

## AGENDA

### ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, NOVEMBER 17, 2021 - 4:30 PM MCALLEN CITY HALL, 1300 HOUSTON AVENUE CITY COMMISSION CHAMBERS, 3<sup>RD</sup> FLOOR

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

#### CALL TO ORDER – Chairperson Erick Diaz

#### 1. MINUTES:

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

#### 2. PUBLIC HEARINGS:

- a) Request of Fidel Felix, for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 2 ft. into the 6 ft. side yard setback for a proposed carport measuring 10 ft. by 22 ft., at Lot 36, Block 2, Maravillas Subdivision Unit 1, Hidalgo County, Texas; 2420 Jonquil Avenue. **(ZBA2021-0054) (TABLED: 11/3/2021)**
- b) Request of Felipe Martinez for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 25 feet into the 25 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet at the north 40 feet of Lots 13 and 14, Block 7, College Heights Subdivision, Hidalgo County, Texas; 915 South 22nd Street. **(ZBA2021-0045) (TABLED: 10/6/2021) (REMAIN TABLED: 10/20/2021, 11/3/2021)**
- c) Request of Felipe Martinez for the following special exception to the City of McAllen Zoning Ordinance to allow: **1)** an encroachment of 20 feet into the 20 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet and **2)** an encroachment of 3 feet into the 6 feet side yard setback along the south side yard setback for a proposed metal carport measuring 20 feet by 20 feet at the north 40 feet of Lots 13 and 14, Block 7, College Heights Subdivision, Hidalgo County, Texas; 915 South 22nd Street. **(ZBA2021-0045)**
- d) Request of Micaela R. Corcoran for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 10 feet rear yard setback for an existing metal carport measuring 17 feet by 20 feet at Lot 9, Block 2, The Village Townhouse Subdivision, Hidalgo County, Texas; 410 Zinnia Avenue. **(ZBA2021-0056)**
- e) Request of Jimmy Ring for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 13.67 feet into the 20 feet front yard setback for an existing metal carport at Lot 125, Harvey Terrace Subdivision Unit 2- Phase I & II, Hidalgo County, Texas; 2724 North 27th Street. **(ZBA2021-0057)**
- f) Request of Cesar Cepeda for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 5 feet into the 25-foot front yard setback for a proposed single family residence at Lot 19, Antigua Subdivision, Hidalgo County, Texas; 3001 Zenaida Avenue. **(ZBA2021-0055)**
- g) Appeal of Jack and Hilda Edwards appealing issuance of Certificate of Occupancy to Tacos El Plebe operating at 1017 North Main Street. **(TABLED: 11/3/2021)**

### **3. FUTURE AGENDA ITEMS**

- a)** 2724 North 27th Street
- b)** 8008 North 3rd Street
- c)** 417 Cornell Avenue
- d)** 2116 North 32nd Street
- e)** 2709 Nolana Avenue
- f)** 3004 La Vista Avenue
- g)** 11504 North Taylor Road

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

<b>Present:</b>	<b>Erick Diaz</b>	<b>Chairperson</b>
	<b>Sylvia Hinojosa</b>	<b>Member</b>
	<b>Jose Gutierrez</b>	<b>Member</b>
	<b>Ann Tafel</b>	<b>Alternate</b>
	<b>Hugo Avila</b>	<b>Alternate</b>
	<b>Rebecca Millan</b>	<b>Alternate</b>
<b>Absent:</b>	<b>John Millin</b>	<b>Vice-Chairperson</b>
	<b>Juan F. Jimenez</b>	<b>Member</b>
	<b>Rogelio Rodriguez</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Austin Stevenson</b>	<b>Assistant City Attorney</b>
	<b>Michelle Rivera</b>	<b>Assistant City Manager</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Omar Sotelo</b>	<b>Senior Planner</b>
	<b>Hebert Camacho</b>	<b>Planner I</b>
	<b>Mario Escamilla, Jr.</b>	<b>Planner I</b>
	<b>Katia Sanchez</b>	<b>Planner I</b>
	<b>Porfirio Hernandez</b>	<b>Planning Technician II</b>
	<b>Julian Hernandez</b>	<b>Planning Technician I</b>
	<b>Carmen White</b>	<b>Administrative Assistant</b>

**CALL TO ORDER – Chairperson Erick Diaz**

**1. MINUTES:**

- a)** Minutes for the meeting held on October 6, 2021.

The minutes for the meeting held on October 6, 2021 were approved. The motion to approve the minutes was made by Ms. Sylvia Hinojosa. Mr. Jose Gutierrez seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a)** Request of Fidel Felix, for the following Special Exception to the City of McAllen Zoning Ordinance to allow: an encroachment of 2 ft. into the 6 ft. side yard setback

for a proposed carport measuring 10 ft. by 22 ft., at Lot 36, Block 2, Maravillas Subdivision Unit 1, Hidalgo County, Texas; 2420 Jonquil Avenue. **(ZBA2021-0054)**

Mr. Camacho stated the applicant was requesting a special exception to allow the construction of a carport on the east side of the property. The carport will protect the applicant's truck from inclement weather since his current driveway was too narrow to fit his vehicle.

The property was located along the north side of Jonquil Avenue, approximately 202 feet east of North 25<sup>th</sup> Lane. The property has 50 feet of frontage along Jonquil Avenue with a depth of 120 feet for a total area of 6,000 square feet. There is a single-family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions and C-3 (general business) District to the northeast. The surrounding land use is single family residential.

Maravillas Subdivision Unit 1 was recorded on November 28, 1977. The plat specifies a 6 ft. side yard setback and a 20 ft. front yard setback. An application for the special exception request was submitted on October 6, 2021. There is no building permit on file.

The proposed 10 ft. by 22 ft. carport was to be built over an existing 8 ft. by 14 ft. concrete driveway that will be expanding 2 ft. to the east and 8 ft. to the north for a total of a 10 ft. by 22 ft. concrete driveway. The submitted site plan shows a proposed carport attached to the house encroaching 2 ft. into the 6 ft. side yard. The proposed construction would not encroach into the front yard.

Currently there was no alley access or garage on the subject property.

During a site visit, staff noticed other structures that seem to be encroaching into setbacks. A review of Planning Department records did not reveal any variances granted along this subdivision.

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

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

Chairperson Erick Diaz asked staff the reason recommending approval. Mr. Camacho stated this would be the first carport that was encroaching on the side. Carports were not common in the neighborhood. There was one at the rear on setbacks. There were no other variances or special exceptions on file. Chairperson Diaz asked if staff knew what the carport would look like. Mr. Camacho stated not specifically but it would be made of the same materials similar to the house with an open carport area. There was no alley.



Mr. Fidel Felix, the applicant stated he wanted to build a carport to protect his vehicle from inclement weather. Since he only had eight feet, he was requesting two more feet for the carport. Chairperson Diaz asked the applicant what type of materials would be used for the carport. Mr. Felix stated he was going to use four posts made of tubing and the roof would be the same material as the house. Chairperson Diaz explained to the applicant the difference of the special exception.

Ms. Ann Tafel asked if gutters were going to be installed for the water runoff. Mr. Felix stated he would have gutters installed.

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

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

Ms. Sylvia Hinojosa mentioned to staff on the picture it showed a brick wall that divided the two properties. She stated it showed the gate that went into the property with a pillar. Mr. Felix stated it was a 6-foot block wall and was going in two feet into the side.

Mr. Rogelio Rodriguez asked Mr. Felix what type of materials would be used for the columns as far as fire rated. He stated the columns would be made of metal and rest of wood and shingles.

Mr. Jose Gutierrez explained to the applicant that he wanted to build the carport out of wood except the posts that were going to be made of metal. The problem was that the distance between the two structures that if he has 2 feet and the neighbor it would be 10 feet, four on his side and six on the neighbor's side. The Fire Department requires 12 feet of distance in between inflammable materials. In this case, it was only going to be 10 feet.

Ms. Sylvia Hinojosa **moved** to approve the special exception limited to the footprint of the site plan. Motion died.

Chairperson Diaz asked the applicant if he would prefer to build the carport in front of the house instead of the side. Mr. Felix stated he preferred on the side. Chairperson Diaz asked if the applicant could build it from other non-combustible materials. Mr. Felix stated he could use stucco materials for the roof. Chairperson Diaz asked if he could make the carport nine feet instead of ten feet wide. The applicant stated he wanted it ten feet.

Chairperson Diaz asked the applicant if he would like to table the request in order to see if he could manage 9 feet instead of 10 feet. Mr. Felix stated he could table the request until the next meeting.

Following discussion, Mr. Jose Gutierrez **moved** to table the special exception until the next meeting. Mr. Rogelio Rodriguez seconded the motion. The Board voted to table the special exception with five members present and voting.

- b) Request of Jesus Espino for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 3.58 ft. into the 25 ft. rear yard setback for a proposed house, at Lot 93, Vendome Phase II Subdivision, Hidalgo County, Texas; 3405 Vendome Drive. **(ZBA2021-0051)**

Mr. Camacho stated the applicant was requesting a variance to a double fronting lot for a house. The applicant is requesting the variance in order to build the proposed house on the rear setback.

The subject property was located on the along Vendome Drive, approximately 280 ft. East of North 35<sup>th</sup> Street. The property has 72 ft. of frontage along Vendome Drive and a depth of 113.45 ft. with a lot size of 8,168.4 square feet. The property and adjacent zoning is R-1 (single family residential) District in all directions. Surrounding land use include single-family residential houses and vacant land.

Vendome Phase II Subdivision was recorded on April 21, 2021. The plat specifies that double fronting lots (El Pacifico Avenue) have a 25 ft. rear yard setback. An application for a variance request for encroachment for a proposed house was submitted to the Planning Department on September 22, 2021.

The variance request is to allow an encroachment of 3.58 ft. into the 25 ft. rear yard setback for proposed house. The plat for the subdivision specifies a 25 ft. rear yard setback for double fronting lots. (Lots 89-94). Standard rear yard setback in R-1 Districts is 10 ft. There is a 15 ft. Utility Easement at the rear of the lot that will not be impacted by the proposed encroachment.

There are four variance requests on file, similar to the variance request; encroachment for swimming pool and other structures into the rear yard setback that were approved in 2020 and 2021, along the double fronting lots.

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

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

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

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

Ms. Ann Tafel **moved** to approve the variance request to the approved site plan. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the variance request with

five members present and voting.

- c) Request of Yesenia Lorie Vargas, for the following Variance to the City of McAllen Zoning Ordinance to allow: an encroachment of 5 ft. into the 10 ft. side yard setback for a proposed swimming pool measuring 29.5 ft. by 11 ft., at Lot 53, Forest Valley Subdivision, Hidalgo County, Texas; 4013 Falcon Avenue. **(ZBA2021-0053)**

Mr. Camacho stated the applicant was requesting a variance to allow the construction of a swimming pool on the west side of the property. The swimming pool will help the applicant enjoy her property at fullest in a safe environment due to COVID times.

The property was located southeast corner of Falcon Avenue and North 41<sup>st</sup> Street. The property has 50 feet of frontage along Falcon Avenue; the irregular lot has a total area of 5,914.67 square feet. There is a single-family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions and A-O (agricultural-open space) District to the west. The surrounding land use is single family residential.

Forest Valley Subdivision was recorded on June 7, 2001. The plat specifies a 10 ft. side yard setback for corner lots. An application for the special exception request was submitted on October 6, 2021. There is no building permit on file.

The site plan shows that the variance request is to allow an encroachment of 5 ft. into the 10 ft. side yard (corner) setback for a proposed 29.5 ft. by 11 ft. swimming pool. There is a 10 ft. Utility Easement at the rear of the property that will not be impacted by the proposed construction.

The applicant has been apprised of other structures that appear to be encroaching on the rear setback of the property. The applicant decided not to include those requests at this time.

During a site visit, staff noticed other structures that seem to be encroaching into setbacks. A review of Planning Department records did not reveal any variances granted along this subdivision.

Staff had received one phone call in opposition to this variance request.

Staff recommended disapproval of the variance request. If the Board grants approval of the request, it should be limited to the footprint shown on the submitted site plan.

Chairperson Diaz asked staff the area that it was encroaching it was the angle. Mr. Camacho stated it was an angle lot with an angle setback. At the highest point, it would be the five feet as you approach the rear yard utility easement it starts decreasing to one foot and ten inches. Chairperson Diaz asked if there was an alley. Mr. Camacho stated no. It was a corner lot.

Ms. Yesenia Lorie Vargas, the applicant stated she wanted to build a swimming pool. It was off to the side and she was on a corner lot. Chairperson Diaz asked if she could build the pool shorter. She stated her husband wanted it longer.

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

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

Following a brief discussion, Ms. Sylvia Hinojosa **moved** to approve the variance request limited to the footprint as proposed. Ms. Rebecca Millan seconded the motion. The Board voted to approve the variance request with five members present and voting.

- d) Request of Juan Gastelum, on behalf of GGC Group LLC, for the following Variance to the City of McAllen Zoning Ordinance to allow: the property a 40.58 ft. of frontage instead of the 50 ft. requirement, at a 0.959-acre tract of land out of Lot 6, Rancho de la Fruta Subdivision No. 2, Hidalgo County, Texas; 816 East Cedar Avenue. **(ZBA2021-0052)**

Mr. Camacho stated the applicant was requesting a variance to continue with the site plan and subdivision process. The property has access off a narrow strip of land between two existing homes. The new property owner acquired 12 ft. from adjacent homeowner to make his entrance wider. The property now has 40.58 ft. of frontage and will be used to access the rear property for the future development.

The property is located along the south side of East Cedar Avenue, approximately 530 feet east of North McColl Road. The property has 40.58 feet of frontage along Cedar Avenue; the irregular shaped tract has a total area of 0.959 acres. There are existing structures on the subject property. The property is zoned R-3A (multifamily apartments) District. Adjacent zoning is R-1 (single family residential) District to the northeast, R-2 (duplex-fourplex) District to the north, C-4 (commercial-industrial) District to the west and south and R-3A District to the east, west and southeast. The surrounding land use is single family residential, duplexes, Templo Vida Victoriosa, and apartments.

The proposed subdivision under the name "Cedar Apartments" is still under review. The subdivision was approved in preliminary form at the P&Z meeting of May 18, 2021. The subdivision was approved subject to the approval of any variances from the Zoning Board of Adjustments and Appeals board prior to final plat review.

The irregular shaped tract had originally 28.58 ft. of frontage along Cedar Avenue; a 0.047 acre-tract was bought from the neighbor to the east of the subject property, this area gave the subject property additional 12 ft. of frontage along Cedar Avenue. With the additional feet, the subject property now has a frontage of 40.58 ft.; however, still is not meeting the 50 ft. requirements, as the property is 9.42 ft. short.

The proposed development is for an apartment complex, based on the maximum density per gross acres in the R-3 multifamily residential district (0.959 acres): 41 "one" bedroom units, 33 "two" bedroom units or 27 "three" bedroom units are allowed.

The requested 40.58 ft. instead of the 50 ft. frontage requirement is for the entrance to the apartment complex.

The approval of the variance request will not get the plat immediately approved; it will still need to meet the conditions noted on the preliminary form and Utilities and Drainage approvals. Additionally, the apartment complex will still need site plan approval by the Development Team; it must comply with Building, Engineering, Public Works and Fire access requirements throughout the site as well as additional Fire Dept. requirements.

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

Staff recommended disapproval of the variance request. If the Board grants approval of the request, it should be limited to the distances shown on the submitted metes and bounds.

Chairperson Diaz asked staff if it was approved or disapproved, today it would still have to go through subdivision. Mr. Camacho stated it was approved in preliminary form but subject approval from this Board regarding the frontage so it can move forward.

Mr. Hugo Avila asked staff if it was going to affect with the entrance, landscaping or parking for the development. Mr. Camacho stated it might trigger with the multifamily landscape requirements that would be another variance. Chairperson Diaz asked if that would come back to this Board later. Mr. Camacho stated it might.

Mr. Hector Moreno, 1810 East Griffin Parkway, Mission. He is the engineer on behalf of the property owner. He stated the property had an irregular shape lot. Initially it had 28.58 feet of fronting the property. They tried to acquire as much as possible in the additional 12 feet. They have common and green areas but once entering the property, you would see a "T" shape. Chairperson Diaz asked the applicant if they were able to acquire 10 more feet. Mr. Moreno stated it was getting in too much from the neighboring property. They were able to retain 12 feet from the neighbor. Chairperson Diaz asked if they had started the site plan process. Mr. Moreno stated yes. They had received the drainage report approved from the Hidalgo County. They met with Code regarding parking and setbacks. It was rezoned for multifamily use.

Mr. Hugo Avila asked Mr. Moreno if they acquired the property as far as ownership. Mr. Moreno stated the previous owner had an easement with the neighbor when they were married. The owner bought the property but the easement did not transfer over. The only fronting property was 28.58 feet so they were able to get the 12 feet. The packet had the two surveys. They were going through the platting process and site plan reviews.

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

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

Ms. Maricruz Jimenez, 808 E. Cedar Avenue, stated there was a church in front of her property. When services were being conducted, there was many cars parked in front of her house, which makes it difficult to get out of her driveway. If they were going to build apartments behind her house, and it only allows one vehicle to go in and out, there would be a lot of traffic. Chairperson Diaz explained to Ms. Jimenez that all departments in City has to review all aspects of the proposed site plan to make everything would comply with the codes.

Chairperson Diaz asked if there were any other precedence this type of scenario around town where the entrance was not 5 or 10 feet shorter. Mr. Camacho stated there might be some on the Expressway. Some lots were landlocked but have landlocked easements.

