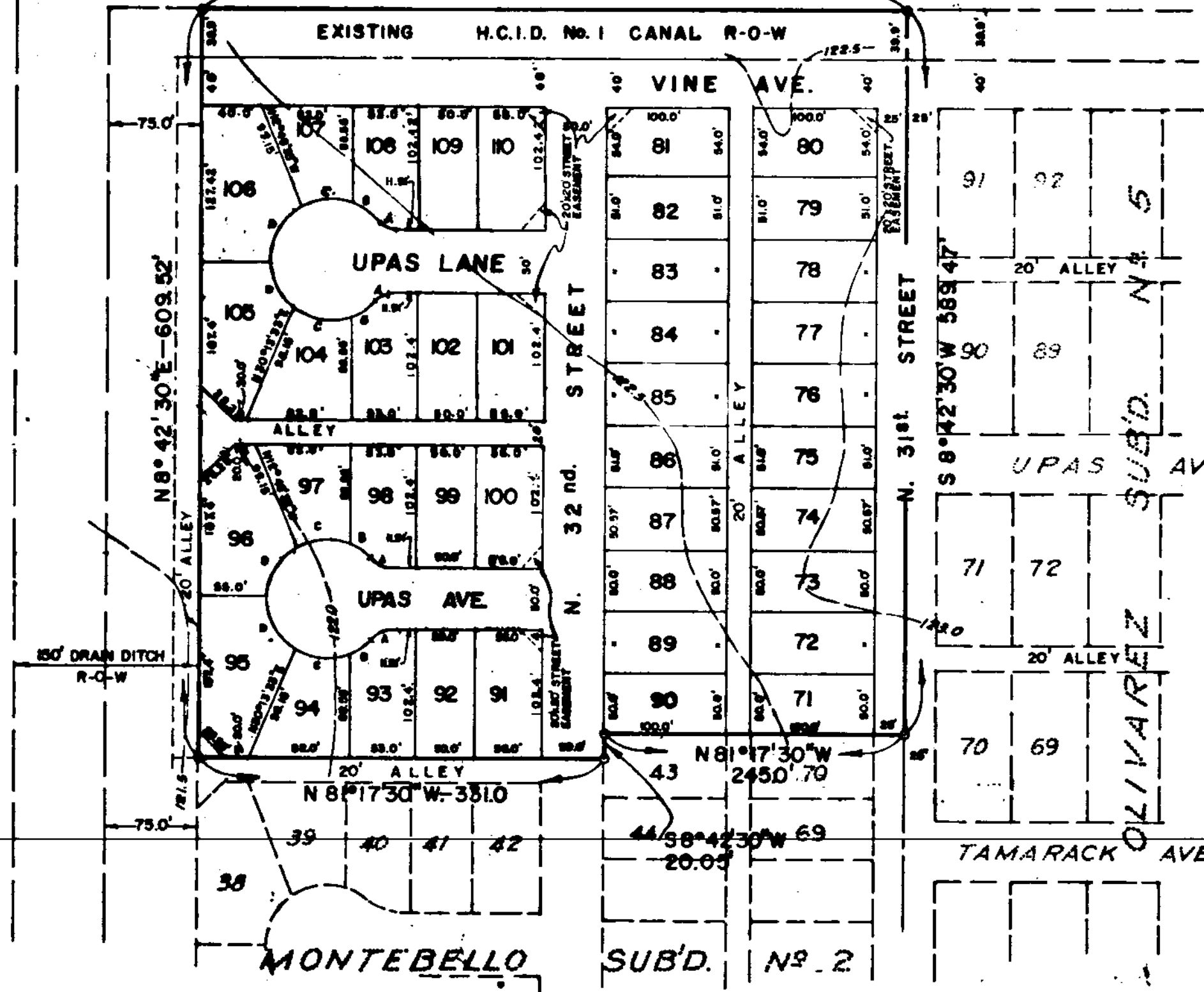
Charles L. Malden
COUNTY SURVEYOR

John Walker
COUNTY CLERK

LOT 135
& CONST. CO'S. SUBD.

S 81°17'30"E - 576.0'

LOT 141
LA LOMITA IRRIG.



MAP
OF

MONTEBELLO SUBDIVISION
UNIT No. 3

McALLEN, TEXAS.

BEING A SUBDIVISION OF 7.94 ACRES OF LAND
OUT OF LOT 142,
LA LOMITA IRRIGATION & CONST. CO'S. SUBDIVISION,
OF PORCIONES 61, 62 & 63, HIDALGO COUNTY, TEXAS.

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

SCALE: 1"=100' DATE: 9/26/78
REVISED 10-81

APPROVED
FOR RECORDING
Hidalgo Co. Right of Way Dept.
By *John Walker*
Date 10-20-81

STATE OF TEXAS:
COUNTY OF HIDALGO:

WE THE UNDERSIGNED, OWNERS OF THE LAND SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE "MONTEBELLO SUBDIVISION UNIT No. 3" SUBDIVISION TO THE CITY OF McALLEN, TEXAS, AND WHOSE NAMES ARE SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATER COURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES THEREON SHOWN. FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

MONTEBELLO DEVELOPERS, Inc.

Felipe V. Ramon
President FELIPE V. RAMON

Antonio Salinas Jr.
Secretary ANTONIO SALINAS, JR.

STATE OF TEXAS:
COUNTY OF HIDALGO:

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ATTEST: *John Walker*
COUNTY CLERK

