

AGENDA

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, MARCH 17, 2021 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3RD FLOOR

Web: <https://zoom.us/join> or phone: (346) 248-7799

Meeting ID: 672 423 1883

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

CALL TO ORDER - Chairperson Erick Diaz

1. MINUTES:

- a) Minutes for the meeting held on March 3, 2021

2. PUBLIC HEARINGS:

- a) Request of Potenciano and Madeline Garcia for the following variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 7.67 ft. into the 10 ft. south corner side yard setback for an existing metal patio canopy cover measuring 12 ft. by 10 ft., **2)** an encroachment of 6.67 ft. into the 10 ft. south corner side yard setback for an existing metal carport measuring 30 ft. by 16 ft., **3)** an encroachment of 8.67 ft. into the 10 ft. rear yard setback for an existing metal carport measuring 30 ft. by 16 ft., and **4)** to not require a 5 ft. separation for an accessory building to the main building for an existing metal carport measuring 30 ft. by 16 ft., at Lot 1, The Gardens Subdivision, Hidalgo County, Texas; 7001 North 5th Street. **(ZBA2021-0003) (TABLED: 02/17/2021) (TABLED: 03/03/2021)**
- b) Request of Enrique Reynoso for a variance to the City of McAllen Zoning Ordinance to allow an encroachment of 15 ft. into the 25 ft. rear yard setback for a proposed pool house with a covered terrace measuring 25.16 ft. by 29.16 ft., at Lot 33, Orangewood North Subdivision, Hidalgo County, Texas; 404 Grayson Avenue. **(ZBA2021-0004)**
- c) Request of Luis Muro, for the following variances to the City of McAllen Zoning Ordinance, Off-Street Parking and Loading Ordinance and Vegetation Ordinance: **1)** to allow issuance of a building permit in excess of 10% value for a non-conforming structure, **2)** to allow 11 parking spaced instead of the required 19 spaces, **3)** to not provide a landscape area with a tree within 50 ft. of any parking space and **4)** to not provide 50% of the required landscape area to be visible from the street fronting the property, at the South 28 ft. of Lot 6, all of 7 & 8 & all of Ash Avenue lying south of Lot 8, Block 54, North McAllen Subdivision, Hidalgo County, Texas; 110 North 16th Street. **(ZBA2021-0005)**

3. FUTURE AGENDA ITEMS

- a) 3012 Yellowhammer Avenue
- b) 912 South 25th 1/2 Street E.

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, March 3, 2021 at 4:30 p.m. in the City Commission Meeting Room with the following present:

Present:	Erick Diaz	Chairperson
	John Millin	Vice-Chairperson (via Zoom)
	Sylvia Hinojosa	Member
	Juan F. Jimenez	Member
	Jose Gutierrez	Member
	Ann Tafel	Alternate
	Rebecca Millan	Alternate
	Hugo Avila	Alternate (via Zoom)
	Rogelio Rodriguez	Alternate (via Zoom)
Staff Present:	Victor Flores	Assistant City Attorney
	Edgar Garcia	Planning Director
	Rodrigo Sanchez	Senior Planner
	Kaveh Forghanparast	Planner II
	Mario Escamilla	Planner I
	Porfirio Hernandez	GIS Technician II
	Carmen White	Secretary

CALL TO ORDER – Chairperson Erick Diaz

1. MINUTES:

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

The minutes for the meeting held on February 17, 2020 were approved. The motion to approve the minutes was made by Mr. Jose Gutierrez. Mr. Juan Jimenez seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

- a) Request of Potenciano and Madeline Garcia for the following variances to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 7.67 ft. into the 10 ft. south corner side yard setback for an existing metal patio canopy cover measuring 12 ft. by 10 ft., **2)** an encroachment of 6.67 ft. into the 10 ft. south corner side yard setback for an existing metal carport measuring 30 ft. by 16 ft., **3)** an encroachment of 8.67 ft. into the 10 ft. rear yard setback for an existing metal carport measuring 30 ft. by 16 ft., and **4)** to not require a 5 ft. separation for an accessory building to the main building for an existing metal carport measuring 30 ft. by 16 ft., at Lot 1, The Gardens Subdivision, Hidalgo County, Texas; 7001 North 5th Street. **(ZBA2021-0003) (TABLED: 02/17/2021)**

Ms. Sylvia Hinojosa made a motion to remove the item from the table. Mr. Juan Jimenez seconded the motion. The Board voted unanimously with five members present and

voting.

Mr. Escamilla stated the applicants were requesting the following variances to allow: 1) an encroachment of 7.67 ft. into the 10 ft. south corner side yard setback for an existing metal patio canopy cover measuring 12 ft. by 10 ft., 2) an encroachment of 6.67 ft. into the 10 ft. south corner side yard setback for an existing metal carport measuring 30 ft. by 16 ft., 3) an encroachment of 8.67 ft. into the 10 ft. rear yard setback for an existing metal carport measuring 30 ft. by 16 ft., and 4) to not require a 5 ft. separation for an accessory building to the main building for an existing metal carport measuring 30 ft. by 16 ft. The applicant is requesting the variances in order to allow an existing patio canopy and carport to encroach into the corner side yard setbacks. The carport also encroaches into the rear yard setback. The applicant for the building permit of the carport was unaware that a building permit was required for the construction.

The property was located on the northwest corner of the intersection of North 5th street and Robin Avenue. The corner lot has 60 ft. of frontage along North 5th Street and a depth of 96 ft. for a lot size of 5,760 sq. ft. The property is zoned R-1 (single-family residential) District. The adjacent zoning is R-1 District to the north and east, R-3T (multifamily residential townhouse) District to the south and A-0 (agricultural and open space) District to the west. The surrounding land uses include single-family residences and apartments.

The Gardens Subdivision was recorded on June 14, 1995. The plat specified a 20 ft. front yard setback, 6 ft. side yard setbacks except for corner lots, which shall be 10 ft., and a 10 ft. rear yard setback or to the easement line whichever was greater. The residential home was built in 2002 according to the Hidalgo County Appraisal District records. The existing patio canopy was built since the construction of the home. Buildings and Inspections Department staff issued a stop work order on September 17, 2020 for the construction of "a side patio and rear patio without permit". An application for a building permit for a carport and patio canopy was submitted to the Building Permits & Inspections Department on September 17, 2020. An application for variance requests for encroachments of an existing carport and canopy cover was submitted to the Planning Department on January 20, 2021.

The construction of the 12 ft. by 10 ft. existing patio canopy is of aluminum and steel tubing and was secured by bolts to an existing cement foundation. The patio canopy currently did not contain a roof cover. The canopy cover was removed for maintenance purposes and the intent was to re-install the canopy cover.

The construction of the 30 ft. by 16 ft. existing carport was of aluminum and steel tubing and was secured by bolts to an existing driveway. The carport also provides shade and allows the property owners to pursue their hobbies.

Variance request #1 was to allow an encroachment of 7.67 ft. into the 10 ft. south corner side yard setback for an existing metal patio canopy measuring 12 ft. by 10 ft. The plat for the subdivision shows and specifies a 5 ft. utility easement running concurrently with the 10 ft. corner side yard setback along the south property line. The applicant is requesting to allow the canopy to remain at this location since there is no available area for relocation that would place it out of the setbacks.

Variance request #2 is to allow an encroachment of 6.67 ft. into the 10 ft. south corner side yard setback for an existing metal carport measuring 30 ft. by 16 ft. The plat for the subdivision shows and specified a 5 ft. utility easement running concurrently with the 10 ft. corner side yard setback along the south property line. The encroachment could be reduced or eliminated by modifying the structure to be in compliance with the 10 ft. south corner side yard setback.

Variance request #3 was to allow an encroachment of 8.67 ft. into the 10 ft. rear yard setback for an existing metal carport measuring 30 ft. by 16 ft. The plat for the subdivision shows and specified a 10 ft. utility easement running concurrently with the 10 ft. rear yard setback along the west property line. There was a two-car garage that was used for hobby purposes however; the carport accommodates the applicant's larger vehicles. There was an alley at the rear of the property that allows for access to the carport.

Variance request #4 was to not require a 5 ft. separation for an accessory building to the main building for an existing metal carport measuring 30 ft. by 16 ft. The applicant can attach the carport to the main building in order to achieve compliance. The applicant had been appraised of this option.

The applicant had also applied for an abandonment request, which is currently in process.

During a site visit, staff noticed similar encroachments in the area. A review of Planning Department records did not reveal any variances granted along this street.

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

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF FEBRUARY 17, 2021:

At the Zoning Board of Adjustment and Appeals, meeting of February 17, 2021 no one appeared in opposition of the variance requests. Mr. Potenciano Garcia Jr, the applicant, spoke in favor of the requests and stated that the 12 x 10-patio canopy was built in 2002. He was also unaware that a permit was needed for the construction of the structures. Mr. Garcia went on to state that the carport at the rear of the property was constructed to help with his wife's skin condition. Mr. Garcia informed the Board that he could attach the carport to the house and that would allow for withdrawal of variance request listed as number four on the legal notice caption. Chairman Erick Diaz and Board Member Jose Gutierrez expressed to the applicant the concern that the variances run with the land and anything could be built within the area of encroachment if the variances were approved. Following further discussion, Board Member John Millin made a motion to approve variances one, two and three subject to the abandonment of the easement, and limited to the footprint shown on the submitted site plan. Board Member Juan Jimenez seconded the motion. The vote for the motion was two ayes and two nays. The motion did not pass. After further discussion with the applicant, the Board voted to table the variance requests until the next meeting in order to allow time for staff to meet with the applicant regarding options for the patio canopy and carport.

Subsequent to the Zoning Board of Adjustments and Appeals meeting February 17, 2021, Staff met with the applicant and his representative(s) to help clarify the variance requests

and discuss possible alternatives such as reducing the structural encroachments, easement abandonment and/or obtaining letters of agreement. The representative for the applicant also met with Building Inspections Staff to confirm their proposed manner of attaching the carport to the main structure will be satisfactory. The applicant will submit a revised site plan depicting their proposed reduction of encroachments.

Board member Ann Tafel asked staff why they did not shorten the back. Mr. Escamilla stated the applicant was present to answer that question.

Board member Sylvia Hinojosa asked staff which variance request was not going to be discussed. Mr. Escamilla stated variance request #4 was removed from the last meeting. The applicants were attaching it to the building and met with building officials to make sure they met City standards.

Dr. Potenciano Garcia stated he was asking the Board for consideration regarding the modifications for reduction sun exposure for his wife who had a medical skin condition.

Chairperson Diaz mentioned to the applicant that there was a question by Board member Tafel why the side metal structure was reduced and not the rear metal structure. Dr. Potenciano stated they were trying to preserve as much as the shaded area as possible. The sun was more intense in the rear yard.

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

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

Mr. Victor Flores, Assistant City Attorney, stated this happened at the previous meeting in which there was a motion to approve or disapprove all three variances. In this case, one variance pertained to one structure and the other two pertained to another structure. An option would be the Board could vote on each different structure.

Board member Tafel stated at the last meeting one of the Board's concern was because the structure was not in the front property that would run with the land and not to the owner. She had concerns that the applicant could enclose it later.

Chairperson Diaz asked the applicant if he would be willing to reduce the back carport and if so, how much. Dr. Potenciano stated he did not intend to enclose the carport. They already had an enclosed garage.

Chairperson Diaz asked the applicant if he would like to proceed forward or table the item to discuss with staff any further modifications to the rear carport. Dr. Potenciano asked the Board for recommendations.

Mr. Flores, Legal stated he had to advise the Board they were not allowed to give recommendations. He stated the Chairperson was giving Dr. Potenciano an opportunity to meet with staff in what might work for him.

Dr. Potenciano stated he wanted to proceed forward and vote on the variance. In addition, if he needed to appeal again then he would.

Mr. Flores, Assistant City Attorney, explained to the applicant the appeal process would be through the Court system. If he had another request that was different from the one they submitted with different dimensions, the applicant could bring it up as a new request but would have to go through the whole process and fees. To approve a variance it would have to be approved by a super majority, which would be four out of five people making that vote.

Dr. Potenciano stated he would table it.

Board member Juan Jimenez commented on how the applicant had made changes of 2 feet on the side patio and that it was not up to the property line. The structure was made of metal, appealing, and not of wood that would cause a fire hazard. Mr. Jimenez appreciated that the applicant has returned two times to make sure that he complied with City's ordinances.

Board member Sylvia Hinojosa asked if these particular encroachments did not affect any utility lines. Chairperson Diaz stated the applicant was going through the abandonment process and almost done. Ms. Hinojosa stated it was on the corner and did not affect the street or neighbor. They would have to consider it was a variance and not a special exception and that she would approve it.

Board member Hugo Avila commented where they had instances of garages being enclosed, which was his main concern and what would happen later. He stated he felt he would not support this variance.

Chairperson Diaz stated that now that the applicant had the chance to hear from some of the Board members of their opinions that he would suggest to table the item and speak with staff.

Sylvia Hinojosa **moved** to table the variance request. Mr. Juan Jimenez seconded the motion. The Board voted unanimously to approve variance request with five members present and voting.

- b) Request of Irma I. Rios for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 5 ft. into the 10 ft. rear yard setback for an existing wooden porch canopy measuring 25.33 ft. by 9 ft., at Lot 87, Forest Valley Subdivision, Hidalgo County, Texas; 5812 North 39th Street. (ZBA2021-0001)**

Mr. Forghanparast stated the applicant was requesting a variance to allow an encroachment of 5 ft. into the 10 ft. rear yard setback for an existing wooden porch canopy. A variance request for a 10 ft. encroachment into the 10 ft. rear yard setback for the existing canopy was disapproved on December 4, 2020. The applicant stated that removing all of the encroachment would not provide a useable space; therefore, she proposed to reduce the size of the porch canopy to reduce the encroachment from 10 ft.

to 5 ft. Ms. Rios also mentioned that they used the canopy as a family gathering space to relieve stress and that they have never heard any complaints about it. In the past, the Board had reconsidered variance requests that have been disapproved, when a significant change has been made to the request.

The subject property was located on the southeast corner of North 39th Street and Flamingo Avenue. The lot had 54 ft. of frontage along North 39th Street with a depth of 100 ft., for a lot size of 5,400 sq. ft. The surrounding land use was single-family residences.

Forest Valley Subdivision was recorded on June 7, 2001. According to Hidalgo County Appraisal District records, the residential home was built in 2001 and Irma Rios, the applicant, and Oscar Rios purchased the subject property in 2003. According to Google Earth aerial images, it seems that the canopy existed since February 2009. An application for a building permit for the existing porch canopy and the enclosed garage was submitted on February 24, 2020, which was disapproved during the building permit review process due to the encroachment into the rear yard easement and setback. A request to abandon an easement that ran concurrently with the rear yard setback was approved by the City Commission on October 26, 2020. A right-of-way permit to widen the existing driveway to accommodate two parking spaces was issued on November 30, 2020. A variance application to allow an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing wooden porch canopy measuring 25.33 ft. by 14 ft. was submitted on November 2, 2020, which was disapproved by the Board on December 4, 2020. A variance application to allow an encroachment of 5 ft. into the 10 ft. rear yard setback for an existing wooden porch canopy proposed to measure 25.33 ft. by 9 ft. was submitted on January 11, 2021.

The plat for the subdivision showed a 10 ft. utility easement and setback along the rear side of the subject property. The City Commission abandoned the utility easement on October 26, 2020. The variance request was to allow an encroachment of 5 ft. into the 10 ft. rear yard setback for an existing wooden porch canopy proposed to measure 25.33 ft. by 9 ft. The porch canopy was an accessory building which seems to be built prior to February 2009, according to Google Earth aerial images.

Approval of the variance request would allow the reduced sized porch canopy to remain that was proposed to measure 25.33 ft. by 9 ft.

Staff had not received any emails or phone calls in opposition of the request.

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

Mr. Forghanparast stated now the total of canopy size would be 9 feet by 25.33 feet and 4 feet would be the outside the setback and 5 feet would be encroaching into the setback.

Ms. Irma Rios, the applicant stated they were reducing the dimensions that they had originally requested at a previous meeting. Originally, it was 4 feet out of the setback

but she stated it was too small. She wanted to have sufficient room to put the patio furniture against the wall.

Board member Jose Gutierrez stated to the applicant that the Board's concerns were that these types of variances ran with the land and eventually anyone could enclose it. In addition, if the variance was approved, perhaps not the applicant herself but the next owner could enclose it with the proper building permits. Ms. Rios asked if she was approved and decided to sell her house was there an agreement to remove the structure. Mr. Gutierrez stated no and went onto explain to the applicant that the variance ran with the property and not the owner itself and the next owner could build something in that space where the structure once stood.

Mr. Flores, Assistant City Attorney, stated the law did not allow the City to make variances conditioned and would not allow for an outside agreement.

Board member Juan Jimenez asked the applicant if they built the canopy. Ms. Rios stated yes and that they were not aware of obtaining a building permit. She stated they would go back and forth to Mexico but when the pandemic occurred, they had to stay and decided to build a canopy. Mr. Jimenez mentioned to the applicant that on the back of the application there was no indication of any special circumstances to keep the structure in place like other properties. Ms. Rios stated the way her house was built on the property and had very little patio space. Chairperson Diaz asked why the house was built irregular. Ms. Rios stated the house was at an angle because it sat at the corner of Flamingo Avenue and 39th Street.

Mr. Forghanparast stated the City Commission abandoned the easement on the south side. Staff tried to work with the applicant to find somewhere else for the canopy to be located but the way the house was located; there was no other location to put it.

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

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

Board member Hugo Avila agreed with staff's attempt to try to locate the canopy elsewhere in order to accommodate the applicant's request.