Mr. Edgar Garcia, Planning Director stated a good number of Tres Lagos especially when they are in the coving section; they have lots that are less than 50 feet and had received variances. Campo de Suenos, which was located at Ware Road west of Sanchez Elementary, got a Planned Unit Development with some variances because of that coving design.

Juan Gastelum, 309 N. Mockingbird Avenue, Mission stated they were going to be 16 apartments. Chairperson Diaz asked if it was a two-way road. Mr. Gastelum stated yes. Mr. Moreno stated they were proposing 16 apartments, which was less than max density per acre. They were also meeting water and sewer requirements, fire hydrants and landscaping as well as parking. There will also be a buffer all around the property.

Following discussion, Ms. Sylvia Hinojosa **moved** to approve 40.58 ft. frontage instead of the 50 ft. requirement. Mr. Hugo Avila seconded the motion. The Board voted to approve the variance request with five members present and voting.

- e) Request of Felipe Martinez for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 25 feet into the 25 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet at the north 40 feet of Lots 13 and 14, Block 7, College Heights Subdivision, Hidalgo County, Texas; 915 South 22<sup>nd</sup> Street. **(ZBA2021-0045) (TABLED: 10/6/2021) (REMAIN TABLED: 10/20/2021)**

**This case was to remain tabled until the next meeting.**

- f) Appeal of Jack and Hilda Edwards appealing issuance of Certificate of Occupancy to Tacos El Plebe operating at 1017 North Main Street.

**This case was tabled until the next meeting per the applicant.**

Mr. Jose Gutierrez **moved** to table the item until the next meeting. Vice-Chairperson John Millin seconded the motion. The Board voted to table the item with five members present and voting.

**3. FUTURE AGENDA ITEMS:**

- a) 3001 Zenaida Avenue
- b) 410 Zinnia Avenue
- c) 2724 North 27<sup>th</sup> Street

**ADJOURNMENT**

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

---

Chairperson Erick Diaz

---

Carmen White, Administrative Assistant

## **MEMO**

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

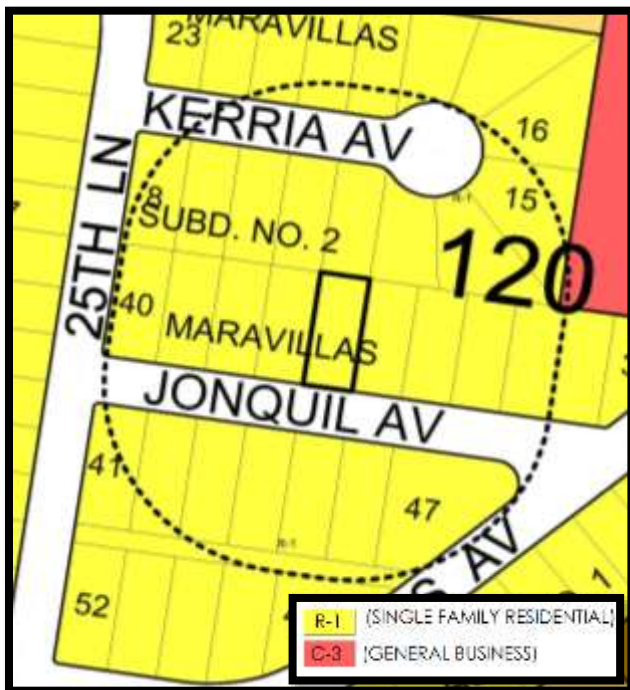
**FROM:** Planning Staff

**DATE:** November 9, 2021

**SUBJECT:** REQUEST OF FIDEL FELIX, FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: AN ENCROACHMENT OF 2 FT. INTO THE 6 FT. SIDE YARD SETBACK FOR A PROPOSED CARPORT MEASURING 10 FT. BY 22 FT., AT LOT 36, BLOCK 2, MARAVILLAS SUBDIVISION UNIT 1, HIDALGO COUNTY, TEXAS; 2420 JONQUIL AVENUE. (ZBA2021-0054) (TABLED: 11/2/21)

**REASON FOR APPEAL:** The applicant is requesting a special exception to allow the construction of a carport on the east side of the property. The carport will protect the applicant's truck from inclement weather since its too narrow to fit his vehicle.

**PROPERTY LOCATION AND VICINITY:** The property is located along the north side of Jonquil Avenue, approximately 202 feet east of North 25<sup>th</sup> Lane. The property has 50 feet of frontage along Jonquil Avenue with a depth of 120 feet for a total area of 6,000 square feet. There is a single-family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions and C-3 (general business) District to the northeast. The surrounding land use is single family residential.





**BACKGROUND AND HISTORY:** Maravillas Subdivision Unit 1 was recorded on November 28, 1977. The plat specifies a 6 ft. side yard setback and a 20 ft. front yard setback. An application for the special exception request was submitted on October 6, 2021. There is no building permit on file.

**ANALYSIS:** The proposed 10 ft. by 22 ft. carport is to be built over an existing 8 ft. by 14 ft. concrete driveway that will be expanding 2 ft. to the east and 8 ft. to the north for a total of a 10 ft. by 22 ft. concrete driveway. The submitted site plan shows a proposed carport attached to the house encroaching 2 ft. into the 6 ft. side yard. The proposed construction would not encroach into the front yard.

The applicant is proposing to use WonderBoard Lite Backer Board under the carport's ceiling. The board is a fiberglass mesh reinforced-cement backer board for residential applications. See attached Product details.

Additionally, as per Building Dept. requirement, when a structure is 5 ft. or closer to the property line, the structure must be fire rated.

Currently there is no alley access or garage on the subject property.

During a site visit, staff noticed other structures that seem to be encroaching into setbacks. A 7.5 ft. CMU wall is in place along the east property line for a distance of 14 ft., after the 14 ft. mark, the wall drops to 7 ft. all the way to the rear property line.

A review of Planning Department records did not reveal any variances granted along this subdivision.

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

**ZBOA MEETING OF NOVEMBER 2, 2021:** The case was presented, there was no one in opposition of the request. The board discuss with the applicant about proposing to relocate the proposed carport to the front yard, reducing the 2 ft. encroachment or changing the material of the carport. The concern of one of the Board members was about the material not being fire rated and the proximity to the property line (4 ft.). After some further discussion, the board voted to table the item, to let the applicant change his site plan or proposed a different type of material.

**RECOMMENDATION:**

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

ZBA- 11/3/21

ZBA 2021-0054



City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street

McAllen, TX 78501

P. O. Box 220

McAllen, TX 78505-0220

(956) 681-1250

(956) 681-1279 (fax)

Project	Legal Description	<u>Block 2, Maravillas unit 2, Lot 36</u>		
	Subdivision Name	<u>Las Maravillas</u>		
	Street Address	<u>2420 Jonquil Ave</u>		
	Number of lots	<u>1</u>	Gross acres	<u>          </u>
	Existing Zoning	<u>CASA R-1</u>	Existing Land Use	<u>          </u>
	Reason for Appeal (please use other side if necessary)	<u>add carport to side of house</u>		
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input checked="" type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required			
Applicant	Name	<u>Fidel Felix</u>	Phone	<u>956-867-5695</u>
	Address	<u>2420 Jonquil Ave</u>	E-mail	<u>          </u>
	City	<u>McAllen</u>	State	<u>TX</u> Zip <u>78501</u>
Owner	Name	<u>Fidel Felix</u>	Phone	<u>956-867-5695</u>
	Address	<u>2420 Jonquil Ave</u>	E-mail	<u>686-3159-ND</u>
	City	<u>McAllen</u>	State	<u>TX</u> Zip <u>78501</u>
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.			
	Signature	<u>[Signature]</u>	Date	<u>10 06 21</u>
	Print Name	<u>Fidel Felix</u>	<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent	
Office	Accepted by	<u>KS</u>	Payment received by	<u>          </u>
	Date <u>10 06 2021</u> Initials <u>[Signature]</u>			

ENTERED

OCT 06 2021

Initials





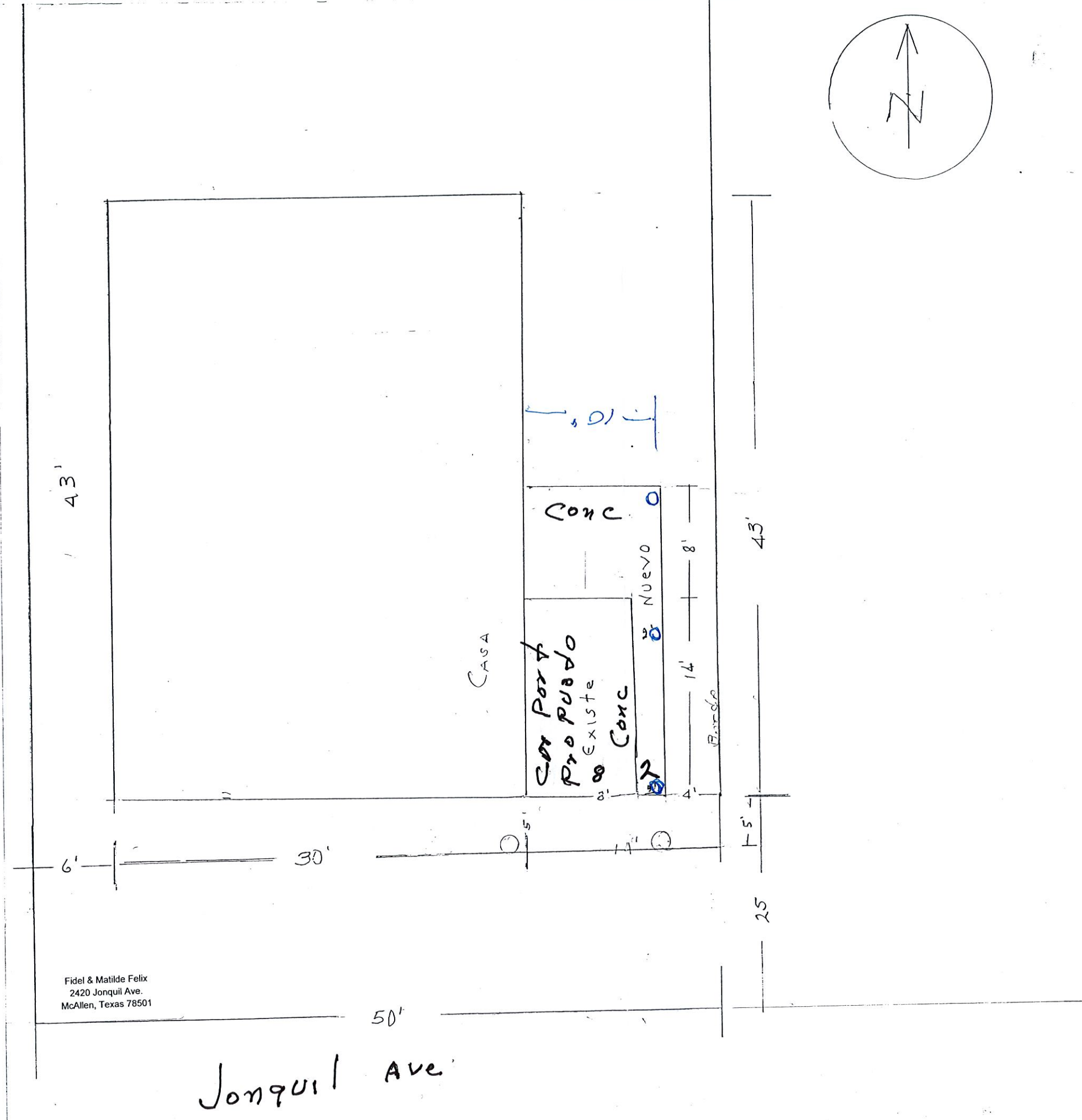
# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider <b>any combination</b> of the following: (Please use an additional page if necessary to complete responses)</p> <p>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</p> <p>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</p> <p>1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:</p> <p>no tenemos Callejon. y necesito El techo</p>
	<p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p>Proteccion frok de El Sol</p>
	<p>3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:</p> <p>Este techo Abierto Por tres lados no Afecta A los Vecinos y Recibilidad</p>
	<p>4. Describe special conditions that are unique to this applicant or property:</p> <p>necesito 10' Para subir y bajar de la frok 8' Es Arcoosito</p>
Board Action	<p>Chairman, Board of Adjustment Signature _____</p> <p>Date _____</p> <p>Rev. 9/20</p>

Home constructed in 2015

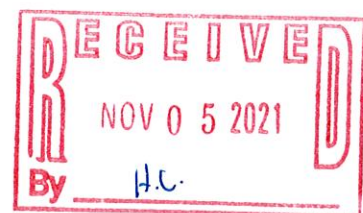
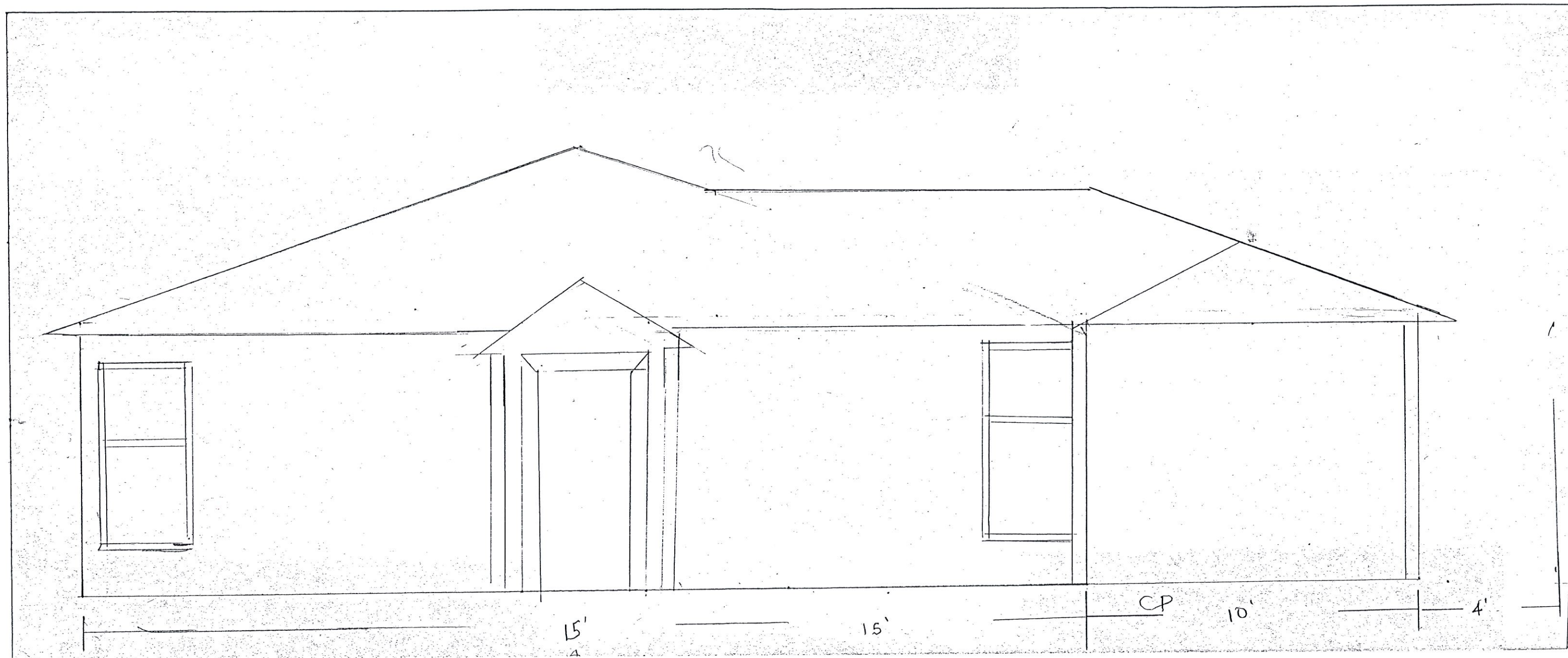


Fidel & Matilde Felix  
2420 Jonquil Ave.  
McAllen, Texas 78501

Jonquil Ave

**ENTERED**  
OCT 06 2021  
Initial: AM









You're shopping  
**Mission** ▾  
● **OPEN** until 9 pm

Delivering to  
**78572** ▾

Search



Cart | 0 items

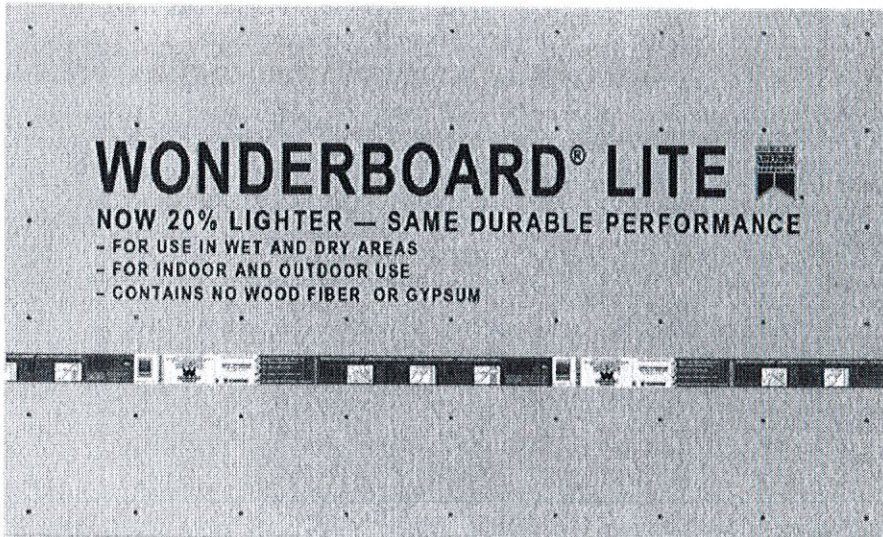
Home / Flooring / Flooring Supplies / Surface Prep / Backer Boards

Internet #203689282 Model #GCB60L Store SKU #683256 Store SO SKU #1005498962

Custom Building Products

## WonderBoard Lite 5 ft. x 3 ft. x 7/16 in. Backer Board

★★★★★ (295) ▾ Questions & Answers (141)



Feedback

**BULK  
PRICE**  
ELIGIBLE

**\$11<sup>27</sup>**

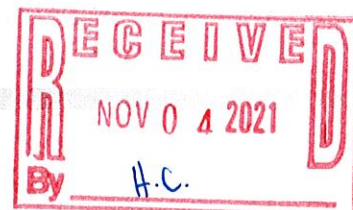
Buy 30 or more \$10.14

### Mission Store

✓ 340 in stock Aisle 41, Bay 019 Text to Me

### How to Get It

Delivering to: 78572 | Change



**Store Pickup**Pickup  
Today  
**FREE****Ship to Home**Not available for this  
item**Scheduled Delivery**As soon as  
Today  
**\$35.00****340 in stock at Mission**

Check Nearby Stores

**How much will you need?**

Please note: calculations are estimates and can only be made using whole numbers.

