

## CITY DEVELOPMENT DEPARTMENT

### ZONING BOARD OF ADJUSTMENT MEETING MINUTES CITY COUNCIL CHAMBERS, 2<sup>ND</sup> FLOOR, CITY HALL MAY 14, 2012 1:30 P.M.

Chair Aguilar called the meeting to order at 1:30 p.m.

The following Board Members answered roll call:

Mr. Rick Aguilar, Chair  
Mr. Rigoberto Mendez, Vice-Chair  
Mr. Ken Gezelius  
Mr. Robert Garland  
Mr. Rick Concha, Jr.  
Mr. Rick Cordova  
Mr. James Wolff  
Mr. Lamar Skarda

The following City Staff were present:

Ms. Linda Castle, Planning & Economic Development, Zoning Board of Adjustment Coordinator  
*Ms. Castle introduced Mr. Alex Hoffman, Planning & Economic Development, Lead Planner for Zoning*  
Mr. Juan Estala, Building Permit & Inspections, Chief Plans Examiner  
Ms. Kristen Hamilton, City Attorney's Office, Assistant City Attorney

#### CHANGES TO THE AGENDA

Ms. Castle noted the Representatives for **Item 4. PZBA12-00013** requested a four week postponement to the next regularly scheduled ZBA meeting.

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John F. Cook

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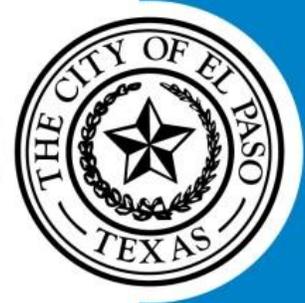
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**MOTION:**

Motion made by Vice-Chair Mendez, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO POSTPONE ITEM 4. PZBA12-00013 FOUR (4) WEEKS TO THE NEXT REGULARLY SCHEDULED ZBA MEETING.**

Motion passed. (8-0)

**Prior to the meeting, Staff distributed copies of the revised Site Plan to Board Members and Staff.**

**ITEM 1:**

**REVISED SITE PLAN**

PZBA12-00015                      835 Sun City Court                      Francisco Arechiga Solis  
Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R3-A (Residential) zone. This would allow a 448 sq. ft. addition to encroach in the required rear yard setback located to within 10 feet of the rear property line. The required front and rear yard cumulative total setback is 45 feet in the R-3A zone district. The request is to encroach into the required rear yard setback for a covered patio. An existing 20.25' by 37.33' (754 sq. ft.) covered patio currently exists and is proposed to be reduced to conform to the requested 10 foot setback. Code enforcement has cited the owner for building without a permit. ~~STAFF RECOMMENDATION PENDING SUBMITTAL OF REVISED SITE PLAN THAT SHOWS THE PERMITTED 386.25 SQUARE FEET OF ENCROACHMENT.~~ STAFF RECOMMENDS APPROVAL BASED ON THE REVISED SITE PLAN WHICH SHOWS THE PERMITTED 386 SQUARE FEET OF ENCROACHMENT.

Ms. Castle gave a PowerPoint presentation and responded to questions and/or comments from Board Members. Ms. Castle noted that Staff did not receive any phone calls, letters or emails regarding the proposed request.

Mr. Ramon Gomez, representing the applicant, was present.

Chair Aguilar asked if Board Members had any questions. There being none. Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was no response from the audience.

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Staff responded to questions and/or comments from the following:

Mr. Cordova asked if Staff was requesting the applicant to remove 10 feet of existing construction. He asked Staff if the applicant will have to remove 10 feet of existing concrete.

Ms. Castle responded half of what was built will have to be removed according to the revised Site Plan.

Mr. Estala responded the structure will have to be modified or removed. Building Permits & Inspections Staff has not seen the revised Site Plan.

Mr. Gomez explained the revised Site Plan is the Plan; that their next step is to move forward with the modification plans, locate the spot footings, etc.

**MOTION:**

*Motion made by Mr. Gezelius, seconded by Vice-Chair Mendez and UNANIMOUSLY CARRIED TO APPROVE.*

*Motion passed. (8-0)*

**AMENDED MOTION:**

*Motion made by Mr. Gezelius, seconded by Garland and UNANIMOUSLY CARRIED TO APPROVAL BASED ON THE REVISED SITE PLAN WHICH SHOWS THE 386 SQUARE FEET.*

*Motion passed. (8-0)*

**ITEM 2:**

PZBA12-00016                      3501 Durazno Avenue                      Figueroa Holdings  
Applicant requests a Special Exception under Section 2.16.050 B (Two or More Non-Conforming) in an M-1 (Manufacturing) zone. This would permit the construction of a new structure to be located to within 0 feet of the front, rear, and side street property lines. The required side street setback is 10 feet, the required front yard setback is 15 feet, and the required rear yard setback is 10 feet in the M-1 zone district. The applicant is requesting to construct a new warehouse storage facility at the corner of Durazno Avenue and Grama Street.