Mr. Juan Jimenez **moved** to approve the variance request limited to the footprint. Ms. Sylvia Hinojosa seconded the motion. The Board voted unanimously to approve variance request with five members present and voting.

3. FUTURE AGENDA ITEMS:

- a) 404 Grayson Avenue**
- b) 110 North 16th Street**

Mr. Edgar Garcia, Planning Director stated regarding the previous case. Staff had met with the property owner and his contractor. The contractor indicated to let him know when

he could proceed with the construction. Staff had met with Dr. Garcia and had given him multiple chances with several options. In two weeks, there should be an agreement as to either to reduce or bring down the structure.

ADJOURNMENT

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

Chairperson Erick Diaz

Carmen White, Secretary

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: March 11, 2021

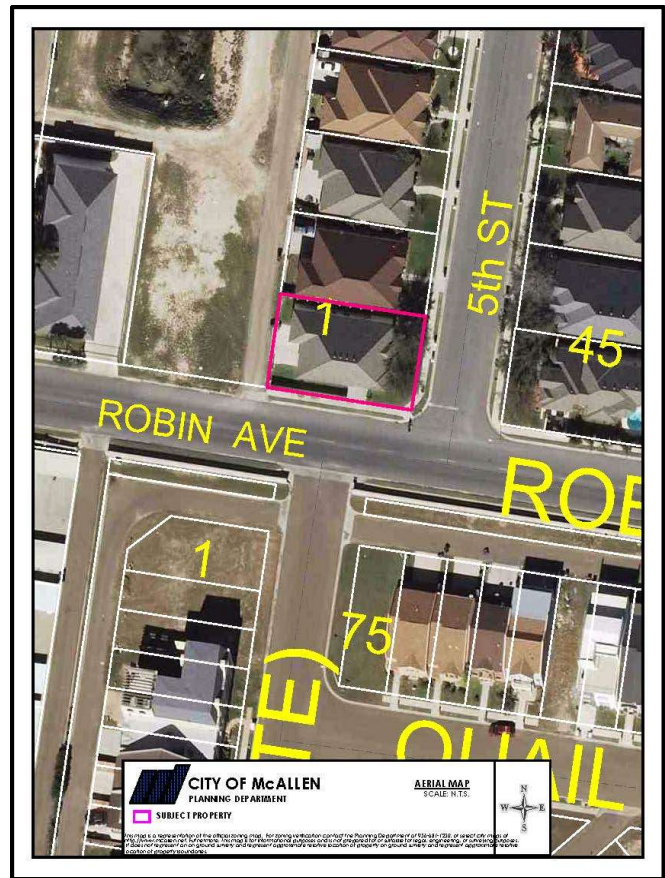
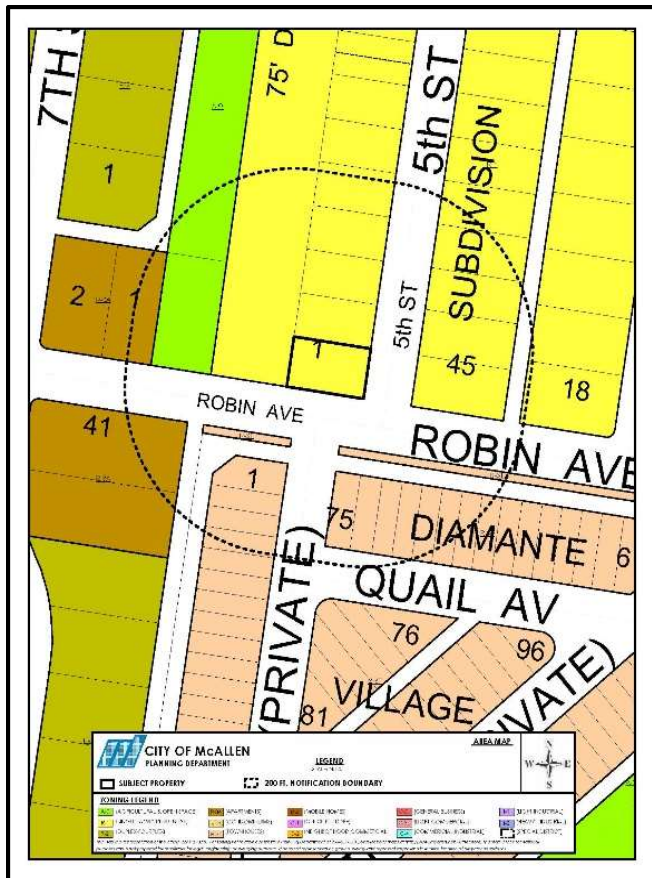
SUBJECT: REQUEST OF POTENCIANO AND MADELINE GARCIA FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 7.67 FT. INTO THE 10 FT. SOUTH CORNER SIDE YARD SETBACK FOR AN EXISTING METAL PATIO CANOPY COVER MEASURING 12 FT. BY 10 FT., 2) AN ENCROACHMENT OF 6.67 FT. INTO THE 10 FT. SOUTH CORNER SIDE YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING 30 FT. BY 16 FT., 3) AN ENCROACHMENT OF 8.67 FT. INTO THE 10 FT. REAR YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING 30 FT. BY 16 FT., AND 4) TO NOT REQUIRE A 5 FT. SEPARATION FOR AN ACCESSORY BUILDING TO THE MAIN BUILDING FOR AN EXISTING METAL CARPORT MEASURING 30 FT. BY 16 FT., AT LOT 1, THE GARDENS SUBDIVISION, HIDALGO COUNTY, TEXAS; 7001 NORTH 5TH STREET. (ZBA2021-0003)

REASON FOR APPEAL:

The applicants are requesting the following variances to allow: 1) an encroachment of 7.67 ft. into the 10 ft. south corner side yard setback for an existing metal patio canopy cover measuring 12 ft. by 10 ft., 2) an encroachment of 6.67 ft. into the 10 ft. south corner side yard setback for an existing metal carport measuring 30 ft. by 16 ft., 3) an encroachment of 8.67 ft. into the 10 ft. rear yard setback for an existing metal carport measuring 30 ft. by 16 ft., and 4) to not require a 5 ft. separation for an accessory building to the main building for an existing metal carport measuring 30 ft. by 16 ft. The applicant is requesting the variances in order to allow an existing patio canopy and carport to encroach into the corner side yard setbacks. The carport also encroaches into the rear yard setback. The applicant for the building permit of the carport was unaware that a building permit was required for the construction.

PROPERTY LOCATION AND VICINITY:

The property is located on the northwest corner of the intersection of North 5th street and Robin Avenue. The corner lot has 60 ft. of frontage along North 5th Street and a depth of 96 ft. for a lot size of 5,760 sq. ft. The property is zoned R-1 (single-family residential) District. The adjacent zoning is R-1 District to the north and east, R-3T (multifamily residential townhouse) District to the south and A-0 (agricultural and open space) District to the west. The surrounding land uses include single-family residences and apartments.



BACKGROUND AND HISTORY:

The Gardens Subdivision was recorded on June 14, 1995. The plat specifies a 20 ft. front yard setback, 6 ft. side yard setbacks except for corner lots which shall be 10 ft., and a 10 ft. rear yard setback or to the easement line whichever is greater. The residential home was built in 2002 according to the Hidalgo County Appraisal District records. The existing patio canopy was built since the construction of the home. A stop work order was issued by Buildings and Inspections Department staff on September 17, 2020 for the construction of “a side patio and rear patio without permit”. An application for a building permit for a carport and patio canopy was submitted to the Building Permits & Inspections Department on September 17, 2020. An application for variance requests for encroachments of an existing carport and canopy cover was submitted to the Planning Department on January 20, 2021.

ANALYSIS:

The construction of the 12 ft. by 10 ft. existing patio canopy is of aluminum and steel tubing and is secured by bolts to an existing cement foundation. The patio canopy currently does not contain a roof cover. The canopy cover was removed for maintenance purposes and the intent was to re-install the canopy cover.

The construction of the 30 ft. by 16 ft. existing carport is of aluminum and steel tubing and is secured by bolts to an existing driveway. The carport also provides shade and allows the property owners to pursue their hobbies.

Variance request #1 is to allow an encroachment of 7.67 ft. into the 10 ft. south corner side yard setback for an existing metal patio canopy measuring 12 ft. by 10 ft. The plat for the subdivision shows and specifies a 5 ft. utility easement running concurrently with the 10 ft. corner side yard setback along the south property line. The applicant is requesting to allow the canopy to remain at

this location since there is no available area for relocation that would place it out of the setbacks.

Variance request #2 is to allow an encroachment of 6.67 ft. into the 10 ft. south corner side yard setback for an existing metal carport measuring 30 ft. by 16 ft. The plat for the subdivision shows and specifies a 5 ft. utility easement running concurrently with the 10 ft. corner side yard setback along the south property line. The encroachment could be reduced or eliminated by modifying the structure to be in compliance with the 10 ft. south corner side yard setback.

Variance request #3 is to allow an encroachment of 8.67 ft. into the 10 ft. rear yard setback for an existing metal carport measuring 30 ft. by 16 ft. The plat for the subdivision shows and specifies a 10 ft. utility easement running concurrently with the 10 ft. rear yard setback along the west property line. There is a two car garage that is used for hobby purposes however, the carport accommodates the applicant's larger vehicles. There is an alley at the rear of the property that allows for access to the carport.

Variance request #4 is to not require a 5 ft. separation for an accessory building to the main building for an existing metal carport measuring 30 ft. by 16 ft. The applicant can attach the carport to the main building in order to achieve compliance. The applicant has been appraised of this option.

The applicant has also applied for an abandonment request which is currently in process.

During a site visit, staff noticed similar encroachments in the area. A review of Planning Department records did not reveal any variances granted along this street.

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

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF FEBRUARY 17, 2021:

At the Zoning Board of Adjustment and Appeals meeting of February 17, 2021 no one appeared in opposition of the variance requests. Mr. Potenciano Garcia Jr, the applicant, spoke in favor of the requests and stated that the 12 x 10 patio canopy was built in 2002. He was also unaware that a permit was needed for the construction of the structures. Mr. Garcia went on to state that the carport at the rear of the property was constructed to help with his wife's skin condition. Mr. Garcia informed the Board that he could attach the carport to the house and that would allow for withdrawal of variance request listed as number four on the legal notice caption. Chairman Erick Diaz and Board Member Jose Gutierrez expressed to the applicant the concern that the variances run with the land and anything could be built within the area of encroachment if the variances were approved. Following further discussion, Board Member John Millin made a motion to approve variances one, two and three subject to the abandonment of the easement, and limited to the footprint shown on the submitted site plan. Board Member Juan Jimenez seconded the motion. The vote for the motion was two ayes and two nays. The motion did not pass. After further discussion with the applicant, the Board voted to table the variance requests until the next meeting in order to allow time for staff to meet with the applicant regarding options for the patio canopy and carport.

Subsequent to the Zoning Board of Adjustments and Appeals meeting February 17, 2021, Staff met with the applicant and his representative(s) to help clarify the variance requests and discuss possible alternatives such as reducing the structural encroachments, easement abandonment and/or obtaining letters of agreement. The representative for the applicant also met with Building Inspections Staff to confirm their proposed manner of attaching the carport to the main structure will be satisfactory. The applicant will submit a revised site plan depicting their proposed reduction of encroachments.

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING OF MARCH 3, 2021:

At the Zoning Board of Adjustment and Appeals meeting of March 3, 2021 no one appeared in opposition of the variance requests. The variance requests were tabled at the meeting of February 17, 2021 in order to allow the applicant time to meet with staff and review options to reduce the structural encroachments. The applicant submitted a revised site plan where he proposed a 2.67 ft. reduction of encroachment for the 12 ft. x 10 ft. patio canopy and no changes to the metal carport (rear structure). Mr. Potenciano Garcia Jr., the applicant, spoke in favor of the requests Mr. Garcia went on to remind the Board that the carport at the rear of the property was constructed to limit sun exposure during recreational use which helps with his wife's medical skin condition. He went on to state that no reductions had been proposed for the rear structure because they would like to preserve as much of shade area as possible. Mr. Victor Flores, Assistant City Attorney reminded the Board that they could vote separately on each different structure. Board member Ann Tafel expressed concern if the variance were approved they would go with the property, and in the future property owners may enclose the structure. Following the discussion regarding the new proposal, Chairman Erick Diaz expressed the boards concern regarding the rear structure and if the applicant would propose any reduction and reminded the applicant that the variance would go with the land. Chairman Diaz went on to inform the applicant of his options to vote on the requests or table the requests in order to clarify available options. After discussion, Mr. Garcia requested that the item be tabled in order to allow the applicant time to meet with staff regarding his options for the patio canopy and carport.

Subsequent to the Zoning Board of Adjustments and Appeals meeting March 3, 2021, Staff met with the applicant and his representative(s) at the subject property to help clarify the variance requests and discuss possible alternatives for reducing the structural encroachments. The applicant submitted a revised site plan depicting proposed reduction of encroachments of 2.67 ft. for the 12 ft. x 10 ft. patio canopy and a rear yard encroachment reduction of 2 ft. for the existing metal carport.



City of McAllen

Planning Department

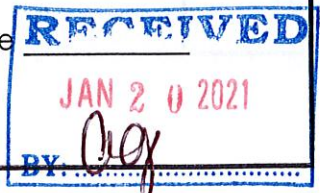
APPEAL TO ZONING BOARD OF

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)

ZBA 2021-0003
02-17-21

Project	Legal Description	7001 N. 5 th St		
	Subdivision Name	McAllen TX 78504		
	Street Address	The Gardens		
	Number of lots	1	Gross acres	
	Existing Zoning	Existing Land Use		
Applicant	Reason for Appeal (please use other side if necessary)	replace / pnt back		
		existing roof (porch)		
	<input 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	Potenciano & Madeline Garcia	Phone	956-631-3344
Owner	Address	7001 N. 5 th	E-mail	prgarcia.mad@aol.com
	City	McAllen	State	TX
	Zip	78504		
	Name	- same -	Phone	
	Address		E-mail	
Authorization	City		State	
	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	Potenciano Garcia Jr.	Date	1/20/2021
Office	Print Name	Potenciano Garcia Jr.	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Authorized Agent
	Accepted by	ES	Payment received by	
	Date			





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:

There is a concrete foundation that is existing on this porch (since 2002) when the house was built. The roof over the above porch has been in disrepair & needed replacement.

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

This new roof is simply to replace the old one.

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 porch faces Robin St and there is a concrete wall between the porch & Robin Avenue.

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

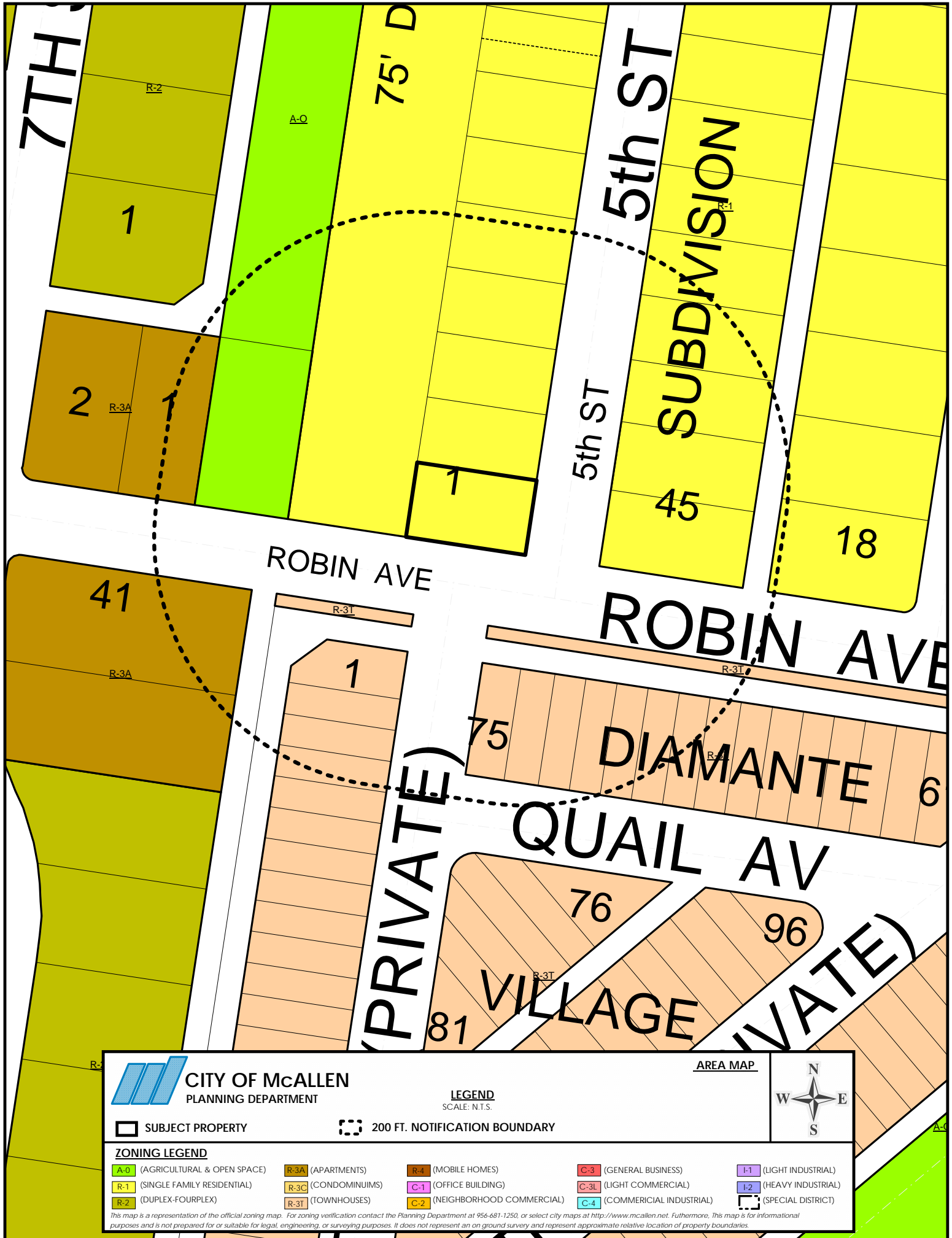
There is no other area in the property to possibly relocate the above existing porch area

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date





CITY OF McALLEN
PLANNING DEPARTMENT



SUBJECT PROPERTY

AERIAL MAP
SCALE: N.T.S.