Calculate by Square Footage

**Wall 1**

Width:

ft

Length:

ft

+ Add Wall

**Calculate**

Feedback

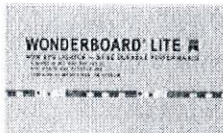
-

1

+

**Add to Cart**

— or —

Buy now with **PayPal**Frequently Bought Together

+



+



Price for all three:

**\$32<sup>41</sup>****Add all three to cart**This item: WonderBoard Lite 5 ft. x 3 ft. x 7/16 in. Backer Board **\$11.27**Rock-On #9 x 1-1/4 in. Serrated Flat Head Star Drive Cement Board Screws (185-Pack) **\$11.87**QEP 2 in. x 150 ft. Cement Board Drywall Joint Tape **\$9.27**Product Overview

The Custom Building Products WonderBoard Lite 5 ft. x 3 ft. x 7/16 in. Backer Board provides a stable surface for installing tile or stone and protects against moisture. Ideal for both interior and exterior substrate applications. Protects against excessive moisture in wet areas such as showers, saunas and steam rooms.

**Info & Guides**

You will need Adobe® Acrobat® Reader to view PDF documents. Download a free copy from the Adobe Web site.



# WonderBoard® Backerboard

## 1 Product Name

WonderBoard® Backerboard

## 2 Manufacturer

Custom Building Products  
13001 Seal Beach Blvd.  
Seal Beach, CA 90740-2757  
Customer Support: 800-272-8786  
Technical Services: 800-282-8786  
Fax: 800- 200-7765  
Email: [contactus@cbpmail.net](mailto:contactus@cbpmail.net)  
[custombuildingproducts.com](http://custombuildingproducts.com)

## 3 Product Description

A fiberglass mesh reinforced [cement backerboard](#) for residential and commercial tile, stone, slate and thin-brick applications. High-flexural strength, along with moisture resistance, makes WonderBoard® ideal for both interior and exterior substrate applications.

**Note: This product has been discontinued.** Please refer to our [WonderBoard Lite](#) product line.

### Uses

- Walls
- Floors
- Ceilings
- Counters
- Vanities

### Composition of Product

WonderBoard® panels are composed of stable Portland cement, aggregates and reinforcement.

### Sizes

- 36" x 60" x 1/2" (914 x 1524 x 13 mm) for floors, walls and countertops
- 36" x 60" x 1/4" (914 x 1524 x 6 mm) for floors and countertops

### Benefits of Product in the Installation

- Patented open mesh edges allow tapeless installation and provides outstanding edge bond strength.
- Aligns to 1/2" (13 mm) drywall without use of shims or spacers on wall studs.
- WonderBoard® includes a preprinted grid pattern on the panel surface and is easy to score, snap, cut and fasten, simplifying installation.
- Remains stable when exposed to moisture, reducing risk of moisture damage.



### Limitations to the Product

- Do not use WonderBoard® for exterior surfaces where imposed wind loads exceed 30 lb/ft (146 kg/M).
- Do not use WonderBoard® as a structural load bearing member.
- WonderBoard® is not a waterproof barrier. If the area behind the backerboard must be kept dry, use RedGard® Waterproofing and Crack Prevention Membrane or Custom® 9240 Waterproofing and Anti-Fracture Membrane.
- Do not use drywall fiberglass tape for this product.
- Do not use wallboard joint compound for this product.

Not for controlling verticle-movement cracks.

## 4 Technical Data

### Applicable Standards

American National Standards Institute (ANSI) ANSI A108.11, A118.9, A108.5 and A118.4 American National Standards for the Installation of Ceramic Tile ASTM International (ASTM) ASTM C1325

- ASTM C473 Standard Test Methods for Physical Testing of Gypsum Panel Products
- ASTM C627 Standard Test Method for Evaluating Ceramic Floor Tile Installation Systems Using the Robinson-Type Floor Tester
- ASTM C947 Standard Test Method for Flexural Properties of Thin-Section Glass-Fiber-Reinforced Concrete (Using Simple Beam With Third-Point Loading)
- ASTM D1037 Standard Test Methods for Evaluating Properties of Wood-Base Fiber and Particle Panel Materials
- ASTM D2394 Standard Methods for Simulated Service Testing of Wood and Wood-Base Finish Flooring
- ASTM E84 Standard Test Method for Surface Burning Characteristics of Building Materials
- ASTM E330 Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights and Curtain Walls by Uniform Static Air Pressure Difference

National Fire Protection Association (NFPA) NFPA 255 Standard Method of Test of Surface Burning Characteristics of Building Materials

Tile Council of North America (TCNA) TCNA Handbook for Ceramic Tile Installation, TCNA Method EJ171





# WonderBoard® Backerboard

Underwriters Laboratories, Inc. (UL) ANSI/UL 263 Fire Tests of Building Construction and Materials

Underwriters Laboratories of Canada (ULC) CAN/ULC S101 Standard Method of Fire Endurance Tests of Building Construction and Materials

## Approvals

**Fire Performance:** WonderBoard® has achieved a fire resistance rating for cementitious backer units per ANSI/UL 263 and CAN/ULC S101, Report No. 21766.

## Technical Chart

Property	Test Method	Requirement	Typical Results
Shear Bond Strength - A118.4 Mortar	A118.4	> 50 psi	> 50 psi
Compression Indentation	ASTM D-2394	< 0.050" @ 1250 psi	< 0.050" @ 2500 psi
Facial Dimension	ASTM C-473	+/- 1/8"	+/- 1/8"
Falling Ball Impact	ASTM D-1037	no damage at 12"	
Fastener Holding	ASTM D-1037	> 90 lbs.	140 lb (63.5 kg)
Flame Spread/Smoke Development	ASTM E-84	< 10/10	0
Flexural Strength	ASTM C-947	> 750 psi	900 psi (62.9 kg/cm sq.)
Moisture Movement - Linear Variation	ASTM D-1037	< 0.07%	0.07%
Bacteria Resistance	ASTM E-2180	< 1	No growth
Fungus Resistance	ASTM G-21	< 1	No growth
Squareness	ASTM C-473	square	+/- 1/8"
Thickness	ASTM C-473	+/- 1/32"	+/- 1/32"

## Environmental Consideration

Custom® Building Products is committed to environmental responsibility in both products produced and in manufacturing practices. Use of this product may contribute to LEED® certification.

## 5 Instructions

### Installation

Use a polymer-modified mortar meeting ANSI A118.4 standards, such as FlexBond® Crack Prevention Mortar, for leveling bed and joint treatment; mortars meeting ANSI A118.1, A118.4 or A118.11 adhesive can also be used. Follow instructions for each mortar. Use 1.5" (38 mm) galvanized roofing nails or 1.25" (32 mm) SuperiorBilt® backerboard screws. For wood or 20 gauge steel framing, use 1.25" (32 mm) SuperiorBilt® backerboard screws or an equivalent. Nails should meet or be equivalent to Federal Specification FF-N105B/Type 2 Style 20. Tiled surfaces that exceed 36' (11 M) in a continuous plane or with surfaces that abut a dissimilar structure should incorporate perimeter and generic movement joints in the tile network. Location width and details of control joints must follow sound architectural practices. See TCNA Handbook EJ171.

### Application of Product

#### Wood Floors

For the subfloor, securely glue and fasten minimum 5/8" (16 mm) exterior grade plywood or OSB panels (PRP-108) to the floor joists. Floor joists should be spaced a maximum of 16" (40 cm) o.c.; a 3/4" (19 mm) Exterior Grade Plywood or OSB subfloor with I-joists spaced a maximum of 19.2" (48 cm) o.c. is also acceptable. When setting dimensional stone larger than 12" x 12" (30 x 30 cm), a 3/4" (19 mm) subfloor is required. All plywood or OSB subfloor sheets must be gapped 1/8" (3 mm). Use 1" (2.5 cm) bond-breaker tape over gaps in the subfloor to prevent gaps from filling with thin-set. Using a 1/4" (6 mm) square-notch trowel, apply a setting bed of polymer-modified mortar to the subfloor. Immediately laminate the WonderBoard® to the subfloor, leaving a 1/8" - 3/16" (3-5 mm) space between the boards at all joints and corners. Stagger joints so they do not line up with underlying substrate joints. While the setting bed mortar is still workable, fasten WonderBoard® every 4"- 6" (10-15 cm) o.c. throughout the board field and around all edges. Around the perimeter of each board, locate fasteners within 1/2"-1" (1.3-2.5 cm) of the edge. Fill all joints with polymer-modified mortar. On all joints and corners, prefill the gap with bonding material; then embed 2" (5 cm) mesh tape and smooth material over the joint and corner. Use 1" (2.5 cm) bond-breaker tape over gaps in the subfloor.

#### Walls and Ceilings



# WonderBoard® Backerboard

For wall framing, edges parallel to framing should be continuously supported (typical sleeper studs should be used). Framing for a tub surround or prefabricated shower pan should be plumb and square. Provisions for the sheet membrane pan liner must be made to ensure proper backerboard installation at the interface of the tub or pan flange. For ceiling framing, the complete ceiling assembly allowable deflection due to dead load should not exceed 1/360 of the span. Framing members in the ceiling should not exceed 16" (40 cm) o.c. The weight applied to the ceiling frame, including insulation, backerboard, bonding material and facing material, should not exceed 15 lb/ft (73 kg/M). Backerboard edges parallel to the framing should be continuously supported. Provide additional blocking, when necessary, to permit proper backerboard attachment and reduce deflection between the joists. Leaving a 1/8" - 3/16" (3-5 mm) space at **all joints and corners, install the WonderBoard® panels. Stagger** board joints with those of adjacent rows. Fasten the backerboard every 6" (15 cm) along the joist or rafter. It is recommended that blocking be installed between the joists to support the ends of the backerboard. On all joints and corners, prefill the gap with bonding material, and then embed 2" (5 cm) mesh tape and smooth the material over the joint and corner.

A moisture barrier must be installed to protect the wall cavity for wet area installations. Nail or staple 15 lb roofing felt or 4 mil polyethylene sheeting to the studs. Precut WonderBoard® panels and make any necessary cutouts. Install WonderBoard®, leaving a 1/8"-3/16" (3-5 mm) space at all joints and corners. Stagger board joints with those of adjacent rows. Fasten backerboards every 8" (20.3 cm) o.c. along studs. At all joints and corners, prefill gaps with polymer-modified mortar, then embed 2" (5 cm) alkali-resistant fiberglass mesh tape and smooth material over joint and corner. Any shelf, ledge or horizontal surface subjected to water exposure must have a slight downward slope for water runoff. These areas also require proper waterproofing. Apply RedGard® according to directions.

For installation of tile, natural stone or a similar material, comply with ANSI A108 standard specifications. Install according to installation instructions for the corresponding mortar data sheets.

## Health Precautions

This product, when cut, drilled or abraded, produces dust containing free silica, which may cause cancer or delayed lung injury (silicosis) if inhaled. Work outdoors, in a well-ventilated area, or use mechanical ventilation. Wear safety glasses and a dust mask; in very dusty areas or where airborne dust exceeds PEL, wear a NIOSH/MSHA approved respirator. This product contains one or more chemicals known to the State of California to cause cancer.

## Conformance to Building Codes

Installation must comply with the requirements of all applicable local, state and federal code jurisdictions.

## 6 Availability & Cost

Item Code	Size
GCB60	36" x 60" x 1/2" (91 cm x 153 cm x 13 mm)
GCB96	36" x 96" x 1/2" (91 cm x 244 cm x 13 mm)
FLB48	36" x 48" x 1/4" (91 cm x 122 cm x 6 mm)
FLB60	36" x 60" x 1/4" (91 cm x 153 cm x 6 mm)

## 7 Product Warranty

Custom® Building Products warrants to the original consumer purchaser that its product shall be free from defects in material and workmanship under normal and proper usage for a period of one year **following the date of original purchase. Custom's® sole liability under this warranty shall be limited to the replacement of the product.** Some states, countries or territories do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This warranty will not extend to any product which has been modified in any way or which has not been **used in accordance with Custom's® printed instructions.** Custom® makes no other warranties either expressed or implied. This warranty gives you specific legal rights, and you may have other rights that vary from state to state or from one country/territory to another. Click for details and complete [warranty information](#).

## 8 Product Maintenance

Properly installed product requires no special maintenance.

## 9 Technical Services Information

For technical assistance, contact Custom® Building Products.

## 10 Filing System

Additional product information is available from the manufacturer upon request.



**TABLE R301.5—continued**  
**MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS**  
**(in pounds per square foot)**

- g. Uninhabitable attics with limited storage are those where the clear height between joists and rafters is 42 inches or greater, or where there are two or more adjacent trusses with web configurations capable of accommodating an assumed rectangle 42 inches in height by 24 inches in width, or greater, within the plane of the trusses.

The live load need only be applied to those portions of the joists or truss bottom chords where all of the following conditions are met:

1. The attic area is accessed from an opening not less than 20 inches in width by 30 inches in length that is located where the clear height in the attic is not less than 30 inches.
2. The slopes of the joists or truss bottom chords are not greater than 2 inches vertical to 12 units horizontal.
3. Required insulation depth is less than the joist or truss bottom chord member depth.

The remaining portions of the joists or truss bottom chords shall be designed for a uniformly distributed concurrent live load of not less than 10 pounds per square foot.

- h. Glazing used in handrail assemblies and guards shall be designed with a safety factor of 4. The safety factor shall be applied to each of the concentrated loads applied to the top of the rail, and to the load on the infill components. These loads shall be determined independent of one another, and loads are assumed not to occur with any other live load.

**R301.6 Roof load.** The roof shall be designed for the live load indicated in Table R301.6 or the snow load indicated in Table R301.2(1), whichever is greater.

**TABLE R301.6**  
**MINIMUM ROOF LIVE LOADS IN POUNDS-FORCE**  
**PER SQUARE FOOT OF HORIZONTAL PROJECTION**

ROOF SLOPE	TRIBUTARY LOADED AREA IN SQUARE FEET FOR ANY STRUCTURAL MEMBER		
	0 to 200	201 to 600	Over 600
Flat or rise less than 4 inches per foot (1:3)	20	16	12
Rise 4 inches per foot (1:3) to less than 12 inches per foot (1:1)	16	14	12
Rise 12 inches per foot (1:1) and greater	12	12	12

For SI: 1 square foot = 0.0929 m<sup>2</sup>, 1 pound per square foot = 0.0479 kPa, 1 inch per foot = 83.3 mm/m.

**R301.7 Deflection.** The allowable deflection of any structural member under the live load listed in Sections R301.5 and R301.6 or wind loads determined by Section R301.2.1 shall not exceed the values in Table R301.7.

**R301.8 Nominal sizes.** For the purposes of this code, dimensions of lumber specified shall be deemed to be nominal dimensions unless specifically designated as actual dimensions.

## SECTION R302

### FIRE-RESISTANT CONSTRUCTION

**R302.1 Exterior walls.** Construction, projections, openings and penetrations of *exterior walls* of *dwelling*s and accessory buildings shall comply with Table R302.1(1); or *dwelling*s equipped throughout with an *automatic sprinkler system*

installed in accordance with Section P2904 shall comply with Table R302.1(2).

#### Exceptions:

1. Walls, projections, openings or penetrations in walls perpendicular to the line used to determine the *fire separation distance*.
2. Walls of *individual dwelling units* and their *accessory structures* located on the same *lot*.
3. Detached tool sheds and storage sheds, playhouses and similar structures exempted from permits are not required to provide wall protection based on location on the *lot*. Projections beyond the *exterior wall* shall not extend over the *lot line*.
4. Detached garages accessory to a *dwelling* located within 2 feet (610 mm) of a *lot line* are permitted to have roof eave projections not exceeding 4 inches (102 mm).
5. Foundation vents installed in compliance with this code are permitted.

**TABLE R301.7**  
**ALLOWABLE DEFLECTION OF STRUCTURAL MEMBERS<sup>b, c</sup>**

STRUCTURAL MEMBER	ALLOWABLE DEFLECTION
Rafters having slopes greater than 3:12 with finished ceiling not attached to rafters	L/180
Interior walls and partitions	H/180
Floors	L/360
Ceilings with brittle finishes (including plaster and stucco)	L/360
Ceilings with flexible finishes (including gypsum board)	L/240
All other structural members	L/240
Exterior walls—wind loads <sup>a</sup> with plaster or stucco finish	H/360
Exterior walls—wind loads <sup>a</sup> with other brittle finishes	H/240
Exterior walls—wind loads <sup>a</sup> with flexible finishes	H/120 <sup>d</sup>
Lintels supporting masonry veneer walls <sup>e</sup>	L/600

Note: L = span length, H = span height.

