

The motion passed. (7-0)

ITEM 2:

ZBA08-00006

8181 Starr Avenue

Alma R. Avalos

Applicant requests Special Exceptions under Section 2.16.050 C (Rear Yard Setback) and Section 2.16.050 K (Side Street Yard Setback) in an R-F zone. This would permit the existence of a residence that encroaches 25' in the rear yard setback and 7' in the side street yard setback. The required cumulative front and rear yard setback total in an R-F zone is 100'. The required side street yard setback is 25' in an R-F zone.

The applicant's house was built in 1947 encroaching 16'6" in the front yard setback and 2' in the side street yard. The applicant is requesting to legalize an addition to her house that was built without a permit and encroaching 25' in the rear yard and 7' in side street yard. There appears to be two other nonconforming properties in the same block located on the same side of the street and across the street with the same or more nonconforming rear yard setbacks. The addition increased the encroachment in the side street yard by 5', but the total encroachment of 7' does not exceed 50 percent of the required 25 foot setback. The Engineering-Traffic Division has reviewed the site and notes no objections to the side street yard encroachment. The house has been registered nonconforming as to a lot area of less than one acre for a single-family dwelling in the R-F district and a front yard setback of less than 50 feet, existing prior to 1955, the effective date of the Zoning Code. The applicant requested re-zoning from R-F to R-5 in 2007 in order to permit a single-family residence and a duplex, but her application was denied by City Council on August 28, 2007. The new addition includes an additional kitchen and bath.

Mirian Spencer presented the case and noted Staff recommends approval of these Special Exceptions with the condition that the applicant shall file an affidavit with County Deeds and Records stating that she will not rent the subject property as a duplex and will never have separate utility meters for the addition. Alma Rosa Avalos, owner, noted that she hired a contractor who took her money and never did the job.

Chair Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Ms. Alisa Jorgensen moved, Mr. Servando Hernando seconded, and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Messrs. Mendez, Bowling, Barela, Nance, Veliz, Hernandez, and Ms. Jorgensen

NAYS: N/A

The motion passed. (7-0)

OTHER BUSINESS:

9. Approval of Minutes – January 28, 2008

The minutes for January 28, 2008 were not ready to be presented at this meeting.

DEVELOPMENT SERVICES REPORT:

10. Discussion and action regarding proposed changes to the Zoning Board of Adjustment Ordinance, Section 2.16, City of El Paso Municipal Code.

Ms. Linda Castle briefly discussed the proposed changes to the Zoning Board of Adjustment Ordinance, Section 2.16, City of El Paso Municipal Code.

The original intent was to clean up the Ordinance, take out some of the Special Exceptions that were not used, and to restrict some of the Special Exceptions applying to new home construction. Cynthia Osborn, Assistant City Attorney, said she had reviewed the proposed changes and had some recommendations.

Special Exception S. Ms. Osborn noted it was moved to 2.16.020 Powers and added as D. **The Board is empowered and encouraged to recommend to City Council any changes to the Special Exceptions which it believes are necessary or useful to the welfare of the community.**

Variances: No changes were made.

2.16.040 Appeals. Staff added wording that was in another part of the Ordinance: **In exercising these powers the board may, in conformity with the state act and this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.**

Special Exception R. This was formerly a Special Exception but it is now placed in the introduction to the Special Exceptions: more than one Special Exception may be made for a lot as long as the total of the exceptions granted does not exceed the maximum which could have been combined into one request.

Special Exception B. This exception was completely deleted. The reason for this is that the requirements for increases in sign height and area in this Special Exception are based on topographical condition, the same requirements as for a Variance. Ms. Castle noted that this Special Exception has only been used one time in the last three years. Staff believes that sign requests should come in as Variances to the zoning ordinance.

Special Exception C. Two or more non-conforming lots: **#1 was added, restricting it to the lot being in a legally recorded developed division of at least 30 years. The other requirements were numbered to conform to the format of the ordinance.**

Special Exception D. Deleted because it has never been used.

Special Exception F. Deleted.

Special Exception G. The following has been added: **(1) The residence has been in existence and owner occupied for one continuous year and has a valid Certificate of Occupancy.** The objective is when someone decides to develop a piece of property, they should comply with the existing zoning and not start developing it under the assumption that the zoning can be changed one lot at a time.

In response to discussion by the Board regarding allowing some new home construction to get the special exceptions for reductions in setbacks, Ms. Osborn read the language of the former Special Exception "N" for construction of a single family residence on a lot that did not

meet the required size: **The maximum number of lots for which this exception shall be granted in any subdivision shall be five percent of the total number of lots in the subdivision or one lot whichever is greater.**

Linda Castle noted that new home construction could also be restricted by restricting it to a **percentage of the lots in the subdivision.**

For the rear yard setback reduction, the staff is proposing that the size of the permitted accessory structure be increased from 120 square feet to 180 square feet.

Rear Yard Setback for Duplex. New language added: **owner occupied to occupied.** #5: Reduced the size of the accessory structure, when the addition to the duplex encroaches into the rear yard setback, from 120 square feet to 100 square feet.

Special Exceptions I and J. Deleted.

Special Exception K. The following was added: **(2) Language that was on the Special Exceptions G and V that restricts a property owner from getting the Side Street Yard and the Front and/or Rear Yard setback reduction.**

Special Exception L. No change in the builder error.

Special Exception M. Deleted.

Special Exception N. Added language: **the lot is in a legally recorded developed subdivision of at least 30 years.**

Off-Street Parking Requirement: This special exception allows a 15 percent or less reduction in parking requirements.

Special Exception P. Deleted.

Special Exception Q. Added language: **that the residence is in existence and owner occupied for one continuous year and has a valid certificate of occupancy.** The requirements have been re-worded, but the main change is that staff is asking for the **written approval of the structural design from the Building Permits and Inspections Division, Development Services Department, and removing the requirement for the plans to be sealed by a registered architect or engineer.** Added the requirements for elevation drawings and added language about carports for duplexes.

Special Exception R. Moved to the front of the ordinance.

Special Exception S. Moved to the Powers section.

Special Exception T. Deleted

Special Exception U. In existence for fifteen years or more. Deleted the requirement about the encroachment over the utility easement, since the special exception already requires that no other provision of the Municipal Code can be violated.

Front Yard Setback: Added language, **same as Special Exception G and H, but can also add the percentage of lots in a subdivision.**

Administration. Staff had proposed administrative review and approval of applications that met all the requirements for the special exceptions for residential structures. Ms. Osborn noted that by state statute any special exceptions must be granted by the Zoning Board of Adjustment and that that responsibility cannot be delegated to a city staff or office.

The proposed changes will be ready and brought before the Board so they can vote on any changes made.

Linda Castle said she could send the changes out to the board members via e-mail, so they can review it prior to the meeting of March 10, 2008.

ADJOURNMENT:

Motion was made, seconded, and unanimously carried to adjourn the Zoning Board of Adjustment meeting.

AYES: Messrs. Mendez, Bowling, Barela, Nance, Veliz, Hernandez, and Ms. Jorgensen

NAYS: N/A

The motion passed. (7-0)

Robert Peña, Secretary
Zoning Board of Adjustment