

## AGENDA

### ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING WEDNESDAY, OCTOBER 23, 2024 - 4:30 PM MCALLEN DEVELOPMENT CENTER, 311 NORTH 15<sup>TH</sup> STREET EXECUTIVE CONFERENCE ROOM

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 Jose Gutierrez

#### 1. MINUTES:

- a) Minutes for the meeting held on October 9, 2024

#### 2. PUBLIC HEARINGS:

- a) Request of Julio Mercado for a special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 20 feet into the 25-foot front yard setback for a proposed metal carport measuring 20 feet by 20 feet at Lot 80, Idela Park Unit No. 1 Subdivision, Hidalgo County, Texas; 2712 Judith Avenue. **(ZBA2024-0041)**
- b) Request of Eugenio Garcia to allow a Variance to the City of McAllen Zoning Ordinance: Accessory use(s) without a primary use for a proposed covered terrace, swimming pool with jacuzzi and a guesthouse at Lot 48, The Embers Subdivision, Hidalgo County, Texas; 304 Cornell Avenue. **(ZBA2024-0038) (TABLED: 10/09/2024)**
- c) Request of Anita Moon on behalf of Greater McAllen Association of Realtors for the following variance to the City of McAllen Zoning Ordinance to allow an accessory building with a one-foot separation to the main building instead of the required five feet for rear yard structures at Lot B1, Aim Media Subdivision, Hidalgo County, Texas; 1324 East Nolana Avenue. **(ZBA2024-0036) (TABLED: 10/09/2024)**

#### 3. FUTURE AGENDA ITEMS

- a) 10321 North 31st Street
- b) 901 Sycamore Avenue

#### ADJOURNMENT:

IF ANY ACCOMMODATIONS FOR A DISABILITY ARE REQUIRED, PLEASE NOTIFY THE PLANNING DEPARTMENT (681-1250) 72 HOURS BEFORE THE MEETING DATE. WITH REGARD TO ANY ITEM, THE ZONING BOARD OF ADJUSTMENTS AND APPEALS 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, October 9, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:**

<b>Present:</b>	<b>Jose Gutierrez</b>	<b>Chairperson</b>
	<b>Ann Tafel</b>	<b>Vice-Chairperson</b>
	<b>Hugo Avila</b>	<b>Member</b>
	<b>Hiram A. Gutierrez</b>	<b>Member</b>
	<b>Juan Mujica</b>	<b>Alternate</b>
	<b>Alex Lamela</b>	<b>Alternate</b>
	<b>Daniel Santos</b>	<b>Alternate</b>
<b>Absent:</b>	<b>Rogelio Rodriguez</b>	<b>Member</b>
	<b>Pablo Garcia</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Austin Stevenson</b>	<b>Interim Deputy City Attorney</b>
	<b>Luis Mora</b>	<b>Deputy Planning Director</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Samuel Nunez</b>	<b>Senior Planner</b>
	<b>Samantha Trevino</b>	<b>Planner I</b>
	<b>Alexis Martinez</b>	<b>Planner I</b>
	<b>Jessica Puga</b>	<b>Planning Technician II</b>
	<b>Noah Del Bosque</b>	<b>Planning Technician I</b>
	<b>Carmen White</b>	<b>Administrative Assistant</b>

**CALL TO ORDER –Chairperson Jose Gutierrez**

**1. MINUTES:**

- a) Minutes for the meeting held on October 9, 2024

The minutes for the meeting held on October 9, 2024. The motion to approve the minutes were made by Mr. Hugo Avila. Mr. Alex Lamela seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a) Request of Blanca Benavides for a Variance to the City Of McAllen Zoning Ordinance to allow an encroachment of 10 feet into the 25-foot rear yard setback for a proposed swimming pool at Lot 93, Falcon’s Crossing Subdivision Phase II, Hidalgo County, Texas; 2500 Denton Creek Avenue. **(ZBA2024-0040)**

Ms. Martinez stated the applicant was requesting to encroach 10 feet into the 25-foot rear yard setback in order to accommodate construction of a proposed swimming pool.

The subject property is located at the southwest corner of Sprague Road and North 25<sup>th</sup> Street. The subject property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions.

Falcon's Crossing Subdivision Phase II was recorded August 24, 2005. The plat shows a 15-foot electrical and utility easement adjacent to the rear property line that runs concurrently with the 25-foot rear yard setback for double fronting lots. An application for a swimming pool permit was submitted September 4, 2024, but was disapproved due to the rear setback encroachment of 10 feet into the 25-foot rear yard setback. An application for a Variance request was submitted September 18, 2024.

The variance request is to allow an encroachment of 10 feet into the 25-foot rear yard setback for the construction of a swimming pool with a spa.

The plat for this subdivision shows a 15-foot utility easement adjacent to the rear property line that runs concurrently with the 25-foot rear yard setback but the utility easement will not be impacted.

The subject property is a double frontage lot. City ordinance Section 138-367 (b) states, "where lots have double frontage, a required front yard shall be provided on one street only." A submitted site plan shows the proposed residence will be in compliance with the 25 foot front yard setback along Denton Creek Avenue. However, an approved variance is still necessary to resolve the plat note setback requirement of 25 feet for the rear yard. Furthermore, a plat note (#12) of the plat for this subdivision states "no curb cut, access, or lot frontage permitted onto Sprague Road".

The standard rear yard setback in an R-1 District is 10 feet as per current Code of Ordinance.

A review of Planning Department records revealed one other similar variance request granted within Falcon's Crossing Subdivision Phase II at Lot 94.

Staff had not received any phone calls, emails, or letters in opposition to the variance request.

Staff recommended approval of the variance request since the front yard as proposed at 25 feet along Denton Creek Avenue will be in compliance with the City of McAllen Zoning Ordinance requirement for double fronting lots.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Variance request. There was no one to speak in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Variance request. There was no one to speak in opposition of the Variance request.

Following discussion, Mr. Hugo Avila moved to approve the Variance request as recommended by staff. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to approve the request with five members present and voting.

- b) Request of Jorge Ancer for a Variance to the City of McAllen Zoning Ordinance to allow an encroachment of up to 5 feet into the 20-foot rear yard setback for a proposed spa at Lot 20, Lago Vista Subdivision, Hidalgo County, Texas; 4401 South "M" Street. (ZBA2024-0034) (TABLED: 09/26/2024)**

Vice-Chairperson Ann Tafel **moved** to remove the item from the table. Mr. Hugo Avila seconded the motion. The Board voted unanimously with five members present and voting.

Ms. Martinez stated the applicant was requesting to encroach up to 5 feet into the 20-foot rear yard setback for a proposed spa. The reason for the variance request is for the property owners to have as much use of space as possible for their backyard area and allow for more distance between the proposed swimming pool and the main house.