- a. For the purpose of the determining deflection limits herein, the wind load shall be permitted to be taken as 0.7 times the component and cladding (ASD) loads obtained from Table R301.2(2).
- b. For cantilever members, L shall be taken as twice the length of the cantilever.
- c. For aluminum structural members or panels used in roofs or walls of sunroom additions or patio covers, not supporting edge of glass or sandwich panels, the total load deflection shall not exceed L/60. For continuous aluminum structural members supporting edge of glass, the total load deflection shall not exceed L/175 for each glass lite or L/60 for the entire length of the member, whichever is more stringent. For sandwich panels used in roofs or walls of sunroom additions or patio covers, the total load deflection shall not exceed L/120.
- d. Deflection for exterior walls with interior gypsum board finish shall be limited to an allowable deflection of H/180.
- e. Refer to Section R703.8.2.



**R302.2 Townhouses.** Walls separating townhouse units shall be constructed in accordance with Section R302.2.1 or R302.2.2.

**R302.2.1 Double walls.** Each townhouse shall be separated by two 1-hour fire-resistance-rated wall assemblies tested in accordance with ASTM E119, UL 263 or Section 703.3 of the *International Building Code*.

**R302.2.2 Common walls.** Common walls separating townhouses shall be assigned a fire-resistance rating in accordance with Item 1 or 2. The common wall shared by two townhouses shall be constructed without plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing.

**TABLE R302.1(1)  
EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour—tested in accordance with ASTM E119, UL 263 or Section 703.3 of the <i>International Building Code</i> with exposure from both sides	0 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Projections	Not allowed	NA	< 2 feet
	Fire-resistance rated	1 hour on the underside, or heavy timber, or fire-retardant-treated wood <sup>a, b</sup>	≥ 2 feet to < 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Openings in walls	Not allowed	NA	< 3 feet
	25% maximum of wall area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm.

NA = Not Applicable.

- a. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.
- b. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the rake overhang where gable vent openings are not installed.

**TABLE R302.1(2)  
EXTERIOR WALLS—DWELLINGS WITH FIRE SPRINKLERS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour—tested in accordance with ASTM E119, UL 263 or Section 703.3 of the <i>International Building Code</i> with exposure from the outside	0 feet
	Not fire-resistance rated	0 hours	3 feet <sup>a</sup>
Projections	Not allowed	NA	< 2 feet
	Fire-resistance rated	1 hour on the underside, or heavy timber, or fire-retardant-treated wood <sup>b, c</sup>	2 feet <sup>a</sup>
	Not fire-resistance rated	0 hours	3 feet
Openings in walls	Not allowed	NA	< 3 feet
	Unlimited	0 hours	3 feet <sup>a</sup>
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet <sup>a</sup>

For SI: 1 foot = 304.8 mm.

NA = Not Applicable.

- a. For residential subdivisions where all dwellings are equipped throughout with an automatic sprinkler system installed in accordance with Section P2904, the fire separation distance for exterior walls not fire-resistance rated and for fire-resistance-rated projections shall be permitted to be reduced to 0 feet, and unlimited unprotected openings and penetrations shall be permitted, where the adjoining lot provides an open setback yard that is 6 feet or more in width on the opposite side of the property line.
- b. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.
- c. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the rake overhang where gable vent openings are not installed.





NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0054















Item 2b

To be withdrawn

## **Memo**

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

**FROM:** Planning Staff

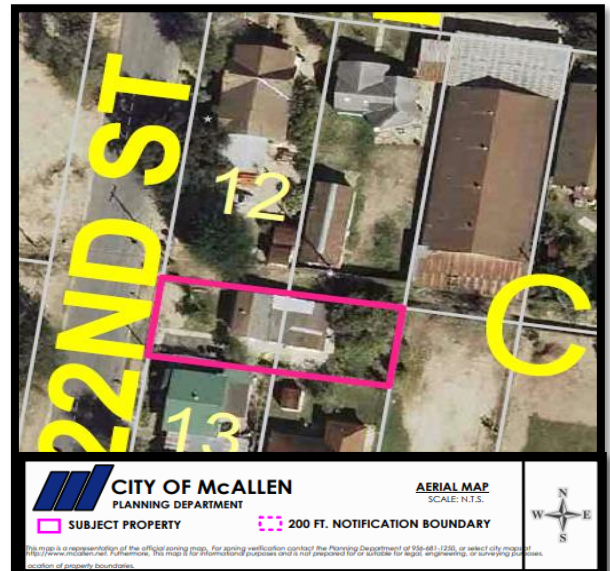
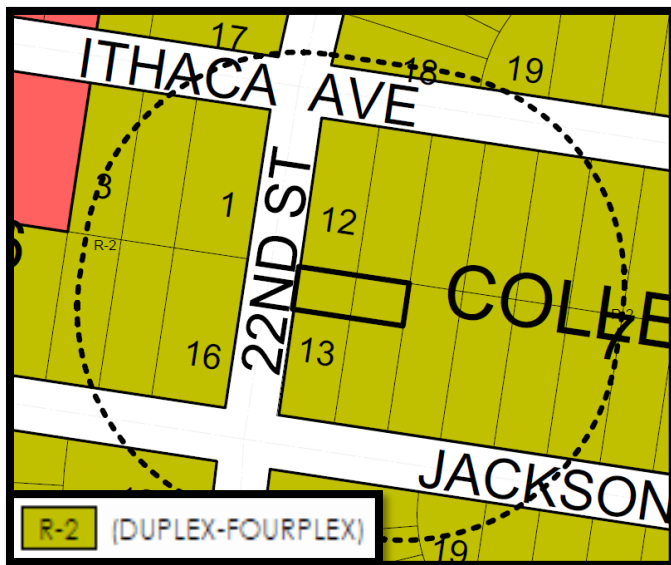
**DATE:** November 5, 2021

**SUBJECT:** Request of Felipe Martinez for the following special exception to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 20 feet into the 20 feet front yard setback for a proposed metal carport measuring 20 feet by 20 feet and 2) an encroachment of 3 feet into the 6 feet side yard setback along the south side yard setback for a proposed metal carport measuring 20 feet by 20 feet at the north 40 feet of Lots 13 and 14, Block 7, College Heights Subdivision, Hidalgo County, Texas; 915 South 22nd Street. (ZBA2021-0045)

---

### **REASON FOR APPEAL:**

The applicant is requesting the special exception to shelter his vehicles from inclement weather.



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

The subject property is located along the east side of South 22<sup>nd</sup> Street, north of Jackson Avenue. The subject property has 40 feet of frontage along South 22<sup>nd</sup> Street and a depth of 100 feet for a total area of 4,000 square feet. The property is zoned R-2 (duplex-fourplex) District. The adjacent zoning is R-2 (duplex-fourplex) District in all directions. Surrounding land uses are multi-family residences.

### **BACKGROUND AND HISTORY:**

College Heights Subdivision was recorded in 1926. According to Hidalgo County Appraisal District records a residential home was built on the property in 2019. An application for a special exception

request for a carport was submitted to the Planning Department on August 30, 2021. The applicant modified the application for a special exception on October 18, 2021 by adding a second request for an encroachment of 3 feet into the 6 feet side yard setback for the same carport.

**ANALYSIS:**

The special exception request is for a proposed metal carport that will be anchored to an existing concrete driveway. The submitted site plan shows a proposed metal carport encroaching 20 feet into the 20 feet front yard setback. The front yard setbacks are important in establishing the character of a single family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view. Buildings are not permitted to be located within the front yard setback.

The second special exception variance request is for an encroachment of the proposed metal carport into the side yard setback. The submitted site plan shows an encroachment of 3 feet into the 6 feet side yard setback at the south side of the subject property. Buildings are not permitted to be located within the side yard setbacks.

The tract fronts South 22<sup>nd</sup> Street while the house orientation is north. The orientation of the house does not affect the setbacks for this property. The proposed carport will be open on all sides which will allow for visibility during egress and ingress into the street or for oncoming traffic. The residence does not have a garage. There is no alley at the rear of the property that would provide access and allow for relocation of the proposed carport to the rear yard area.

During a site visit, staff noticed other similar encroachments in the area. A review of Planning Department records revealed other variances have been approved for carports in this subdivision between 1981 and 2020.

Staff has received a phone call in opposition to this special exception request. The individual in opposition indicated that any proposed construction should comply with setback requirements.

**RECOMMENDATION:**

Staff recommends approval of the special exception request.



ZBA 2021-0045

ZBA  
10/6/2021

City of McAllen

Planning Department

APPEAL TO ZONING BOARD OF

ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Project

Legal Description COLLEGE HEIGHTS N 40' OF 13814 BLK 7

Subdivision Name COLLEGE HEIGHTS

Street Address 915 S 22nd St

Number of lots 2 Gross acres \_\_\_\_\_

Existing Zoning B2 Existing Land Use RESIDENTIAL

Reason for Appeal (please use other side if necessary) ENCROACHMENT OF FRONT SET BACK 25' OUT OF 25'

☒ \$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 FELIPE MARTINEZ Phone 956 601 3308

Address 915 S 22nd St E-mail felipemart@yahoo.com

City MCALLEN State TX Zip 78501

Owner

Name LUCIA RODRIGUEZ MARTINEZ Phone 956 601 4833

Address 915 S 22nd St E-mail lurod132@yahoo.com

City MCALLEN State TX Zip 78501

Authorization

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

☐ Yes☒ No

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

Signature Felipe MartinezDate 8-30-21Print Name FELIPE MARTINEZ☒ Owner☐ Authorized Agent

Office

Accepted by \_\_\_\_\_ Payment received by \_\_\_\_\_ Date \_\_\_\_\_

Rev 09/20

AUG 30 2021

BY: CW

Accela/L.F. ad





# 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:

WATER N GAS METERS ON NORTH SIDE  
IF DECIDED TO DO CARPORT ON THE BACK  
WOULD REQUIRE MORE WORK AND ACOMODATIONS.

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

CARPORT NEEDED FOR SAFETY SPECIALLY ON BAD WEATHER  
DAYS WHEN TAKING AND PICKING OUR KIDS TO AND  
FROM SCHOOL

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:

CARPORT WILL NOT INTERFERE WITH ANY  
WHEEL CHAIR RAMPS, SIDE WALKS OR PASS  
PROPERTY LINES

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

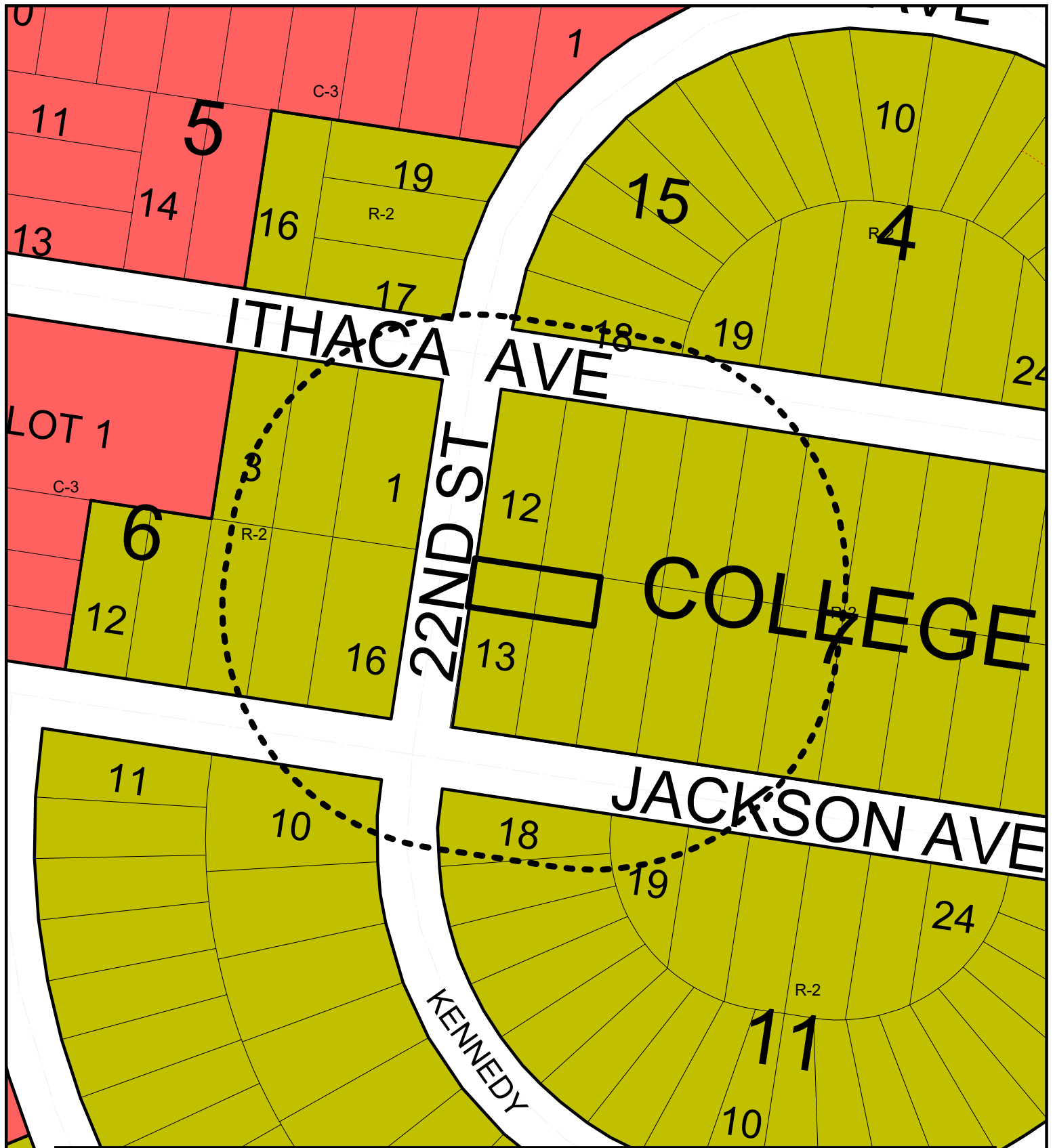
IF APPROVED, THE NORTH SIDE OF EXISTING  
CONCRETE ~~AND~~ DRIVEWAY WILL BE WIDENING  
ABOUT 5'

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**

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



ITHACA AVE

22ND ST

COLLIER

JACKSON



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.



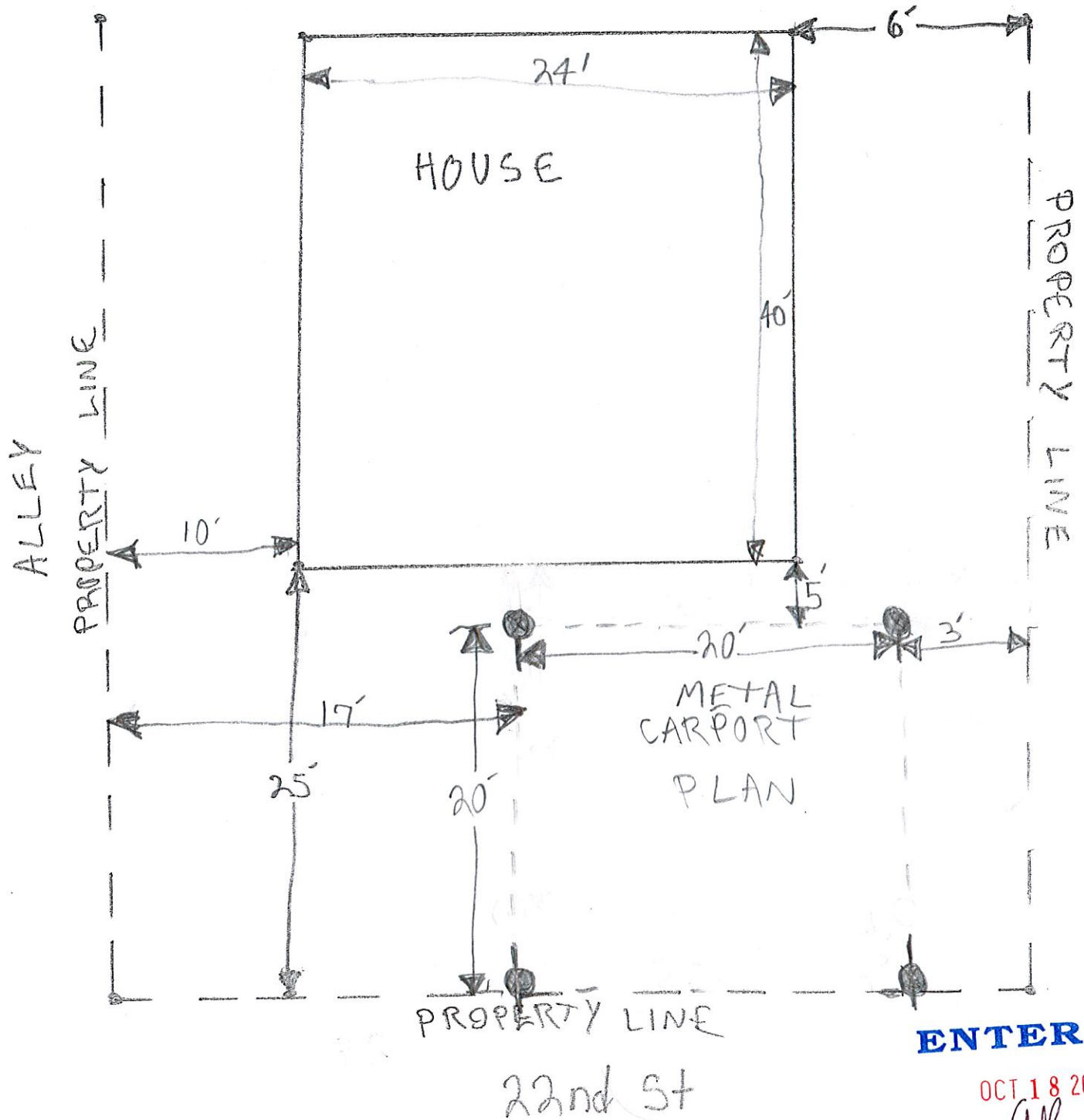
**SUBJECT PROPERTY**



**200 FT. 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.



**ENTERED**

OCT 18 2021

Initial: AK





NOTICE  
VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA2021-0045  
CITY OF MCALLEN PLANNING DEPT.  
366-621-1234  
WWW.MCALLE.NET