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



RESIDENTIAL PERMIT APPLICATION

REV. 3/2020

P.O. BOX 220 McALLEN, TEXAS 78505-0220

APPLICATION MUST BE COMPLETE

PERMIT APPLICATION REFERENCE NUMBER

RES2020-06710

(Please type or print in black or blue ink)

GC104293
APPLICANT

NAME David Gonzalez PHONE 956-393-9308
 ADDRESS 704 S. Main St.
 CITY McAllen STATE TX ZIP 78501
 CONTACT NAME: Skyline RV LLC PHONE 956-393-9308
☐ OWNER ☒ CONTRACTOR ☐ TENANT ☐ OTHER

OWNER

NAME Protenciano R. Garcia PHONE 956-292-5097
 ADDRESS 7001 N. 5th *EMAIL: prgarcia@yahoo.com
 CITY McAllen STATE TX ZIP 78504

*OWNER INFORMATION NOT PROVIDED, INITIAL:

☐ NEW 480 ☐ ADDITION ☐ REMODELING ☐ REPAIR ☐ MOVE ☐ REMOVE BLDG. HGT. 1 NO. OF FLOORS
 BLDG SQ. FT. 16x30 NO. PARKING SPACES _____ SQ. FT. LOT FRONT _____ FLOOR EL. ABOVE CURB _____
 EXISTING USE residential NEW USE _____
 OF LOT _____

SCOPE OF WORK TO BE DONE adding car porch

PROJECT

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

FOUNDATION

☒ CONCRETE SLAB
☐ CONCRETE PIER
☐ CONCRETE BLOCK
☐ CONCRETE BEAM
☐ WOOD POSTS
☐ _____

EXT WALL

☐ MASONRY VENEER
☐ MASONRY SOLID
☐ METAL SIDING
☐ COMPOSITION
☐ WOOD
☐ _____

ROOF

☐ WOOD SHINGLE
☐ COMPOSITION
☒ METAL
☐ BUILD UP
☐ CLAY OR CONCRETE TILE
☐ _____

UPGRADES/OTHER

☐ GRANITE COUNTERTOPS
☐ MARBLE TUBS/FLOORS
☐ CUSTOM WINDOWS
☐ POLYURETHANE INSULATION
☐ OTHER UPGRADES _____
☐ SEPTIC TANK EXISTING OR PROPOSED
☐ YES ☐ NO

LOT _____ BLOCK _____ SUBDIVISION _____
 SITE ADDRESS ST. NO. 7001 ST. NAME NORTH 5th McAllen TX 78504

CITY USE ONLY

Construction Cost _____ Permit Fee \$ 76.80 Rec'd by [Signature]
 Value \$ 21,600 Double Fee \$ _____ Date 9/17/20
 Zoning _____ Total Fee \$ _____ Time 2:43
 Park Development Fee \$ _____ Park Zone _____

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

David Gonzalez PRINT (AUTHORIZED AGENT/OWNER) [Signature] SIGNATURE Skyline RV20@gmail.com EMAIL ADDRESS (required) 9/17/20 DATE

7001
N. 5th

House

12x10

Old
Porch

Extended
Porch

Fence Block

30x16

New

Covered Porch

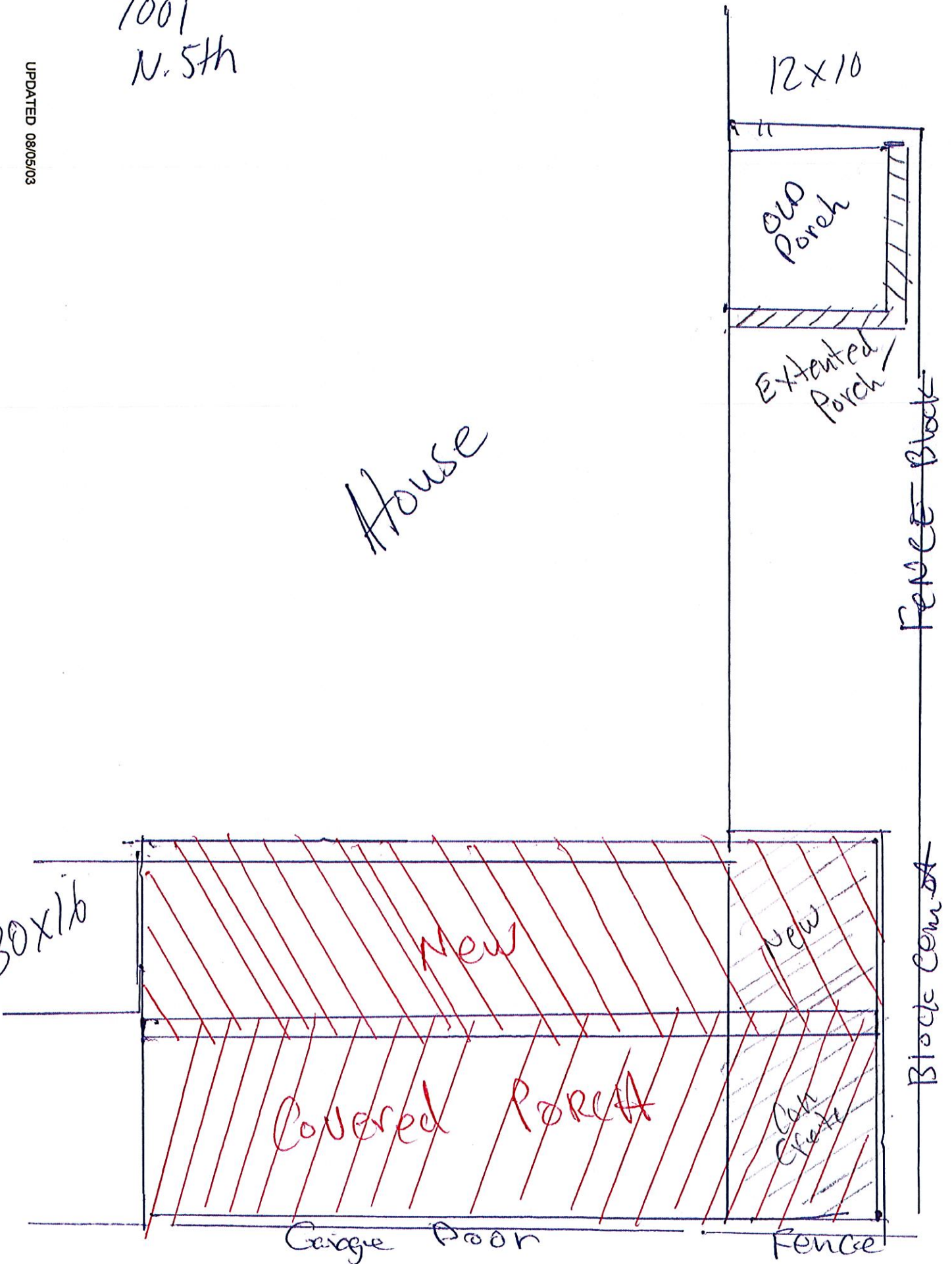
Garage Door

New

Can
Chute

Fence

Block Com

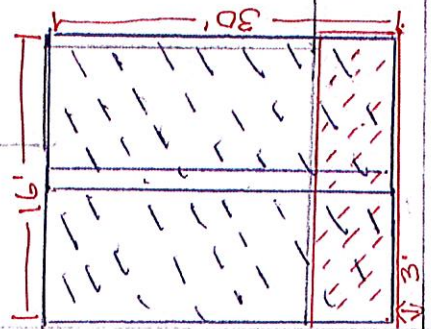


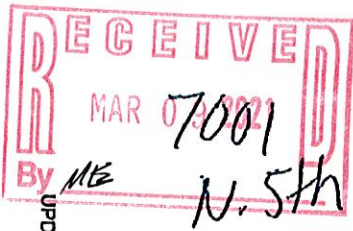
↑ N

50

ANY

Robbin





UPDATED 08/05/03

Option A

py

Reduce
2.67
foot



12x10

Old Porch
2007

Extended Porch

House

Fence Block

30x16

New

New

Covered Porch

Can
Gates

Block Corner

Garage Door

Fence

Alley

Reduction
2 feet



SUBDIVISION PLAT OF THE GARDENS SUBDIVISION

AN 11.091 ACRE TRACT BEING A RESUBDIVISION OF CAMBRIDGE ESTATES SUBDIVISION AS RECORDED IN VOL 29, PG 130A, HIDALGO COUNTY, TEXAS, AND 1.074 ACRES OUT OF LOT 1, SECTION 12, HIDALGO CANAL COMPANY'S SUBDIVISION, OF PORCTIONS 64, 65, AND 66, HIDALGO COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HIDALGO

I (WE) THE UNDERSIGNED OWNER(S) OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS THE GARDENS SUBDIVISION AN ADDITION TO THE COUNTY OF HIDALGO TEXAS AND WHOSE NAME(S) IS (ARE) SUBSCRIBED HERETO HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS ALLEYS PARKS SEWER LINES WATER COURSES STORM SEWERS FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH I (WE) WILL CAUSE TO BE INSTALLED OR DEDICATED UNDER THE SUBDIVISION APPROVAL PROCESS OF THE COUNTY OF HIDALGO ALL THE SAME FOR THE PURPOSES THEREIN EXPRESSED EITHER ON THE PLAT OR ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE COUNTY OF HIDALGO

Rudolfo (Rudy) Elizondo Jr.
RUDOLFO ELIZONDO DEVELOPMENT CO. L.L.C.
921 N. 27TH STREET
McALLEN TEXAS 78501
RODRIGO (RUDY) ELIZONDO JR. PRESIDENT

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED RUDY ELIZONDO KNOWN TO ME TO BE THE PERSON(S) WHOSE NAME(S) IS (ARE) SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE (THEY) EXECUTED THE SAME FOR PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED GIVEN UNDER MY HAND AND SEAL OF OFFICE

THIS THE 27th DAY OF March A.D. 1995

Salvador Olvera
NOTARY PUBLIC TEXAS
EXPIRATION DATE 3-9-99

THIS PLAT APPROVED BY HIDALGO COUNTY IRRIGATION DISTRICT No. THREE

ON THIS 14th DAY OF May A.D. 1995

HIDALGO COUNTY IRRIGATION DISTRICT No. THREE WILL NOT BE RESPONSIBLE FOR DRAINAGE OF DELIVERY OF WATER TO ANY LOT IN THIS SUBDIVISION IF DESIRED THIS WILL NOT BE AT THE OWNER'S EXPENSE

J.R. Smith
SECRETARY

Blaine Doyle
PRESIDENT

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

William M. Voth
CITY CLERK DATE 3-2-95

John M. Hinkle
MAYOR CITY OF McALLEN

THIS SUBDIVISION PLAT OF THE GARDENS SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF McALLEN TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION

DATED THIS 21st DAY OF 3/95 A.D.

458
CHAIRMAN

STATE OF TEXAS
COUNTY OF HIDALGO

I JAVIER HINOJOSA REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT

Javier Hinojosa
REGISTERED PROFESSIONAL ENGINEER No. 74808

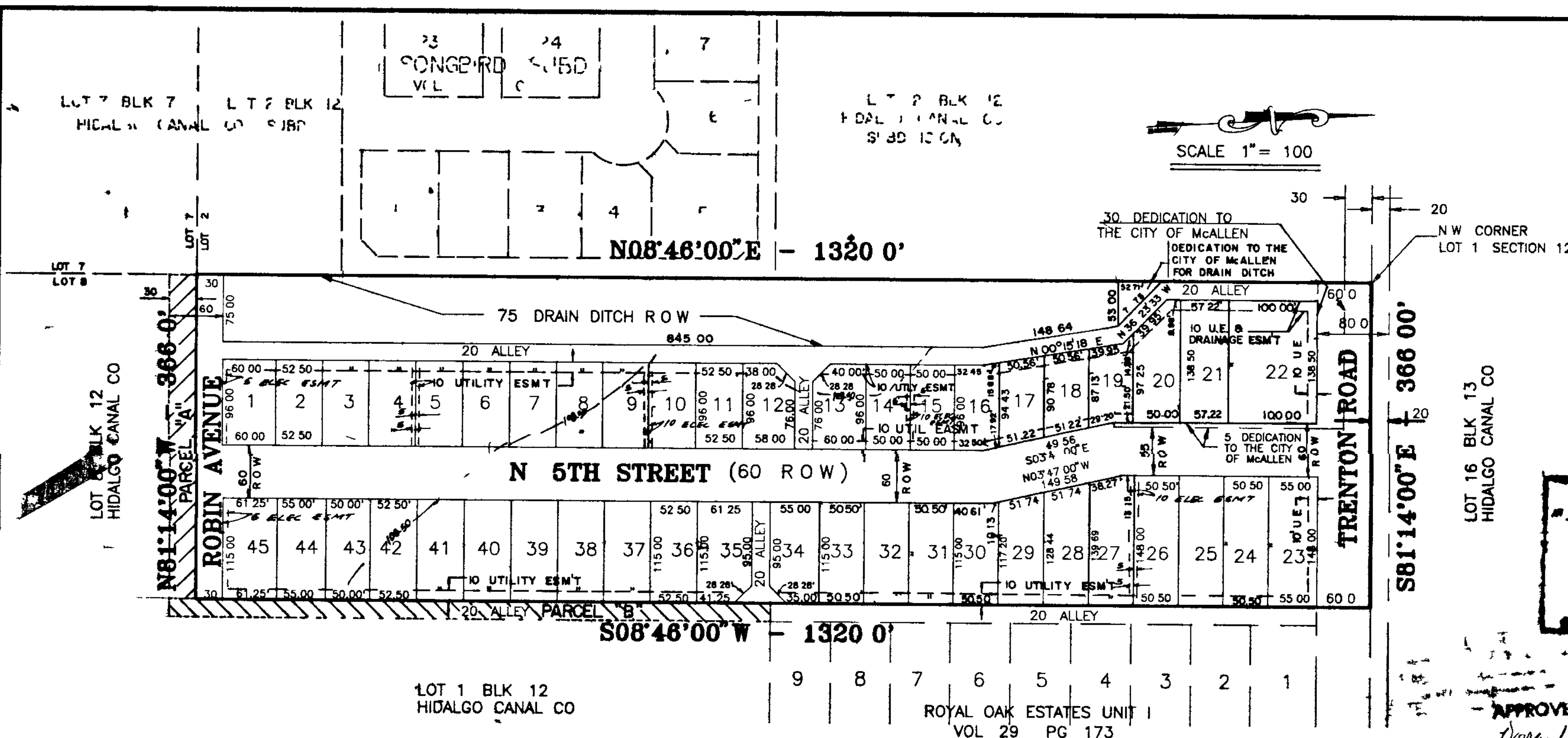
LEO L. RODRIGUEZ JR. A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND AND FURTHER CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT

REGISTERED PROFESSIONAL LAND SURVEYOR No. 2448

Leo L. Rodriguez Jr.

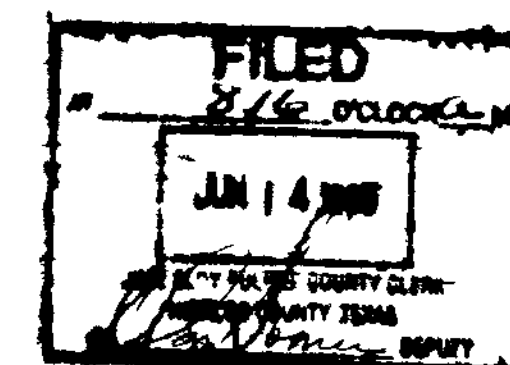
CHECKED BY *Leo L. Rodriguez Jr.*
DATE 6-8-95

Leo L. Rodriguez Jr.
REGISTERED PROFESSIONAL LAND SURVEYOR



APPROVED FOR RECORDING
BY
COMMISSIONERS COURT
This the 12th day of June 1995
JOSE ELOY PULIDO County Clerk
Hidalgo County Texas
By *Jose E. Pulido* Deputy

457884



APPROVED FOR RECORDING
HIDALGO COUNTY PLANNING DEPT
DATE 6-12-95

APPROVED
Verna Walker
Hidalgo County ROW DEPT

I THE UNDERSIGNED OWNER OF PARCEL A AS SHOWN ON THIS PLAT DESIGNATED AS THE GARDENS SUBDIVISION HEREBY DEDICATE TO THE USE OF THE PUBLIC THIS TRACT OF LAND FOR USE AS ROADWAY

A 0.266 ACRE TRACT OF LAND OUT OF LOT 8 SECTION 12 HIDALGO CANAL COMPANY'S SUBDIVISION AS RECORDED IN VOLUME Q PAGE 177 OF THE MAP RECORDS OF HIDALGO COUNTY TEXAS AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 8 SECTION 12 FOR THE NORTHWEST CORNER OF THIS TRACT

THENCE S81°14'00"E ALONG THE NORTH LINE OF SAID LOT 8 SECTION 12 A DISTANCE OF 386.00 FEET TO A POINT FOR THE NORTHEAST CORNER OF THIS TRACT

THENCE S08°46'00"W A DISTANCE OF 30.00 FEET TO A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT

THENCE N81°14'00"W A DISTANCE OF 386.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT

THENCE N08°46'00"E A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.266 ACRES OF LAND MORE OR LESS.