The subject property is located along South "M" street and fronts a partial cul-de-sac at the intersection of South "M" Street and Helena Avenue. The subject property is vacant and is zoned R-1 (single family residential) District. There is R-1 District in all directions except for the area to the East across South Jackson Road, which is in the city limits of Pharr.

Lago Vista Subdivision was recorded on October 31, 2006. An application for a variance request was submitted on August 20, 2024.

The variance request is to allow an encroachment of up to 5 feet (for the proposed spa) into the 20-foot rear yard setback for a triangular shaped area. The spa is part of a proposed swimming pool. The purpose of the variance request is to make use of the available backyard area as well as allow for more distance between the proposed swimming pool and the main house. The plat for this subdivision shows a 10-foot utility easement adjacent to the rear property line that runs concurrently with the 20-foot rear yard setback. The utility easement is not impacted.

To the East of the property there is a R.O.W. easement. As per the Engineering Department, there are no plans for future expansion to Jackson Road at this specific location.

The subject property is a double frontage Lot. City ordinance Section 138-367 (b) states, "where lots have double frontage, a required front yard shall be provided on one street only." A submitted site plan shows the proposed residence in compliance with the 25-foot front yard setback along South "M" Street. The variance as requested is not a deviation from what the zoning ordinance allows for double fronting Lots. It maintains the intention of the required rear yard setback by the plat and complies with the standard 10-foot rear yard setback required in the R-1 District.

In the past, the Board has approved variance requests for encroachments into the rear yard setback on double fronting Lots for accessory uses but not for living areas.

Staff had not received any phone calls, emails, or letters in opposition to the variance requests.

Staff recommended approval since the Lot has an irregular shape and the angle of the adjacent right of way to the east results in a setback that prevents building construction placement to be unlike construction placement in a standard rectangular Lot. The circumstance may constitute a unique physical limitation of the property. Also, the required front yard has 25 feet along South "M" Street and is in compliance with the City of McAllen Zoning Ordinance requirement for double fronting Lots. If the Board grants the variance request, it may be limited to the encroachment shown on the submitted site

plan.

At the Zoning Board of Adjustment and Appeals, meeting of September 26, 2024 no one appeared in opposition to the variance request. Since the subject, property backs up to Jackson Road, a state highway, Board members Ann Tafel and Juan Mujica stated concerns in the event of future road expansion. Board member Daniel Santos stated in the event that might happen, the property owner(s) run that risk. Following further discussion, the Board voted on a motion to approve the request and the vote was two ayes and three nays. The motion did not pass. The Board then voted on a motion to disapprove the request and the vote was three ayes and two nays. The motion did not pass. The Board then voted to table the variance request in order to allow the applicant time for consideration of site plan modification. The vote was 5-0 with five members present and voting.

Chairperson Gutierrez asked staff if there had been any changes from the original request. Staff stated there has been no changes to the site plan.

Chairperson Gutierrez asked staff if the applicant was present. Staff stated the applicant was not present.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Variance request. There was no one to speak in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Variance request. There was no one to speak in opposition of the Variance request.

Board member Mujica commented the purpose of the tabling at the last meeting was to give the applicant an opportunity to consider a revise to the site plan.

Chairperson Gutierrez asked staff if the applicant proposed a different layout. Staff stated they did subsequently met with the applicant and that the owner wanted to maintain the request as originally submitted.

Following discussion, Mr. Juan Mujica **moved** to disapprove the Variance request. Vice-Chairperson Ann Tafel seconded the motion. The Board voted to disapprove the Variance request with four members voting aye and one voting nay, Mr. Hugo Avila.

- c) Request of Eugenio Garcia to allow a Variance to the City of McAllen Zoning Ordinance: Accessory use(s) without a primary use for a proposed covered terrace, swimming pool with jacuzzi and a guest house at Lot 48, The Embers Subdivision, Hidalgo County, Texas; 304 Cornell Avenue. **(ZBA2024-0038)**

Mr. Hernandez stated the applicant was requesting a variance to build a covered terrace, a swimming pool with jacuzzi and a guest house as accessory uses but without a primary residence on Lot 48. The main use, a single-family residence is located on the adjacent Lot 49. Both lots are owned by the same property owner.

The subject property is vacant and located along the north side of Cornell Avenue, 102 feet west of North 3<sup>rd</sup> Street. The Lot has 98 feet of frontage along Cornell Avenue and 112.5 feet of depth for a total Lot size of 11,025 square feet. The property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions.

The Embers Subdivision was recorded in June 2016. An application for a variance request was submitted on September 9, 2024.

The applicant is requesting a variance to build a covered terrace, a swimming pool with jacuzzi and a guest house as accessory uses but without a primary residence on Lot 48. The main use, a single-family residence is located on the adjacent Lot 49. Both lots are owned by the same property owner. A 12-foot drain easement runs concurrently with the six-foot setback adjacent to the east and west property line of Lot 49 and 48, respectively. This drain easement prevents continuous building of the Lot with the main use to Lot 48. The applicant states due to an easement, the main house could not span both lots, leaving one lot vacant for this purpose.

An accessory building means a subordinate building, located on the same lot as the main building, the use of which is clearly incidental to and customarily found in connection with the main building or principle use of the property. Accessory uses of buildings are located on a lot occupied by the main use conforming to setback and other regulations concerning location.

The submitted site plan illustrates that the proposed structures will not impact the utility easement and will comply with the required setbacks.

A block wall surrounds both lots and makes for one buildable area.

City Engineering department staff had stated that approval for abandoning the drainage easement is unlikely, as it contains an active drain line.

Measurements provided are without benefit of a survey.

Staff recommended approval of the variance request since the drainage easement prevents the property owner from building across the Lot lines.

Board member Rodriguez asked staff if this was standard practice for the City of McAllen when an individual owns two lots to allow accessory use buildings or was this an isolated incident. Staff stated there had been a similar variance like this one in another subdivision within the City. In this case, the easement prevents him to span to build across two lots.

Interim Deputy City Attorney Austin Stevenson stated to the Board that this item was eligible to be discussed in an Executive Session meeting.

Board member Juan Mujica **moved** to adjourn the meeting and go into Executive Session at 4:51 p.m. Vice-Chairperson Ann Tafel seconded the motion. The Board voted unanimously with five members present and voting to go into Executive Session.

The Board reconvened from the Executive Session at 5:04 p.m.

Following discussion, Mr. Pablo Garcia **moved** to table the Variance request. Mr. Hugo Avila seconded the motion. The Board voted to table the Variance request with five members present and voting.