## Memo

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

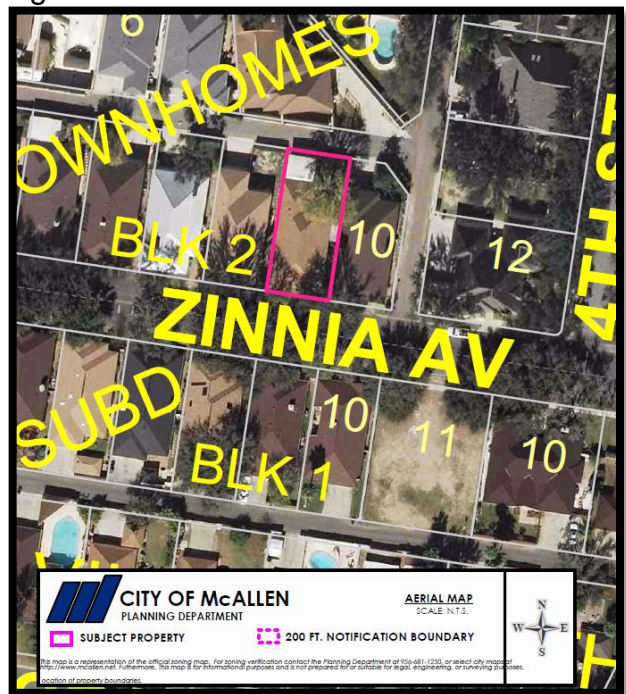
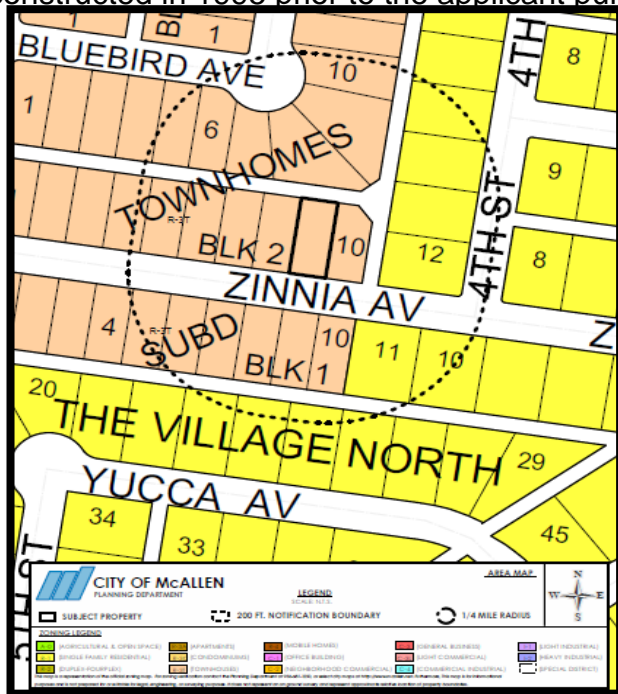
**FROM:** Planning Staff

**DATE:** November 9, 2021

**SUBJECT:** Request of Micaela R. Corcoran for the following special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 10 feet rear yard setback for an existing metal carport measuring 17 feet by 20 feet at Lot 9, Block 2, The Village Townhouse Subdivision, Hidalgo County, Texas; 410 Zinnia Avenue. (ZBA2021-0056)

### REASON FOR APPEAL:

The applicant is requesting the variance for an encroachment into the rear yard setback in order to allow an existing metal carport to remain in its current location. The carport measure 17 feet by 20 feet. According to the applicant, the house was built in 1982 and the carport was constructed in 1995 prior to the applicant purchasing the home in 2013.



### PROPERTY LOCATION AND VICINITY:

The subject property is located along the north side of Zinnia Avenue, west of North 4<sup>th</sup> Street. The subject property has 4,830 square feet. The property is zoned R-3T (multifamily residential townhouse District). The adjacent zoning is R-3T (multifamily residential townhouse) District in all directions. Surrounding land uses are townhouse and single-family residences.

### BACKGROUND AND HISTORY:

The Village Townhouse Subdivision was recorded in May 1981. An application for a building permit was submitted on October 28, 2021 for an existing metal carport. An application for a variance

request was submitted to the Planning Department on October 15, 2021. The Hidalgo County Appraisal District record indicates the house was built in 1982 and the carport was constructed in 1995. The metal carport existed on the subject property prior to the applicant purchasing the home.

**ANALYSIS:**

This request is for an existing metal carport measuring 17 feet by 20 feet that would encroach 10 feet into the 10 feet rear yard setback. The metal carport has access from the alley at the rear of the subject property. The carport is not enclosed which allows for visibility during egress and ingress into the alley or for oncoming traffic. The 20 feet alley serves as a buffer to the property to the north.

There is an existing garage that is used to park one vehicle, and also is used to store household items and hobby-related supplies.

During a site visit, staff noticed other similar encroachments, specifically carports, in the area along the alley. The metal carport on the subject property is characteristic of construction along the alley in this block. A review of Planning Department records did not reveal any variances or special exceptions along the block.

The standard rear yard setback in R-3T (multifamily residential townhouse) District is 10 feet.

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

The Planning Department has received one email in support of the special exception request for the existing metal carport.

The applicant would like for the carport to remain since the carport was built before she purchased the property.

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

**RECOMMENDATION:**

Staff recommends disapproval of the special exception request since buildings are not allowed to be built within setbacks.



ZBA-11.17.21

ZBA2021-0056



City of McAllen

## Planning Department

## APPEAL TO ZONING BOARD OF

## ADJUSTMENT TO MCALLEN ZONING ORDINANCE

311 North 15<sup>th</sup> Street

McAllen, TX 78501

P. O. Box 220

McAllen, TX 78505-0220

(956) 681-1250

(956) 681-1279 (fax)

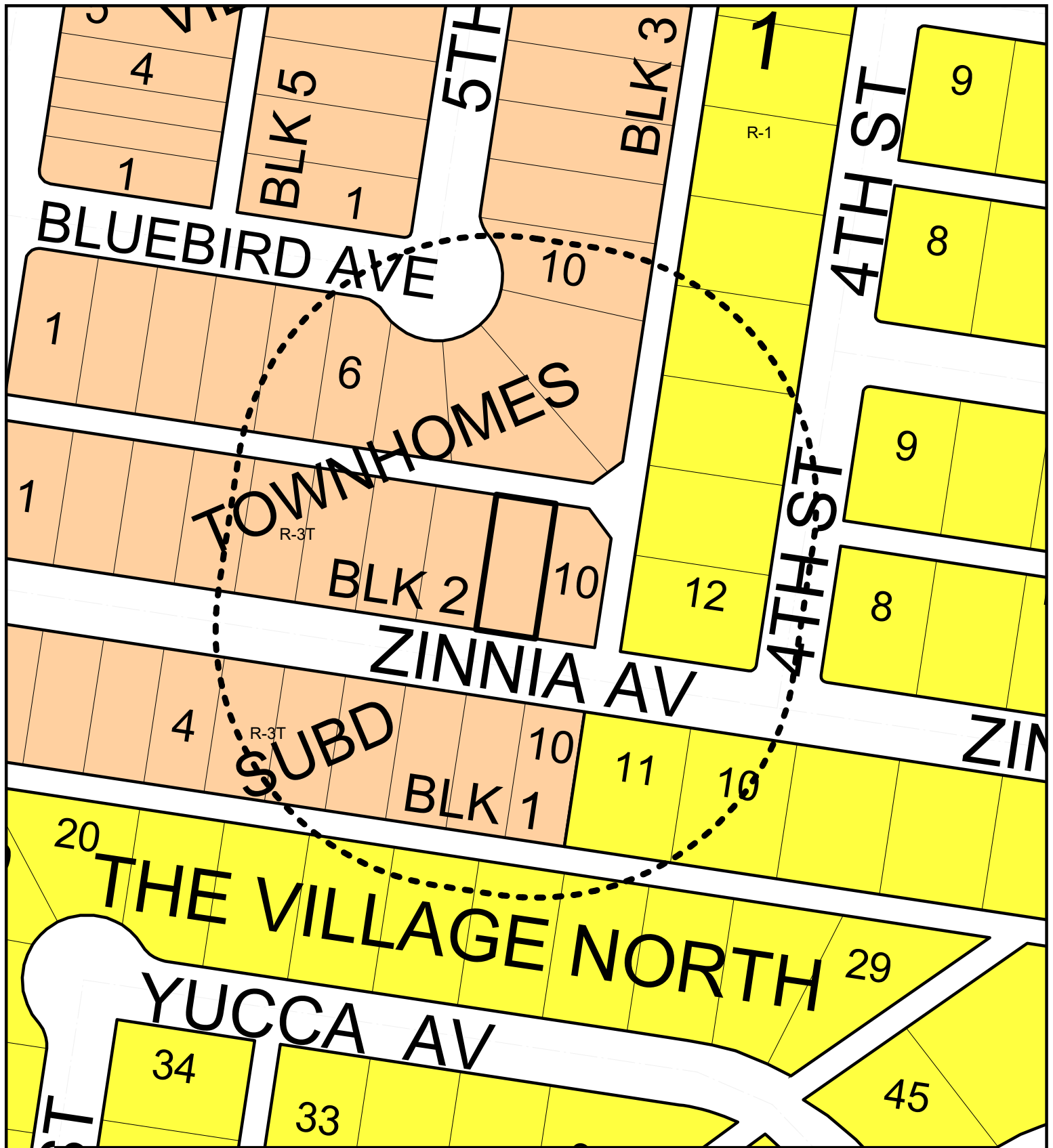
Project	Legal Description	<u>The Village Townhouses Lot 9 Blk 2</u> <del>The Village</del>		
	Subdivision Name	<u>The Village Townhouse Subdivision</u>		
	Street Address	<u>410 Zinnia Avenue</u>		
	Number of lots	_____	Gross acres	_____
	Existing Zoning	<u>R-3T</u>	Existing Land Use	<u>Townhouse</u>
	Reason for Appeal (please use other side if necessary)	<u>an encroachment of 7 ft into the 10 ft rear yard setback for a carport</u>		
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input checked="" type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required			
Applicant	Name	<u>Micaela R. Corcoran</u>		
	Address	<u>410 Zinnia Avenue</u>	E-mail	<u>leadingthepath@yahoo.com</u>
	City	<u>McAllen</u>	State	<u>TX</u>
	Zip	<u>78504</u>		
Owner	Name	<u>Micael R. Corcoran</u>		
	Address	<u>410 Zinnia Avenue</u>	E-mail	<u>leadingthepath@yahoo.com</u>
	City	<u>McAllen</u>	State	<u>TX</u>
	Zip	<u>78504</u>		
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.			
	Signature	<u>Micaela R. Corcoran</u>		
	Date	<u>Oct 15, 2021</u>		
	Print Name	<u>Micaela R. Corcoran</u>	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Authorized Agent
Office	Accepted by	_____	Payment received by	_____
	Rev 09/20	Date <b>ENTERED</b> <b>OCT 15 2021</b> Initial: <u>AW</u>		

RS



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

<b>Reason for Appeal</b>	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider <b>any combination of</b> the following: (Please use an additional page if necessary to complete responses)</p> <p><b>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</b></p> <p><b>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</b></p> <p>1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:</p> <p>house was built in 1982 - carport was added in 1995 (25yrs ago) My daughter and I own larger vehicles - maybe it being built in 1995 - the <del>house</del> <sup>house</sup> was not equipped for larger cars.</p> <p>2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:</p> <p>(Carport &amp; porch)          They were already there prior to purchasing the house. With my daughter living w/me, her car is safer using the carport for protection. Porch was there also prior to purchase of house &amp;</p> <p>3. Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legal rights other property owners enjoy in the area:</p> <p>Both carport &amp; porch <del>are</del> <sup>are</sup> not enclosed (no walls)          Allows for <del>easy</del> <sup>easy</sup> visibility. The elevated carport is above the property &amp; does not pose a hazardous problem.</p> <p>4. Describe special conditions that are unique to this applicant or property:</p> <p>For the seventh year I lived here <del>there</del> <sup>I have</sup> has never noticed it being hazardous. <sup>though</sup> I am applying for an encroachment <sup>the</sup> of patio &amp; carport on the setbacks. I was always under the impression that the prior owner had applied for <sup>building</sup> permits. The carport &amp; the porch are attached to the house.</p>
<b>Board Action</b>	<p>Chairman, Board of Adjustment          Signature _____ Date _____</p> <p>Rev. 9/20</p>



**CITY OF McALLEN**  
PLANNING DEPARTMENT

**LEGEND**  
SCALE: N.T.S.

**SUBJECT PROPERTY**

**200 FT. NOTIFICATION BOUNDARY**

**1/4 MILE RADIUS**

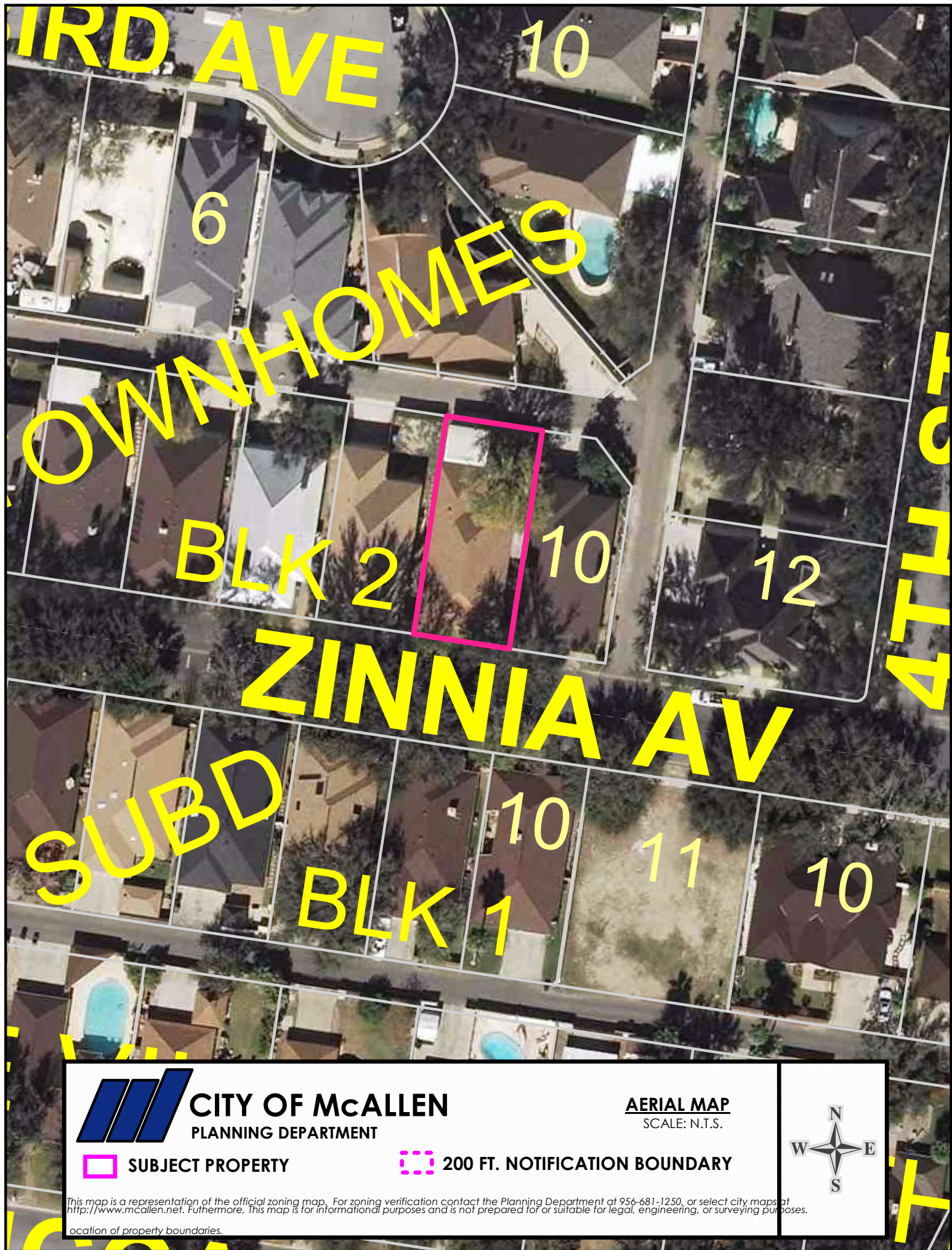


**ZONING LEGEND**

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

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

**AERIAL MAP**  
SCALE: N.T.S.



**SUBJECT PROPERTY**



**200 FT. 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.

landscape feature  
114 ft  
5 ft 8 in

LIVING ROOM  
H O U S E  
KITCHEN

GARAGE

20 ft.