Plinio C. Medina
REGISTERED PUBLIC SURVEYOR
McALLEN, TEXAS

Charles L. Malden
COUNTY SURVEYOR

John Walker
COUNTY CLERK



NOTICE
VARIANCE
FOR
THIS PROPERTY
ZBA2021-0060
CITY OF MCALLEN PLANNING DEPT
MCALLEN, TEXAS
WWW.MCALLEN.NET

2176



TO REMAIN TABLED UNTIL
JANUARY 19, 2022

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

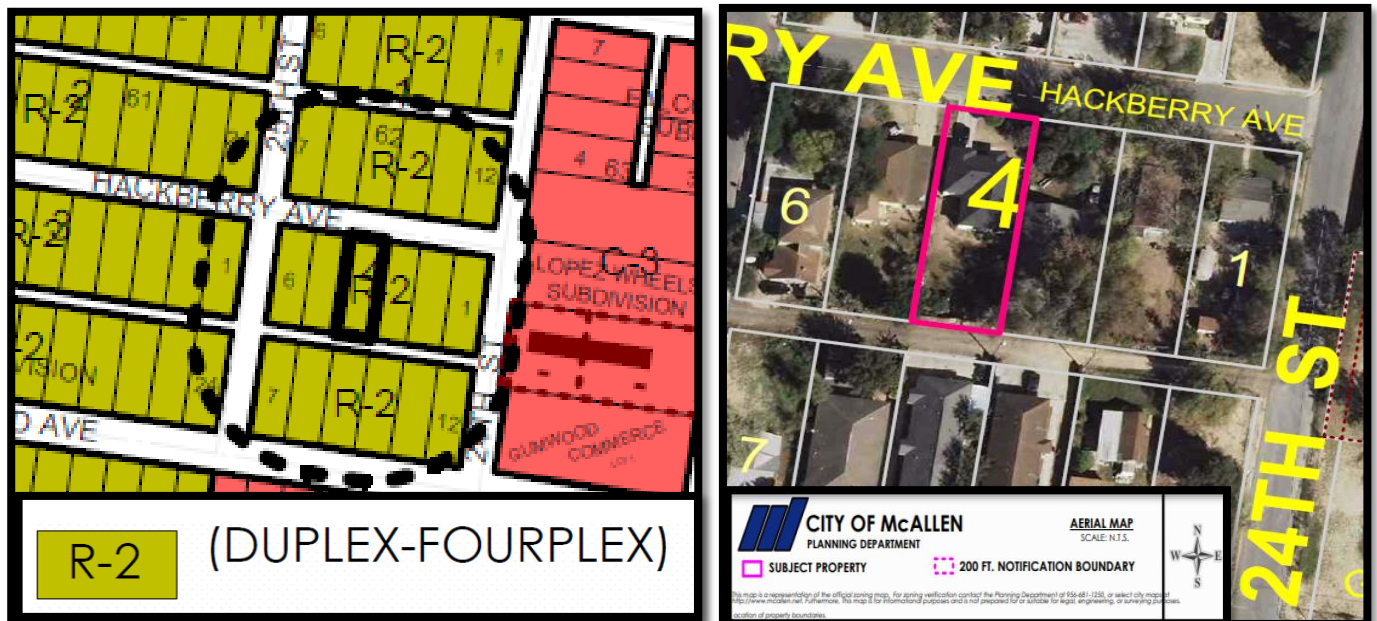
FROM: Planning Staff

DATE: December 21, 2021

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

REASON FOR APPEAL:

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



PROPERTY LOCATION AND VICINITY:

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

BACKGROUND AND HISTORY:

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

ANALYSIS:

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

Variance request #2 is to allow an encroachment of 6 feet into the 6 feet side yard setback along the east side of the subject property. The property to the east of the subject property (Lot 1, Block 4), is vacant. A cedar fence obscures and buffers the view of the rear yard and the wooden canopy. A 20 feet alley is located along the rear property that provides additional separation for public safety purposes to the residence to the south.

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

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

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

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

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

RECOMMENDATION:

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

ZBA-01/05/22

ZBA2021-606A



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

Colonia del Norte Lote 4 Block 4

Subdivision Name

Colonia del Norte

Street Address

2415 Hakberry Ave

Number of lots

1

Gross acres

Existing Zoning

R2

Existing Land Use

Casa

Reason for Appeal (please use other side if necessary)

Encroachment of 10 ft into the 10 ft rear yard setback and 6 ft into the 6 ft side yard. Setback for a porch measuring 12 ft by 4 ft.

☐ \$300.00 non-refundable filing fee☐ \$50.00 Recording Fee for Special Exception (carport)☒ Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

Applicant

Name

Alicia Perez

Phone

956 616-8726

Address

2415 Hakberry Ave

E-mail

Ave

City

McAllen

State

Tex

Zip

78501

Owner

Name

Alicia Perez

Phone

956 616-8726

Address

2415 Hakberry Ave

E-mail

Ave

City

McAllen

State

Tex

Zip

78501

Authorization

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

☐ Yes☒ No

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

Signature

Alicia Perez

Date

11-19-2021

Print Name

Alicia Perez

☒ Owner☐ Authorized Agent

Office

Accepted by _____

Payment received by _____

Date

NOV 19 2021

Rev 10/18

Initial:

AP

KS



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:

Para mi Perros - por que se ponen bien Caliente en el verano. Muy Frío Lo puse este año cuando estaba la canícula Fuerte 110 tem

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

Pongo Cajas Taulas tengo cosas / La pilla al duermen mis Mascotas

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

No tengo Problemas Con Nadie
No tengo vecinos a los lados

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

Subdivision es Vieja Al Callejón
Atras de la Cerca

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date

South

5 inch

Fence

Back Door

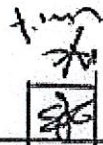
8 inch

14 ft

12 ft



4 ft



Fence

West

House

Fence

Garage

Fence

Door

Front Porch

Sidewalk

Driveway

Public Sidewalk

ENTERED

NOV 19 2021

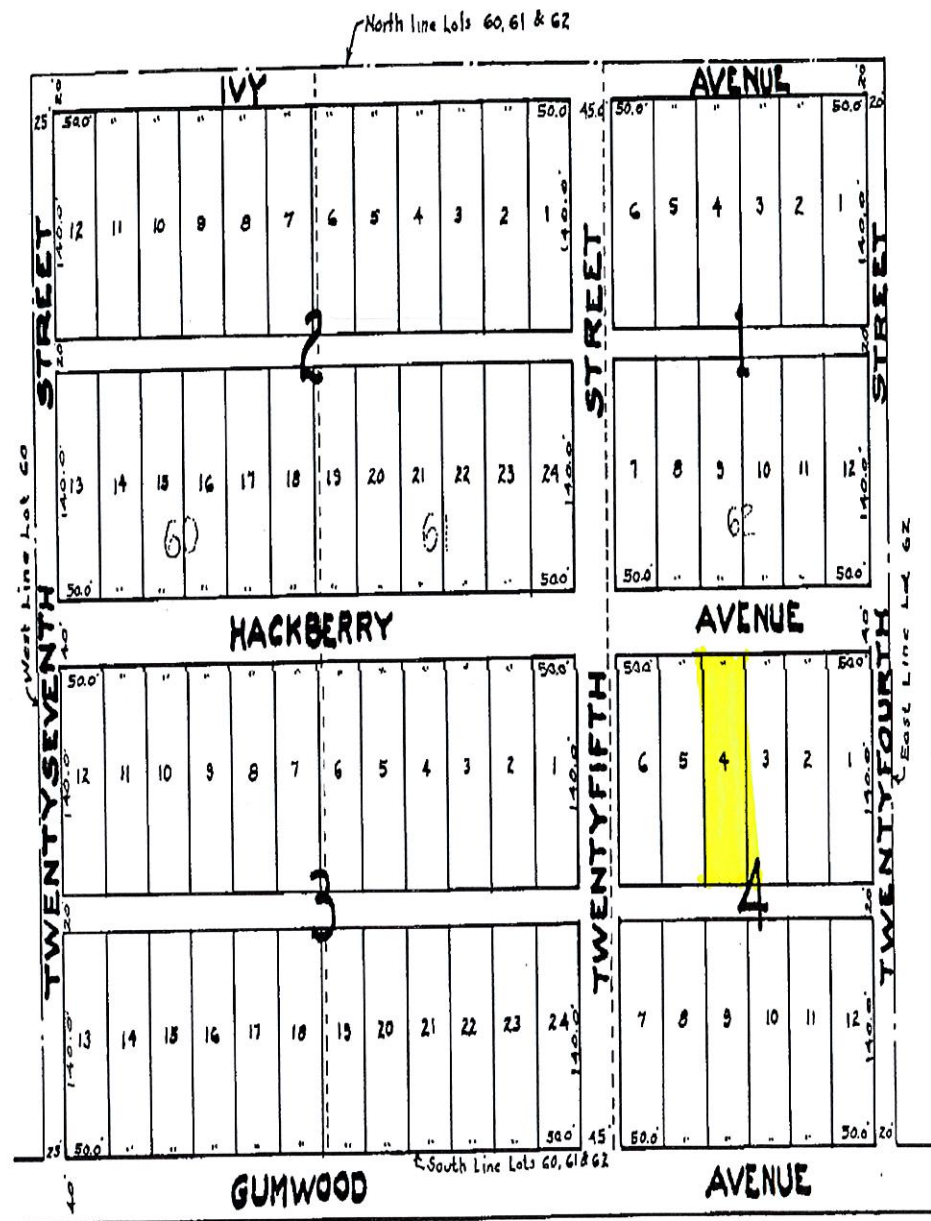
North

Hackberry Ave.