METES AND BOUNDS DESCRIPTION PARCEL B

A 0.296 ACRE TRACT OF LAND OUT OF LOT 1 SECTION 12 HIDALGO CANAL COMPANY'S SUBDIVISION AS RECORDED IN VOLUME Q PAGE 177 OF THE MAP RECORDS OF HIDALGO COUNTY TEXAS AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

BEGINNING AT A POINT ALONG THE SOUTH LINE OF SAID LOT 1 SECTION 12 FOR THE SOUTHWEST CORNER OF THIS TRACT SAID POINT BEING S81°14'00"E 386.00 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 1 SECTION 12

THENCE N08°46'00"E A DISTANCE OF 645.00 FEET TO A POINT FOR THE NORTHWEST CORNER OF THIS TRACT SAID POINT BEING THE SOUTHWEST CORNER OF ROYAL OAK SUBDIVISION UNIT 1 AS RECORDED IN VOLUME 29 PAGE 173 OF THE MAP RECORDS OF HIDALGO COUNTY TEXAS,

THENCE S81°14'00"E A DISTANCE OF 20.00 FEET TO A POINT FOR THE NORTHEAST CORNER OF THIS TRACT,

THENCE S08°46'00"W A DISTANCE OF 645.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT

THENCE N81°14'00"W A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.296 ACRES OF LAND MORE OR LESS

I THE UNDERSIGNED OWNER OF PARCEL B AS SHOWN ON THIS PLAT DESIGNATED AS THE GARDENS SUBDIVISION HEREBY DEDICATE TO THE USE OF THE PUBLIC THIS TRACT OF LAND FOR USE AS AN ALLEY

Kathleen Shepherd
THE ROYAL OAK GROUP
208 NOLANA
McALLEN, TEXAS 78501
KATHLEEN SHEPHERD GENERAL PARTNER

SWORN TO AND SUBSCRIBED BEFORE ME
THIS THE 16 DAY OF May A.D. 1995

Salvador Olvera
NOTARY PUBLIC TEXAS
EXPIRATION DATE 3-9-99



APPROVED
Verna Walker
Hidalgo County ROW DEPT
DATE 6-8-95

CHECKED BY *Leo L. Rodriguez Jr.*
DATE 6-8-95

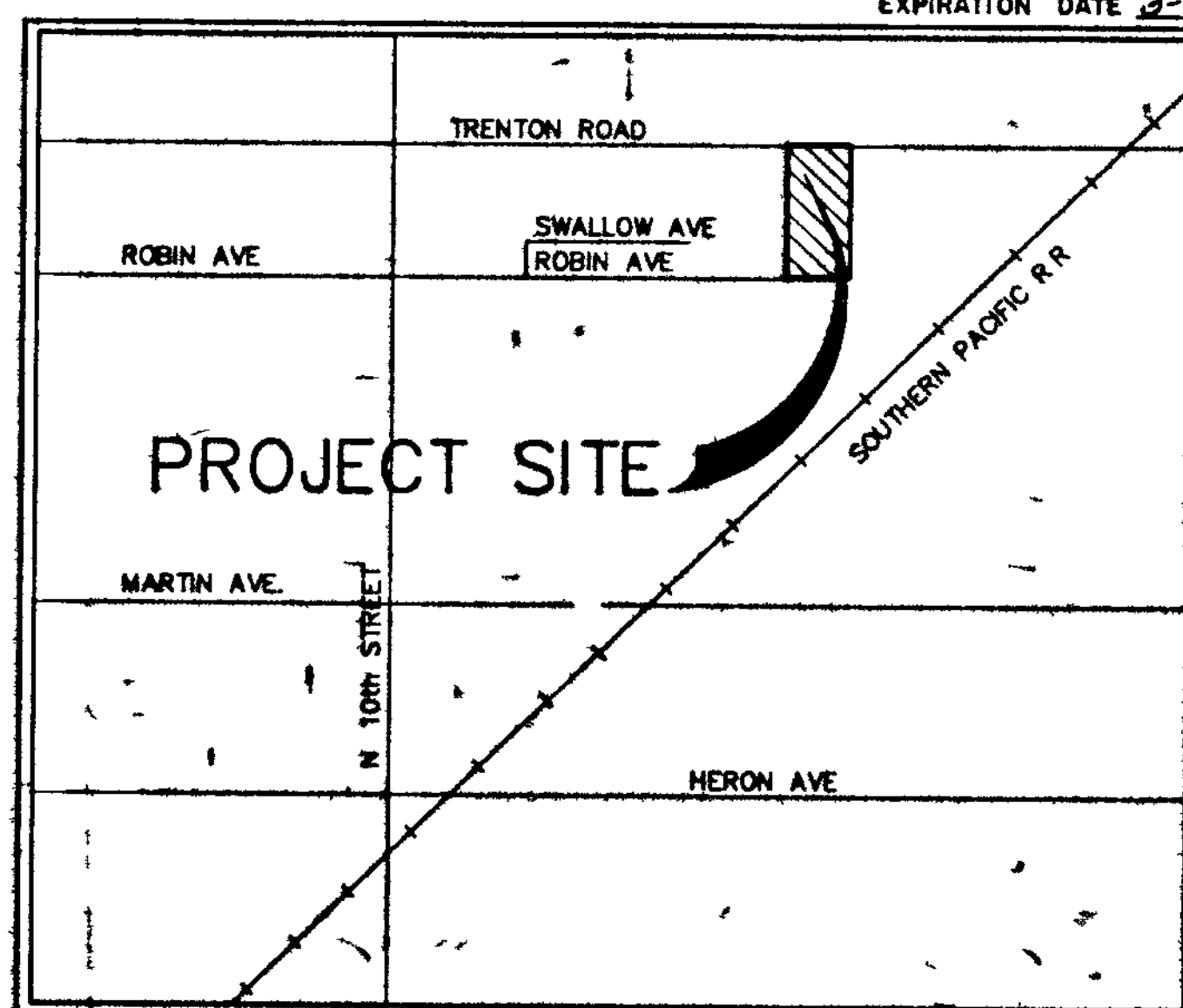
Leo L. Rodriguez Jr.
REGISTERED PROFESSIONAL LAND SURVEYOR



HEED PROPERTIES
921 N. 27TH STREET
McALLEN TEXAS 78501
HUGO HAMDAN MANAGER

SWORN TO AND SUBSCRIBED BEFORE ME
THIS THE 16 DAY OF May A.D. 1995

Salvador Olvera
NOTARY PUBLIC TEXAS
EXPIRATION DATE 3-9-99



LOCATION MAP

DATE OF PREPARATION 02/15/95

L. L. RODRIGUEZ and ASSOCIATES, INC.
CONSULTING ENGINEERS / PLANNERS / SURVEYORS
2427 N. 16TH STREET SUITE 101 McALLEN, TEXAS 78501
PHONE (214) 887-7281













NOTICE
VARIANCE
FOR
THIS PROPERTY
ZBA2021-0003

7001

Hidalgo CAD

Property Search Results > 550251 GARCIA POTENCIANO JR & MADELINE M for Year 2021

Tax Year: 2021

Property

Account

Property ID:	550251	Legal Description:	THE GARDENS LOT 1
Geographic ID:	T3253-00-000-0001-00	Zoning:	RS
Type:	Real	Agent Code:	1024876
Property Use Code:			
Property Use Description:			

Location

Address:	7001 N 5TH ST MCALLEN, TX	Mapsc:	
Neighborhood:	THE GARDENS	Map ID:	CML VOL 30 PG 66
Neighborhood CD:	T325300		

Owner

Name:	GARCIA POTENCIANO JR & MADELINE M	Owner ID:	491961
Mailing Address:	PO BOX 4876 MCALLEN, TX 78502-4876	% Ownership:	100.000000000000%

Exemptions:

Values

(+) Improvement Homesite Value:	+	\$0	
(+) Improvement Non-Homesite Value:	+	\$128,258	
(+) Land Homesite Value:	+	\$0	
(+) Land Non-Homesite Value:	+	\$38,016	Ag / Timber Use Value
(+) Agricultural Market Valuation:	+	\$0	\$0
(+) Timber Market Valuation:	+	\$0	\$0

(=) Market Value:	=	\$166,274	
(-) Ag or Timber Use Value Reduction:	-	\$0	

(=) Appraised Value:	=	\$166,274	
(-) HS Cap:	-	\$0	

(=) Assessed Value:	=	\$166,274	

Taxing Jurisdiction

Owner:	GARCIA POTENCIANO JR & MADELINE M
% Ownership:	100.000000000000%
Total Value:	\$166,274

--	--	--	--	--	--	--

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax	
CAD	APPRAISAL DISTRICT	0.000000	\$166,274	\$166,274	\$0.00	
CML	CITY OF MCALLEN	0.495600	\$166,274	\$166,274	\$824.05	
DR1	DRAINAGE DISTRICT #1	0.102600	\$166,274	\$166,274	\$170.60	
GHD	HIDALGO COUNTY	0.575000	\$166,274	\$166,274	\$956.08	
JCC	SOUTH TEXAS COLLEGE	0.171800	\$166,274	\$166,274	\$285.66	
R12	ROAD DIST 12	0.000000	\$166,274	\$166,274	\$0.00	
SML	MCALLEN ISD	1.138600	\$166,274	\$166,274	\$1,893.20	
SST	SOUTH TEXAS SCHOOL	0.049200	\$166,274	\$166,274	\$81.81	
Total Tax Rate:		2.532800				
Taxes w/Current Exemptions:					\$4,211.40	
Taxes w/o Exemptions:					\$4,211.39	

Improvement / Building

Improvement #1: RESIDENTIAL **State Code:** A1 **Living Area:** 2020.0 sqft **Value:** \$128,258

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
MA	MAIN AREA	BRKAV - 7	DBRK	2002	2020.0
GAR	GARAGE	*		2002	462.0
POR	PORCH (COVERED)	*		2002	24.0
PAT	PATIO	*		2002	120.0

Land

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	L	LOT	0.1322	5760.00	60.00	96.00	\$38,016	\$0

Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2021	\$128,258	\$38,016	0	166,274	\$0	\$166,274
2020	\$114,377	\$38,016	0	152,393	\$0	\$152,393
2019	\$112,526	\$38,016	0	150,542	\$0	\$150,542
2018	\$107,231	\$41,760	0	148,991	\$0	\$148,991
2017	\$107,231	\$41,760	0	148,991	\$0	\$148,991
2016	\$105,748	\$41,760	0	147,508	\$0	\$147,508
2015	\$105,748	\$41,760	0	147,508	\$0	\$147,508
2014	\$105,146	\$41,760	0	146,906	\$0	\$146,906
2013	\$107,591	\$41,760	0	149,351	\$0	\$149,351
2012	\$110,037	\$40,320	0	150,357	\$0	\$150,357
2011	\$108,951	\$40,320	0	149,271	\$0	\$149,271
2010	\$110,147	\$40,320	0	150,467	\$0	\$150,467
2009	\$111,344	\$40,320	0	151,664	\$0	\$151,664
2008	\$112,540	\$40,320	0	152,860	\$0	\$152,860
2007	\$116,477	\$40,320	0	156,797	\$0	\$156,797

Deed History - (Last 3 Deed Transactions)

#	Type	Description	Grantor	Grantee	Volume	Page
---	------	-------------	---------	---------	--------	------

	Deed Date						Deed Number
1	5/23/2002	WDV	WARRANTY DEED/VENDORS LIEN	VILLALPANDO PEDRO	GARCIA POTENCIANO JR & MADELINE M		1085351
2	1/23/2001	WD	WARRANTY DEED	MIS TRES PROPERTIES LLC	VILLALPANDO PEDRO		937712
3	9/4/2000	SVD	SPEC WD/VEN LIEN	LAREDO NATIONAL BANK	MIS TRES PROPERTIES LLC		904861

Tax Due

Property Tax Information as of 01/27/2021

Amount Due if Paid on: 

Year	Taxing Jurisdiction	Taxable Value	Base Tax	Base Taxes Paid	Base Tax Due	Discount / Penalty & Interest	Attorney Fees	Amount Due
------	---------------------	---------------	----------	-----------------	--------------	-------------------------------	---------------	------------

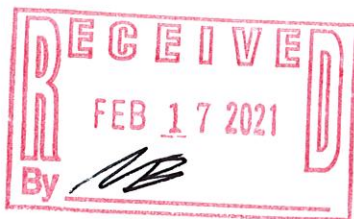
NOTE: Penalty & Interest accrues every month on the unpaid tax and is added to the balance. Attorney fees may also increase your tax liability if not paid by July 1. If you plan to submit payment on a future date, make sure you enter the date and RECALCULATE to obtain the correct total amount due.

Questions Please Call (956) 381-8466.

2/17/2021

I Peter and Janice Sr. would be really to have
the carport structure be attached to the house
and withdraw variance # 4

Peter and Janice



Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: March 10, 2021

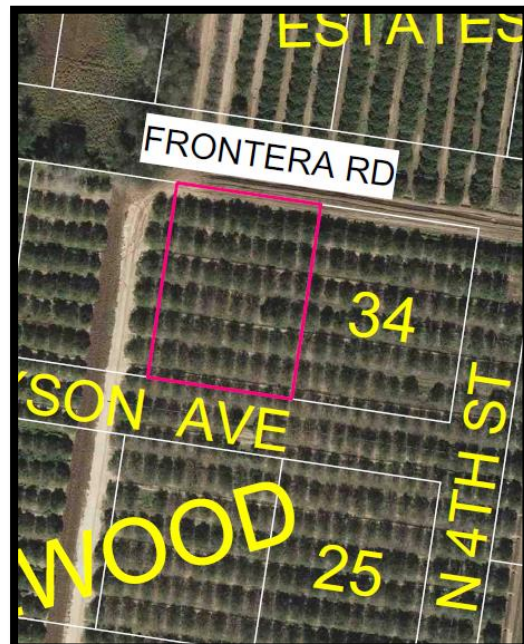
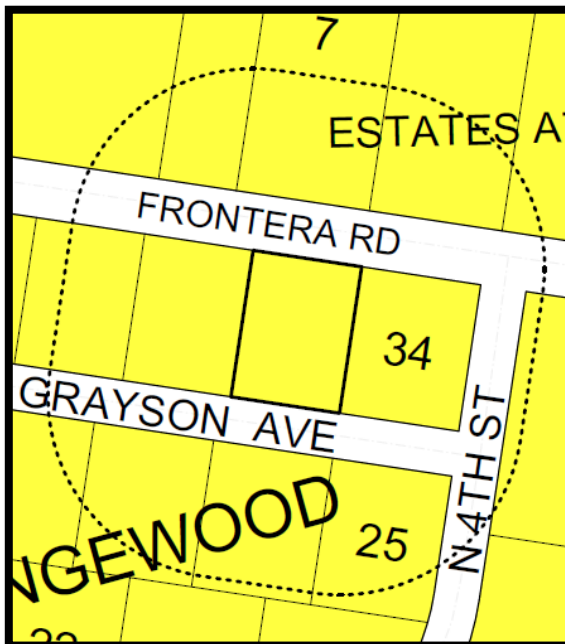
SUBJECT: REQUEST OF ENRIQUE REYNOSO FOR A VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 15 FT. INTO THE 25 FT. REAR YARD SETBACK FOR A PROPOSED POOL HOUSE WITH A COVERED TERRACE MEASURING 25.16 FT. BY 29.16 FT., AT LOT 33, ORANGEWOOD NORTH SUBDIVISION, HIDALGO COUNTY, TEXAS; 404 GRAYSON AVENUE. (ZBA2021-0004)

REASON FOR APPEAL:

The applicant is requesting a variance to allow a rear yard encroachment of 15 ft. into the 25 ft. rear yard setback for the proposed construction of a pool house with a covered terrace. The pool house and covered terrace require a variance for an encroachment into the rear yard setback.

PROPERTY LOCATION AND VICINITY:

The subject property has 120.42 ft. frontage on Grayson Avenue and Frontera Road, with a depth of 162.55 ft. for a lot size 19,574.27 sq. ft. The subject property is located 132 ft. west of North 4th Street in a private (gated) subdivision. The property is zoned R-1 (single family residential) District. The surrounding land uses include single family residences and vacant lots.



BACKGROUND AND HISTORY:

The Orangewood North Subdivision was recorded on April 20, 2016. An application for a variance request was submitted on January 8, 2020 for an encroachment of 7 ft. into the 25 ft. rear yard setback for the construction of a single-family home. The request was approved at the Zoning Board of Adjustment and Appeals Meeting on February 5, 2020. A new application for a variance request was submitted on February 5, 2021 for the proposed pool house and covered terrace. The applicant is proposing to encroach 15 ft. into the 25 ft. rear yard setback. The issuance of a future building permit will depend on the outcome of this variance request.

ANALYSIS:

A single-family home and accessory use are permitted in the R-1 District. Required setbacks and building separation must be met. The site plan submitted shows a proposed encroachment of 15 ft. The property is a “double fronting” lot. The Zoning Ordinance requires the rear yard setback to be the same as the front setback for “double fronting” lots to separate the residential structure from the traffic and noise from roadways.

The plat for this subdivision indicates a 25 ft. rear yard setback for double fronting lots along Frontera Road (Lots 30-34). The applicant decided to pursue the option of the variance request in order to construct a proposed pool house with a covered terrace.

Access to the lot is limited to Grayson Avenue. An 8 ft. solid fence has been erected along the rear of the properties along Frontera Road which serves to mitigate traffic noise. Should the variance request be approved the applicant will have to apply for a building permit and comply with building and engineering requirements. There is a 10 ft. utility easement at the rear of the lot parallel to Frontera Road that will not be impacted by the proposed construction. The standard rear yard setback in the R-1 District is 10 ft.