17 ft.

17 ft.

Car Port

fence

Brick Wall fence

'all the way to the property line'

ALLEY

410 Zinnia Ave. Phone # 605-4174  
Micaela R Corcoran

ENTERED

OCT 29 2021

Initial:

AK





ITEM 2E  
WILL BE TABLED  
UNTIL THE  
MEETING OF  
DECEMBER 1



## **Memo**

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

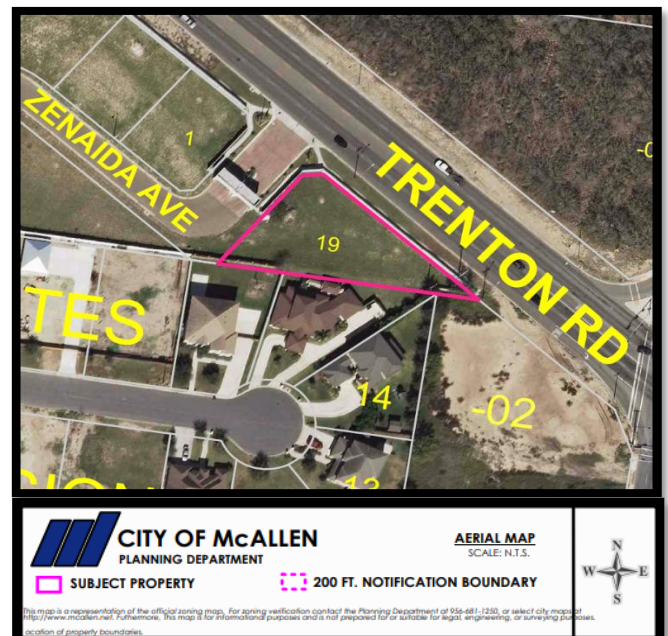
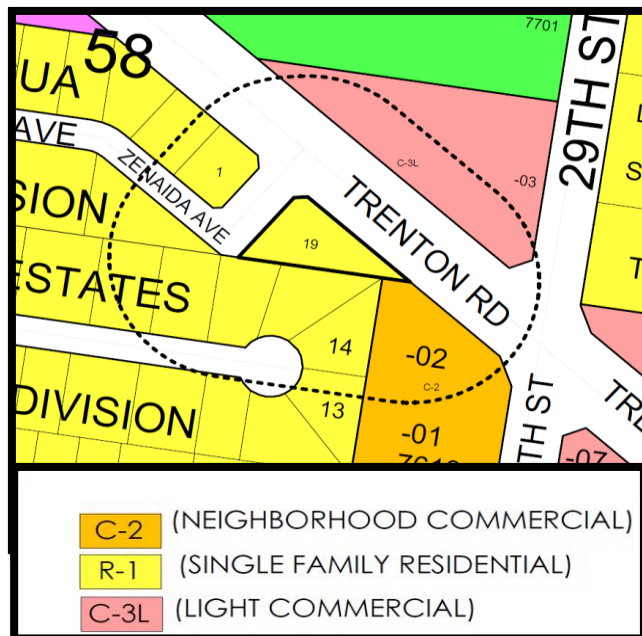
**FROM:** Planning Staff

**DATE:** November 8, 2021

**SUBJECT:** Request of Cesar Cepeda for the following variance to the City of McAllen Zoning Ordinance to allow an encroachment of 5 feet into the 25 feet front yard setback for a proposed single family residence at Lot 19, Antigua Subdivision, Hidalgo County, Texas; 3001 Zenaida Avenue. (ZBA2021-0055)

### **REASON FOR APPEAL:**

The applicant is requesting the variance to encroach into the front yard setback in order to construct a proposed 3,920 square feet single-family residence of stucco construction.



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

The subject property is located along the southwest side of Trenton Road, northwest of 29<sup>th</sup> Street. The subject property has 146 feet of frontage and a total area of 16,478 square feet. The property is zoned R-1 (single-family residential) District. The adjacent zoning is C-3L (light commercial) District to the northeast, C-2 (neighborhood commercial) District to the south, and R-1 (single-family residential) District to the south, and west. Surrounding land uses are single-family residences and vacant land.

### **BACKGROUND AND HISTORY:**

Antigua Subdivision was recorded on July 06, 2006. The applicant is proposing a new single family residence on the subject property. The Zoning Board of Adjustment and Appeals approved a



variance request at Lot 2 of Antigua Subdivision on October 07, 2021, to allow an encroachment of 10 feet into the 25 feet rear yard setback. An application for a building permit was submitted on September 28, 2021 for a proposed single-family residence. An application for a variance request was submitted to the Planning Department on October 12, 2021.

**ANALYSIS:**

This request is for a proposed single-family residence that would encroach 5 feet into the 25 feet front yard setback on an irregular triangular-shaped lot. The proposed area that would encroach into the front yard setback would be a portion of a 2-car garage and storage area. The encroachment comprises 5 feet by 29.08 feet area or approximately 145.4 square feet. It should be noted that the percentage of the area of encroachment compared to the area of the front yard is only 4.43%. The lot has building setbacks and utility easement lines on all sides which reduces the building site area to 6,741 square feet.

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

There is an eight feet masonry wall along the street right-of-way frontage, that will screen off any encroachments.

The Planning Department has not received any calls in opposition to the variance request.

**RECOMMENDATION:**

Staff recommends approval of the variance request since the encroachment is minimal.

ZBA- 11.17.21

ZBA2021-0055



City of McAllen

## Planning Department

## APPEAL TO ZONING BOARD OF

## ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Project	Legal Description	ANTIGUA LOT 19		
	Subdivision Name	Antigua		
	Street Address	3001 Zenaida		
	Number of lots	1	Gross acres	
	Existing Zoning	R1	Existing Land Use	R1
	Reason for Appeal (please use other side if necessary) <u>Encroachment of 5 FT into the 25 ft front yard set back.</u>			
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport) <input checked="" type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required			
Applicant	Name	Cesar Cepeda	Phone	956.821.3765
	Address	1412 Eagle Ave	E-mail	cepedacesar1@gmail.com
	City	McAllen	State	TX Zip 78504
Owner	Name	Cesar Cepeda	Phone	956.821.3765
	Address	1412 Eagle Ave	E-mail	cepedacesar1@gmail.com
	City	McAllen	State	TX Zip 78504
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization.			
	Signature		Date	10-12-2021
	Print Name	Cesar Cepeda	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Authorized Agent
Office	Accepted by		Payment received by	Date
	Rev 09/20 <div style="text-align: right;"> <b>ENTERED</b>            OCT 15 2021            Initial: <u>AR</u> </div>			

215

Initial:



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

Reason for Appeal	<p>*A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: <i>(Please use an additional page if necessary to complete responses)</i></p> <p>**Information provided here by the applicant does not guarantee that the Board will grant a variance.</p> <p>***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below.</p>	
	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:	
	Please see Enclosed	
	2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the owner:	
	Please see Enclosed	
	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:	
Board Action	Please see Enclosed	
	4. Describe special conditions that are unique to this applicant or property:	
	Please see Enclosed	
Chairman, Board of Adjustment Signature		
Date		
_____ Rev. 9/20		



3001 Zenaida Ave, lot 19 Antigua Subdivision. Request for variance

1.-

Setback restrictions are put in place by the City of McAllen in order to maintain property values and public safety high and aesthetics to a maximum. In this particular case, the lot in question has an asymmetric triangular shape which our neighbors call – the Dorito. As the name implies, it has three angles and is very limited and challenging in area.

There are two factors that affect a reasonable use of this irregular lot: the first being its triangular shape, and secondly, the high percentage of non-buildable area. Please note on the annexed Engineer's survey notes that the non-buildable area constitutes 59% of the total lot area which signifies over 9,000 sq. ft.

Applying the 25 feet setback from Zenaida Ave. greatly restricts the design of an aesthetically pleasing house due to the triangular shape and extreme narrowness of the lot. Permitting us the variance will give us a very necessary 5 feet in depth along the wide side of the Dorito lining Zenaida Ave. that will allow us a proper design that is in sync with the rest of the neighborhood.

2.-

Due to the shape of the lot and its setbacks and easements, the buildable area is barely 40% of the total lot area. In order to fully enjoy our lot as owners, a 5 feet variance that we are requesting will allow more buildable area suitable for a home for this neighborhood.

With the 25 feet setback the home would be restricted to a design unsuitable and potentially unattractive for future buyers as well as affecting the neighborhood's other property owners. With the 5 feet variance, the addition of this buildable land will permit us to properly enjoy a home with a design that makes the best use of its space.

As the lot narrows tremendously towards the back, the challenges in design increase exponentially. Therefore, permitting us the variance of 5 feet in the front, the widest side of the triangle, will greatly improve the design of our home.

3.-

The 5 feet variance requested will not be detrimental to public safety because of the unusually nature of this lot. Not only is it already bordered by a wall on half its length (on the side where we are requesting the variance), but there is no risk to public safety as it is also isolated from the rest of the neighborhood because of its location. In addition, it would not affect in any way as a 20 feet setback would be in place.

4.-

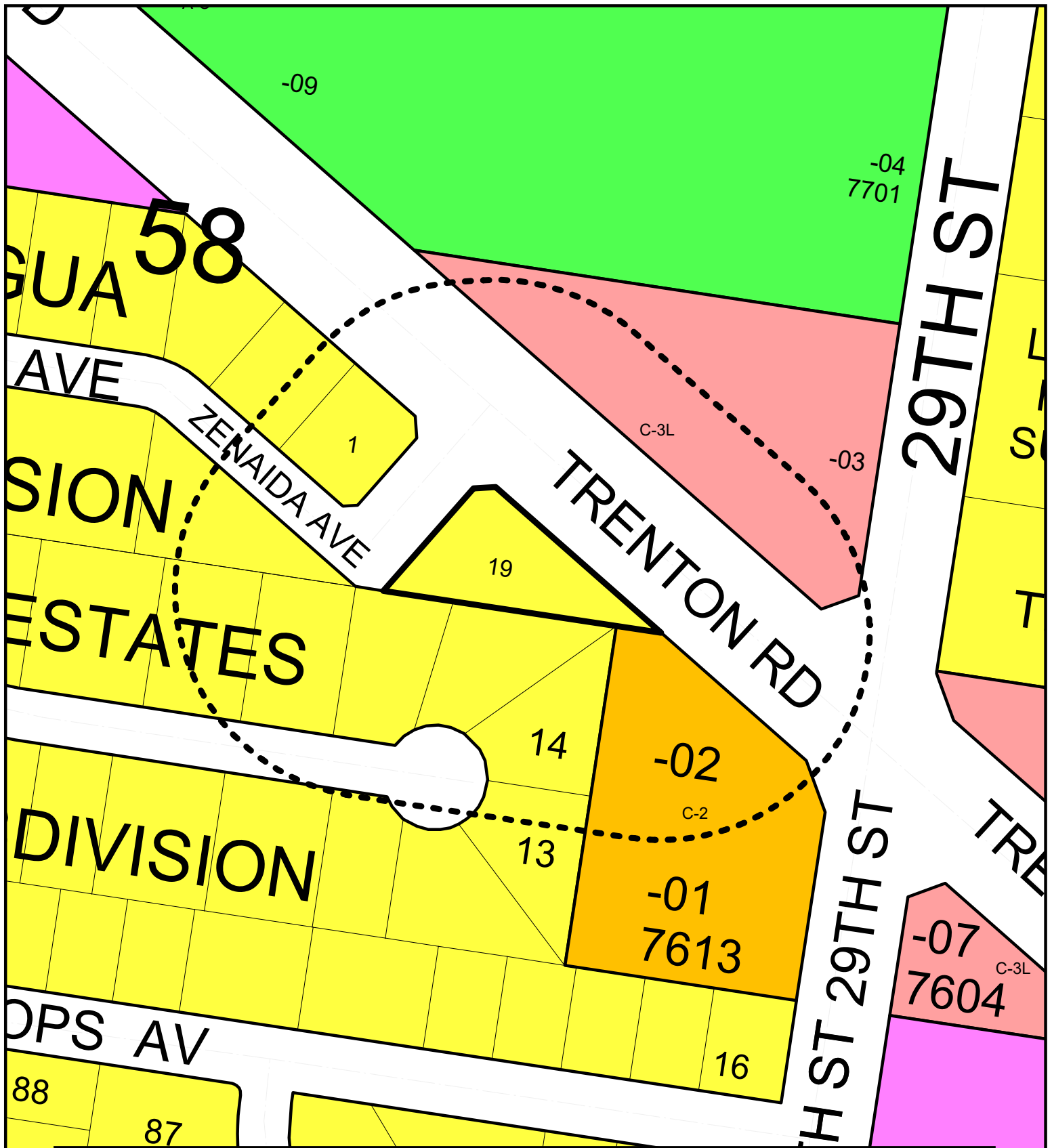
This lot has several factors that are unique to it. The first being its triangular shape. Secondly, the high percentage of non-buildable area. Please note on the annexed Engineer's survey notes that the non-buildable area constitutes 59% of the total lot area which signifies over 9,000 sq. ft. Thirdly, the front setback is on the wide side of the triangle which affects directly the front of the house. Not only is the most important side of a house the front façade, but as the lot narrows tremendously towards the back, the challenges in design increase exponentially.


 Cesar Cepeda

**ENTERED**

OCT 15 2021

Initial: an








**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><span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>A-0</b> (AGRICULTURAL &amp; OPEN SPACE)</p> <p><span style="background-color: #FFFF00; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-1</b> (SINGLE FAMILY RESIDENTIAL)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-2</b> (DUPLEX-FOURPLEX)</p>	<p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-3A</b> (APARTMENTS)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-3C</b> (CONDOMINIUMS)</p> <p><span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-3T</b> (TOWNHOUSES)</p>	<p><span style="background-color: #FFA500; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>R-4</b> (MOBILE HOMES)</p> <p><span style="background-color: #FFA500; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-1</b> (OFFICE BUILDING)</p> <p><span style="background-color: #FFA500; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-2</b> (NEIGHBORHOOD COMMERCIAL)</p>	<p><span style="background-color: #FF69B4; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-3</b> (GENERAL BUSINESS)</p> <p><span style="background-color: #FF69B4; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-3L</b> (LIGHT COMMERCIAL)</p> <p><span style="background-color: #FF69B4; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>C-4</b> (COMMERCIAL INDUSTRIAL)</p>	<p><span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>I-1</b> (LIGHT INDUSTRIAL)</p> <p><span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>I-2</b> (HEAVY INDUSTRIAL)</p> <p><span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> <b>S</b> (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.





**CITY OF McALLEN**  
PLANNING DEPARTMENT

**AERIAL MAP**  
SCALE: N.T.S.



**SUBJECT PROPERTY**



**200 FT. NOTIFICATION BOUNDARY**



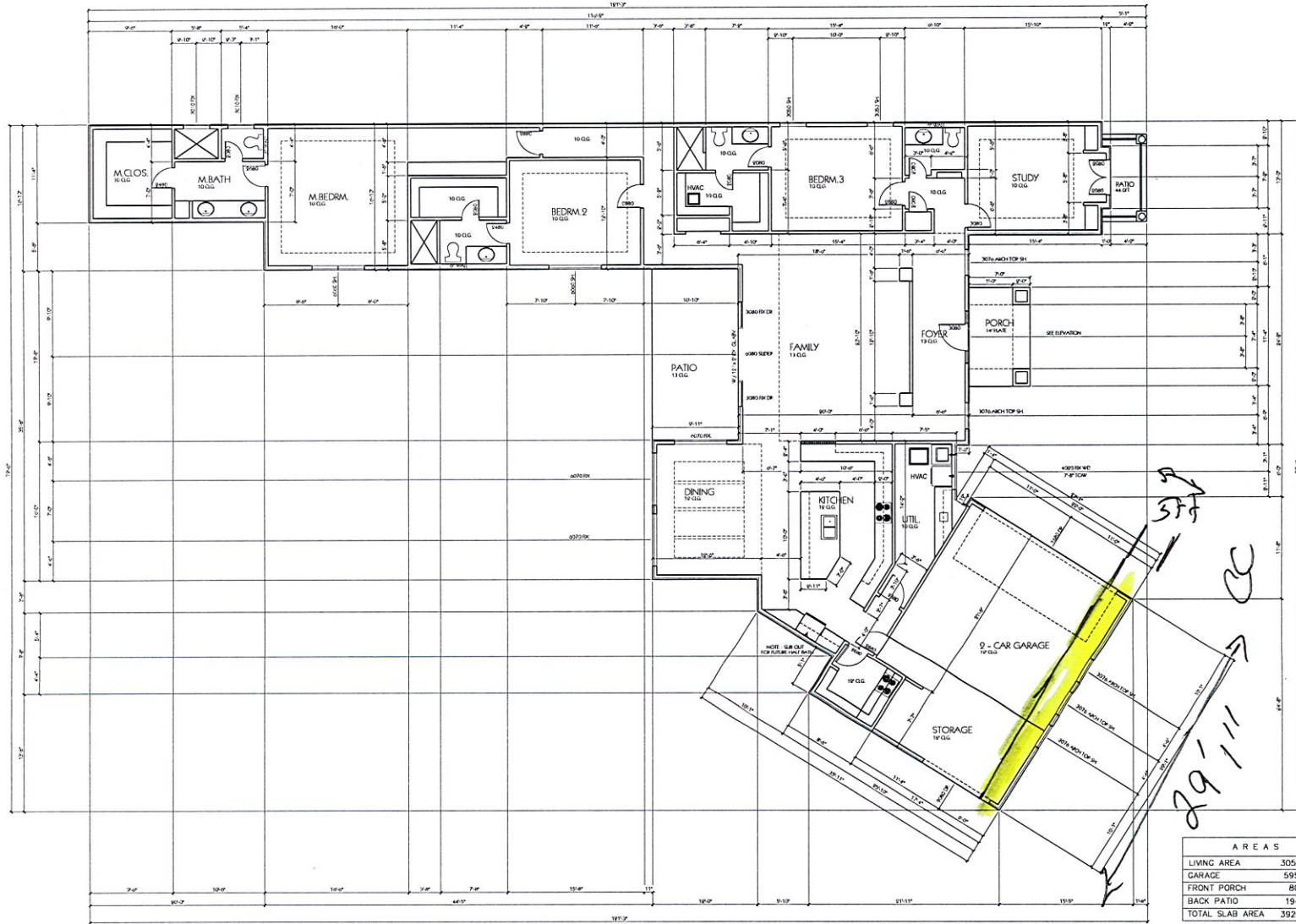
This map is a representation of the official zoning map. For zoning verification contact the Planning Department at 956-681-1250, or select city maps at <http://www.mcallen.net>. Furthermore, this map is for informational purposes and is not prepared for or suitable for legal, engineering, or surveying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



ENTERED

OCT 15 2021

Initial: CW



FLOOR PLAN LAYOUT  
SCALE: 3/16" = 1'-0"

AREAS	
LIVING AREA	3051 SQ. FT.
GARAGE	595 SQ. FT.
FRONT PORCH	80 SQ. FT.
BACK PATIO	194 SQ. FT.
TOTAL SLAB AREA	3920 SQ. FT.