Initial:

AK

INS



MAP OF COLONIA DEL NORTE





NOTICE
VARIANCE
FOR
THIS PROPERTY
ZBA2021-0069

7419

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: December 29, 2021

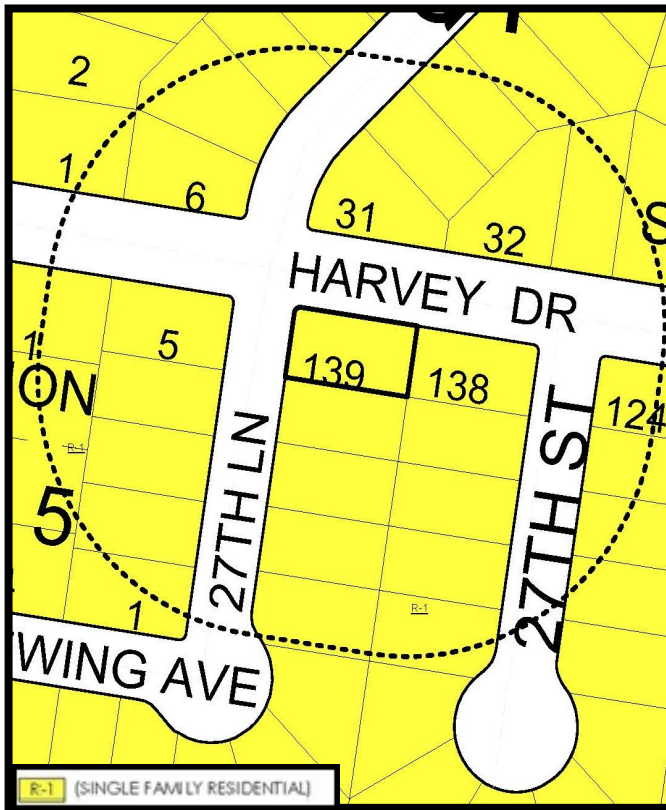
SUBJECT: REQUEST OF MARCY EDWARDS FOR THE FOLLOWING SPECIAL EXCEPTION AND VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE: TO ALLOW: 1) AN ENCROACHMENT OF 20 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING 20 FT. BY 22 FT., 2) AN ENCROACHMENT OF 1 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE SOUTH PROPERTY LINE FOR AN EXISTING METAL CARPORT MEASURING 20 FT. BY 22 FT., 3) AN ENCROACHMENT OF 9.5 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR AN EXISTING PORCH CANOPY MEASURING 9 FT. BY 17.1 FT., 4) AN ENCROACHMENT OF 10 FT. INTO THE 10 FT. SIDE YARD SETBACK ALONG THE NORTH PROPERTY LINE FOR AN EXISTING PORCH CANOPY MEASURING 9.7 FT. BY 73 FT., 5) AN ENCROACHMENT OF 2.9 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING PORCH CANOPY MEASURING 8 FT. BY 40 FT., 6) AN ENCROACHMENT OF 1 FT. INTO THE 6 FT. SIDE YARD SETBACK ALONG THE SOUTH PROPERTY LINE FOR AN EXISTING PORCH CANOPY MEASURING 14 FT. BY 11.3 FT., 7) AN ENCROACHMENT OF 6 FT. INTO THE 6 FT. SIDE YARD SETBACK FOR AN EXISTING STORAGE BUILDING MEASURING 8.2 FT. BY 10.2 FT. 8) TO NOT REQUIRE A 5 FT. SEPARATION FOR AN ACCESSORY BUILDING TO THE MAIN BUILDING FOR AN EXISTING STORAGE BUILDING MEASURING 8.2 FT. BY 10.2 FT., AT LOT 139, HARVEY TERRACE SUBDIVISION UNIT 2- PHASE I & II, HIDALGO COUNTY, TEXAS; 2728 NORTH 27TH LANE. (ZBA2021-0068)

REASON FOR APPEAL:

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

PROPERTY LOCATION AND VICINITY:

The subject property is located on the southeast corner of the intersection of North 27th Lane and Harvey Drive. The corner lot has 50 feet of frontage along North 27th Lane and a depth of 100 feet at its deepest point for a lot area of approximately 5,000 square feet. The property is zoned R-1 (single family residential) District. The surrounding land uses are single-family residences.



BACKGROUND AND HISTORY:

Harvey Terrace Unit 2 Subdivision Phase 1 & 2 was recorded on March 9, 1981. The plat specifies a 20-foot front yard setback, 10-foot rear yard setback and a 6-foot side yard setback, except for corner lots which shall be 10 feet. Hidalgo County Appraisal District records also indicate the structures were built from 2006 to 2010, however the structures don't appear in Google Earth aerial images until 2008 and 2009. The Building and Inspection Department issued a stop work order on April 08, 2021 for a carport built without a building permit. An application for a special exception and variance requests was submitted to the Planning Department on November 18, 2021 for an existing carport and front, side and rear yard encroachments.

ANALYSIS:

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

The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view of properties in a subdivision. However, a site visit by the Planning Department staff revealed there are existing carports built around the Harvey Terrace Unit 2 Subdivision Phase 1 & 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION:

Staff recommends approval of the special exception request and disapproval of variance request 3-8 as variances go with the land and approval would allow for future construction on the requested footprint. However, the Board may take into consideration financial cost of compliance for variance request 3 through 6 and that compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement for request 7 and 8; If the Board grants approval of the request it should be limited to the footprint shown on the submitted site plan.