In the past, the Board has approved variance requests in rear yards of double fronting lots for accessory uses, but not for living areas.

Staff has not received any phone calls from surrounding property owners in opposition to the variance request.

RECOMMENDATION:

Staff recommends disapproval of the variance request.

ZBA2021-0004



City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15th Street

McAllen, TX 78501

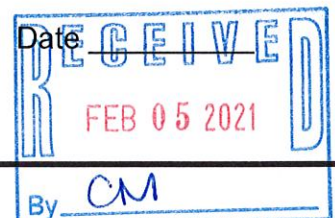
P. O. Box 220

McAllen, TX 78505-0220

(956) 681-1250

(956) 681-1279 (fax)

Project	<p>Legal Description <u>LOT 33, ORANGEWOOD NORTH</u> <u>404 GRAYSON AVE</u></p> <p>Subdivision Name <u>McALLEN, TX 78504</u></p> <p>Street Address _____</p> <p>Number of lots <u>1</u> Gross acres <u>.45</u></p> <p>Existing Zoning <u>RESIDENTIAL</u> Existing Land Use <u>RESIDENCE UNDER CONSTRUCTION</u></p> <p>Reason for Appeal (please use other side if necessary) <u>SEE PAGE 2 + SITE PLAN</u> <u>+ SURVEY</u></p> <p><input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport)</p> <p><input checked="" type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required</p>
Applicant	<p>Name <u>ENRIQUE REYNOSO</u> Phone <u>956-929-4540</u></p> <p>Address <u>2311 S 42ND LN</u> E-mail <u>EREYNOSO@NDUALINK.MX.COM</u></p> <p>City <u>McALLEN</u> State <u>TX</u> Zip <u>78503</u></p>
Owner	<p>Name <u>SAME</u> Phone _____</p> <p>Address _____ E-mail _____</p> <p>City _____ State _____ Zip _____</p>
Authorization	<p>To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>SEE HOA APPROPRIAL</u></p> <p>I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.</p> <p>Signature <u>[Signature]</u> Date <u>2/5/2021</u></p> <p>Print Name <u>ENRIQUE REYNOSO</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent</p>
Office	<p>Accepted by <u>K.F.</u> Payment received by _____</p> <p>Rev 09/20</p>



Rct# 253776



City of McAllen

Planning Department

REASON FOR APPEAL & BOARD ACTION

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

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

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

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

THE BACK SIDE (NORTH SIDE) OF THE PROPERTY
FRONTS FRONTIERA AVENUE, AND AS SUCH HAS A
25 FOOT REAR SET BACK VERSUS NORMAL 10' EASEMENT

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

I WANT TO CONSTRUCT A SMALL POOLHOUSE ON THE
NORTH EAST CORNER OF THE PROPERTY WHICH WILL
RESPECT BOTH THE 10' UTILITY AND 6' EAST SIDE EASEMENT.

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:

THERE IS AN 8 FOOT CONCRETE BLOCK FENCE
ON NORTH PERIMETER OF THE SUBDIVISION / PROPERTY
WHICH MITIGATES TRAFFIC SAFETY CONCERN ON ADJACENT 15'

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

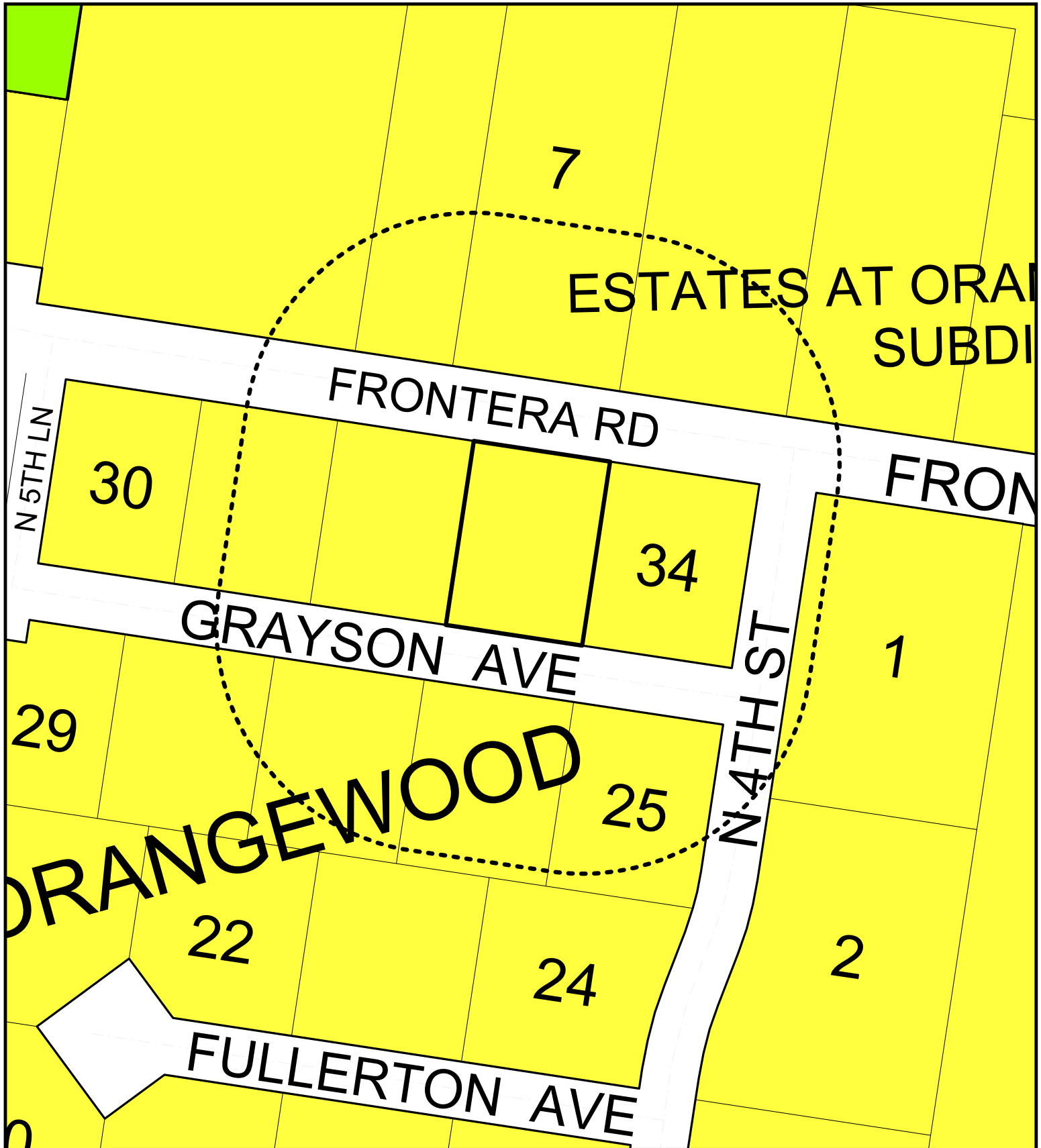
LOTS 30 TO 34 ARE THE ONLY LOTS IN
ORANGEWOOD NORTH WITH THE ADDITIONAL 15'
FOOT SETBACK, LIMITING ENJOYMENT OF BACK-
YARD. NO SAFETY ISSUES ON THE 15' GIVEN CONCRETE FENCE

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date



CITY OF McALLEN

PLANNING DEPARTMENT

LEGEND

SCALE: N.T.S.

AREA MAP

SUBJECT PROPERTY

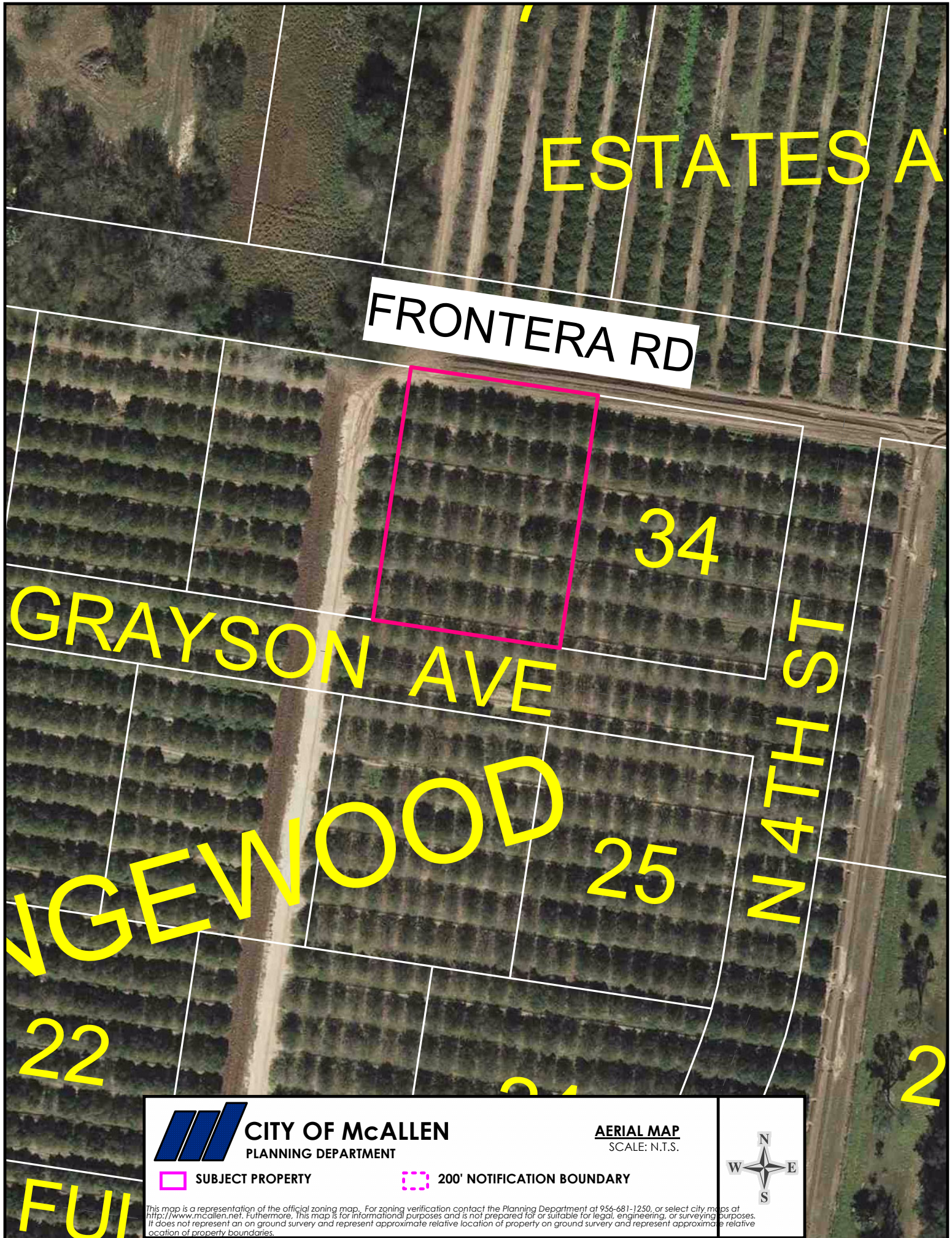
200 FT. NOTIFICATION BOUNDARY

1/4 MILE RADIUS

ZONING LEGEND

<p> A-0 (AGRICULTURAL & OPEN SPACE)</p> <p> R-1 (SINGLE FAMILY RESIDENTIAL)</p> <p> R-2 (DUPLEX-FOURPLEX)</p>	<p> R-3A (APARTMENTS)</p> <p> R-3C (CONDOMINIUMS)</p> <p> R-3T (TOWNHOUSES)</p>	<p> R-4 (MOBILE HOMES)</p> <p> C-1 (OFFICE BUILDING)</p> <p> C-2 (NEIGHBORHOOD COMMERCIAL)</p>	<p> C-3 (GENERAL BUSINESS)</p> <p> C-3L (LIGHT COMMERCIAL)</p> <p> C-4 (COMMERCIAL INDUSTRIAL)</p>	<p> I-1 (LIGHT INDUSTRIAL)</p> <p> I-2 (HEAVY INDUSTRIAL)</p> <p> (SPECIAL DISTRICT)</p>
--	--	---	---	---

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



ESTATES A

FRONTERA RD

34

GRAYSON AVE

N 4TH ST

INGENWOOD

25

22

2



CITY OF McALLEN
PLANNING DEPARTMENT

AERIAL MAP
SCALE: N.T.S.

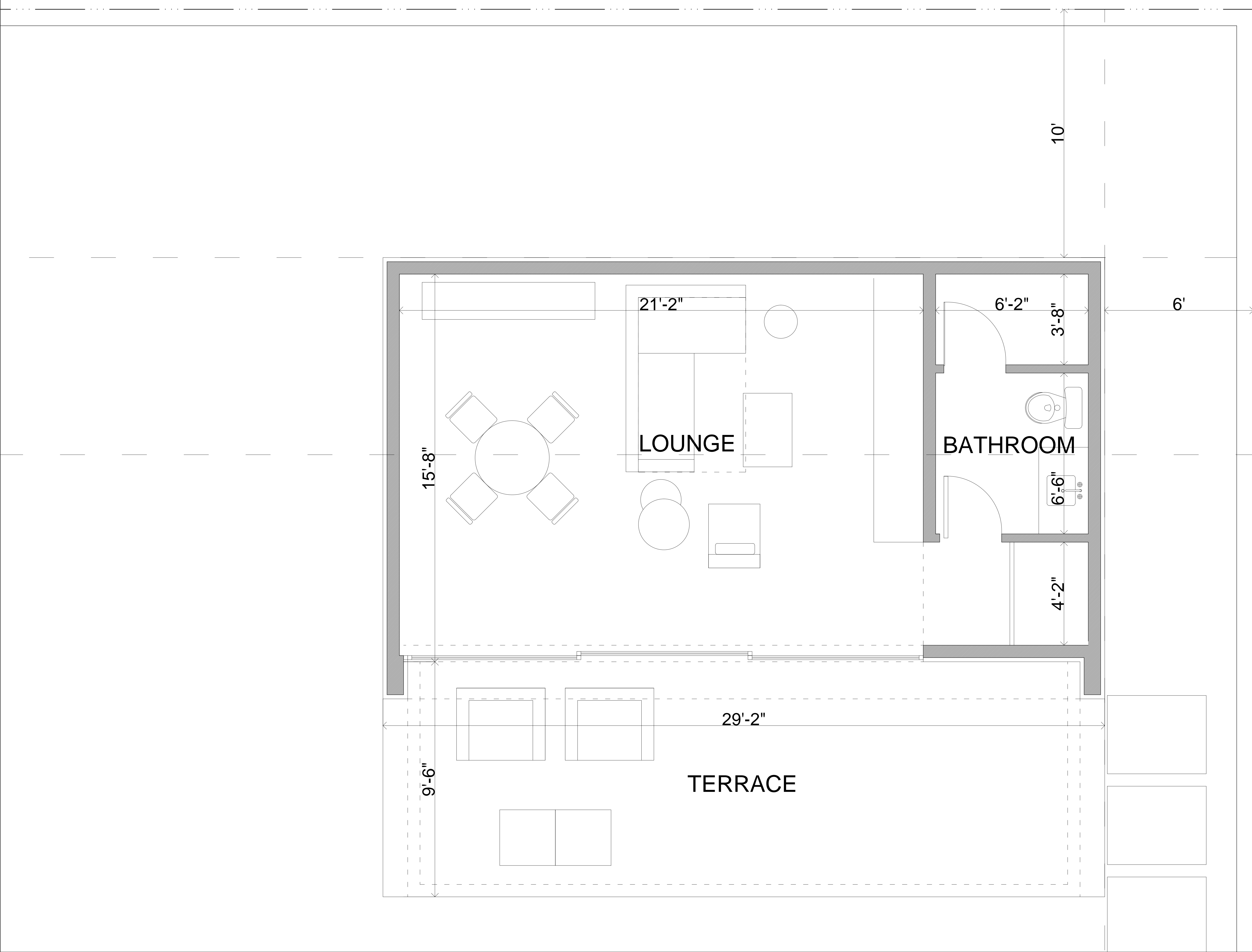
 **SUBJECT PROPERTY**

 **200' NOTIFICATION BOUNDARY**



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

FUI



SHEET NO.

01-01

FLOOR PLAN

SCALE TO FIT

DATE: 02/24/2021

CASA_REYNOSO

LOCATION:
Lot 33
Orange Wood North
McAllen, Texas.

LIVING AREA:
5,200.12 SQ.FT.
GARAGE & STO.
828.10 SQ.FT.
TERRACES
1,434.50 SQ.FT.
POOL CLOSET
64.36 SQ.FT.
POOL HOUSE
476.4 SQ.FT.
PORCH
62.23 SQ.FT.
TOTAL
8,065.71 SQ.FT.