South Texas Design

PROJECT

OWNER + BUILDER

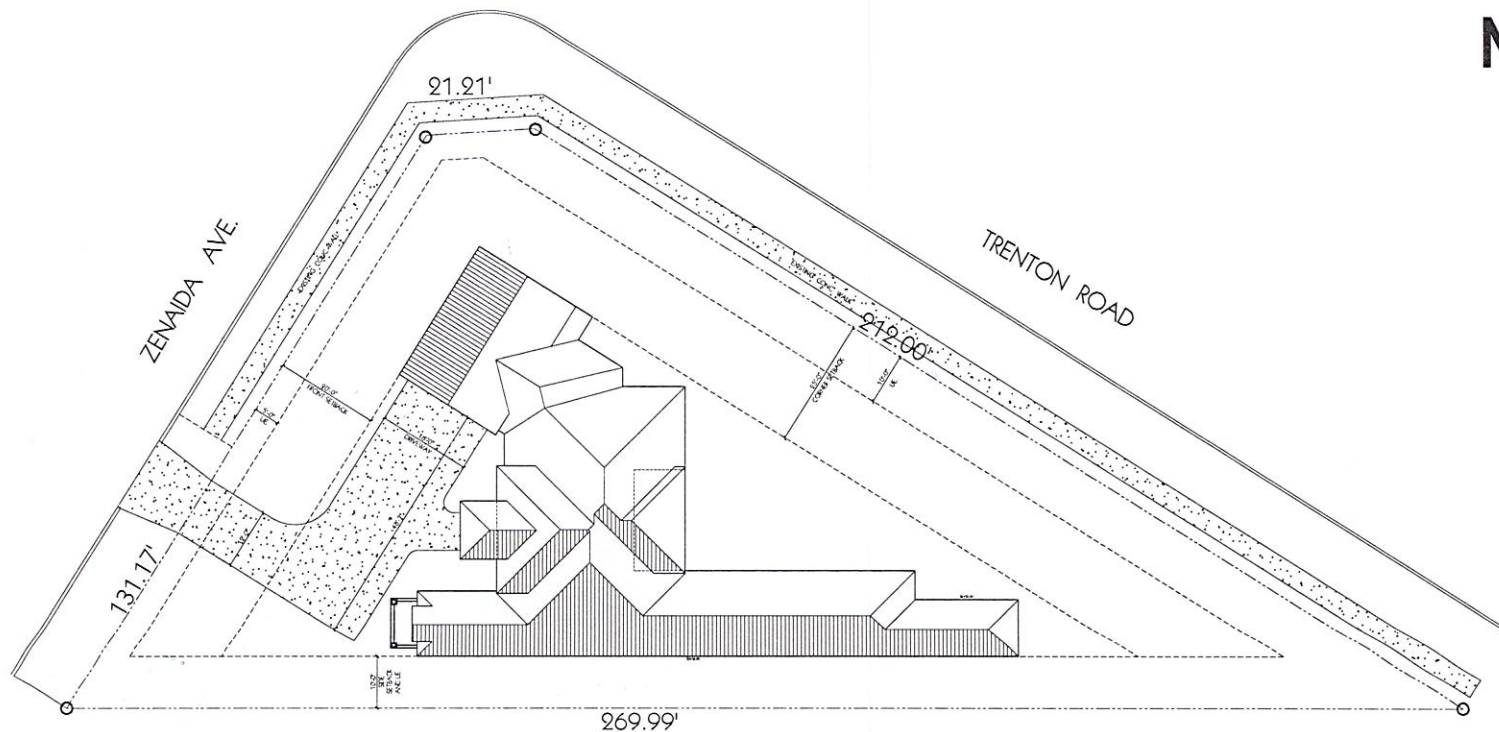
210 WILKINSON SUITE 107 WILKINSON, TEXAS 75504 (956) 687-1406

SCALE: 3/16" = 1'-0"

REVISIONS

BT

JOB No. SHI.  
OF



# SITE PLAN LAYOUT

LOT - 19  
ANTIGUA SUB.  
MCALLEN TEXAS



South Texas Designs

PROJECT

OWNER • BUILDER

210 NOVA SITE "D" MCALLEN, TEXAS 78501 (512) 687-1406

SCALE: 3/32" = 1'-0"

REVISIONS	BY

ENTERED

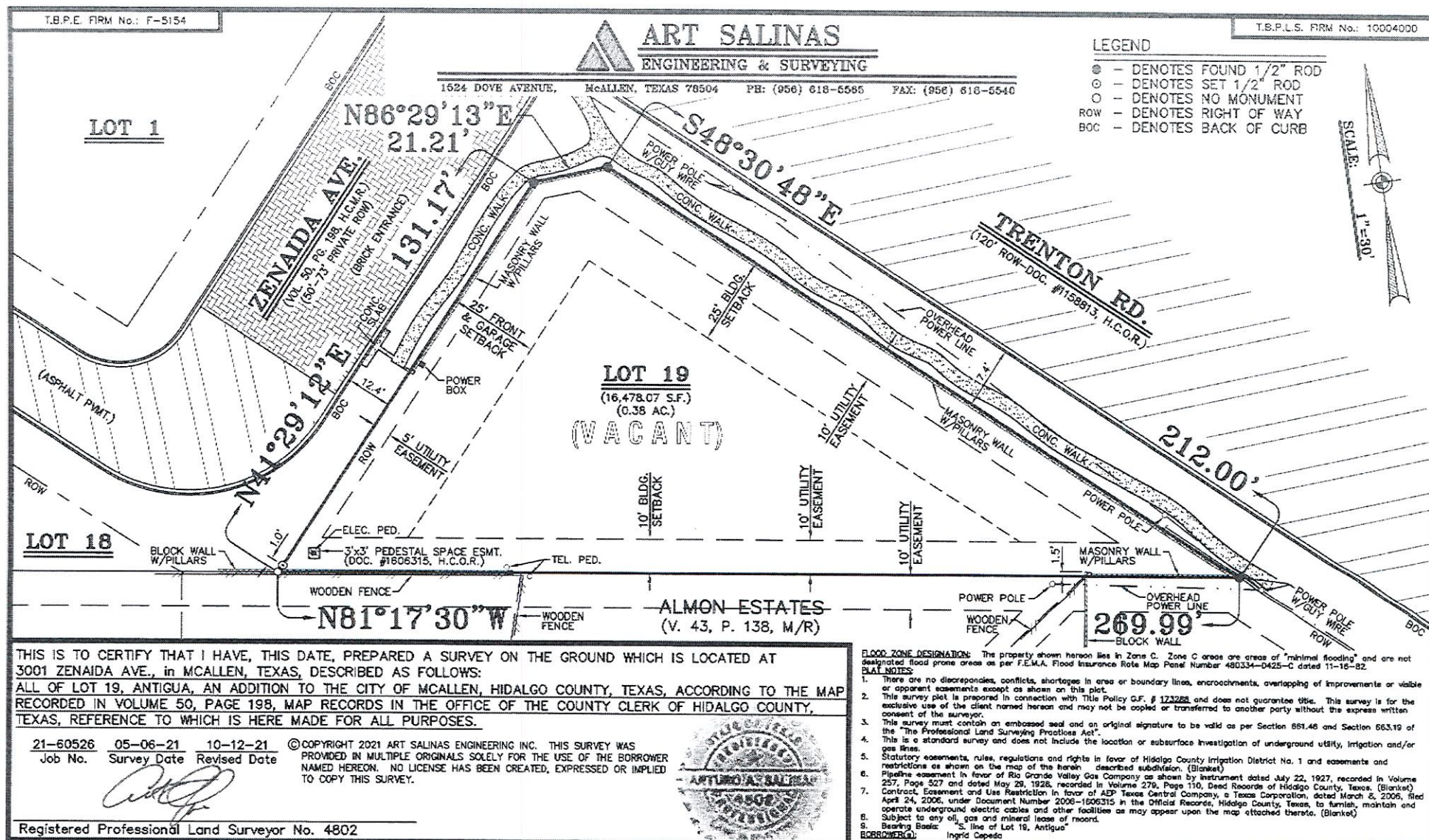
OCT 15 2021

Initial: air



● - DENOTES FOUND 1/2" ROD  
 ⊙ - DENOTES SET 1/2" ROD  
 ○ - DENOTES NO MONUMENT  
 ROW - DENOTES RIGHT OF WAY  
 BOC - DENOTES BACK OF CURB

SCALE: 1"=30'



**ENTERED**

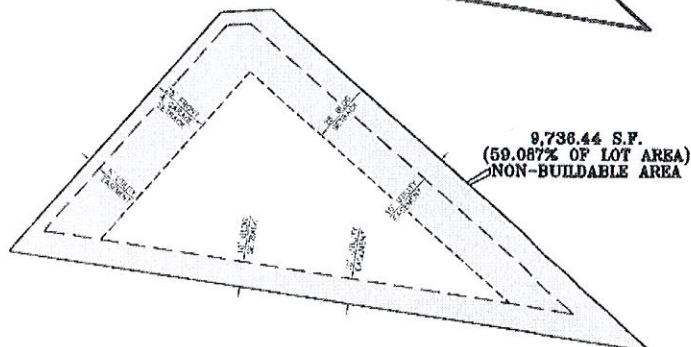
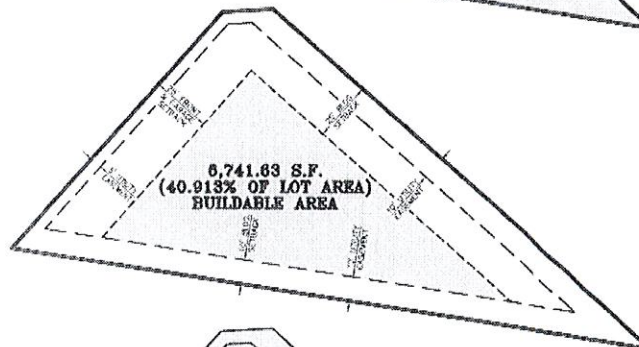
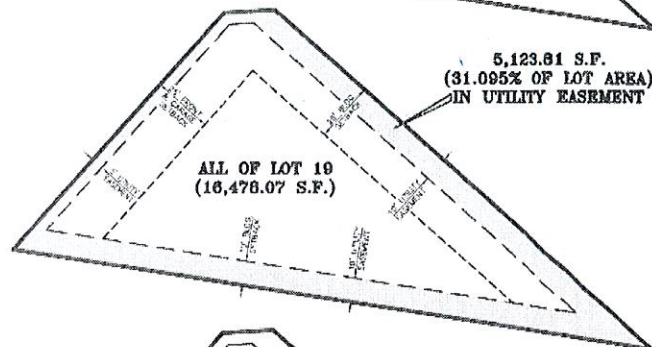
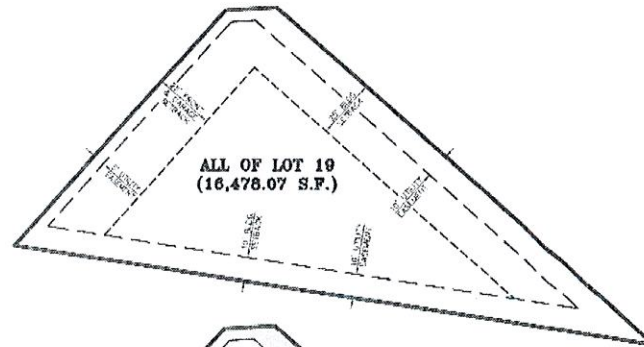
OCT 15 2021

Initial: AR





1524 DOVE AVENUE, McALLEN, TEXAS 78504 PH: (956) 618-5565 FAX: (956) 618-5540

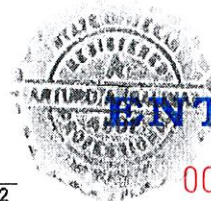


**PLAT  
OF  
BUILDABLE VS. NON-BUILDABLE LOT AREAS**

LOT 19, ANTIGUA, AN ADDITION TO THE CITY OF McALLEN, HIDALGO COUNTY, TEXAS, ACCORDING TO THE MAP RECORDED IN VOLUME 50, PAGE 198, MAP RECORDS IN THE OFFICE OF THE COUNTY CLERK OF HIDALGO COUNTY, TEXAS, REFERENCE TO WHICH IS HERE MADE FOR ALL PURPOSES.

Job No.: 21-60526A  
Date: 10-12-21

Arturo A. Salinas, R.P.L.S. No. 4802



**ENTERED**

OCT 15 2021

Initial:           

*cm*







**Building Permits & Inspections Department**

---

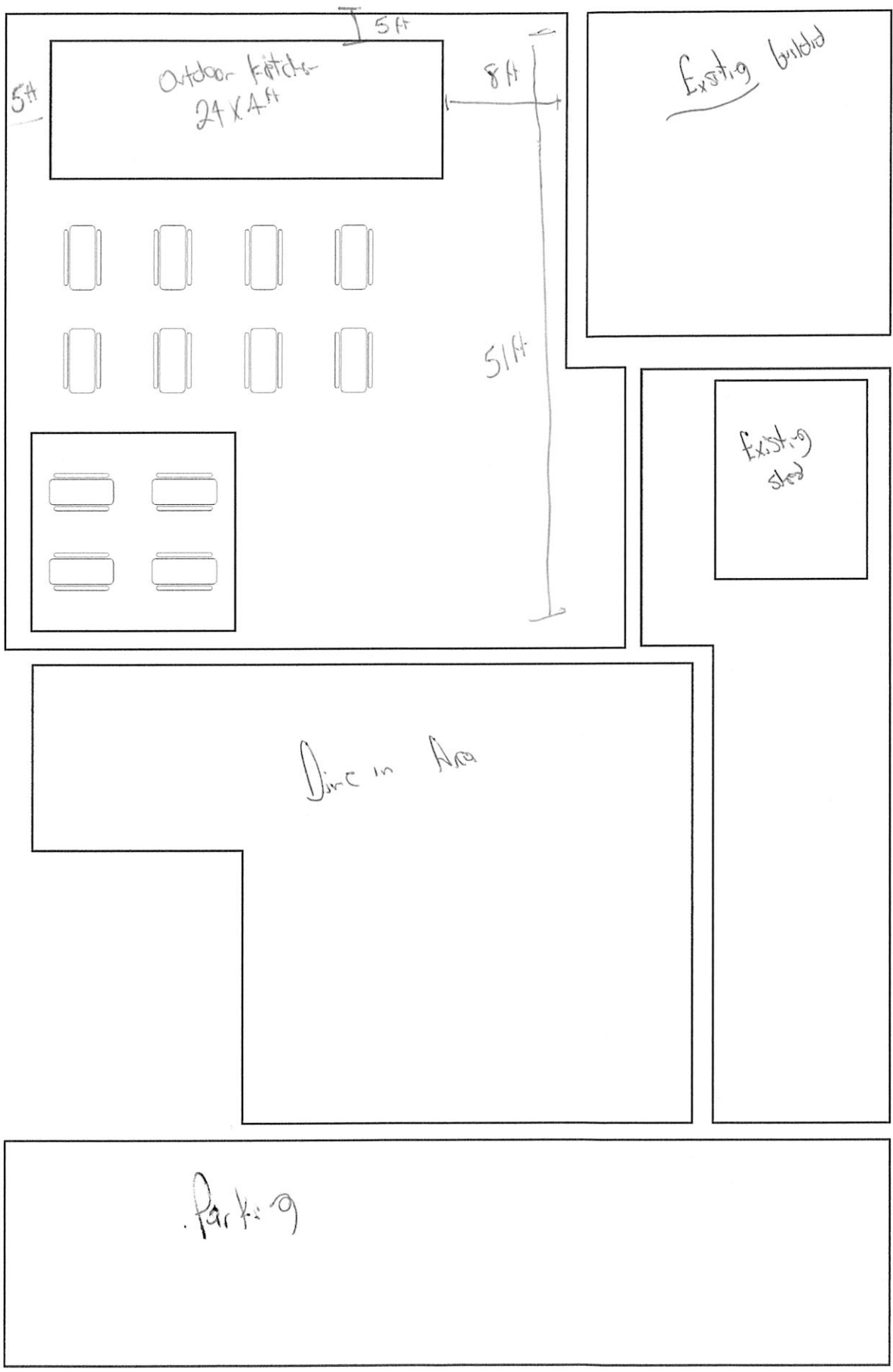
**TO:** Zoning Board of Adjustment and Appeals  
**FROM:** Norma Yado, Chief Building Official  
**DATE:** October 29, 2021  
**SUBJECT:** 1017 N Main, Certificate of Occupancy

---

On April 4, 2021, a building permit application was submitted for review of a commercial addition with permanent plumbing and electrical, outside seating and restrooms. In addition, remodeling of the front structure was proposed for the dining area. A Building Permit was issued on May 19, 2021 and final inspection was approved on September 3, 2021. A Certificate of Occupancy was signed on September 3, 2021.