ZBDA-1/5/22

ZBA2021-0068



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

HARVEY TERRACE ut 2 PH 122 Lot 139

HARVEY TERRACE ut 2

Subdivision Name

HARVEY Terrace

Street Address

2728 N. 27 LANE McALLEN, TX 78501

Number of lots

1

Gross acres

Existing Zoning

R1

Existing Land Use

Residential

Reason for Appeal (please use other side if necessary)

Request Encroachment
for existing structures on rear & front & side
and existing carport
☒ \$300.00 non-refundable filing fee + ☐ \$50.00 Recording Fee for Special Exception (carport)

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

Applicant

Name

MARCY EDWARDS

Phone

956-624-7311

Address

2728 N. 27 LANE

E-mail

marcy.edwards@yahoo.com

City

McALLEN, TX

State

TX

Zip

78501

Owner

Name

IRIS ORTIZ

Phone

254-778-9272

Address

2018 Buckskin TR.

E-mail

iris.ortiz9272@yahoo.com

City

Temple

State

TX

Zip

76502

Authorization

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

☐ Yes

☐ No

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

Signature

MARCY EDWARDS

Date

11-19-21

Print Name

MARCY EDWARDS

☐ Owner

☒ Authorized Agent

Office

Accepted by _____

Payment received by _____

Date

ENTERED

Rev 10/18

NOV 18 2021

Initial: _____



City of McAllen
Planning Department
REASON FOR APPEAL & BOARD ACTION

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

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

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

Reason for Appeal

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: **THIS IS A**

CORNER LOT SO WE HAD NO PORCH UP FRONT! HAD FOSTER KIDS FOR 13 YRS AND THEY COULD PLAY OUTSIDE SAFE FROM WEATHER

2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner: **CARPOT WAS BUILT FOR PROTECTION OF CAR DURING**

STORM - PORCH WAS DONE CAUSE LIGHT BILL WAS \$400 AND PORCH CUT IT DOWN TO LESS THAN \$200. MY HUSBAND WAS HANDICAP AND WOULD SIT IN PORCH IN SHADE

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:

STRUCTURES ARE NOT CLOSE TO NEIGHBORS ONLY ONE SIDE HAS NEIGHBORS OTHER IS (CORNER LOT) STREET

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

CARPOT PROTECTED WINDOWS AND CAR DURING HAIL STORM. NO DAMAGE TO HOUSE OTHER THAN ROOF OR CARS LIKE NEIGHBORS HAD.

Board Action

Chairman, Board of Adjustment
Signature

Date

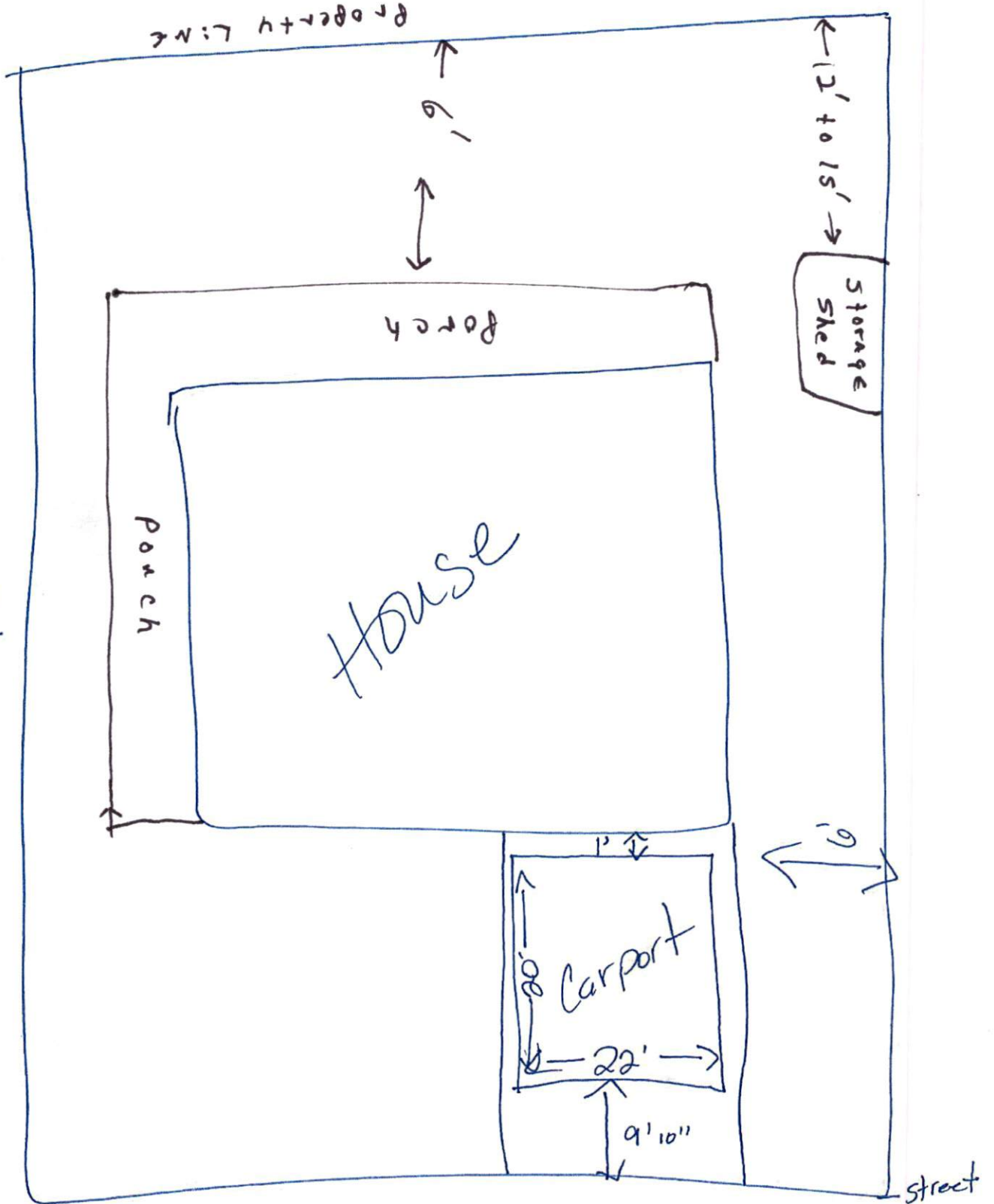
Mario Escamilla, Jr.

From: iris ortiz <irisortiz9272@yahoo.com>
Sent: Wednesday, December 29, 2021 2:31 PM
To: Mario Escamilla, Jr.
Subject: Request for variance

I, Iris Ortiz, owner of property at 2728 North 27th Lane gives Marcy Edwards permission to apply for variance of exception at 2728th Lane for carport, ,porch , canopy and storage building.

Thank You
Iris Ortiz
254-778-9272

RECEIVED
Date: 12/29/21



Harvey St
15

N 27th

Front

ENTERED

NOV 18 2021

Initial:

