



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR - CITY COUNCIL CHAMBERS
MARCH 8, 2010
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order.

The following Board Members answered roll call:

Mr. Rick Cordova, Chair
Ms. Alisa Jorgensen, Vice-Chair
Mr. Oscar Perez
Mr. Sam Barela
Mr. Ken Gezelius
Mr. Servando Hernandez
Mr. Rigoberto Mendez
Mr. Jose Melendez

The following City Staff were present:

Mr. Art Rubio, Development Services Department, Planning, Senior Planner
Ms. Linda Castle, Development Services Department, Planning, Senior Planner
Mr. Juan Estala, Development Services Department, Building Permits & Inspections, Chief Plans Examiner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Chair Cordova asked if there were any changes to the agenda.

Ms. Castle responded applicants for agenda items 3 and 4 have requested their items be postponed to the March 22nd ZBA meeting.

MOTION:

Motion made by Ms. Jorgensen, seconded by Mr. Hernandez and unanimously carried **TO POSTPONE ITEMS 3 AND 4 ON THE AGENDA TO THE MARCH 22ND MEETING.**

AYES: Ms. Jorgensen and Messrs. Perez, Barela, Gezelius, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

ITEM 1:

ZBA10-00004

440 Reynolds Street

William L. Carvajal and Steven R. Carvajal

Applicant requests a Special Exception under Section 2.16.050 L (15 years or more, Side Street Yard Setback) in an M-1 (Manufacturing) zone. This would permit an existing office building that is encroaching 10' into the required side street yard setback and that is located to within 0' of the side street property line. The required side street yard setback is 10' feet in the M-1 zone district. The applicant is requesting the Special Exception for an addition that can be seen in the 1986 aerial, existing 24 years ago as it does now. The current owners purchased the property in 1996 and are not responsible for the addition to the building that encroaches 10 feet into the required side street yard setback. They are seeking to legalize the encroachment. A site visit shows that there is a portion of a rock landscape wall and a wall decoration that are encroaching in public right-of-way. The applicant's representative has been notified about the encroachment and has agreed to remove the landscape wall and the wall decoration. The representative is asking for 90 days to remove these items. **STAFF RECOMMENDS APPROVAL WITH A CONDITION THAT AN APPROXIMATE 3' BY 17' PORTION OF THE ROCK LANDSCAPE WALL ALONG ROSA STREET AND THE WALL DECORATION ON THE PORTION OF THE BUILDING THAT IS ENCROACHING IN THE SIDE STREET YARD BE REMOVED FROM THE PUBLIC RIGHT-OF-WAY WITHIN 90 DAYS, BY JUNE 8, 2010.**

Mr. Rubio gave a PowerPoint presentation and explained Staff is requesting the applicant remove the decorative rock wall and the decorative columns that extend into the right-of-way.

Mr. David Bernard, attorney representing Medical Center of the Americas and Ms. Emma Schwartz, President, Medical Center of the Americas Foundation, were present.

Ms. Jorgensen requested Staff clarify what will be removed.

Mr. Hernandez requested additional clarification and asked what the current width of the sidewalk is.

Mr. Rubio explained Staff is requesting the applicant remove the decorative rock wall and the decorative columns that extend into the right-of-way. Per the Subdivision ordinance, sidewalk widths should be five feet, the current width of this sidewalk is a little over five feet. Regarding the rock wall, Street Department Staff offered the applicant the following remedies:

1. Removal or Vacation of the right-of-way; or
2. The applicant could apply for a Special Privilege permit

Ms. Castle added the rock wall is a permanent structure and encroaches into the public right-of-way; however, shrubbery or landscaping would be allowed.

Ms. Jorgensen wondered if the sidewalk width was ADA compliant; additionally, should specific measurements be included in the motion.

Regarding the building itself, Ms. Castle explained Staff is requesting removal of that portion of the building that is encroaching into the side street yard setback.

Mr. Bernard concurred with Staff recommendations and explained as part of tenant improvements, they would like to remove the rock wall and encroaching decorative fenestrations on the windows. Regarding the removal of the encroachments, they would like an additional 30 days just in case.

Staff was not opposed to the additional 30 day request. Staff will tag the parcel's inspection date for July 8, 2010.

Mr. Estala stated if approved, the applicant could apply for a demolition permit to remove the encroachments.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There were none.