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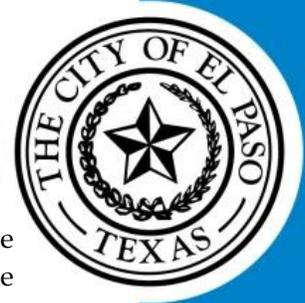
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The subject property has been registered legally nonconforming, built to the front and side street property lines. There are properties directly across the street at 3431 Durazno and 3500 Durazno that are built to the front and side street property lines. The adjacent property at 3509 Durazno has been built to the rear property line, as have properties in the same block at 301 N. Copia and in the block across the street at 3530 Durazno and 221 N. Copia. The applicant is proposing to demolish the buildings on the subject property. The proposed construction includes 16 parking stalls (1 ADA/TAS compliant) with access from Grama Street. **STAFF RECOMMENDATION IS FOR APPROVAL AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION B.**

Ms. Castle gave a PowerPoint presentation and noted Staff received one phone call from a curious property owner.

Mr. Carlos Figueroa, applicant, was present.

Chair Aguilar asked if Board Members had any questions. There being none.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was no response from the audience.

**MOTION:**

*Motion made by Mr. Gezelius, seconded by Mr. Garland and **UNANIMOUSLY CARRIED TO APPROVE.***

*Motion passed. (8-0)*

*Ms. Castle noted the Applicant and Representatives were not present during the swearing in. Mr. Steve Juen, Realtor, explained that he could not swear on the Bible; however, he could confirm, if that was acceptable. At this time, Chair Aguilar swore them in.*

*Prior to the meeting, Staff distributed copies of the revised Staff Report to Board Members and Staff.*

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**ITEM 3:**

**REVISED STAFF REPORT**

PZBA12-00018                      5001 Dyer Street                      Earl Scheib Realty Corporation  
Applicant requests a Special Exception under Section 2.16.050 K (15 Years or More, Rear Yard Setback) in a C-4 (Commercial) zone. This would permit a 119.4' by 10' portion of a building that is encroaching into the rear yard setback and is located to within 0' of the rear property line. The required front and rear yard cumulative setback total is 10 feet in the C-4 zone district. The applicant purchased the subject property in 1987 (see copy of warranty deed). The 1986 aerial shows that the entire building encroaching to the rear property line. The ZBA granted a Special Exception on June 8, 1981 to the referenced property for a 50' by 55' (3 bays) garage structure located up to the rear property line (see enclosed decision card). However, at some time **between 1981 and prior to the 1986 aerial**, the entire 119.4' of the building was extended to the rear property line, **prior to the current owner taking ownership of the building**. Further, a portion of the building is built to 0' of the front property line. **No permit was found for the extension of the building to the front property line. Research of Building Permits & Inspections microfiche records reveals building permit #'s B64831 (1979), B87286 (1981), B07585 (1984), and B34711 (1987, interior improvements), all submitted with site plans showing the encroaching portion of the building, extending to the front property line, as it exists today. The building exists in the 1956 aerial, but the encroachments to the rear and front property lines do not exist; therefore, Planning could not register the property as legally nonconforming for the front and rear yard setbacks, existing prior to the effective date of the zoning code, 1955. A recent code change to Title 20, Zoning, Appendix B (Table of Density and Dimensional Standards), in March 2012 permits a 0' front yard setback in the C-4 zone district if a cumulative front and rear yard setback of 10 feet is provided.**

Ms. Castle gave a PowerPoint presentation

Mr. Mathew Koch, Keller & Koch Realtors, representing the applicant, explained his partner, Mr. Keller, could not be present today as he was having surgery today. Mr. Koch noted that sometime between 1971 and 1979 the property was added on to. He distributed copies of Site and Traffic Plans that the City had stamped **APPROVED** which shows an addition to the main

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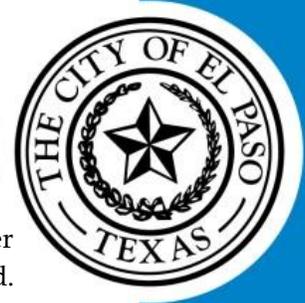
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structure all the way back to the alley and all the way to the sidewalk on Dyer Street. Mr. Koch stated that it is difficult to read the year this was approved. He then gave background information regarding the various different owners of the property and explained the purpose for the Special Exception is to legalize the structure.

Mr. Steve Juen, Steve Juen Commercial Real Estate, representing the “*property owner to be*,” should this be approved.