an



Harvey Dr

N 27th Ln

N 27th Ln

#3

#4

#5

#1

#2

#6

#7 #8

Special Exception Request #1,#2



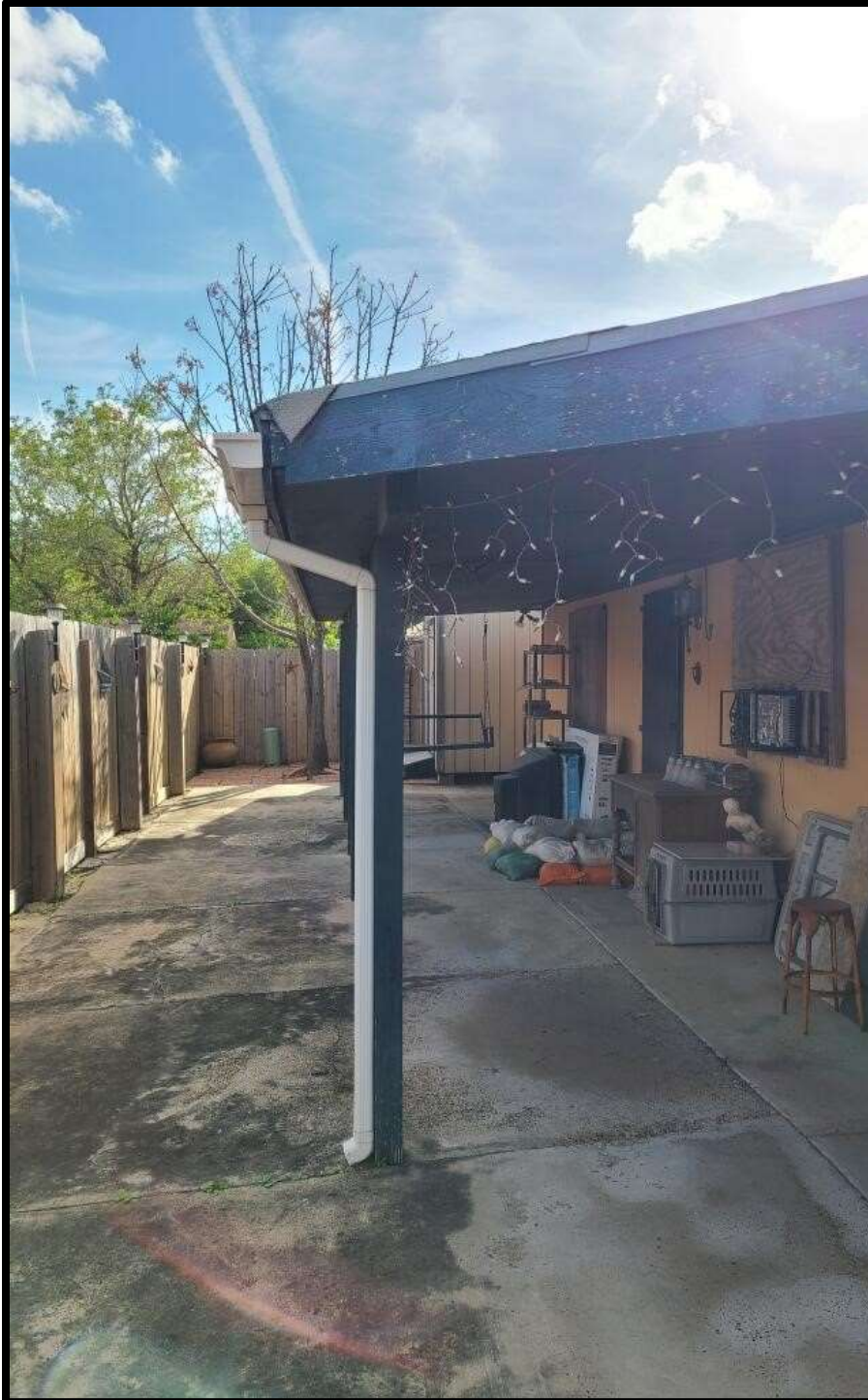
Variance Request #3



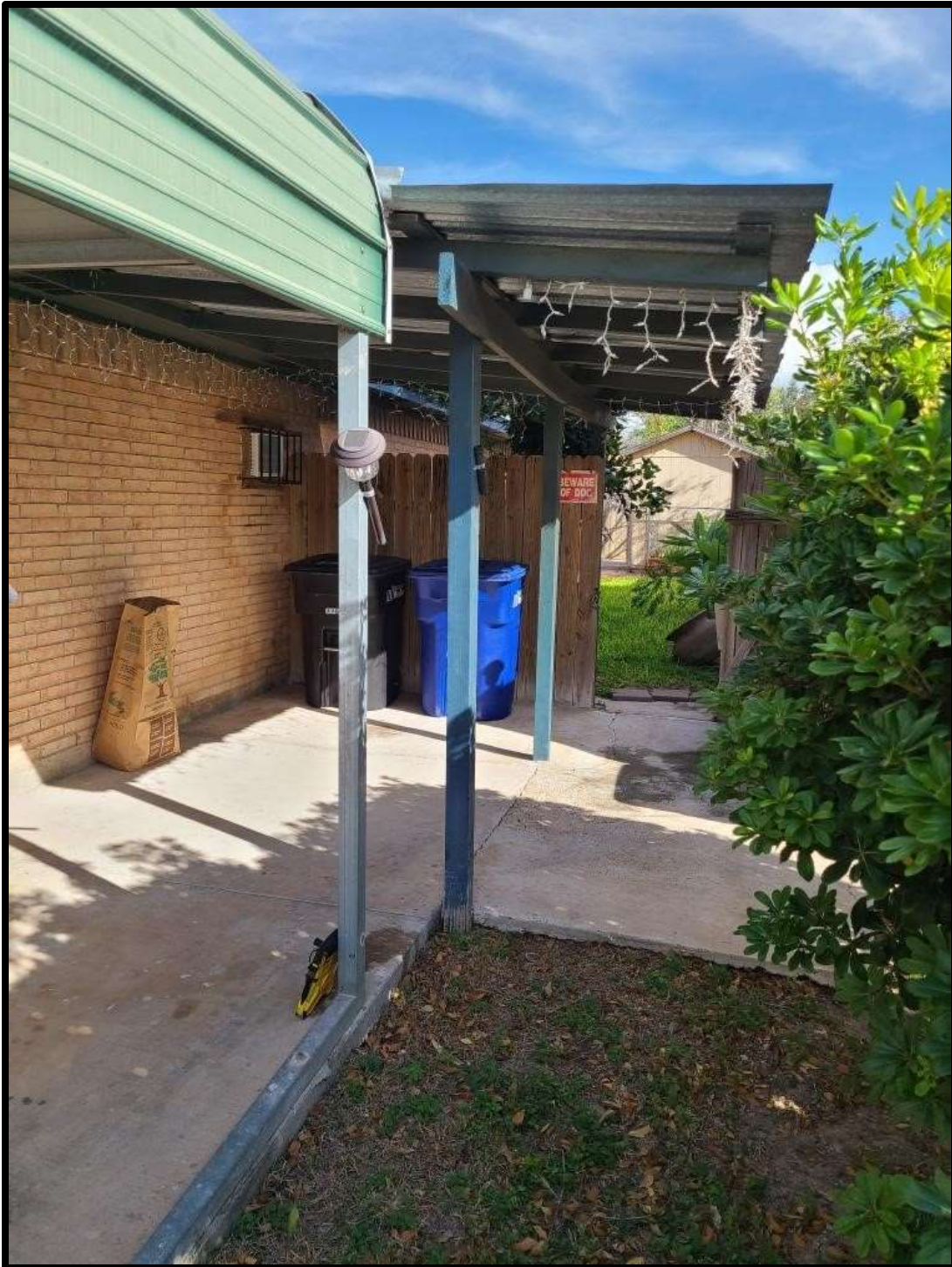
Variance Request #4



Variance Request #5



Variance Request #6







NOTICE
VARIANCE
SPECIAL EXCEPTION
FOR
THIS PROPERTY
ZBA2021-0068
CITY OF McALLEN PLANNING DEPT
98-081-120
WWW.MCALLEN.TX

★ 2728

★ 2728

Planning Department

Memo

TO: Zoning Board of Adjustment & Appeals

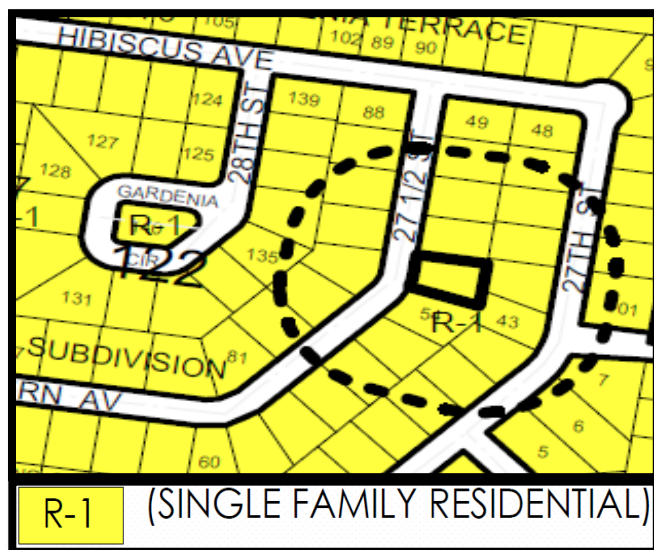
FROM: Planning Staff

DATE: December 27, 2021

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

REASON FOR APPEAL:

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



PROPERTY LOCATION AND VICINITY:

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

BACKGROUND AND HISTORY:

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

ANALYSIS:

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

Variance requests #1 and #2 is to allow an encroachment of up to 3.92 feet into the 6 feet south side yard setback and 5 feet electrical easement for an existing wooden storage shed measuring 12 feet by 12 feet. The encroachment at the rear setback will encroach up to 7.92 feet into the 10 feet rear yard setback and 10 feet utility easement for an existing wooden storage shed measuring 12 feet by 12 feet. If the existing wooden storage shed building is to remain at its current location, the easement abandonment process needs to be undertaken. The existing wooden storage shed are used to store tools, household items, and gardening supplies

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

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

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

The size of the existing house, the 10 feet rear yard setback, the 6 feet side yard setbacks, and the separation distance requirement limit the amount of space for any accessory structures to be placed

in compliance with setbacks. There is a large tree on the rear of the subject property which hinders relocation of the accessory buildings out of the setbacks.

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

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

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

RECOMMENDATION:

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

260A. 1/5/22

26A2021-0070



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>Gardenia Terrace Unit 2 Lot 53</u>		
	Subdivision Name	<u>Gardenia Subdivision</u>		
	Street Address	<u>3300 N. 27 1/2 St.</u>		
	Number of lots	<u>1</u>	Gross acres	
	Existing Zoning	<u>R1</u>	Existing Land Use	<u>Single family</u>
Applicant	Reason for Appeal (please use other side if necessary)	<u>Site and rear yard encroachment for storage and hobby work area and 5' separation</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			