Mr. Lopez referred to provisions in the Zoning Code regarding signage and explained the provision allows one sign per premise; a premise is a platted lot; however, you cannot have additional signage per each metes and bounds split lot. He stated any form of advertising display that brings attention to a business is signage. Regulations for wall signage and poles are different. In this case, the property is zoned C-3; therefore, the applicant is allowed 40% of the building wall for signage. Mr. Lopez read into the record the definition of premise, "a lot, together with all buildings and structures thereon".

Mr. Lopez explained Staff has been working with the applicant since November and has offered two options:

1. Take the existing sign, which is below the sign height and area, increase that sign and add the tenant information; or
2. Plat the property to an individual lot

In conclusion, Mr. Lopez stated Staff's position is that the property has met its maximum allocation of signs based on the lots being part of the entire lot and having already been split by metes and bounds. If the property owner is determined to have another sign, the property must go through a re-plat process and if approved, the property owner would then have the additional free standing sign.

Mr. Ray Mancera, representing the property owner, gave a PowerPoint presentation and stated the applicant is requesting a monument sign fronting S. Mesa Hills. Mr. Mancera requested a zoning verification letter and plat determination certificate from Planning Division Staff. In the zoning verification letter, Staff notes "3. No additional monument or pole signs are permitted since the property has reached its maximum allocation of permitted freestanding signage per the El Paso City Code." However, the letter offered no explanation. He requested the City explain to the community under what conditions signage will/will not be granted. The plat determination certificate states a replat is not required; replatting the applicant's property would cost approximately \$6,000 to \$8,000.00.

Mr. Mancera asked Staff what the definition of a premise is and what provision of the Code is the applicant being denied the right to erect a monument sign. He requested:

1. **Ordinances:**
The City of El Paso should try to capture and close as many loopholes in the Code as possible. Following public input and City Council's decision to enact the ordinances, everyone will then be governed the same.
2. **Zoning Administrator:**
After making an interpretation, the Zoning Administrator should include that interpretation in the Code.

In summary, Mr. Mancera stated the City of El Paso has failed to show where his client is not legal and requested the Zoning Board of Adjustment override the decision of the Zoning Administrator.

In order to erect the sign, Mr. Barela wondered, why one handicapped parking space would be removed.

Mr. Mancera responded depending on the location of the proposed sign, he would redesign the parking lot to accommodate the required number of handicapped and non-handicapped parking spaces.

Chair Cordova clarified the measurements of the proposed sign 18' H x 12' W.

Mr. Mancera concurred and explained if the property is recognized as a premise, the applicant meets the minimum requirements for the proposed signage.

Mr. Melendez asked Mr. Lopez if the sign located on the corner was in compliance and would the sign affect any wall signs or would the wall signs have to be changed.

Mr. Lopez responded yes, the permit was approved. He explained the provisions for wall and free standing signage noting each building is allowed its own wall sign.

Mr. Hernandez asked if the billboard was digital.

Mr. Lopez responded no; however, the sign could be either internally or externally lit.

Mr. Mancera added the proposed sign is not illuminated.

Chair Cordova asked Ms. Osborn whether or not the definitions in the code were current. He wondered if premise meant "lot" and if "lot" was either platted of record or described by metes and bounds.

Ms. Osborn responded yes, Staff reviewed the code and the definitions are current. She added Mr. Lopez has made a determination how he and the city interprets the definitions. Mr. Mancera has a different interpretation; therefore, the Board, as fact finders, must determine whether or not Mr. Lopez' interpretation is correct or incorrect.

Mr. Lopez explained Planning has determined the property is a portion of the original platted lot; which was then split by metes by bounds. In the past, property owners split their lots, by metes and bounds, just to create additional signage. He asked the Board to consider the signage regulations, in total. Mr. Lopez explained the subdivision verification letter verifies the original subdivision was legally approved; the letter has no bearing on signage or analysis on signage.

Mr. Perez asked if the applicant could have a wall sign and clarified the issue is the interpretation regarding the denial of the monument sign.

Mr. Lopez responded yes, regulations regarding wall signs are based on buildings, not individual lots.

Ms. Jorgensen clarified Board Members are being asked to decide whether we believe Staff made an error in interpreting the ordinances as they apply to the applicant or to affirm Staff's decision that there was no error in the interpretation of the ordinances.

Ms. Osborn concurred and stated the appeal is whether or not the administrative official has erred in the interpretation of the code. She explained, per the ZBA Ordinance, Board Members may grant Special Exceptions, Variances, etc. with conditions.

Mr. Mendez asked if the applicant could reduce the size of the sign.