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COMPLETION DRAWING

DRAWN BY:

CHECKED BY:

APPROVED BY:

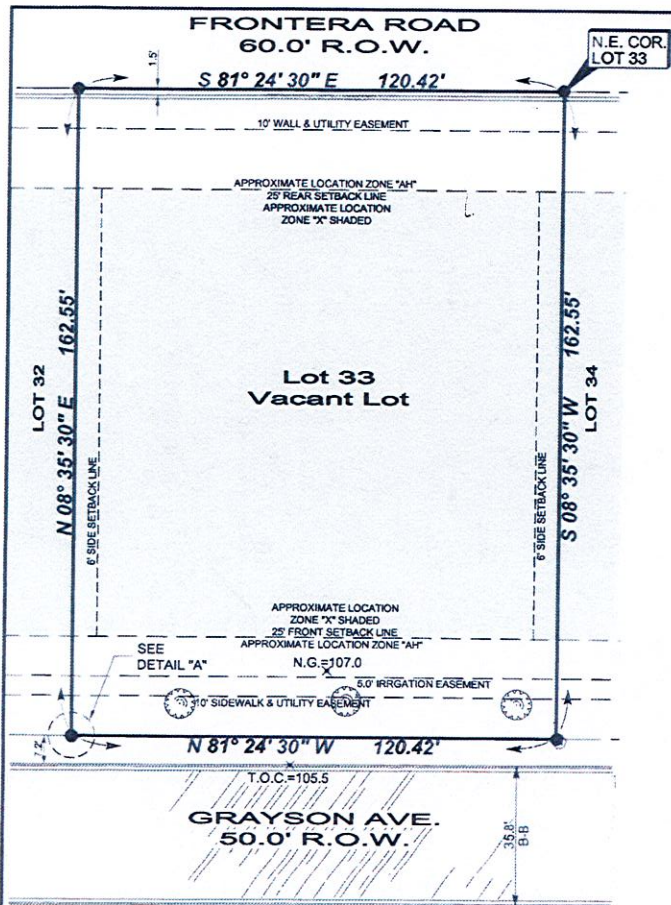
REVISIONS:

LOPEZ RESENDEZ STUDIO

609 PECAN BLVD. McALLEN TX. 78501
PHONE: (956) 683 0649
luis@lopezresendez.com / luis@casalabdesign.com
www.lopezresendez.com / www.casalabdesign.com

LRS





**PLAT SHOWING
LOT 33,
ORANGEWOOD NORTH,
INSTRUMENT No. 2705278, H.C.M.R.
CITY OF McALLEN,
HIDALGO COUNTY, TEXAS**

NOTES:

1. SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SEAL & SIGNATURE OF SURVEYOR.
2. SURVEY WAS PREPARED IN COORDINATION WITH LANDTITLE USA COMMITMENT GF, No. 18004862.
3. SIDE SETBACKS NOT SHOWN ON SAID ORANGEWOOD NORTH SUBDIVISION. SIDE SETBACKS SHOWN AS PER CITY OF McALLEN BUILDING PERMITS AND INSPECTIONS DEPARTMENT.
4. NO BUILDING ALLOWED OVER ANY EASEMENT.
5. THE BUILDABLE AREAS OF EACH LOT LIE IN ZONE "X" (SHADED). THE STREETS LIE IN ZONE "AH" WHEN PERTAINING TO FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER: 480334 0425 C

ZONE "X" (SHADED) - AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD.

ZONE "AH" - AREAS OF 100-YEAR SHALLOW FLOODING WHERE DEPTHS ARE BETWEEN ONE (1) AND THREE (3) FEET; BASE FLOOD ELEVATION HAS BEEN DETERMINED TO BE 107, BUT NO FLOOD HAZARD FACTORS ARE DETERMINED.

BOTH ZONE "X" (SHADED) IS SHOWN ON:
COMMUNITY-PANEL NUMBER: 480334 0325 D MAP REVISED: JUNE 6, 2000 REVISED TO REFLECT LOMR: MAY 17, 2001

ZONE "AH" IS SHOWN ON:
COMMUNITY-PANEL NUMBER: 480334 0425 C MAP REVISED: NOVEMBER 16, 1982

ALL FURTHER REVISED TO REFLECT CLOMR-F CASE NO.: 15-06-3825C

FLOOD ZONE

ZONE "X" (SHADED)

AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD.

COMMUNITY-PANEL NUMBER: 480334 0325 D
MAP REVISED: JUNE 6, 2000, REVISED TO REFLECT LOMR: MAY 17, 2001

ALL FURTHER REVISED TO REFLECT CLOMR-F CASE NO. 15-06-3825C

ZONE "AH"

AREAS OF 100-YEAR SHALLOW FLOODING WHERE DEPTHS ARE BETWEEN ONE(1) AND THREE(3) FEET; BASE FLOOD ELEVATION HAS BEEN DETERMINED TO BE 107, BUT NO FLOOD HAZARD FACTORS ARE DETERMINED.

COMMUNITY-PANEL NUMBER: 480334 0425 C
MAP REVISED: NOVEMBER 16, 1982

LEGEND

- FOUND No.4 REBAR
- SET No.4 REBAR WITH PLASTIC CAP STAMPED MELDEN & HUNT
- ⊗ WATER METER
- ▬ 1' BLOCK FENCE
- ▨ ASPHALT AREA
- ▭ FLOOD "ZONE X" SHADED [APPROXIMATE LOCATION]
- ⊙ TREE (4")
- T.O.C. - TOP OF CURB ASSUMED ELEVATION
- N.G. - NATURAL GROUND ELEVATION
- H.C.M.R. - HIDALGO COUNTY MAP RECORDS
- N.E. COR. - NORTHEAST CORNER
- N.T.S. - NOT TO SCALE

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY AS DESCRIBED HEREON, WAS MADE ON THE GROUND ON 02/28/18 UNDER MY DIRECTION, THAT THE ONLY IMPROVEMENTS ON THE GROUND ARE AS SHOWN, THAT THERE ARE NO VISIBLE ENCROACHMENTS, VISIBLE OVERLAPPING, APPARENT CONFLICTS, OR VISIBLE EASEMENTS, EXCEPT AS SHOWN HEREON.

Fred L. Kurth
FRED L. KURTH, RPLS No. 4750

3218
DATE:



MELDEN & HUNT INC.
CONSULTANTS • ENGINEERS • SURVEYORS

227 N. F.M. 3167
RIO GRANDE CITY, TX 78562
PH: (956) 487-8256
FAX: (956) 488-8591

BOOK: T-1050, PG.70
DATE: 3/2/2018
JOB No. 18478.08
FILE NAME: 18478.08
DRAWN BY: M.A.

115 W. McINTYRE
EDINBURG, TX 78541
PH: (956) 381-0981
FAX: (956) 381-1839
ESTABLISHED 1947
www.meldenandhunt.com

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Orangewood North HOA
c/o Magnolia Property Management
620 S 12th Street
McAllen TX 78501
Ph: (956) 630-4225 Fax: (956) 616-4162
Website: magnoliapm.net

Date: 2/2/2021 8:10:10 AM

Project Ref: [65766881] 404 Grayson Ave

Enrique Reynoso & Monica F Herrera
2311 S 42nd Ln
McAllen TX 78503

Dear **Enrique Reynoso & Monica F Herrera**,

I am pleased to inform you that your request is approved for the listed project item(s):

Pool House

The approval is contingent upon compliance with the specifications set forth in the approved application. If your change or addition requires a county, city or state permit, it is the responsibility of the homeowner to obtain this before starting construction.

Please retain this letter in your files. If you have any questions regarding this matter, please contact our office at (956) 630-4225 or e-mail us at info@magnoliapm.net.

Please note: Builders should use the builder code and **not** the homeowner's code, which can be obtained from gates@magnoliapm.net.

Sincerely,
Orangewood North HOA

Iris Alvarado

From: Enrique Reynoso <ereynoso@novalinkmx.com>
Sent: Monday, February 22, 2021 8:58 AM
To: Iris Alvarado
Cc: Luis Lopez Resendez; Antonio S. Gallegos Gza.
Subject: RE: Back Yard rendering

That is correct. The fence will be at the property line, not closer in.

Enrique Reynoso
CFO



956-986-6725
www.novalinkmx.com

From: Iris Alvarado <ialvarado@mcallen.net>
Sent: Monday, February 22, 2021 8:54 AM
To: Enrique Reynoso <ereynoso@novalinkmx.com>
Cc: Luis Lopez Resendez <luis@casalabdesign.com>; Antonio S. Gallegos Gza. <antonio.gaga89@gmail.com>
Subject: RE: Back Yard rendering

WARNING: !!This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe!!.

On the renderings it shows the fence in close proximity to the pool house, will the fence be built at the property line?

Sincerely,
Iris Alvarado - Padilla
Planner I
City of McAllen Planning Department
311 North 15th Street | McAllen, Texas 78501
☎ 956-681-1250
✉ ialvarado@mcallen.net
🖨 956-681-1279
🌐 www.mcallen.net or www.buildmcallen.com

From: Enrique Reynoso [<mailto:ereynoso@novalinkmx.com>]
Sent: Monday, February 22, 2021 8:47 AM
To: Iris Alvarado <ialvarado@mcallen.net>
Cc: Luis Lopez Resendez <luis@casalabdesign.com>; Antonio S. Gallegos Gza. <antonio.gaga89@gmail.com>
Subject: RE: Back Yard rendering

Definitely, Iris. I just talked to Luis about making sure that there is no overhang encroaching the 10' utility easement. The updated documents will clearly show no encroachment.

Thanks.

Enrique Reynoso
CFO



956-986-6725

www.novalinkmx.com

From: Iris Alvarado <ialvarado@mcallen.net>
Sent: Monday, February 22, 2021 8:37 AM
To: Enrique Reynoso <ereynoso@novalinkmx.com>
Cc: Luis Lopez Resendez <luis@casalabdesign.com>; Antonio S. Gallegos Gza. <antonio.gaga89@gmail.com>
Subject: RE: Back Yard rendering

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Thank you please ensure that there is no overhang.

Sincerely,
Iris Alvarado - Padilla
Planner I
City of McAllen Planning Department
311 North 15th Street | McAllen, Texas 78501
☎ 956-681-1250
✉ ialvarado@mcallen.net
🖨 956-681-1279
🌐 www.mcallen.net or www.buildmcallen.com

From: Enrique Reynoso [<mailto:ereynoso@novalinkmx.com>]
Sent: Monday, February 22, 2021 8:34 AM
To: Iris Alvarado <ialvarado@mcallen.net>
Cc: Luis Lopez Resendez <luis@casalabdesign.com>; Antonio S. Gallegos Gza. <antonio.gaga89@gmail.com>
Subject: RE: Back Yard rendering
Importance: High

Received your email, Iris.

I can see from the renders (attached) that I included on my application that it is not very clear that the 10 foot utility easement on the north side is NOT encroached on. I will get you updated renders that clearly show that the proposed Pool House does not encroach on 10 foot utility easement.

While I will be representing myself before the Zoning Board, I am copying my Architect Luis Lopez, and his associate Antonio, since they will be providing the updated renders.

Thank you for the follow through on this request.

Best Regards.

Enrique Reynoso
CFO



956-986-6725

www.novalinkmx.com

From: Iris Alvarado <ialvarado@mcallen.net>
Sent: Monday, February 22, 2021 8:21 AM
To: Enrique Reynoso <ereynoso@novalinkmx.com>
Subject: Back Yard rendering

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Sincerely,
Iris Alvarado - Padilla
Planner I
City of McAllen Planning Department
311 North 15th Street | McAllen, Texas 78501
☎ 956-681-1250
✉ ialvarado@mcallen.net
☎ 956-681-1279
🌐 www.mcallen.net or www.buildmcallen.com

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Memo

TO: Zoning Board of Adjustment & Appeals

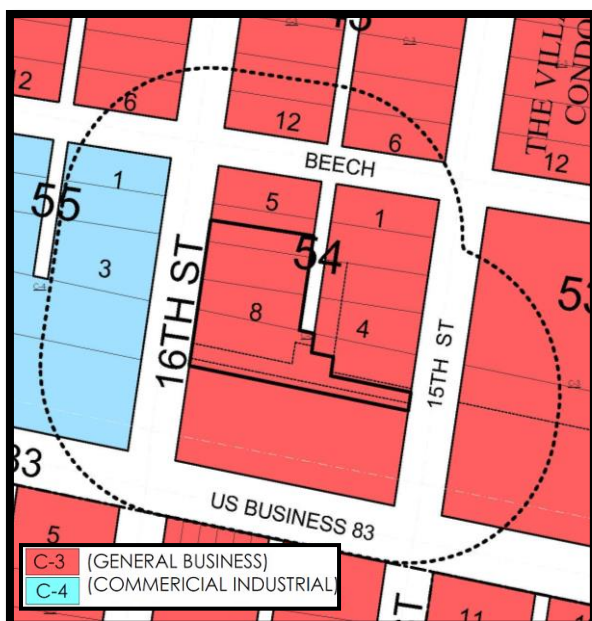
FROM: Planning Staff

DATE: March 11, 2021

SUBJECT: REQUEST OF LUIS MURO FOR THE FOLLOWING VARIANCES TO THE CITY OF MCALLEN ZONING ORDINANCE, OFF-STREET PARKING AND LOADING ORDINANCE AND VEGETATION ORDINANCE: 1) TO ALLOW ISSUANCE OF A BUILDING PERMIT IN EXCESS OF 10% VALUE FOR A NON-COFORMING STRUCTURE, 2) TO ALLOW 11 PARKING SPACES INSTEAD OF THE REQUIRED 19 PARKING SPACES, 3) TO NOT PROVIDE A LANDSCAPE AREA WITH A TREE WITHIN 50 FT. OF ANY PARKING SPACE AND 4) TO NOT PROVIDE 50% OF THE REQUIRED LANDSCAPE AREA TO BE VISIBLE FROM THE STREET FRONTING THE PROPERTY, AT THE SOUTH 28 FT. OF LOT 6, ALL OF 7 & 8 & ALL OF ASH AVE LYING SOUTH OF LOT 8, BLOCK 54, NORTH MCALLEN SUBDIVISION, HIDALGO COUNTY, TEXAS; 110 NORTH 16TH STREET. (ZBA2021-0005)

REASON FOR APPEAL

The applicant is requesting the variances in order to continue with the building permit for a second story office addition to an existing non-confirming structure. The applicant states that there is not enough area to comply with parking and landscape at the time, let alone after the addition. Additionally, he mentions that the variances would not be detrimental to the public; it would only affect their employees since the location is not open to public and most of the employees work off-site. Moreover, the site is covered with pavement and it would have to be dismantled to provide landscaping; providing landscaping will add unreasonable maneuverability for employees since construction materials are cumbersome.



PROPERTY LOCATION AND VICINITY:

The property is located on the east side of North 16th Street, 125 ft. north of US Business 83. The property has 193.6 ft. of frontage along North 16th Street; the property has a variety of depths since it is an irregular shaped lot, at the north side a depth of approximately 140 ft. and at the south side a depth of approximately 300 ft. for a tract size of 0.86 acre as per submitted site plan. The property is zoned C-3 (general business) District. The adjacent zoning is C-3 District to the north, east and south, and C-4 (commercial-industrial) District to the west. The surrounding land uses include Casa Kevin, Omega 99^c Store, Retail Plaza, a parking lot and Western Park.

BACKGROUND AND HISTORY:

The recorded plat is North McAllen Subdivision. The original building permit was submitted on December 4, 2018 and has been renewed as non-permitted additions and stop work orders were being constructed and issued respectively. The City has been working with the applicant with improvements that have been added to the subject property. In the building permit approved on November 2019, the City treated office space with personal storage areas as “warehouse” and this reduced the number of parking spaces required for the offices from 10 parking spaces to 1 parking space. A front stone façade was also built on the existing office structure. However, this construction was encroaching into the ROW and the City issued out a License agreement for the encroachment into the ROW. The latest renewal was submitted on November 13, 2020 after another stop work order was issued; the renewal was to add a second floor to the existing office. 3 stop work orders have been issued for work without a permit for this specified location.

A variance application for the proposed 11 parking spaces instead of the required 19, landscape variances and issuance of a permit for excess of 10% value was received on February 12, 2021.

On April 15, 2020, at 101 North 16th Street, the Zoning Board of Adjustments & Appeals voted to grant a variance to allow 29 parking spaces instead of the required 42 parking spaces, a variance to the 10% landscape requirement and to not provide 50% of the required landscape area to be visible from the street fronting the property.

ANALYSIS:

Variance #1: Excess of 10% Value

The variance request is to allow the issuance of a permit in excess of 10% value for a non-conforming structure. Appraisal District records shows that the existing structure was built in 1973, however the McAllen Growth from 1972 to 2019 GIS map, shows that the structure was already in place in 1972; original building permits were not found. The proposed addition of a second floor would be considered to be in excess of more than 10% since it's an addition of a whole second office, doubling the square footage. The height shown on elevation plan is at 6.87 ft., however a site visited revealed that the existing height is approximately 9 ft. The proposed height of the second floor, including the parapet is 22.5 ft.

The following Variances are specific to the highlighted region as shown on site plan

Variance #2: Off-street Parking

The variance request is to allow 11 parking spaces instead of the required 19 spaces. Currently, the lot has a variety of buildings; the owner is planning to add a second floor to the existing building for office purposes. Based on the square footage of the proposed second floor, approximately 898 sq. ft., eight additional parking spaces are required. Section 138-395 (19) requires for an office building to have 4 parking spaces for up to 200 sq. ft. plus one parking space for each additional 200 sq. f.t. A site visit revealed that there are no parking spaces on site. The site plan is proposing 11 parking spaces. Based

on the number of parking spaces required, one accessible parking space with an eight feet wide aisle is required.

Variance #3: Landscape Area with a Tree

The variance request is to not provide a landscape area with a tree within 50 ft. of any parking space. As shown on the site plan, the applicant is proposing two six in caliper tree 10 ft. in height , these trees cover the proposed north and east parking locations, however there is no proposed tree for the south parking location. On the approved 2019 building permit, a signed landscape plan was submitted with a proposed tree at the same location as to where now the variance is being requested.

Variance #4: 50% of the Required Landscape Area to be Visible from the Front

The variance request is to not provide 50% of the required landscape area to be visible from the fronting street (North 16th St.). The required landscape area is 1,338.5 sq. ft. of which 669 sq. ft. are to be at the front. Total proposed landscape is 2,062.35 sq. ft.; however, most of the green area is inside the property. The submitted site plan shows that there is little to no landscape area within the property boundary.