	Name	<u>Pete Ramirez (Pedro)</u>	Phone	<u>956-821-2359</u>
	Address	<u>3300 N. 27 1/2 St.</u>	E-mail	
Owner	City	<u>McAllen</u>	State	<u>TX</u>
	Zip	<u>78501</u>		
	Name	<u>(Same)</u>	Phone	
	Address		E-mail	
	City		State	
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?			
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.			
	Signature	<u>[Signature]</u>	Date	
	Print Name	<u>Pedro Ramirez</u>	<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent	
Office	Accepted by		Payment received by	
	Date			

ENTERED

NOV 22 2021

Initial: AM

CS



City of McAllen
Planning Department
REASON FOR APPEAL & BOARD ACTION

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses)</p> <p>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</p> <p>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</p> <p>1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:</p> <p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p>3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:</p> <p>4. Describe special conditions that are unique to this applicant or property:</p>
	<p>Storage room & small ^{outside} basement roof were a gift from my son to me. Like me he did not ^{do} do this knowing of all the requirements and intentionally violated them. My son</p>
	<p>my neighbors are good friends and we have a positive relationship. At ^{no} any time would I do anything that ^{would} would be detrimental to them.</p>
	<p>As a 100% disabled Combat Veteran I feel that my home is my only place of ^{peace} peace. I lost my only son and have no other family. My home which I worked</p>
Board Action	<p>So hard for is everything to me. I find my comfort and security there. Having been homeless at the age of 14, I know the value of a home of my own.</p> <p>Chairman, Board of Adjustment Signature _____</p> <p>Date _____</p>

was murdered during a home invasion and the areas
have such a strong sentimental value besides use for me.
I totally respect the City of McAllen provisions and
am asking that I be allowed to maintain the areas.
I have cooperatively worked with the Planning Department
to find a good resolution.

6. MINIMUM FLOOR ELEVATION SHALL BE AS SHOWN ON EACH LOT.

2. SIDEYARD SET-BACKS SHALL BE 6 FT. MINIMUM EACH SIDE UNLESS OTHERWISE SHOWN.

NOTE 3: NO CONSTRUCTION SHALL BE PERMITTED ON LOTS 43 THRU 48, INCLUSIVE, AND 89 THRU 101, INCLUSIVE, UNTIL SANITARY SEWER, WATER, PAVING, DRAINAGE AND OTHER FACILITIES ARE INSTALLED BY OWNER IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE CITY OF McALLEN, TEXAS, IN FORCE AT THE TIME THE CONSTRUCTION IS TO BE PERFORMED.

FILED FOR RECORD THIS DATE

At 3 o'clock M

JUL 11 1964

SANTOS SALDANA

County Clerk, Middlesex County. T889-17'30"W
By Deputy 5.0'

LEASEMENT LINE

6' X 6' EASEMENT TO CENTRAL POWER & LIGHT CO.
FOR TRANSFORMER SPACE, SPECIFIC LOCATION SHOWN
IN MAP BY THIS SYMBOL.....(F)