FOR THE RECORD – Mr. Mancera introduced Mr. Jacob Leiferman, who has proposed 12' x 20' as the sign measurements.

Mr. Melendez responded no, our measurements show 19' H x 12.8' W.

At this time, Mr. Mancera explained his client agreed to a smaller sized sign.

Mr. Lopez explained the provisions for metes and bounds splits are considered an exception, the code requires properties be platted. In this particular exception, the property is zoned commercial manufacturing and may be further split by metes and bounds.

Mr. Mancera confirmed his client is willing to reduce the size of the sign to 18' in height and that no other monument sign be permitted hereafter.

Mr. Lopez pointed out the applicant had originally proposed 18'.

Ms. Castle explained the measurement is 19' high.

Ms. Jorgensen summarized, per Mr. Mancera, Staff failed to show the applicant's request was not legal.

Mr. Melendez responded the code is subject to interpretation.

Ms. Osborn explained, per Section 2.16.040 Appeals, the applicant must allege there was error in any order, decision or determination made by the administrative official.

Mr. Mancera stated the sign would be lit at night. He explained the location of the purposed sign and noted the sign, as submitted, was just a proposal.

Mr. Perez interjected the board is being asked to determine whether or not the administrative official was correct in his interpretation.

Ms. Osborn added if the Board determines the applicant is entitled to a sign, the applicant is entitled to the size of sign the code allows.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There were none.

MOTION:

Motion made by Mr. Gezelius to **APPROVE THE APPEAL.**

Ms. Osborn questioned the meaning of the motion.

Mr. Gezelius responded he was approving Mr. Mancera and his client. They are appealing the judgment of the administrative official, the Board has heard his interpretation and how he came to make that decision. I say, accept the appeal, in other words, agree with Mr. Mancera.

1st MOTION:

Motion made by Mr. Gezelius, seconded by Mr. Mendez **TO APPROVE THE APPEAL.**

AYES: Messrs. Gezelius, Cordova, Mendez and Melendez

NAYS: Ms. Jorgensen and Messrs. Perez, Barela and Hernandez

The Motion failed. (4 -4)

Ms. Osborn explained to grant an appeal, there must be seven affirmative votes. The motion failed, the appeal was unsuccessful.

FOR THE RECORD – Mr. Mancera asked Mr. Perez how he voted on the motion.

Mr. Perez responded he did not agree the administrative official erred in his interpretation.

Ms. Castle confirmed Mr. Perez voted No.

ITEM 3:

ZBA09-00054

8533 Euphrates Drive

Ignacio F. Acosta

Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3/A/sc (Light Density Residential/Special Contract) zone. This would permit a 17.75' by 15' addition to encroach 15' into the required rear yard setback. The required front and rear yard cumulative setback total is 45 feet in the R-3/A zone district. The required side yard setbacks are 5 feet per side in the R-3/A zone district. The applicant purchased his residence as a new home in 1993 and has since constructed additions to his house without permit that are located to 0' of the rear and side property lines. The Board considered a request for a Variance at the January 11, 2010, meeting, but postponed the request to the February 8, 2010, meeting to allow the applicant to come in with a site plan that would meet the Special Exception C requirements and Code requirements. At the February 8, 2010, meeting the Board again postponed the case to the March 8, 2010, meeting to allow the applicants to meet with BP&I and Planning on how they could meet the Special Exception requirements. **STAFF RECOMMENDS POSTPONEMENT TO THE MARCH 22, 2010, MEETING SINCE THE APPLICANT IS REQUESTING AN ENCROACHMENT BASED ON SQUARE FEET. THE CITY COUNCIL IS CONSIDERING THE ZBA ORDINANCE CHANGE ON MARCH 16, 2010, TO ALLOW ENCROACHMENTS IN THE REAR YARD BASED ON A SQUARE FEET CALCULATION.**

Ms. Castle responded she will email the final version of the ordinance and reminded Board Members of the March 22nd ZBA meeting. The March 22nd ZBA meeting is in anticipation of Council approving the ordinance and there are applicants who are requesting the square footage. She suggested Board Members contact their Representative to express their support. Council Members have received backup information regarding the proposed ordinance.

ADJOURNMENT:

MOTION:

Motion made by Mr. Barela, seconded by Mr. Melendez and unanimously carried to **ADJOURN THE ZBA MEETING.**

AYES: Ms. Jorgensen and Messrs. Perez, Barela, Gezelius, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

Linda Castle, Senior Planner