The submitted front elevation rendering plan, shows landscape at the front of the property, however the landscaping shown shall not be counted towards landscape requirements as it is not within the property line. Approval of landscaping within the ROW will require an amended License Agreement; sidewalk must also comply with ADA requirements.

As per Engineering Department requirements on the current building permit:

1. Revised site plan is required.
2. With the addition of a second story, a roof plan depicting how the storm water runoff will flow is required.
3. Proposed balcony cannot overhang onto City of McAllen Right of Way.
4. It appears that work to the wall has already been initiated. As per License Agreement, 'the wall shall not be expanded enlarged or altered in any way without written approval.'

Currently there is a License Agreement for encroachment into the ROW; on the elevations plan submitted to building permits, it show an overhang for a canopy encroaching into the ROW , however, any additions or improvements to the License Agreement will have to be approved by the Engineering and Legal Department.

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

RECOMMENDATION:

Staff recommends disapproval of the variance requests.

ZBOA
3/17/21

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Project

Legal Description

PART OR PORTION OF LOTS 3,4,6 ALL ALL OF LOTS 7,8
BLOCK 54 ADDITION TO CITY OF MCALLEN, HIDALGO COUNTY, TX

Subdivision Name

—

Street Address

110 North 16th St McAllen TX 78501

Number of lots

5

Gross acres

0.86 Ac.

Existing Zoning

C-3

Existing Land Use

OFFICE

Reason for Appeal (please use other side if necessary)

3/2/20
WAIVER OF ~~3~~ PARKING SPACES
AND LANDSCAPE

☐ \$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

LUIS MUÑOZ

Phone

(956) 630-0555

Address

110 North 16th St McAllen TX

E-mail

City

McAllen TX

State

TX

Zip

78501

Owner

Name

LUIS MUÑOZ

Phone

(956) 630-0555

Address

110 North 16th St McAllen TX

E-mail

City

McAllen TX

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

Karin W. Newsum

Date

1/14/2021

Print Name

Karin W. Newsum

☐ Owner☒ Authorized Agent

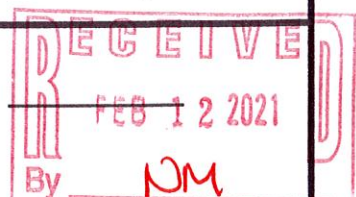
Office

Accepted by

Payment received by

Date

Rev 10/18



R/L H-C



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:

LAND DOESN'T HAVE ENOUGH SF WITH BLDG. ON SITE NOW TO PROVIDE ENOUGH PARKING SPACES NOW AND AFTER BLDG. ADDITION.

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

NOT ENOUGH LAND TO PROVIDE NECESSARY PARKING. THE EXISTING S.F. OF LAND DOESN'T HAVE ENOUGH PARKING NOW AND AFTER THE PROP. BLDG. ADDITION. AT THIS POINT FOR THIS COMPANY MOST EMPLOYEES WORK

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:

THIS WILL ONLY AFFECT THE EMPLOYEE AT AUC. THE AFFECTED AREA IS BEHIND OUR NEW ADDITION, CONCRETE WALL & AUTOMATIC GATE AND WILL NEED BE ACCESSIBLE OR VISIBLE TO THE PUBLIC (SEE ATTACHED DRAWING)

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

MOST EMPLOYEES WORK & PARK OFF SITE. MOST CLIENT MEETINGS ARE DONE OFFSITE, HENCE NOT A LOT OF CARS FROM CUSTOMERS OR EMPLOYEES. EVEN WITH GROWTH IN COMPANY EMPLOYEE WORKING AT OFFICE WOULD NEED TOTAL OF 5 PARKING SPACES.

Reason for Appeal

Board Action

Chairman, Board of Adjustment
Signature

Date

55th-60

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.

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

3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights of the adjacent property owners.

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

5. Describe the special conditions that are unique to this applicant or property.

6. Describe the special conditions that are unique to this applicant or property.

OFF SITE AND DO NOT PARK HERE. THE EXISTING YARD IS USED FOR STORAGE OF COMPANY EQUIPMENT & MATERIALS. THERE IS 14 SPACES AVAILABLE NOW. ONLY 7 PARKING SPACES ARE NECESSARY AND CURRENTLY USED.

7. Describe the special conditions that are unique to this applicant or property.

8. Describe the special conditions that are unique to this applicant or property.

9. Describe the special conditions that are unique to this applicant or property.

10. Describe the special conditions that are unique to this applicant or property.

11. Describe the special conditions that are unique to this applicant or property.

12. Describe the special conditions that are unique to this applicant or property.

13. Describe the special conditions that are unique to this applicant or property.

14. Describe the special conditions that are unique to this applicant or property.

15. Describe the special conditions that are unique to this applicant or property.

16. Describe the special conditions that are unique to this applicant or property.

17. Describe the special conditions that are unique to this applicant or property.

18. Describe the special conditions that are unique to this applicant or property.

19. Describe the special conditions that are unique to this applicant or property.

20. Describe the special conditions that are unique to this applicant or property.

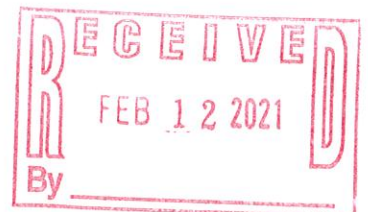
Notice of Decision

Chairman, Board of Adjustment
Signature

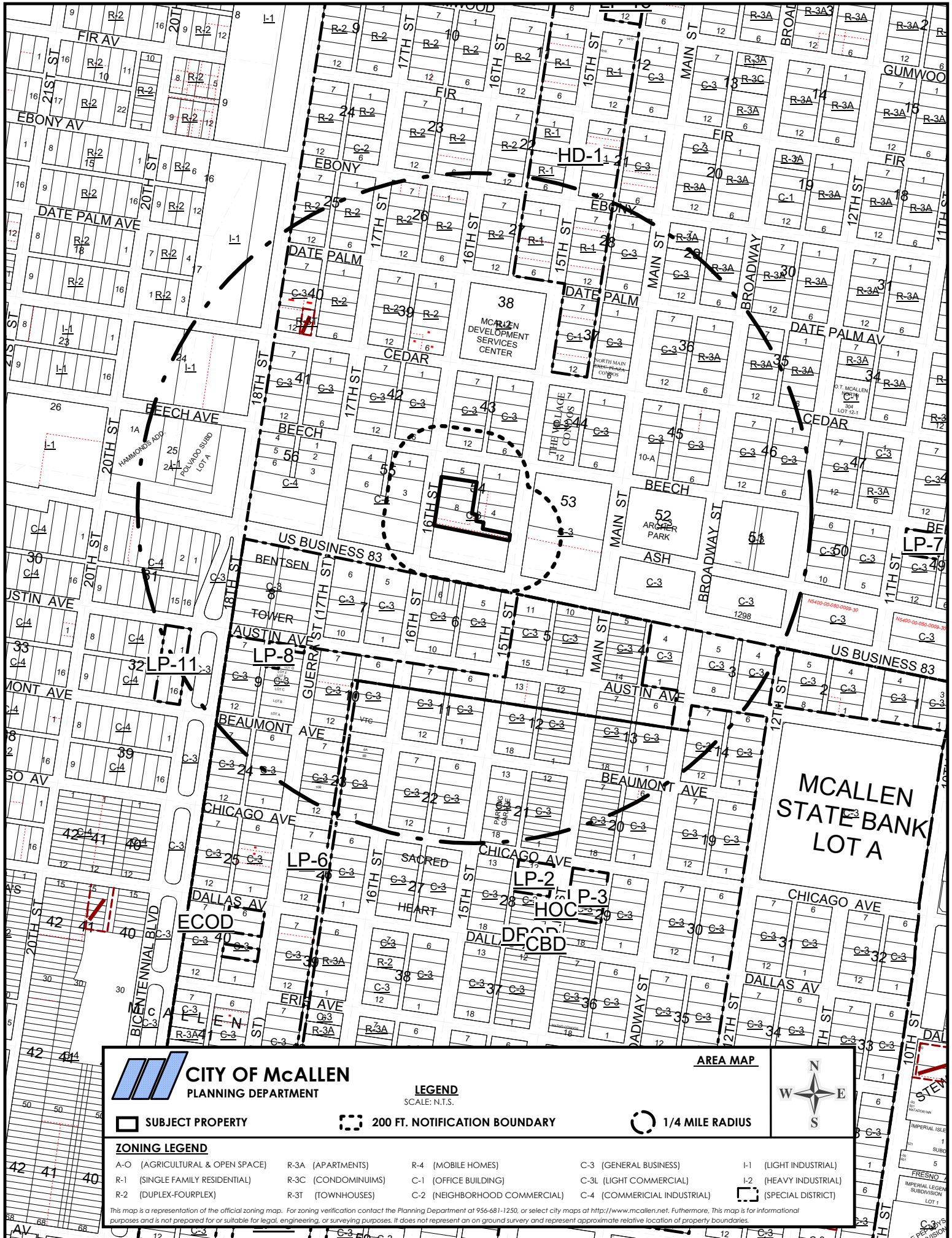
Date

LANDSCAPE Hardships

1. LAND DOESN'T HAVE ENOUGH SPACE FOR LANDSCAPE.
CURRENT LAND IS PAVEMENT AND WOULD HAVE TO BE DISMANTLED.
2. TO PARK AND STORE CONSTRUCTION MATERIALS WITHOUT DESTROYING LANDSCAPE.
3. VARIANCE WOULD ONLY AFFECT EMPLOYEES.
AREAS OF VARIANCE WOULD BLOCK GENERAL PUBLIC DUE TO CONCRETE FENCE AND WOODED GATE.
4. CONSTRUCTION MATERIALS ARE COMBERSOME AND LANDSCAPE WOULD ADD UNREASONABLE MANOEUVRABILITY FOR EMPLOYEES.
- 3/2/21 5. LANDSCAPE AREA WITHOUT A TREE FOR PARKING SPACES
- 3/2/21 6. NOT TO PROVIDE 50% LANDSCAPE TO BE VISIBLE FROM THE STREET.



ISSUANCE OF A PERMIT OF ADDITION OF
MORE THAN 10% VALUE OF NON-CONFORMING
STRUCTURE.



CITY OF McALLEN

PLANNING DEPARTMENT

LEGEND

SCALE: N.T.S.

SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

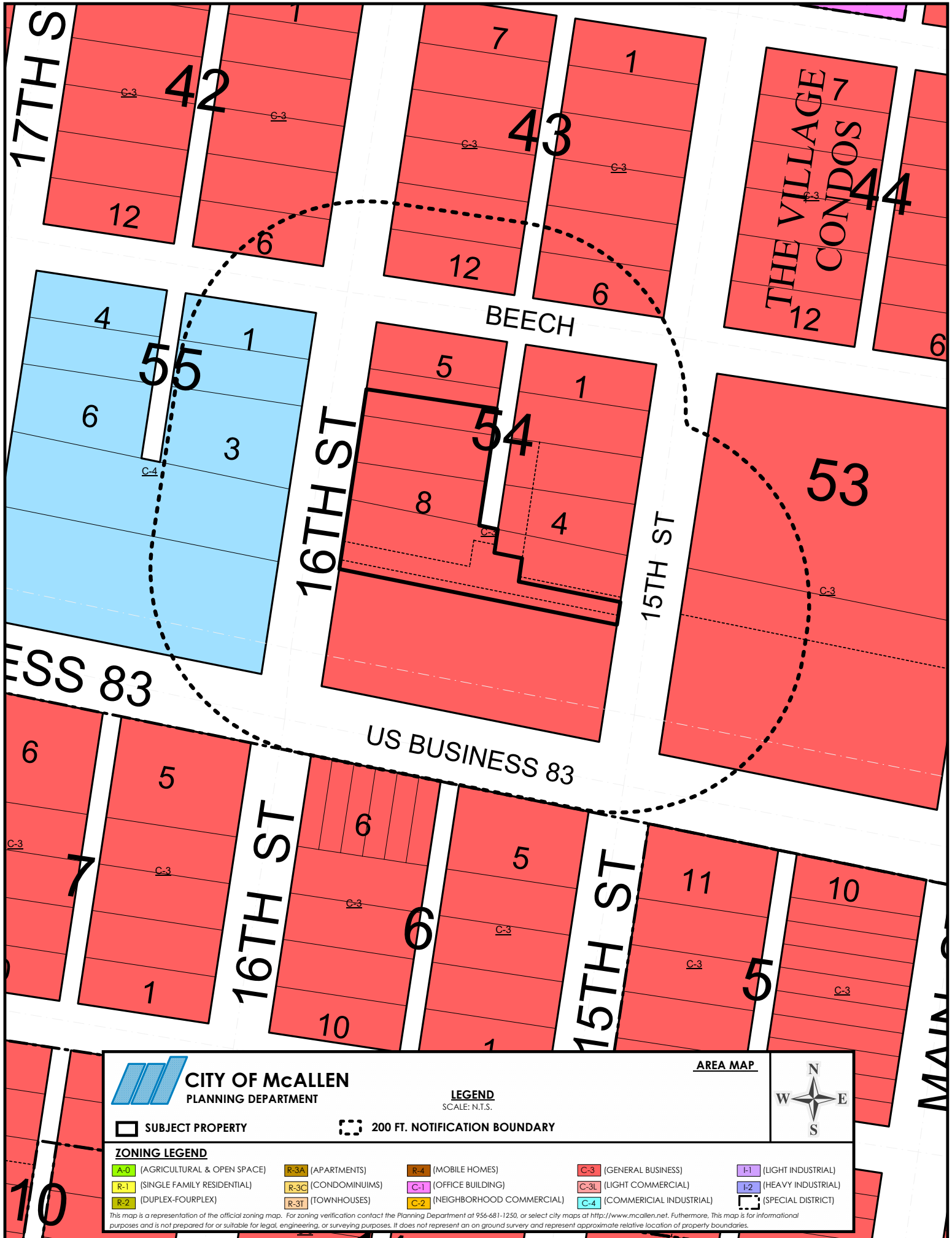
1/4 MILE RADIUS



ZONING LEGEND

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

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



CITY OF McALLEN
PLANNING DEPARTMENT

AREA MAP

LEGEND
SCALE: N.T.S.



SUBJECT PROPERTY

200 FT. NOTIFICATION BOUNDARY

ZONING LEGEND

A-0 (AGRICULTURAL & OPEN SPACE)	R-3A (APARTMENTS)	R-4 (MOBILE HOMES)	C-3 (GENERAL BUSINESS)	I-1 (LIGHT INDUSTRIAL)
R-1 (SINGLE FAMILY RESIDENTIAL)	R-3C (CONDOMINIUMS)	C-1 (OFFICE BUILDING)	C-3L (LIGHT COMMERCIAL)	I-2 (HEAVY INDUSTRIAL)
R-2 (DUPLEX-FOURPLEX)	R-3T (TOWNHOUSES)	C-2 (NEIGHBORHOOD COMMERCIAL)	C-4 (COMMERCIAL INDUSTRIAL)	(SPECIAL DISTRICT)

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CITY OF McALLEN
PLANNING DEPARTMENT

AERIAL MAP
SCALE: N.T.S.



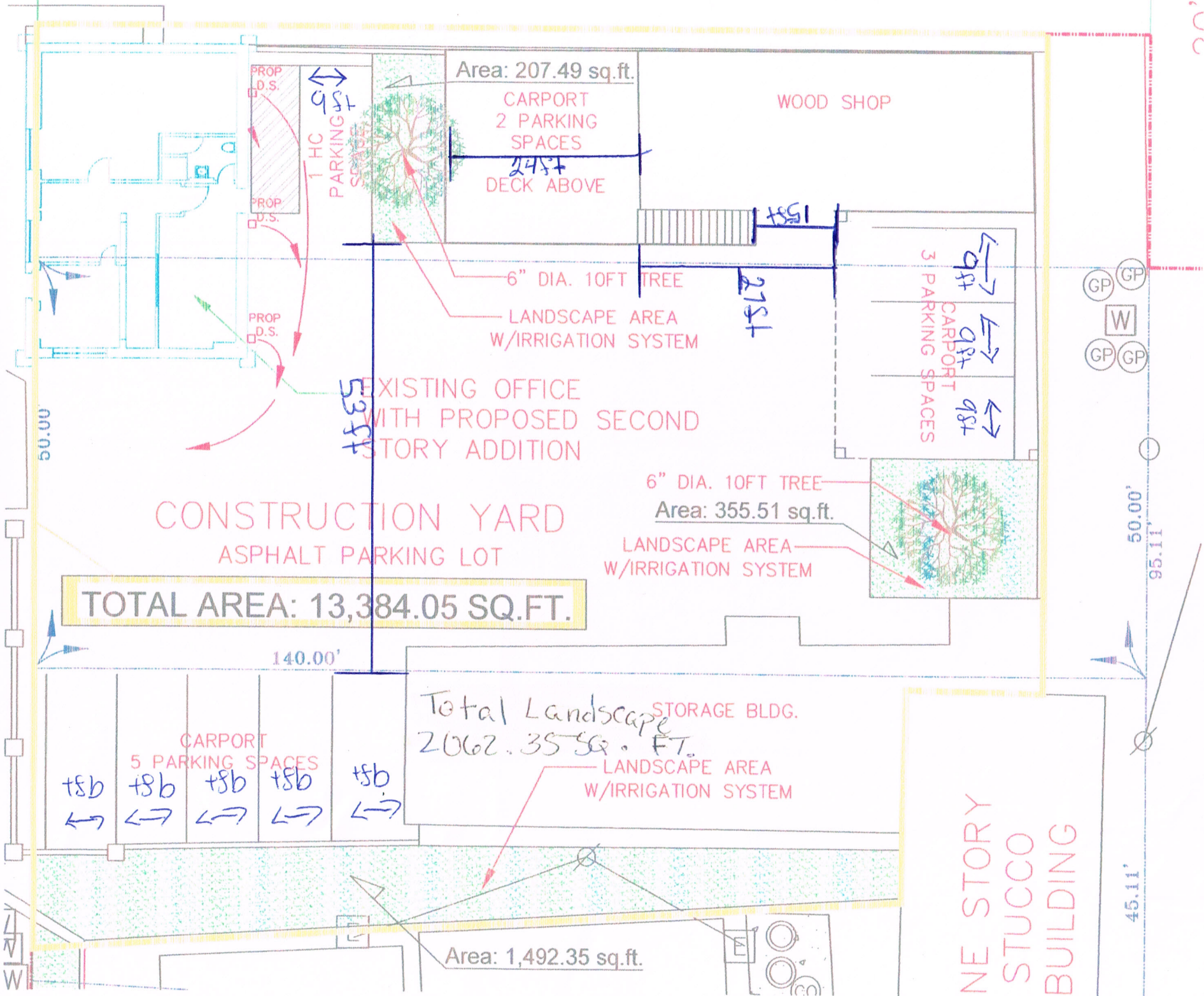
SUBJECT PROPERTY



200' NOTIFICATION BOUNDARY



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Area: 207.49 sq.ft.