- d) Request of Maria C. Cruz on behalf of Yolanda Cruz Rios, for a Special Exception to the City Of McAllen Zoning Ordinance to allow an encroachment of 14 feet into the 30-foot front yard setback for a proposed carport at E42' Lot 3 & W28' Lot 4 Blk 1, West Harvey Addition Unit No. 1 & Unit No. 2, Hidalgo County, Texas; 2017 Daffodil Avenue. **(ZBA2024-0035)**

Ms. Martinez stated the applicant was requesting a Special Exception to allow an encroachment of 14 feet into the 30-foot front yard setback for a proposed metal carport measuring 18 feet by 18 feet for a total size of 324 square feet. The carport is proposed to provide weather protection for the applicant's vehicle.

The subject property is located along the South side of Daffodil Avenue east of North 21<sup>st</sup> Street. The lot has 70 feet of frontage along Daffodil Avenue and 120 feet of depth for an estimated total size of 8,400 square feet. The subject property is zoned R-1 (single-family residential) District. The adjacent zoning is A-0 (Agricultural & open space) district to the North and R-1 District to the East, South and West.

West Harvey Addition, Unit No. 1 & Unit No. 2 was recorded in February 1958. The plat shows a 30-foot front yard setback. According to the Hidalgo County Appraisal District, the house was built with a one-car garage in 1970. An application for a special exception request was submitted on September 5, 2024.

The applicant is requesting a Special Exception to allow an encroachment of 14 feet into the 30-foot front yard setback for a proposed metal carport measuring 18 feet by 18 feet for a total of 324 square feet in size.

The proposed carport is to provide protection for the applicant's vehicle(s) from severe weather conditions.

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.

There is a 20-foot alley, which can be used to provide access at the rear of the property so that the proposed carport could be located in that area. An aerial view of the property seems to show there may be enough room to construct a carport out of the setbacks.

A review of Planning Department records showed no other special exception requests within West Harvey Addition, Unit No. 1 & Unit No. 2 subdivision.

Special Exceptions are issued to and recorded for the present owner only. New property owners would need to apply for a new Special Exception request.

Staff had not received any phone calls or emails with concerns in regards to the Special Exception request.

Staff recommended disapproval of the special exception request, since the plight of the owner is not unique, and there is room for building a carport out of the setbacks in the rear yard.

Vice-Chairperson Tafel asked staff if there were other carports in this neighborhood that were built legally. Staff stated yes but on this particular block, there were none. In the

subdivision West Harvey Addition No. 1, a variance was approved and received a permit for their carport.

Board member Rodriguez asked staff if on the sketch for the carport, they were adding more cement on the dotted line or the actual driveway. Staff stated it was going to be the 18 by 18 feet that would be covering the cement that is on the slab that is on the driveway.

Board member Mujica asked staff if the alley was paved. Staff stated it was gravel.

Ms. Maria C. Cruz and Gabriel Castillo, 2321 Dallas Avenue. The applicant stated she wanted to make more space for the vehicles. She stated they have a family member with special needs.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Special Exception. There was one to speak in favor of the Special Exception.

Mr. Gerard Mittelstaedt, 2011 Daffodil Avenue. He stated he was in favor of the Cruz's and were good neighbors. He stated their driveway were paved and in excellent condition. He stated there were two other carports located at Highland Avenue east of 21<sup>st</sup> Street that built out the driveway and look great.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Special Exception. There was no one to speak in opposition of the Special Exception.

Chairperson Gutierrez asked staff was there a reason as to why they could not build the carport in the back. Staff stated they had not specified any details.

Board member Rodriguez asked staff was anything that would prohibit from having access from alley as a primary entrance to their house. Mr. Sanchez stated there was no prohibition but as mentioned in the report, that could be, a possibility but they preferred to construct it in the front of the lot.

Chairperson Gutierrez asked Ms. Cruz if they could have possibly build a carport in the rear. Ms. Cruz stated if they built the carport in the rear, they would have to have make modifications for access for the family member to exit the house. In addition, in the rear there was no lighting. In the front there was plenty of lighting. Chairperson Gutierrez explained to the applicant that by adding a carport in the front it would bring down the value of the property. Where as if they were to have built the carport in the rear they would have just obtained the building permit and not come before the Board.

Board member Mujica asked the applicant if the carport was to protect the vehicles. Ms. Cruz stated yes.

Board member Rodriguez asked the applicant if the poles were going to stay in the cement or the grass. Mr. Castillo stated the poles would be in the grass and would be one foot on each side from the carport. Asked who was going to build it and Mr. Castillo stated he was going to build it for this aunt.

Following discussion, Vice-Chairperson Ann Tafel **moved** to disapprove the Special Exception as per staff's recommendation. Mr. Alex Lamela seconded the motion. The Board voted to disapprove the request with four members voting aye and one nay, Mr. Hugo Avila.



- e) Request of Jose H. Moreno on behalf of Leonardo Marquez Ponce, for a Special Exception to the City Of McAllen Zoning Ordinance to allow an encroachment of 6 feet into the 20-foot front yard setback for two proposed carport structures with encroachment areas measuring six feet by eighteen feet each at, Lot 5, Block 2, Las Cañadas Subdivision, Hidalgo County, Texas; 3016 South K Center Street.  
**(ZBA2024-0039)**

Mr. Nunez stated the applicants were requesting a Special Exception to allow an encroachment of 6 feet into the 20-foot front yard setback for two metal carports measuring 18 feet by 27 feet totaling 486 square feet in size. The reason for the request is for protection of the vehicles from severe weather elements.

The subject property was located along the west side of South K Center Street approximately 98 feet north of Pineridge Avenue. The subject property was zoned R-2 (Duplex-Fourplex Residential) District this zone extends in all directions except to west side where there was an R-1 (Single Family Residential) District.

Las Cañadas was recorded on March 23, 2007. The variance application was submitted on September 12, 2024.

The applicant was requesting to encroach 6 feet in to the 20 feet front yard setback. Two parallel carport are being built on 3016 South K center. In accordance to the site plan submitted, the parallel-proposed structures have a size of 486 square feet each. The proposed structures will be built using metal material. The main purpose for building the carport is to protect the vehicles from excessive heat. During the site visit, staff did not notice any other encroachments or similar structures along the front or rear yards within Las Cañadas Subdivision. A review of the Planning Department records did not reveal any other similar variances or special exceptions approved in this area.

Measurements provided are without benefit of a survey.

Staff had not received any phone calls, emails, or letters in opposition to the variance request.

Staff recommended disapproval of the special exception request since it does not present any undue hardship and the proposed carport will not align with the existing character of the subdivision.

Mr. Nunez stated that if the request is approved the applicant agreed to cut back the two structures to 400 square feet each and staff does have this request in writing.