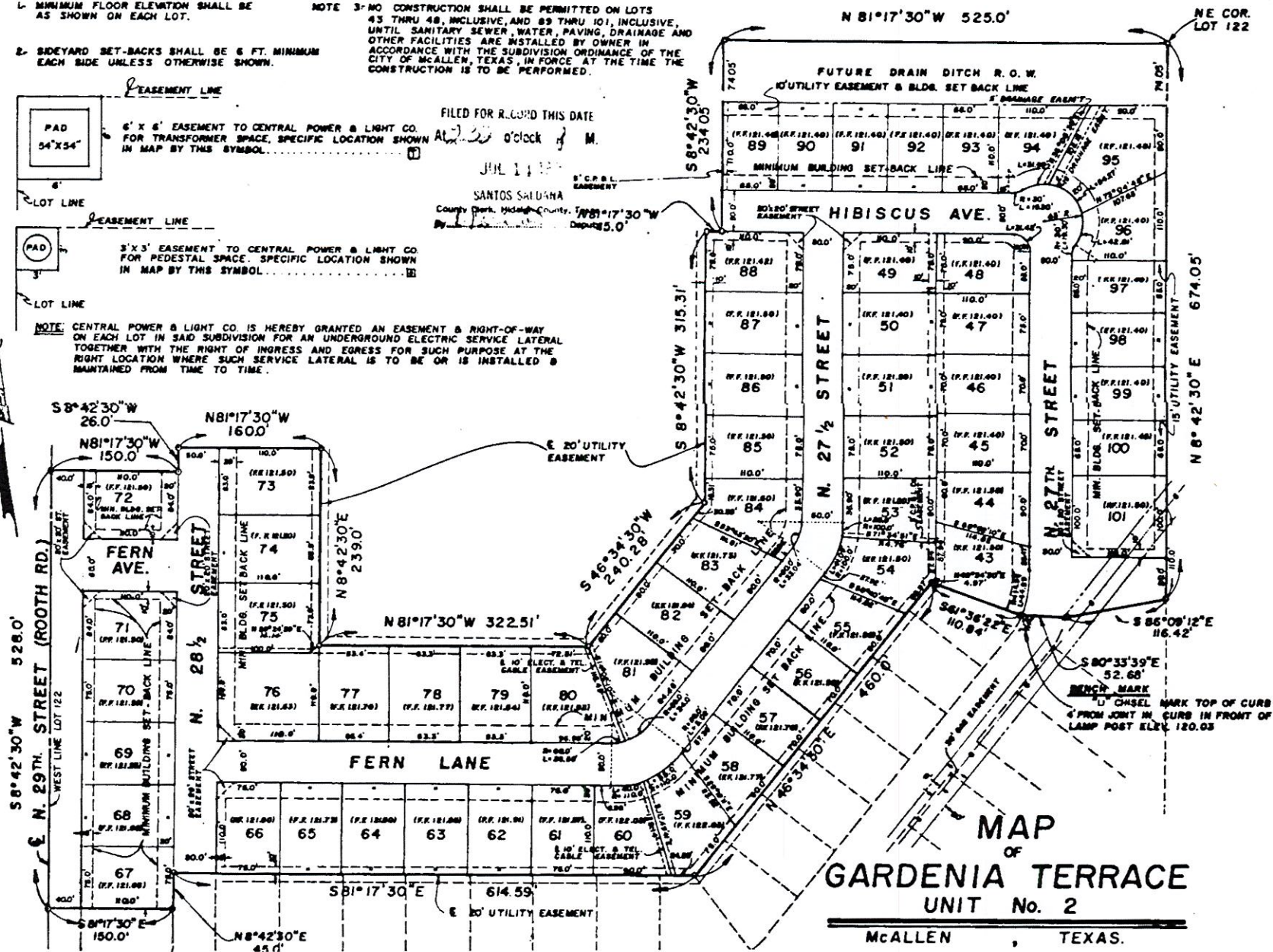
LOT LINE

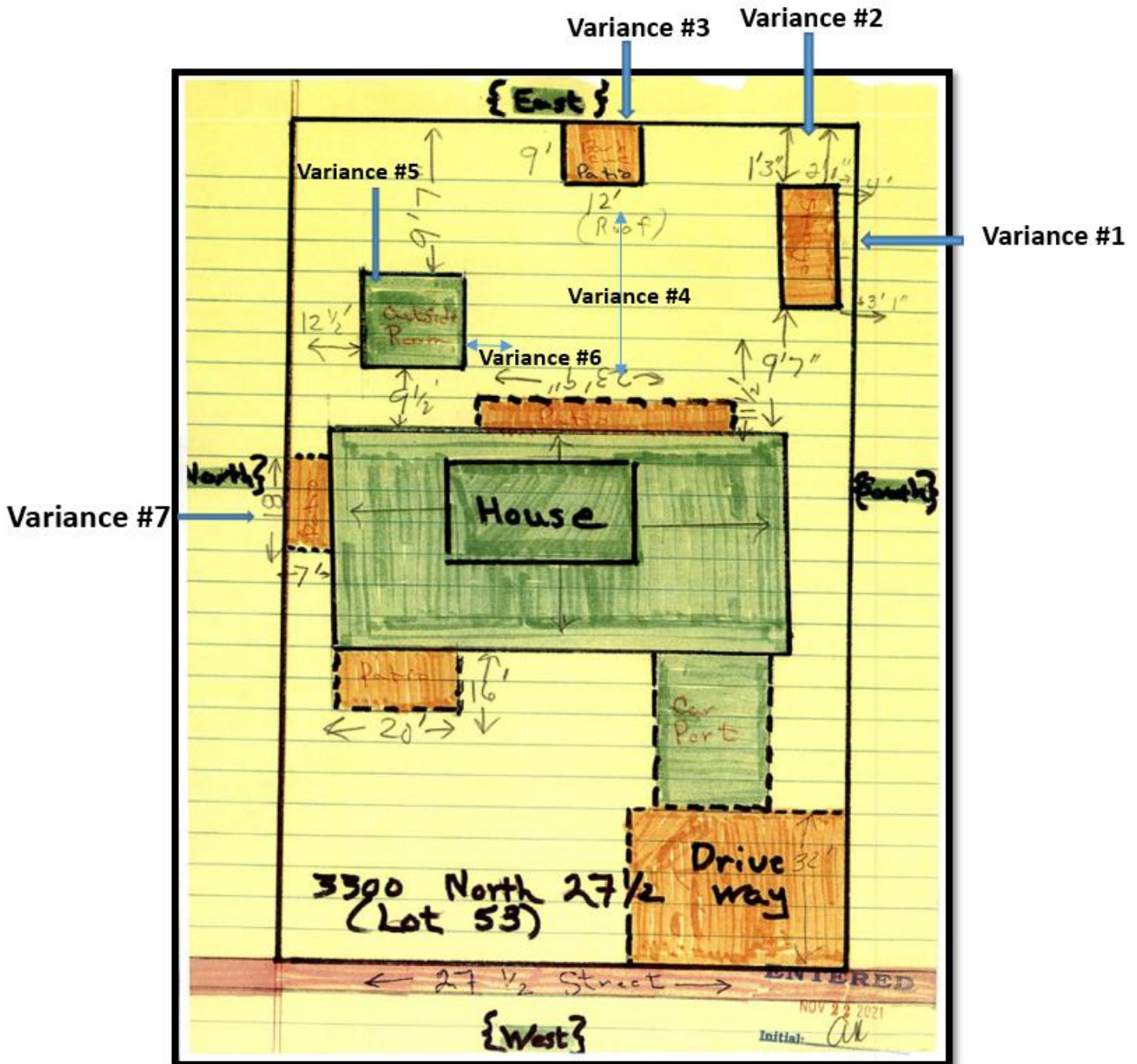
LEASEMENT LINE

3'X3' EASEMENT TO CENTRAL POWER & LIGHT CO.
FOR PEDESTAL SPACE. SPECIFIC LOCATION SHOWN
IN MAP BY THIS SYMBOL

LOT LINE

NOTE: CENTRAL POWER & LIGHT CO. IS HEREBY GRANTED AN EASEMENT & RIGHT-OF-WAY ON EACH LOT IN SAID SUBDIVISION FOR AN UNDERGROUND ELECTRIC SERVICE LATERAL TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR SUCH PURPOSE AT THE RIGHT LOCATION WHERE SUCH SERVICE LATERAL IS TO BE OR IS INSTALLED & MAINTAINED FROM TIME TO TIME.







Subject property:
3300 North 27th ½ St.