S → N



MAIN ST





JAVIER VILLALOBOS, Mayor  
JOAQUIN "J.J." ZAMORA, Mayor Pro Tem & Commissioner District 2  
TONY AGUIRRE, JR., Commissioner District 1  
J. OMAR QUINTANILLA, Commissioner District 3  
TANIA RAMIREZ, Commissioner District 4  
VICTOR "SEBY" HADDAD, Commissioner District 5  
PEPE CABEZA DE VACA, Commissioner District 6

ROEL "ROY" RODRIGUEZ, P.E., City Manager

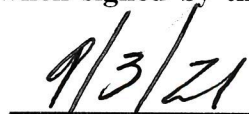
**CERTIFICATE OF OCCUPANCY  
BUILDING INSPECTION OFFICE  
CITY OF MCALLEN, TEXAS  
(Must be conspicuously posted)**

Building Permit No. CMM2021-03082 Site Address 1017 N MAIN ST  
Lot No. 3 Block No. 16 Subdivision EWING  
Property Owner PAMM FAMILY PROPERTIES LLC  
Address 813 N MAIN ST MCALLEN, TX 78501  
Tenant/Business Name TACOS EL PLEBE  
Permit type (New, Addition, Remodel) ADDITION  
Design Occupant Load \_\_\_\_\_ Type of Construction (I, II, III, IV, V) \_\_\_\_\_  
Edition of Building Code \_\_\_\_\_ Fire Sprinkler System (Yes, No) \_\_\_\_\_

**CERTIFICATE OF OCCUPANCY**

This Document becomes the Certificate of Occupancy when signed by the Building Official.

  
\_\_\_\_\_  
Norma Yado, Chief Building Official

  
\_\_\_\_\_  
Date signed

SEPTEMBER 3, 2021  
\_\_\_\_\_  
Date Finaled

CONTRACTOR: TACOS EL PLEBE  
PLUMBING: DC PLUMBING  
ELECTRICAL: EM3 ELECTRICAL SERVICES  
MECHANICAL:

JYJ



## 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-Zoning .....1**

    Section 138-1 Definitions .....1

**Chapter 110-Vegetation .....6**

    Section 110-26 Definitions .....6



## Chapter 138-Zoning

### Sec. 138-1. - Definitions.

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

*Accessory building* means a subordinate building, located on the same lot as the main building, the use of which is clearly incidental to and customarily found in connection with the main building or principal use of the property.

*Accessory use* means a use which is clearly incidental to and customarily found in connection with the principal use of the premises and which is located on the same lot as the principal use.

*Accessory use of building* means a subordinate use or structure customarily incident to and located on the lot occupied by the main use or structure and conforming with setback and other regulations concerning location.

*Alley* means a minor public right-of-way which is used primarily for vehicular and utility service access to the backs or sides of properties otherwise abutting on a public street.

*Apartment* means a room or suite of rooms located in a building with other such rooms or suites arranged, designed, or to be occupied as a residence by a family. (See Dwelling unit.)

*Associated recreation* means recreational uses which are an integral part of a common ownership or associated or high density residential development (example: homeowners' association with a private club or facility).

*Authorized agent* means an architect, builder, developer or other person empowered to act on behalf of such persons.

*Base station.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new base stations that are not eligible for Section 6409, need not be existing at the time of the application, nor does subsection 138-1.A(a)1.c. apply to a new base station.

*Boardinghouse* means a building other than a hotel where lodging and meals are provided for compensation.

*Building* means any structure designed to be built for the support, enclosure, shelter or protection of persons, animals, chattel or property of any kind. The word "building" includes the word "structure."

*Carrier on wheels or cell on wheels ("COW").* A portable self-contained mobile facility moved to a location and set up to provide wireless services on a temporary or emergency basis.

*Concealed or stealth design elements.* A design elements of any tower, base station or transmission equipment that allows it to be integrated as an architectural feature of a tower or base station or so that it is not readily apparent to a casual observer. It may be screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure so that it is not easily recognizable from other natural structures.

*Conditional use* means a use which may be suitable in certain locations in a zoning district if developed and operated under specific conditions and/or for a limited period of time.

*Depth of lot* means the mean horizontal distance between the front and rear lot lines. (See definitions of Front and Rear lot lines.)

*District* means a section of the city for which the regulations governing the areas, heights or uses of buildings are uniform.

*Dwelling unit* means any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boardinghouses or mobile homes.

- (1) *Single-family* means a building designed for and/or occupied exclusively by one family as a separate dwelling unit.



- (2) *Duplex* means a building designed for and/or occupied exclusively by two families living independently of each other.
- (3) *Triplex* means a building designed for and/or occupied exclusively by three families living independently of each other.
- (4) *Fourplex* means a building designed for and/or occupied exclusively by four families living independently of each other.
- (5) *Multiple* means a building designed for and/or occupied exclusively by five or more families living independently of each other.

The determination of whether one family is living independent of another is based on one or more of the following criteria: separate sanitary facilities; separate kitchen facilities; separate entrances; or separate utilities.

*Eligible facilities request.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Eligible support structure.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Existing.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Family* means one or more persons living together as a single housekeeping unit with common sanitary and kitchen facilities.

*Garage, commercial* means a building or premises used for storage, repair, rental or servicing of motor vehicles.

*Garage, private* means an accessory building, attached or detached, designed or used for the storage of motor-driven vehicles owned and used only by the occupants of the building to which it is accessory.

*Guesthouse* means an accessory building designed for the temporary occupancy of guests of the primary dwelling for which there is no remuneration. "Maids' quarters" means a portion of a dwelling unit, within the same enclosure and not a separate accessory building attached to the primary building, that may contain separate sanitary and/or kitchen facilities which is designed for or used for residential occupancy by an employee of the primary residence.

*Height* means, for a building or portion of a building, the vertical distance from grade to the highest point of the coping of a flat roof, the deck line of a mansard roof, and the mean height level between eaves and ridge for hip, gable or gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator bulkheads, mechanical rooms, tanks, water towers, radio towers, television antennas, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height. Heights authorized in this chapter are subordinate to the airport zoning ordinance, appendix A.

*Loading space* means a space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks and having a minimum dimension of 12 by 35 feet and a vertical clearance of at least 14 feet.

*Lot* means an undivided tract or parcel of land having frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record. The word "lot" includes the word "plot."

- (1) *Corner lot* means a lot abutting upon two or more public streets at their intersection.
- (2) *Building coverage* means percentage of the lot that is occupied by the ground area of a building and its accessory buildings.
- (3) *Lot, double frontage* means a lot abutting on two nonintersecting public streets as distinguished from a corner lot.



- (4) *Lot lines* means the lines bounding a lot as defined in this section.
- a. *Front lot line* means the property line between the front yard and the contiguous street right-of-way boundary.
  - b. *Rear lot line* means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
  - c. *Side lot line* means the property between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.

*Lot of record* means a parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the county clerk; or a tract of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the county clerk prior to October 15, 1973, which has not been divided since recording.

*Maneuvering space* means the space entirely on private property required for maneuvering vehicles in such a manner as to preclude the backing of any vehicle into any street right-of-way.

*Mobile home* means a movable or portable dwelling originally constructed to be towed, on its own chassis, by a motor vehicle over public roads.

*Mobile home and modular home park* means a unified development of five acres or more for mobile homes arranged on a tract of land owned by an individual or a single business entity for the purpose of renting or leasing lots, and meeting the requirements of chapter 122, article II of this Code.

*Mobile home and modular home subdivision* means a unified development of five acres or more for mobile homes arranged on a tract of land in such a manner as to provide an individual lot (see definition of Lot) for each of the mobile homes.

*Modular home* means a dwelling unit in which more than 50 percent of the structure is constructed at other than the construction site, brought to the site in modules, and set on a permanent foundation.

*Ornamental feature* means an addition to a structure designed to enhance the appearance of the structure, in compliance with all of the following criteria:

- (1) Any space occupied by or enclosed by the ornamental feature should not be included in or made a part of the air conditioned, heated, or enclosed portion of the structure;
- (2) The feature should serve no purpose or function for the structure other than ornamentation. The building should be equally functional without the feature as with the feature; and
- (3) The feature shall extend no further than 24 inches into a required yard.

*Parking area* means a space used exclusively for the parking of vehicles and where no other business is conducted.

*Parking space* means an area, not closer than six feet from the back edge of the curb, the width and length of which shall exceed by a minimum of two feet the dimensions of the type of vehicle normally to be parked in the space, and connected with a street or alley by a driveway affording satisfactory ingress and egress. The minimum dimension of a parking space shall be in accordance with the city off-street parking requirements in article VII of this chapter.

*Planned unit development (PUD)* means and includes a combination of different dwelling types and/or a variety of land uses which creatively complement each other and harmonize with existing and proposed land uses in the vicinity, and which comply with the Planned Unit Development provisions of chapter 134, article IV of this Code.

*Portable building* means a temporary building that does not have a foundation and is transportable.

*Recreational vehicle or travel trailer* means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified as a travel trailer by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight feet and a body length not exceeding state maximums.



*Residential storage building* means any building, either portable or constructed onsite, utilized for storage purposes and not requiring plumbing and electrical wiring, and not used for living quarters.

*Restaurant* means a building or portion of a building where the primary business is the on-premises sale of prepared food, with adequate kitchen facilities for the preparation of the food to be sold, the adequacy of such kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered, and where alcoholic beverages may be sold under the following conditions:

- (1) At least 51 percent of the gross income shall be derived from the sale of prepared food.
- (2) Any outside entrances, outside separate identification, outside signs or other separate advertising for lounge or bar areas shall be permitted only as an accessory or secondary feature of the restaurant.
- (3) Live entertainment may be permitted.
- (4) Whenever the director of planning on the basis of a sworn complaint from any person determines that a violation of this section exists, he may require any person serving alcoholic beverages as an incidental use to provide the city, within 30 days of notification, a verified audit for each quarter of the calendar year, showing the gross income derived from the sale of food.

*Retail* means the sale of goods directly to a consumer; engaged in, pertaining to or relating to the sale of merchandise at retail; or selling by individual items, or by the piece, directly to a consumer.

*Right-of-way line* means a dividing line between a lot, tract or parcel of land and the public right-of-way.

*Street* means a public or private thoroughfare which affords the principal means of access to abutting property, excluding alleys.

*Structural alteration* means any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

*Structure* means anything constructed, erected or artificially built up; or composed of parts and joined together in a permanent manner.

*Substantial change.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Tower.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new towers that are not eligible for Section 6409, they need not be existing at the time of the application.

*Townhouse* means a single-family dwelling unit constructed in a series or a group of units having common walls, each on a separate lot.

*Transmission equipment.* As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

*Yard* means an open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the definitions of "yard" set out in this section. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

- (1) *Front yard* means a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the right-of-way line and wall of the main building or any projections thereof other than projections of the usual uncovered steps, uncovered balconies or uncovered porches. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension, except where corner lots may be square in dimension and/or have double frontage, in which case the front yard shall correspond to the lot's side adjacent to the longest block face in which it occurs and to which the majority of the existing structures front.



- (2) *Rear yard* means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than projections of uncovered steps, uncovered balconies or uncovered porches. On all lots, the rear yard shall be in the rear of the front yard.
- (3) *Side yard* means a yard between the main building and the side line of the lot, and being the minimum horizontal distance between a side lot line and the sides of the main buildings or any projections thereof.

(Code 1966, § 32-2; Ord. No. 1996-8, § I, 1-22-96; Ord. No. 1996-70, § I, 11-18-96; Ord. No. 1998-68, § 1, 2-27-98; Ord. No. 1999-69, § 1, 8-9-99; Ord. No. 2004-15, § 5, 2-9-04; Ord. No. 2015-38, § II, 5-11-15)

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

Footnotes:

--- () ---

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

--- () ---

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

## Chapter 110-Vegetation

### Sec. 110-26. - Definitions.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Exceptions Cited within the Zoning Ordinance

### Exceptions pertaining to front yard setbacks:

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

### Exceptions pertaining to rear yard setbacks:

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



Exceptions pertaining to side yard setbacks:

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

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

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



## Exceptions as per Planning Department Policy

By policy the following are permitted:

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

Legal opinions:

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



# **ZONING BOARD OF ADJUSTMENT AND APPEALS**

## **RULES AND PROCEDURES**

### **CITY OF MCALLEN**

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

#### **I. ORGANIZATION AND OFFICERS**

##### **A. Members**

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

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

##### **B. Officers**

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

##### **C. Duties and Officers**

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

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



## **II. POWERS OF THE BOARD**

### **A. General Powers**

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

### **B. Specified Powers**

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

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

## **III. DUTIES OF BOARD MEMBERS**

### **A. General Duties of Members**

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

### **B. Disqualification/Conflict of Interest**

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



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

#### **IV. A BASIS FOR ACTION**

The Board shall decide each case based on the following:

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

#### **V. APPLICANTS**

##### **A. Legally Vested Interest**

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

##### **B. Applications**

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

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



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

#### **C. Meetings**

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

#### **D. Evidence**

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

### **VI. HARDSHIP**

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

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

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

### **VII. MEETINGS**

#### **A. Texas Public Information Act and Open Meetings Act.**

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

## **B. Quorum**

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

## **C. Regular Meetings**

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

## **D. Special Meetings**

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

## **E. Order of Business**

The usual order of business shall be:

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



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

#### **F. Staff Recommendations**

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

#### **G. Action by the Board**

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

#### **H. Minutes of the Board**

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

### **VIII. DECISIONS OF THE BOARD**

#### **A. Precedent**

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

#### **B. Public Statements**

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

**B. Parliamentary Procedure**

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

**IX. WITHDRAWAL OF APPEAL**

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

**X. ATTENDANCE**

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

**XI. AMENDEMENT PROCEDURE**

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

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

\_\_\_\_\_  
**Executive Secretary**



**ORDINANCE NO. 2018- 70**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**CITY OF McALLEN**

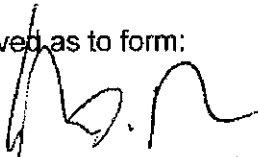
John Ingram, City Commissioner

Attest:



Perla Lara, TRMC/CMC, CPM  
City Secretary

Approved as to form:



Austin W. Stevenson, Assistant City Attorney



## 2021 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/06/21	01/20/21	02/03/21	02/17/21	03/03/21	03/17/21	04/07/21	04/21/21	05/05/21	05/19/21	06/02/21	06/17/21	07/07/21	07/21/21	08/04/21	08/18/21	09/01/21	09/15/21	10/06/21	10/20/21	11/03/21	11/17/21	12/01/21	
ERICK DIAZ- <b>CHAIRPERSON</b>	P	P	P	P	P	P	A	P	A	P	P	P	P	P	P	P	A	P	P	P	P			
JOHN MILLIN- <b>VICECHAIRPERSON</b>	P	A	P	P	P	P	P	P	P	P	A	P	P	A	P	A	P	P	P	A	P			
SYLVIA HINOJOSA	P	P	P	A	P	P	P	P	P	P	P	P	P	P	P	P	P	A	P	P	P			
JOSE GUTIERREZ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
JUAN F. JIMENEZ	P	A	P	P	P	A	P	P	P	P	A	A	P	A	P	A	A	A	A	A	A			
ANN TAFEL (ALT 1)	P	P	P	P	P	P	P	P	P	A	A	P	P	P	P	P	P	P	P	P	P			
HUGO AVILA (ALT 2)	P	P	P	P	P	A	P	P	P	A	P	P	A	P	P	P	P	P	P	P	P			
REBECCA MILLAN (ALT 3)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
ROGELIO RODRIGUEZ (ALT 4)	A	P	P	P	P	P	A	P	P	P	P	P	P	P	P	P	P	A	A	A	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
-  Planning & Zoning Board
-  Public Utility 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- 5/4 & 5/5	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 D: 6/1 & 6/2 N-5/18 & 5/19	6	7	8
9	10	11	12	13	14	15
16	17 A-6/1 & 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-7/6 & 7/7	3	4	5
6	7	8	9	10	11	12
13	14	15	16 D-7/20 & 7/21	17	18	19
20	21 A-7/6 & 7/7	22	23 HPC N-7/6 & 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  
Phone: 956-681-1250 Fax: 956-681-1279



## 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 <b>HOLIDAY</b>	6 PZ moved to 7/8	7 N-7/20 & 7/21 D-8/3 & 8/4	8 PZ MTG	9	10
11	12 	13 	14	15	16	17
18	19 A-8/3 & 8/4	20	21 HPC N-8/3 & 8/4 D-8/17 & 8/18	22	23	24
25	26 	27 	28	29	30	31




### AUGUST 2021

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





### SEPTEMBER 2021

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

### DECEMBER 2021

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

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.