Board member Mujica asked staff how many units on the property. Staff stated there was a total of four units. The parking requirements would be eight for four living units.

Board member Rodriguez asked the reason behind the disapproval was because there was no other carports. Staff stated it would not be compatible with the neighborhood's character.

Mr. Jose Moreno (contractor) on behalf of the applicant, Leonardo Marquez to build the carports for protection from the inclement weather. He stated the applicant had eight parking spaces and that the requirement was four parking spaces per unit.

Mr. Moreno stated he was the only one constructing the carports in that older subdivision and that the owner of the subdivision did not have a problem with the building of the carports.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Special Exception request. There was no one to speak in favor of the Special Exception request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Special Exception request. There was no one to speak in opposition of the Special Exception request.

Following discussion, Mr. Juan Mujica moved to disapprove the Special Exception request. Mr. Hugo Avila seconded the motion. The Board voted to disapprove the Special Exception request with five members present and voting.

- f) Request of Michael Garcia for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 20 feet into the 25-foot front yard setback for an existing metal carport measuring 20 feet by 20 feet at Lot 136, Plantation Gap Phase I Subdivision, Hidalgo County, Texas; 4417 Thunderbird Avenue. **(ZBA2024-0037)**

Ms. Moreno stated the applicant was requesting a Special Exception to allow an encroachment of 20 feet into the 25-foot front yard setback for an existing metal carport measuring 20 feet by 20 feet totaling 400 square feet in size. The applicant is requesting the carport to remain for protection of the vehicles from adverse weather elements.

The subject property was located along the south side of Thunderbird Avenue approximately 114 feet east of North 45<sup>th</sup> street. The Lot has 50 feet of frontage along Thunderbird Avenue and a depth of 102.98 feet for a total Lot size of 5,478.53 square feet. The subject property is zoned R-1 (single family residential) District and there is R-1 District in all directions.

Plantation Gap Phase I was recorded on December of 2004. The plat states a front yard setback of 25 feet with a 5-foot utility easement. Building Permits and Inspections issued a citation on July 19, 2024, for the carport built without a permit. A building permit application was submitted on August 14, 2024, but did not receive approval since the carport was shown to be encroaching into the 25-foot front yard setback. A Special Exception request application was then submitted on September 09, 2024 to allow an encroachment of 20 feet into the 25-foot front yard setback for the existing metal carport.

The Special Exception request involves an encroachment on the front yard of the property. The applicant stated he uses the carport for weather protection of his vehicle and to accommodate for one of the property owners who is a disabled veteran and requires additional time to access a vehicle. The subject property has a two-car garage, which he uses for storage of one vehicle.

The property owner states that existing carport was built by a contractor who had reassured them that a building permit was not required for the construction.

During a site visit of Plantation Gap Phase I Subdivision, Staff noticed five carports that were granted (special exceptions) by the Zoning Board of Adjustments and appeals meeting between the years of 2013 through 2023. Site visit by staff also revealed 5 other carports in the area, which did not have permits.

Front yard setbacks help keep the character of single-family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Zoning ordinance Sec. 138-371(g) for Special Exceptions of carports states that no carport for which a Special Exception has been granted under this subsection shall exceed 400 square feet in size. The carport on the subject property is 400 square feet.

There is no alley at the rear of the property that would allow for relocation of the carport out of the front yard setback.

Special Exceptions are issued to and recorded for the present applicants only. A change in property ownership would require the new owner to apply for a new Special Exception.

Staff spoke with one person in opposition to the special exception request who stated that approval of this request might encourage other property owners in the subdivision to build carports that will encroach into their front yard setbacks.

Measurements provided are with the benefit of a survey.

Staff recommended disapproval of the Special Exception request since the existing carport is not characteristic of the majority of the subdivision.

Chairperson Gutierrez asked staff how many carports were built in the neighborhood. Staff stated there 10; 5 without a permit and 5 with permits. In addition, asked how many houses are in the neighborhood. Staff stated there were 146 houses.

Vice-Chairperson Tafel asked staff if all the houses have a two-car garage. Staff stated yes.

Board member Rodriguez asked when staff goes on site visits on the ones that do not have permits, do they report to a certain department. Staff stated yes, they put it in the 311 app and inform them of the illegal ones.

Mr. Michael Garcia, 4417 Thunderbird Avenue. Chairperson Gutierrez asked the applicant when the carport was built. Mr. Garcia stated the beginning of 2023. He was informed after six months of being built that he needed a building permit. He stated they had found a reputable company that would construct the carport. Mr. Garcia has asked repeatedly if they needed anything else to proceed with the project and their response was no, as long as it was over their driveway. Board member Avila asked if they had reached to the contractors. Mr. Garcia stated they left messages after receiving a notice from the City and no one from the company has called back. The company was located in Weslaco, Spartan Construction and Welders, LLC.

Board member Mujica asked about the two-car garage. Mr. Garcia stated because of the unique layout of the hot water heater, it impedes from putting another larger vehicle in it.

Vice-Chairperson Tafel asked when it rains does it run off the gutter that collects the rain. Mr. Garcia stated the rainwater to runs off the side of the house.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Variance request. There was no one to speak in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Variance request. There was no one to speak in opposition of the Variance request.

Following discussion, Vice-Chairperson Ann Tafel moved to disapprove the Special Exception. Mr. Pablo Garcia seconded the motion. The Board voted to disapprove the Special Exception request with five members present and voting.

- g) Request of Anita Moon on behalf of Greater McAllen Association of Realtors for the following variance to the City of McAllen Zoning Ordinance to allow an accessory building with a one-foot separation to the main building instead of the required five feet for rear yard structures at Lot B1, Aim Media Subdivision, Hidalgo County, Texas; 1324 East Nolana Avenue. (ZBA2024-0036)**

Ms. Moreno stated the applicant was requesting a Special Exception to allow an encroachment of 20 feet into the 25-foot front yard setback for an existing metal carport measuring 20 feet by 20 feet totaling 400 square feet in size. The applicant is requesting the carport to remain for protection of the vehicles from adverse weather elements.

The subject property is located along the south side of Thunderbird Avenue approximately 114 feet east of North 45<sup>th</sup> street. The Lot has 50 feet of frontage along Thunderbird Avenue and a depth of 102.98 feet for a total Lot size of 5,478.53 square feet. The subject property is zoned R-1 (single family residential) District and there is R-1 District in all directions.

Plantation Gap Phase I was recorded on December of 2004. The plat states a front yard setback of 25 feet with a 5-foot utility easement. Building Permits and Inspections issued a citation on July 19, 2024, for the carport built without a permit. A building permit application was submitted on August 14, 2024, but did not receive approval since the carport was shown to be encroaching into the 25-foot front yard setback. A Special Exception request application was then submitted on September 09, 2024 to allow an encroachment of 20 feet into the 25-foot front yard setback for the existing metal carport.