Variance #1

Existing wooden storage shed



Variance #2

Existing wooden storage shed



Variance #3

Existing wooden hobby-related covered patio



Variance #4

Existing wooden hobby-related covered patio



Variance #5

Existing detached accessory wooden structure



Variance #6

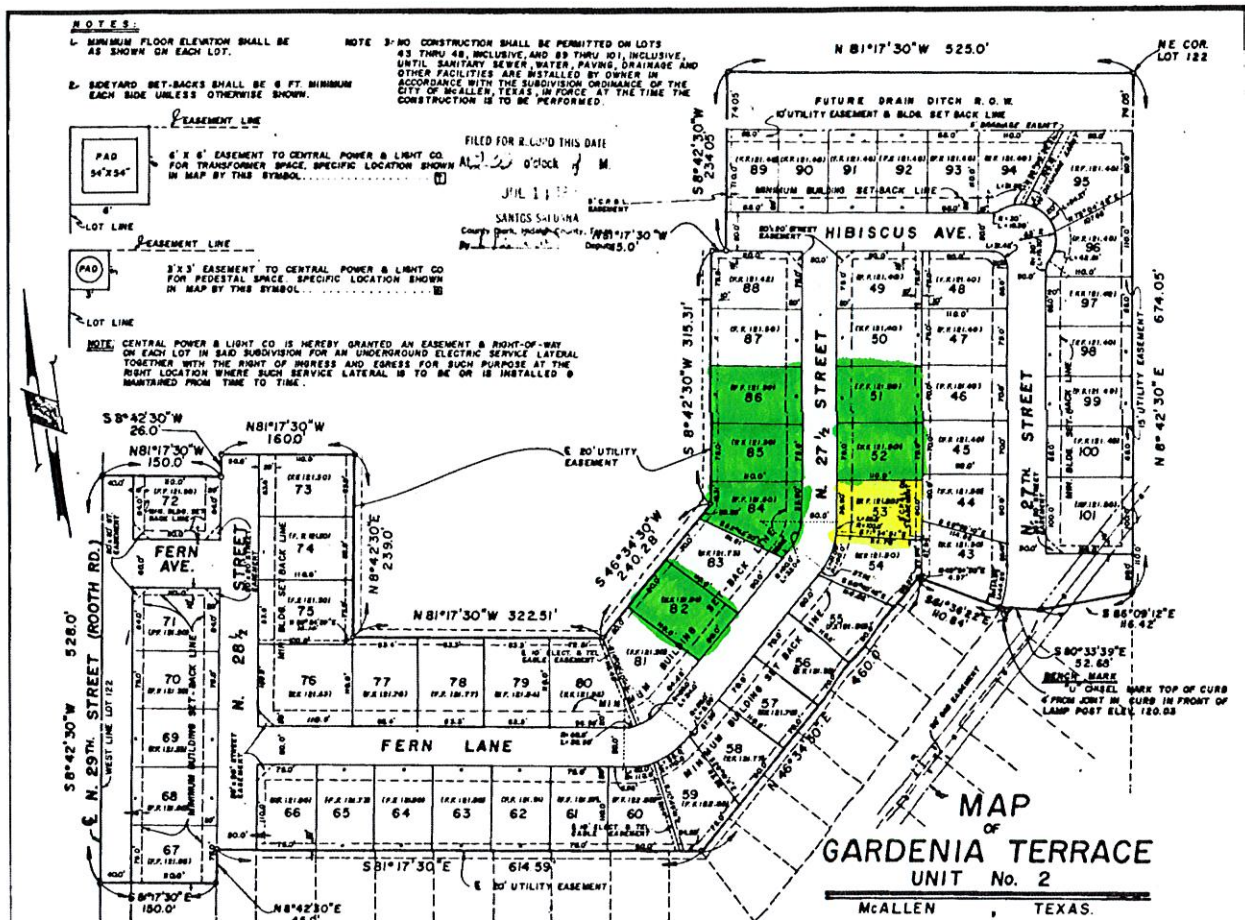
Existing detached accessory wooden structure



Variance #7

Existing wooden porch





 In Favor

 Subject Property

ELECTION FOR OFFICERS TO BE

HELD ON JANUARY 19, 2022

CRITERIA FOR ZBOA DETERMINATIONS

APPEALS

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

SPECIAL EXCEPTIONS

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

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

Ord. Sec. 138-86. – GENERAL POLICY.

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

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

VARIANCES

Authorized only when ALL of the following applies:

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

Definitions

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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;..."

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

Chapter 110-Vegetation

Sec. 110-26. - Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exceptions Cited within the Zoning Ordinance

Exceptions pertaining to front yard setbacks:

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

Exceptions pertaining to rear yard setbacks:

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

Exceptions pertaining to side yard setbacks:

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

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

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

Exceptions as per Planning Department Policy

By policy the following are permitted:

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

Legal opinions:

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

ZONING BOARD OF ADJUSTMENT AND APPEALS

RULES AND PROCEDURES

CITY OF MCALLEN

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

I. ORGANIZATION AND OFFICERS

A. Members

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

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

B. Officers

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

C. Duties and Officers

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

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

II. POWERS OF THE BOARD

A. General Powers

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

B. Specified Powers

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

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

III. DUTIES OF BOARD MEMBERS

A. General Duties of Members

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

B. Disqualification/Conflict of Interest

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

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

IV. A BASIS FOR ACTION

The Board shall decide each case based on the following:

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

V. APPLICANTS

A. Legally Vested Interest

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

B. Applications

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

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

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

C. Meetings

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

D. Evidence

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

VI. HARDSHIP

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

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

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

VII. MEETINGS

A. Texas Public Information Act and Open Meetings Act.

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

B. Quorum

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

C. Regular Meetings

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

D. Special Meetings

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

E. Order of Business

The usual order of business shall be:

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

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

F. Staff Recommendations

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

G. Action by the Board

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

H. Minutes of the Board

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

VIII. DECISIONS OF THE BOARD

A. Precedent

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

B. Public Statements

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

B. Parliamentary Procedure

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

IX. WITHDRAWAL OF APPEAL

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

X. ATTENDANCE

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

XI. AMENDEMENT PROCEDURE

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

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

Executive Secretary

ORDINANCE NO. 2018- 70

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSIDERED, PASSED and APPROVED this 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

Perla Lara, TRMC/CMC, CPM
City Secretary

Approved as to form:

Austin W. Stevenson

Austin W. Stevenson, Assistant City Attorney



2021 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

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

P - PRESENT

A - ABSENT

 NEW APPOINTMENT

MC - MEETING CANCELLED

NRM - NO MEETING

LOQ - LACK OF QUORUM

RS - RESIGNATION







PLANNING DEPARTMENT

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



2022 CALENDAR

Meetings:

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

HPC - Historic Preservation Council

Deadlines:

D- Zoning/CUP Application N - Public Notification

* **Holiday** - Office is closed

JANUARY 2022

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

FEBRUARY 2022

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

MARCH 2022

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

APRIL 2022

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

MAY 2022

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

JUNE 2022

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

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

2022 CALENDAR

Meetings:





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

Deadlines:






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

* Holiday - Office is closed





JULY 2022

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






AUGUST 2022

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





SEPTEMBER 2022

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




OCTOBER 2022

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

NOVEMBER 2022

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

DECEMBER 2022

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