CARPORT
2 PARKING
SPACES
245+
DECK ABOVE

WOOD SHOP

PROP
D.S.

PROP
D.S.

PROP
D.S.

1 HC
PARKING
SPACES

6" DIA. 10FT TREE
LANDSCAPE AREA
W/IRRIGATION SYSTEM

EXISTING OFFICE
WITH PROPOSED SECOND
STORY ADDITION

3 PARKING
SPACES
CARPORT

6" DIA. 10FT TREE
Area: 355.51 sq.ft.

LANDSCAPE AREA
W/IRRIGATION SYSTEM

CONSTRUCTION YARD
ASPHALT PARKING LOT

TOTAL AREA: 13,384.05 SQ.FT.

140.00'

Total Landscape
2062.35 SQ. FT.

STORAGE BLDG.

LANDSCAPE AREA
W/IRRIGATION SYSTEM

Area: 1,492.35 sq.ft.

NE STORY
STUCCO
BUILDING

GP GP
W
GP GP


50.00'
95.11'


45.11'


WINDOW SCHEDULE								
DOOR NUMBER	LOCATION	WINDOW ELEVATION	WINDOW OPENING SIZE	WINDOW FRAME MATERIAL	FRAME MATERIAL	REMARKS	DETAIL SHEET	
A	WEST SIDE OF BLDG.	1	11'-2 1/4" W. X 92 1/4" H.	ALUMINUM	ALUMINUM	COMMERCIAL ALUM. FRAME W/36" SLIDER	A-1.1	
B	WEST SIDE OF BLDG.	2	12'-1 15/16" W. X 92 1/4" H.	ALUMINUM	ALUMINUM	COMMERCIAL ALUM. FRAME W/36" SLIDER	A-1.1	
C	WEST SIDE OF BLDG.	3	11'-4 1/2" W. X 92 1/4" H.	ALUMINUM	ALUMINUM	COMMERCIAL ALUM. FRAME W/36" SLIDER	A-1.1	
D	SOUTH SIDE OF BLDG.	4	7'-8 1/4" W. X 92 1/4" H.	ALUMINUM	ALUMINUM	COMMERCIAL ALUMINUM FRAMES	A-1.1	
E	SOUTH SIDE OF BLDG.	5	7'-8 7/16" W. X 92 1/4" H.	ALUMINUM	ALUMINUM	COMMERCIAL ALUMINUM FRAMES	A-1.1	
F	SOUTH SIDE OF BLDG.	6	8'-11 1/4" W. X 92 1/4" H.	ALUMINUM	ALUMINUM	COMMERCIAL ALUMINUM FRAMES	A-1.1	

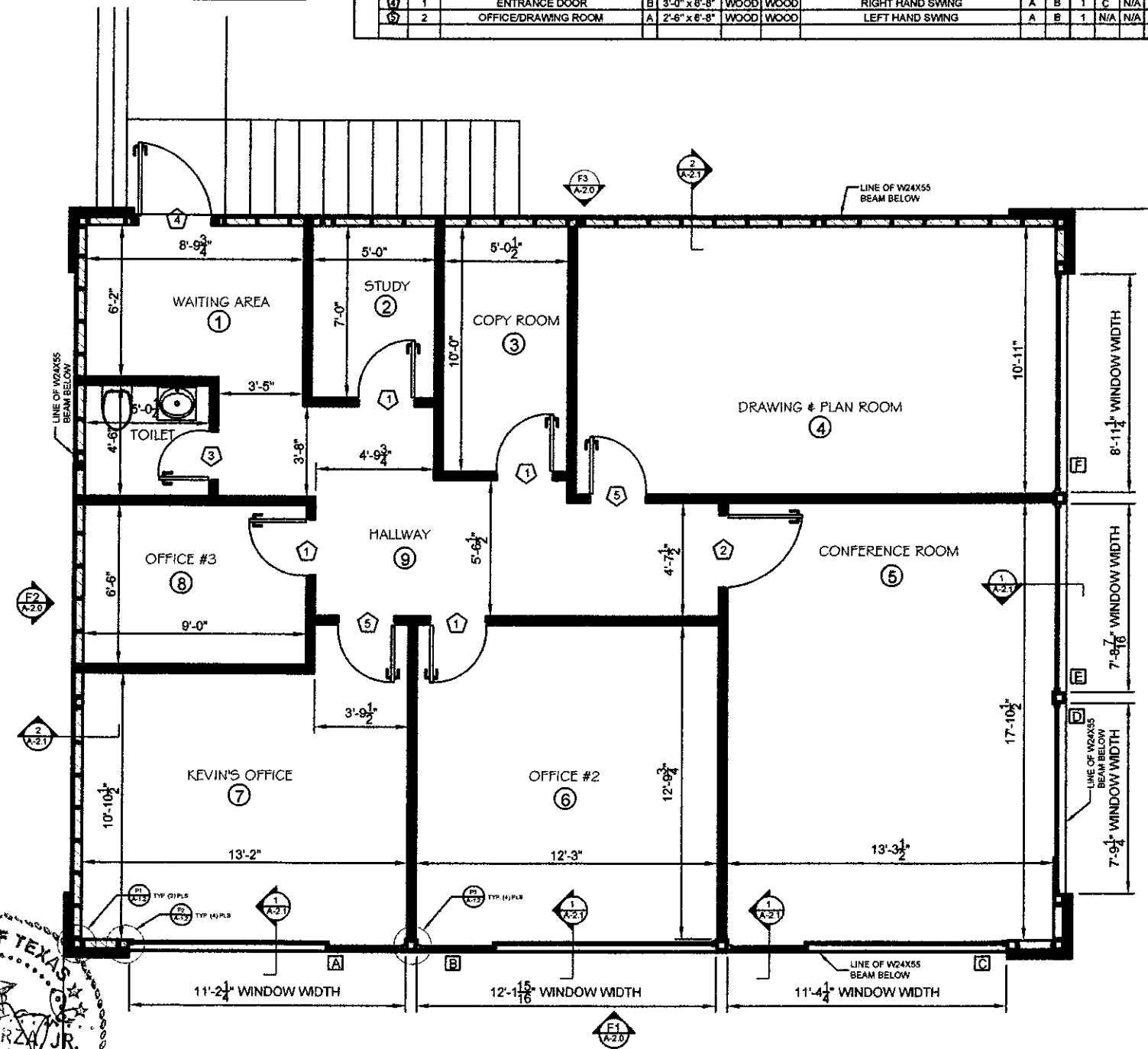
DOOR SCHEDULE													
DOOR NUMBER	TOTAL QUANTITY	LOCATION	DOOR ELEVATION	DOOR OPENING SIZE	DOOR MATERIAL	FRAME MATERIAL	REMARKS	SEE DETAILS ON A13					
								JAMB DETAIL	HEAD DETAIL	HINGEWARE DET	THRESHOLD	DRAINING MULLION	DOOR STOP
①	4	OFFICE/COPY ROOM	A	2'-6" x 6'-8"	WOOD	WOOD	RIGHT HAND SWING	A	B	1	N/A	N/A	N/A
①	1	CONFERENCE ROOM	A	3'-0" x 6'-8"	WOOD	WOOD	LEFT HAND SWING	A	B	1	N/A	N/A	N/A
①	1	TOILET	C	2'-0" x 6'-8"	WOOD	WOOD	LEFT HAND SWING	A	B	1	N/A	N/A	N/A
①	1	ENTRANCE DOOR	B	3'-0" x 6'-8"	WOOD	WOOD	RIGHT HAND SWING	A	B	1	C	N/A	N/A
①	2	OFFICE/DRAWING ROOM	A	2'-6" x 6'-8"	WOOD	WOOD	LEFT HAND SWING	A	B	1	N/A	N/A	N/A

ROOM FINISH SCHEDULE													
ROOM NUMBER	ROOM IDENTIFICATION	FLOOR	BASE AND WALL								CEILING	CEILING HEIGHT	REMARKS
			NORTH		EAST		SOUTH		WEST				
			B	W	B	W	B	W	B	W			
①	WAITING AREA	C	P	P	P	P	P	P	P	P	P	10'-0"	
②	STUDY	C	P	P	P	P	P	P	P	P	P	10'-0"	
③	COPY ROOM	C	P	P	P	P	P	P	P	P	P	10'-0"	
④	DWG/PLAN ROOM	C	P	P	P	P	P	P	P	P	P	10'-0"	
⑤	CONFERENCE RM.	C	P	P	P	P	P	P	P	P	P	10'-0"	
⑥	OFFICE #2	C	P	P	P	P	P	P	P	P	P	10'-0"	
⑦	KEVIN'S OFFICE	C	P	P	P	P	P	P	P	P	P	10'-0"	
⑧	TOILET	T	P	P	P	P	P	P	P	P	P	10'-0"	
⑨	HALLWAY	C	P	P	P	P	P	P	P	P	P	10'-0"	

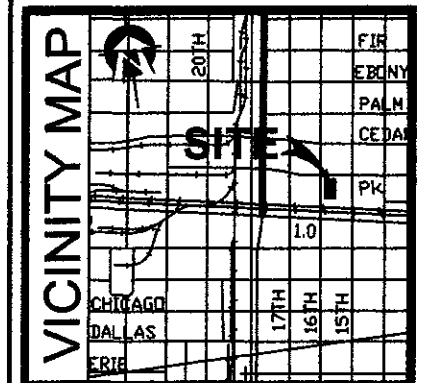
 DENOTES 3 1/2" WALL FRAMING
WITH 1/2" DRYWALL EA. SIDE

 DENOTES 3 1/2" WALL FRAMING
WITH 1/2" DRYWALL INSIDE & 3/4"
SHEATHING OUTSIDE

 DENOTES 4" THICK STUCCO FINISH

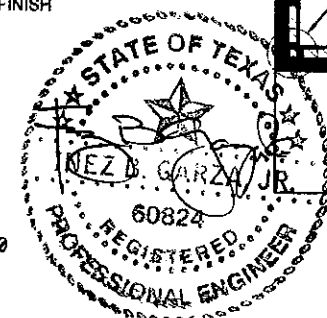


SCALE: $\frac{3}{8}" = 1'-0"$

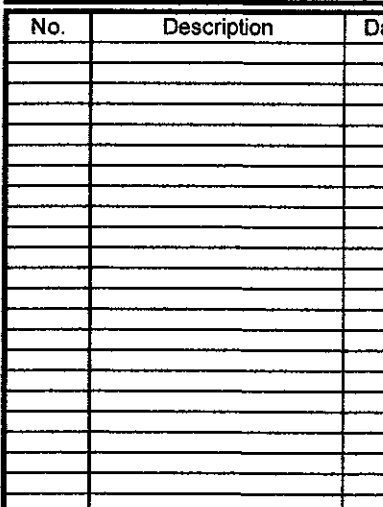
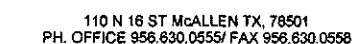
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Checked By _____

A-1.0



11/18/22



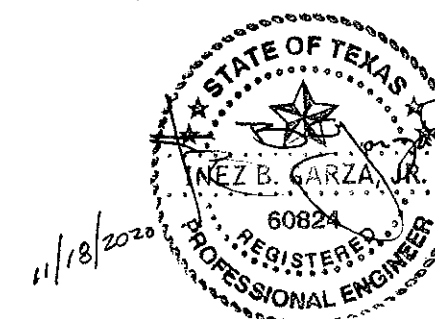
Project:
AVC OFFICE BLDG.
110 North 16th Street
McAllen, Texas

Sheet Identification:

ELEVATIONS

Project Number	2020.104
Date	August 15, 2020
Drawn By	KWN
Checked By	

A-2.0



CONSTRUCTION & DEVELOPMENT



American Value

CONSTRUCTION & DEVELOPMENT















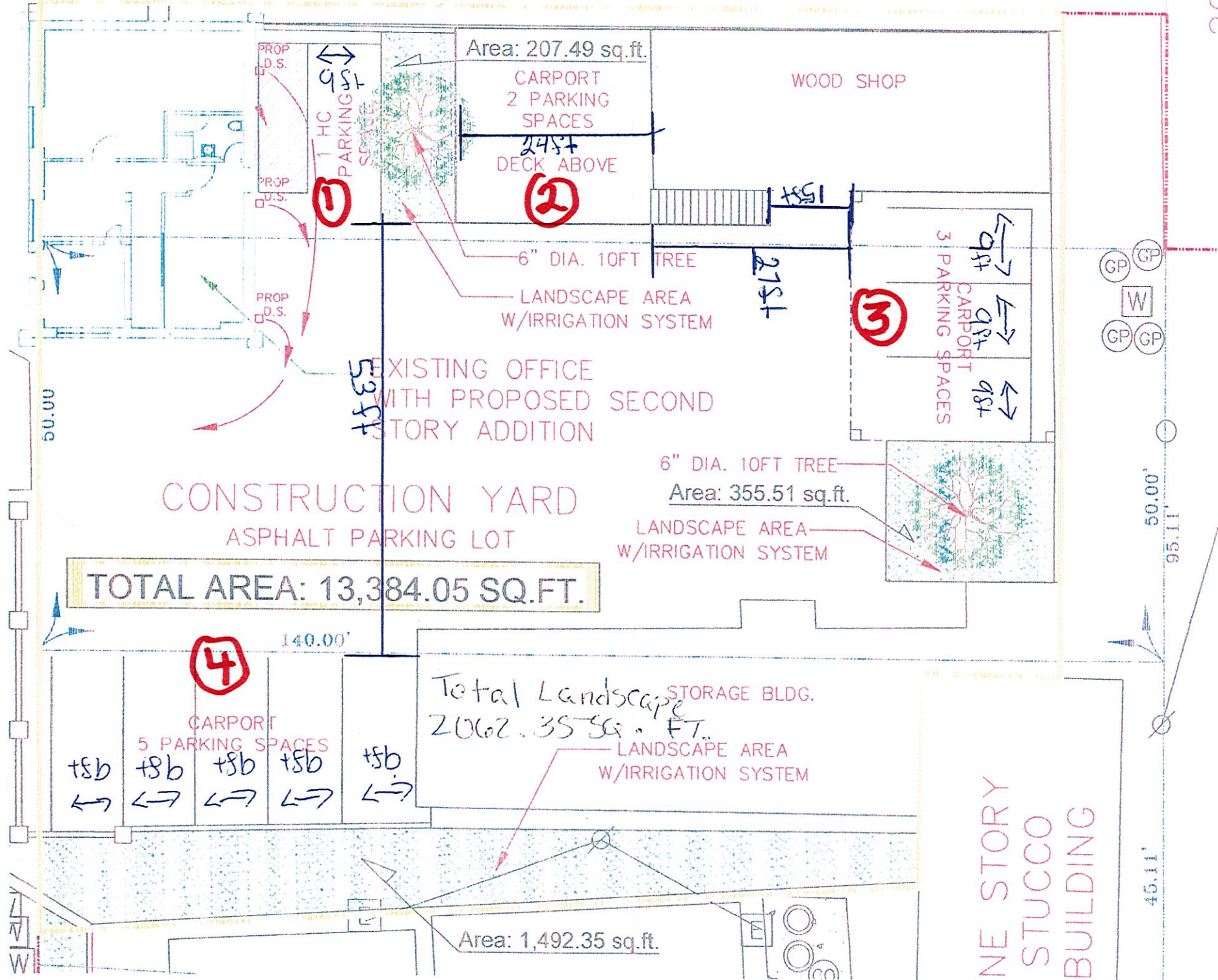








Parking Location



CRITERIA FOR ZBOA DETERMINATIONS

APPEALS

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

SPECIAL EXCEPTIONS

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

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

Ord. Sec. 138-86. – GENERAL POLICY.

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

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

VARIANCES

Authorized only when ALL of the following applies:

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

Definitions

Table of Contents

Chapter 138-Zoning1

 Section 138-1 Definitions1

Chapter 110-Vegetation6

 Section 110-26 Definitions6

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



2021 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 2021

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

FEBRUARY 2021

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

MARCH 2021

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

APRIL 2021

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

MAY 2021

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

JUNE 2021

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

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



PLANNING DEPARTMENT

311 N 15th Street McAllen, TX 78501
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2021 CALENDAR

Meetings:

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

Deadlines:

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

* **Holiday** - Office is closed

JULY 2021

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

AUGUST 2021

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

SEPTEMBER 2021

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

OCTOBER 2021

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

NOVEMBER 2021

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

DECEMBER 2021

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

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