The Special Exception request involves an encroachment on the front yard of the property. The applicant stated he uses the carport for weather protection of his vehicle and to accommodate for one of the property owners who is a disabled veteran and requires additional time to access a vehicle. The subject property has a two-car garage, which he uses for storage of one vehicle.

The property owner states that existing carport was built by a contractor who had reassured them that a building permit was not required for the construction.

During a site visit of Plantation Gap Phase I Subdivision, Staff noticed five carports that were granted (special exceptions) by the Zoning Board of Adjustments and appeals meeting between the years of 2013 through 2023. Site visit by staff also revealed 5 other carports in the area, which did not have permits.

Front yard setbacks help keep the character of single-family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Zoning ordinance Sec. 138-371(g) for Special Exceptions of carports states that no carport for which a Special Exception has been granted under this subsection shall exceed 400 square feet in size. The carport on the subject property is 400 square feet.

There is no alley at the rear of the property that would allow for relocation of the carport out of the front yard setback.

Special Exceptions are issued to and recorded for the present applicants only. A change in property ownership would require the new owner to apply for a new Special Exception.

Staff spoke with one person in opposition to the special exception request who stated that approval of this request might encourage other property owners in the subdivision to build carports that will encroach into their front yard setbacks.

Measurements provided are with the benefit of a survey.

Staff recommended disapproval of the Special Exception request since the existing carport was not characteristic of the majority of the subdivision.

Board member Avila asked staff if the accessory building on a concrete foundation. Staff stated not sure, if it was on a foundation.

Board member Mujica asked staff about the special condition was granted but then went through the permitting process and somehow was not on the permit request. Staff stated they were submitting a Conditional Use Permit for one portable building. Looking on the site plan staff did not highlight it because they had complied with City's ordinance. When they returned this year, they had submitted for two portable buildings. That was how it was caught that they did not have a building permit for the other one.

Board member Rodriguez asked staff if on the customary buildings, could they have electricity and plumbing. Staff stated yes they could.

Board member Mujica asked staff could they move the portable building anywhere else. Staff stated they could move it to the rear.

Ms. Anita Moon on behalf of Greater McAllen Association of Realtors, 1324 Nolana Avenue. She stated the portable building with the one foot away from the building was done in 2019. She was not President of the Association at the time. The building was for signs, tables and chairs but was easy access for in and out of the main building. Chairperson Gutierrez asked Ms. Moon what was their response when City staff asked to put the portable building elsewhere on the property. Ms. Moon stated they did not want to spend the money to move it and did not realize it was a problem.

Board member Mujica asked Ms. Moon if the main building had a fire suppression. The applicant stated yes. He asked if they get it inspected by the Fire Marshall annually. She stated she was not sure but more than likely yes. Board member Mujica had concerns with a fire hazard.

Vice-Chairperson Tafel had concerns because that a variance runs with the land and the next property owner could leave it there.

Interim Deputy Attorney Austin Stevenson stated he understands the Board's concerns with variances that allows people to build whatever they want on that footprint of the land. This however was the distance requirement between the accessory structures and the permanent building so one is not allowing someone to build on there permanently this was just allowing for this one structure the one foot and instead of the five foot.

Board member Mujica asked staff if they were to attach the portable building to the main building would there be a discussion. Staff stated they gave them an option if they could attach it as well.

Chairperson Jose Gutierrez asked if there was anyone present to speak in favor of the Variance request. There was no one to speak in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Variance request. There was no one to speak in opposition of the Variance request.

Ms. Moreno stated she spoke with Building Permit Department and asked about the five-foot separation for their Code, if the Board grants the one-foot separation they would still have to be fire rated material.

Following discussion, Mr. Rogelio Rodriguez **moved** to table the Variance request to consider different options. Mr. Hugo Avila seconded the motion. The Board voted to table the request with five members present and voting.

## **ADJOURNMENT**

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

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Chairperson Jose Gutierrez

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Carmen White, Administrative Assistant

## Memo

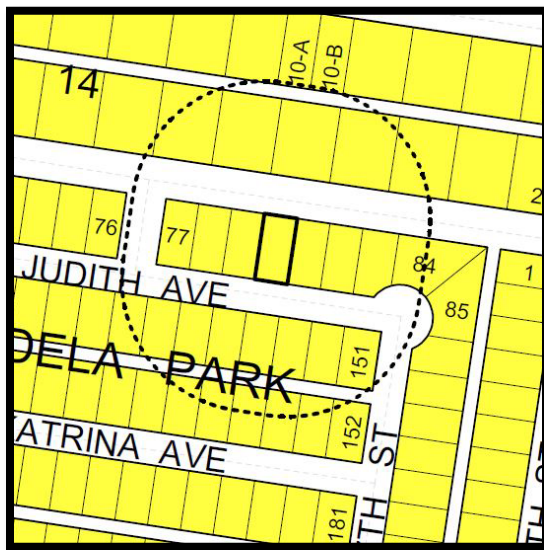
**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** October 10, 2024

**SUBJECT: REQUEST OF JULIO MERCADO FOR A SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW AN ENCROACHMENT OF 20 FEET INTO THE 25 FOOT FRONT YARD SETBACK FOR A PROPOSED METAL CARPORT MEASURING 20 FEET BY 20 FEET AT LOT 80, IDELA PARK UNIT NO. 1 SUBDIVISION, HIDALGO COUNTY, TEXAS; 2712 JUDITH AVENUE. (ZBA2024-0041)**

**REASON FOR APPEAL:** The applicant is requesting to encroach 20 feet into the 25 foot front yard setback for a proposed carport that will be used to protect his vehicles from inclement weather and will provide the same protection to the applicant while getting in and out of his car.



**PROPERTY LOCATION AND VICINITY:** The subject property is located along the north side of Judith Avenue between Idela Avenue and Judith Avenue. The subject property is zoned R-1 (single family residential) District.

**BACKGROUND AND HISTORY:** Idela Park Unit No. 1 Subdivision was recorded on February 13, 1978. The plat states a 25 foot front yard setback. An application for a building permit and a special exception request were submitted on September 24, 2024.

**ANALYSIS:** The applicant is requesting to encroach 20 feet into the 25 foot front yard setback for a

proposed carport that will be used to protect his vehicles from inclement weather conditions. The home was constructed without a garage in 2018 since one parking space beyond the front yard setback was not required at the time of subdivision recordation.

In the past there have been other variances and special exceptions in Idela Park Unit No. 1 Subdivision for encroachments into the front yard setbacks.

Measurements are provided without the benefit of a survey.

Special exceptions are issued to and recorded for the present applicant/owner only. New property owners would need to apply for a new special exception request.

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

**RECOMMENDATION:** Staff recommends approval of the special exception request since the approval is granted solely to the present owner and will not alter the essential character of Idela Park No. 1 Subdivision.





# City of McAllen

## Planning Department

### APPEAL TO ZONING BOARD OF

### ADJUSTMENT TO MCALLEN ZONING ORDINANCE

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

Case Number: ZBA 2024-0041 ZBOA Meeting: 10/23/24  Routed  
Receipt No: 343562  Scanned  
Accepted by: P: P.H. S: SN Customer Acknowledgment (Int.): Q.M

#### PROJECT

Legal Description

Idela park Unit #1 Lot 80

Subdivision Name

Idela park Unit #1

Street Address

2712 Judith Avenue

Number of lots

6

Gross acres

Existing Zoning

R-1

Existing Land Use

Resident

Reason for Appeal (please use other side if necessary)

Requesting a (carport) metal measuring 20x20 enclosing 20ft into 25ft front yard setback

\$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

Julio Mercade

Phone

512 765 2055

Address

2712 Judith Ave

E-mail

Julio Mercade, jr @ gmail . com

City

McAllen

State

TX

Zip

78503

#### OWNER

Name

Julio Mercade

Phone

512 765 2055

Address

2712 Judith

E-mail

Julio Mercade, jr @ gmail . com

City

McAllen TX

State

78503

Zip

78503

#### 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

Julio Mercade

Date

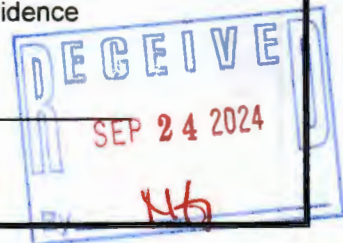
9-24-2024

Print Name

Julio Mercade

Owner

Authorized Agent





# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

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

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

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

Reason for Appeal

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

Protection for my vehicle from hail damage and Bad weather from the sun

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

To be able to build the carport over the setback

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

No issues with the neighbors and they won't be bothered

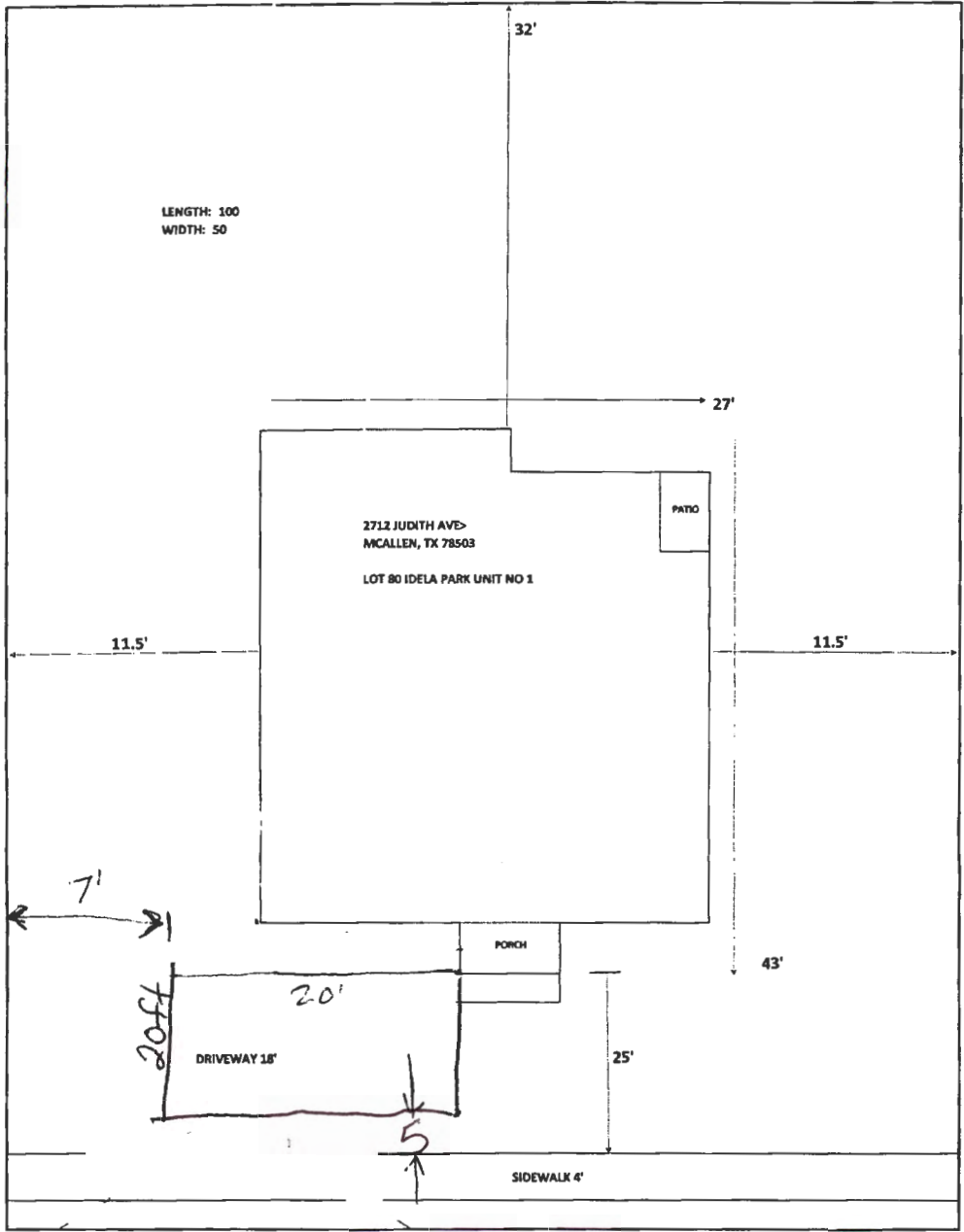
4. Describe special conditions that are unique to this applicant or property:

Protection for my vehicle from inclement weather

Board Action

Chairman, Board of Adjustment  
Signature

Date



RECEIVED  
 SEP 24 2024  
 By NG

2' A

10' HL

House

20'

7' ←

20'

20'

5' ↓

20'





NOTICE  
OF VARIANCE  
SPECIAL EXCEPTION  
FOR  
THIS PROPERTY  
ZBA 2024-0041

## Memo

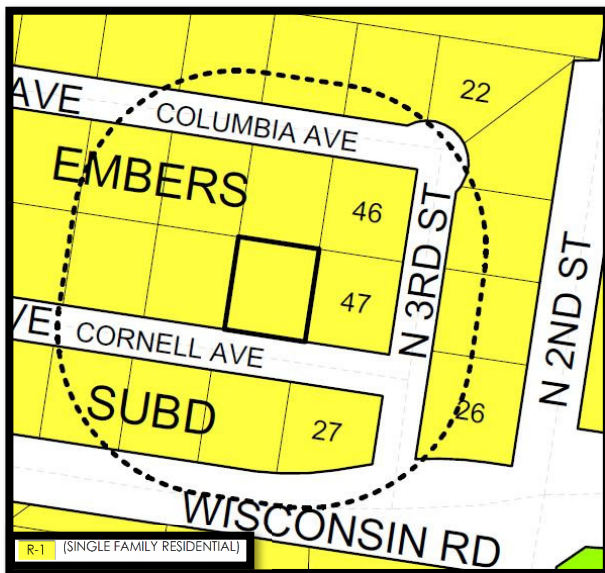
**TO:** Zoning Board of Adjustment & Appeals

**FROM:** Planning Staff

**DATE:** September 30, 2024

**SUBJECT: REQUEST OF EUGENIO GARCIA TO ALLOW A VARIANCE TO THE CITY OF MCALLEN ZONING ORDINANCE: ACCESSORY USE(S) WITHOUT A PRIMARY USE FOR A PROPOSED COVERED TERRACE, SWIMMING POOL WITH JACUZZI AND A GUEST HOUSE AT LOT 48, THE EMBERS SUBDIVISION, HIDALGO COUNTY, TEXAS; 304 CORNELL AVENUE. (ZBA2024-0038)**

**REASON FOR APPEAL:** The applicant is requesting a variance to build a covered terrace, a swimming pool with jacuzzi and a guest house as accessory uses but without a primary residence on Lot 48. The main use, a single family residence is located on the adjacent Lot 49. Both lots are owned by the same property owner.



**PROPERTY LOCATION AND VICINITY:** The subject property is vacant and located along the north side of Cornell Avenue, 102 feet west of North 3<sup>rd</sup> Street. The Lot has 98 feet of frontage along Cornell Avenue and 112.5 feet of depth for a total Lot size of 11,025 square feet. The property is zoned R-1 (single family residential) District. The adjacent zoning is R-1 District in all directions.

**BACKGROUND AND HISTORY:** The Embers Subdivision was recorded in June 2016. An application for a variance request was submitted on September 9, 2024.

**ANALYSIS:** The applicant is requesting a variance to build a covered terrace, a swimming pool with jacuzzi and a guest house as accessory uses but without a primary residence on Lot 48. The main use, a single family residence is located on the adjacent Lot 49. Both lots are owned by the same property owner. A 12 foot drain easement runs concurrently with the six foot setback adjacent to the east and west property line of Lot 49 and 48, respectively. This drain easement prevents continuous building of the Lot with the main use to Lot 48. The applicant states due to an easement, the main house couldn't span both lots, leaving one lot vacant for this purpose.

An accessory building means a subordinate building, located on the same lot as the main building, the use of which is clearly incidental to and customarily found in connection with the main building or principle use of the property. Accessory uses of buildings are located on a lot occupied by the main use conforming with setback and other regulations concerning location.

The submitted site plan illustrates that the proposed structures will not impact the utility easement and will comply with the required setbacks.

A block wall surrounds both lots and makes for one buildable area.

City Engineering department staff has stated that approval for abandoning the drainage easement is unlikely, as it contains an active drain line.

Measurements provided are without benefit of a survey.

**RECOMMENDATION:** Staff recommends approval of the variance request since the drainage easement prevents the property owner from building across the Lot lines.

ZBA2024-0038

ZBA 10/9/24



City of McAllen  
Planning Department

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)

APPEAL TO ZONING BOARD OF  
ADJUSTMENT TO MCALLEN ZONING ORDINANCE

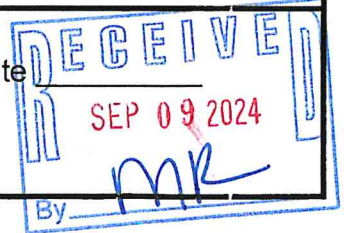
<b>Project</b>	Legal Description <u>Lot # 48 The Embers Subdivision, McAllen TX 78504</u>
	Subdivision Name <u>THE EMBERS SUBDIVISION</u>
	Street Address <u>304 N CORNELL AVE, MCALLEN TX 78504</u>
	Number of lots <u>1</u> Gross acres <u>0.25 ACRES</u>
	Existing Zoning <u>RESIDENTIAL</u> Existing Land Use <u>VACANT</u>
	Reason for Appeal (please use other side if necessary) <u>Construction of terrace, pool and guest house in a Lot with no main Residence on it that will be connected with main house in an adjacent lot #49.</u>
	<input checked="" type="checkbox"/> \$300.00 non-refundable filing fee + <input type="checkbox"/> \$50.00 Recording Fee for Special Exception (carport)
	<input type="checkbox"/> Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required

<b>Applicant</b>	Name <u>EUGENIO GARCIA</u> Phone <u>956-821-8440</u>
	Address <u>1320 N 10TH ST, SUITE 20</u> E-mail <u>eugenio@gmg-dc.com</u>
	City <u>MCALLEN</u> State <u>TX</u> Zip <u>78501</u>

<b>Owner</b>	Name <u>DR. DAVID SCHNAIDERMAN</u> Phone <u>956-802-5476</u>
	Address <u>4631 S JACKSON RD</u> E-mail <u>dr.s@fmgcenter.com</u>
	City <u>EDINBURG</u> State <u>TX</u> Zip <u>78539</u>

<b>Authorization</b>	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></u> Date <u>09/09/2024</u> Print Name <u>DAVID SCHNAIDERMAN</u> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Authorized Agent

<b>Office</b>	Accepted by <u></u> Payment received by _____ Date _____
	Rev 10/18







# City of McAllen

## Planning Department

### REASON FOR APPEAL & BOARD ACTION

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

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

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

Reason for Appeal

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

Owner has two adjacent lots for the project of his New Residential home. Both lots have a drain Easement along the property line between them. Under this circumstance the Main house was not possible locate above the two lots and it had to be located just in one of the lots (#49), leaving the other lot (#48) for the recreational use of the project: Pool, Terrace, Guest House and Backyard.

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

The Variance is needed in order to allow have the Residence with exterior areas according to the size of the Dwelling. If not the residence size will be occupying the area permitted but without patio and backyard.

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:

Instead to be detrimental for the Subdivision neighborhood, this approach will allow to increase the green area at the same time will decrease the building construction density in the area

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

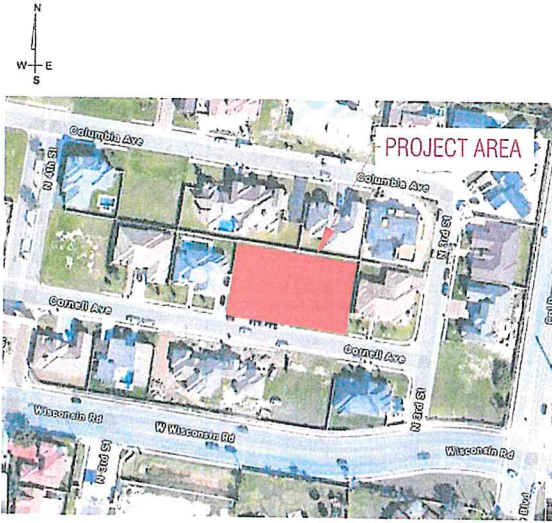
The Covenants of the Subdivision allow Owners to buy two lots for One-Family Residence.

There are other cases in the Subdivision where one House has been Built over two lots. But they had no easement between them.

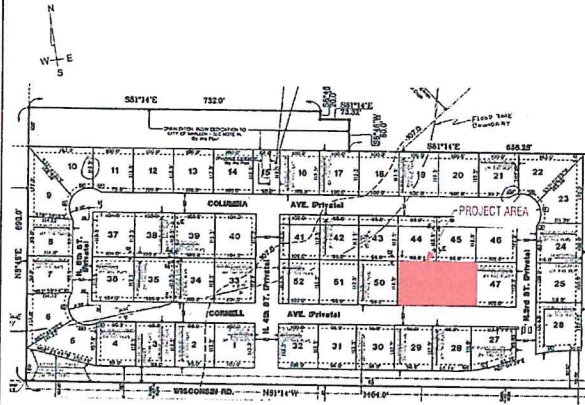
Board Action

Chairman, Board of Adjustment  
Signature

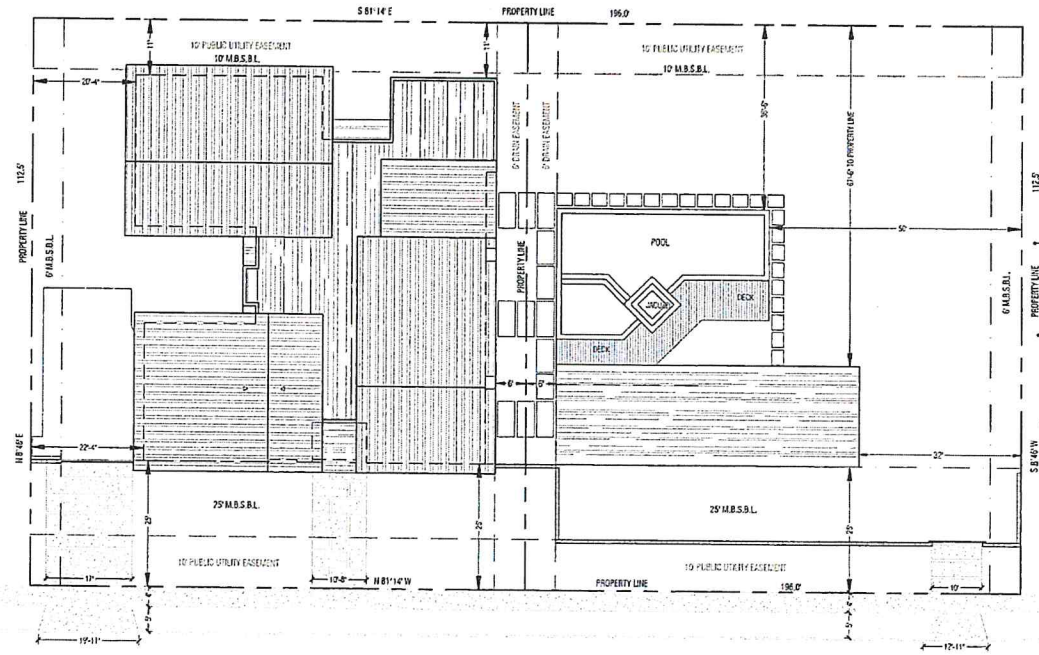
Date



**LOCATION MAP**  
NOT TO SCALE



**SITE PLAN**  
NOT TO SCALE



**SITE PLAN**  
SCALE: 3/32"=1'-0"

**APPROVED**  
 11/09/2024  
 11:01 AM  
 11111  
 By

**PROPOSED PROJECT**  
 Dr David Schindlerman Residence  
 508 H Cornell Ave. Lot # 48 & 49  
 THE EMBERS SUBDIVISION  
 McAllen, TX, 78504

DESIGNED BY	L.J. REASSEMBLANT
CHECKED BY	E.C. CANTRELL
COMPUTER	MAN

**SITE PLAN**  
 SCALE: 3/32"=1'-0"

SHEET NO.  
 1-13





David and Elizabeth Schnaiderman  
112 E Zenaida Ave, McAllen TX, 78504  
dschnaiderman@gmail.com  
10/01/2024

City of McAllen  
Zoning Board of Adjustments and Appeals

Dear Members of the Zoning Board of Adjustments and Appeals,

I hope this letter finds you well. I am writing to respectfully request your consideration of a variance to the City of McAllen Zoning Ordinance concerning Lot 48. This request is deeply personal, driven by the unique medical needs of my son, who is autistic and has special needs.

As our son grows, he is beginning to seek greater independence—a critical step in his development. We believe that establishing a guest house on our property would provide him with the autonomy he desires while ensuring he remains close to home and supported by us, his parents. This arrangement would offer him the best of both worlds: the freedom to explore his independence and the security of knowing we are nearby.

We understand the importance of adhering to zoning regulations and appreciate the board's role in maintaining the integrity of our community. We believe that this variance will not only assist our family but also positively contribute to the neighborhood by enhancing the property in a thoughtful manner.

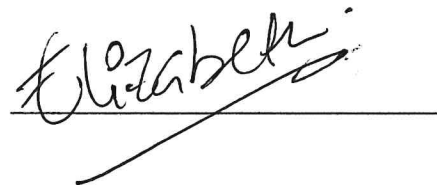
Thank you in advance for considering our request. We are hopeful for a favorable outcome and appreciate your understanding as we seek to create a nurturing environment for our son. We are available to discuss this matter further at your convenience.

Warm regards,

David Schnaiderman

A handwritten signature in black ink, appearing to read "David Schnaiderman", written over a horizontal line.

Elizabeth Schnaiderman

A handwritten signature in black ink, appearing to read "Elizabeth Schnaiderman", written over a horizontal line.

Item 2c)

Will remain tabled per the applicant.