Mr. Estala explained that the site plan, which the City stamped **APPROVED** appears to be for a proposal to be based on the site, it does not refer to the actual building in question. He was unsure whether or not the **APPROVED** plans were for the Special Exception or for something else.

Mr. Koch explained that there are actually two properties Mr. Scheib’s property (5001 Dyer); the property to the right (to the north) is owned by another individual.

Mr. Juen further commented on the site plan stamped **APPROVED** by the City in either 1971 or 1979. He also commented on an additional site plan, dated 1981, requesting a 50’ x 53’ structure. Mr. Juen explained that he, Mr. Koch and Ms. Castle have been trying to piece together the background history regarding these two site plans.

Chair Aguilar asked Staff if this Board needs to approve the 1981 document which shows *Zoning Approved* even if the document was previously approved.

Mr. Estala responded yes.

Referring to one of the Site Plan documents, Mr. Garland asked Staff if the document proved the addition was existing non-conforming. He felt the Board should not have to rule on the Special Exception as the addition was legally done at the time.

Ms. Castle explained the only way to say the addition is legally non-conforming is if it existed prior to 1955. There were setbacks in the zoning code for C-4 zoning in 1955. She noted that the aerial photo was taken in 1956.

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Mr. Garland explained that the addition was in conformance when it was built; per the permit that was issued.

Ms. Hamilton explained the building does not meet the requirements of the Special Exception K. 4.:

*"The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback;"*

Ms. Hamilton continued, saying the required front yard setback would be 10 feet, cumulative.

Mr. Skarda agreed with Ms. Hamilton; however, as Mr. Aguilar stated, if this has already been approved, then this Board does not need to rule on it. If it met the rules back then ...

Ms. Hamilton clarified that is a separate issue.

Mr. Aguilar asked Staff if the request could be approved under a different Special Exception.

Ms. Castle responded the properties across the street do not have two or non-conforming structures.

Mr. Koch took exception to Ms. Castle's comment and mentioned other properties located on Dyer Street with structures similar to the Scheib's property. He noted that the City had recently installed new curb cuts, ADA accessible sidewalks, new sidewalks, etc.

Chair Aguilar clarified this Board is being asked to approve a Special Exception based on the five conditions. This particular structure does not meet the fourth condition of the Special Exception.

Mr. Juen responded he and Mr. Koch asked their legal counsel why they should come to the meeting today. The response was that the buyer needs to legalize the structure/property. It was Messrs. Juen and Koch's contention, too, why

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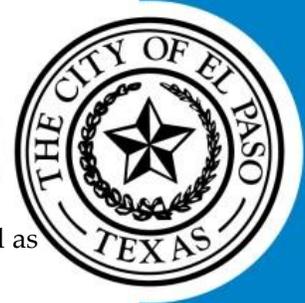
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were they here, when a City entity had already approved the addition, as well as the existing, structures.

Ms. Castle clarified the site plan in front of you does not show the two structures attached. At some point somebody went ahead and attached those two structures, which was the initial concern.

*(Ms. Castle and Mr. Juen discuss one of the two Site Plans amongst themselves)*

Per one of the two site plans, Chair Aguilar clarified that it looks like another building was built later. He did not understand why if Zoning had already approved this, why was it in front of the Board again. Chair Aguilar asked Ms. Hamilton if she agreed with him, that the Board could not approve the Special Exception based on Section 2.16.050 K.4.

Referring to one of the site plans, Mr. Garland stated, if they did it legally here ...

Ms. Hamilton responded she had not seen that document until today; furthermore, she did not know the implications of that approval and whether or not that makes the building legal.

Chair Aguilar suggested Board Members postpone the item until we could get more research from Staff.

Mr. Juen displayed an existing survey that shows the exact building dimensions today as what was presented to the ZBA.

Ms. Hamilton asked if those were the same dimensions as shown in the 1971 site plan approval for the building.

Chair Aguilar asked if Staff received any phone calls, letters or emails regarding this request.

Ms. Castle explained no calls have been received. Further, she stated the representatives submitted this just prior to the 10 day notification deadline. Staff did not have sufficient time to research this.

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Mr. Cordova asked Mr. Juen if he understood what Staff is saying, the Board cannot legally approve this Special Exception.

Mr. Juen responded he had come to City Hall and requested all records of this building; however, the only document recovered was this Site Plan which we submitted to the Planning Department. He asked, with the proof that he has, could the Board or Staff determine why this Special Exception is being presented to the Board today.

**MOTION:**

*Motion made by Vice-Chair Mendez, seconded by Mr. Garland AND UNANIMOUSLY CARRIED TO POSTPONE TO GET MORE HELP/RESEARCH FROM LEGAL SO THAT THE BOARD CAN MAKE A DECISION.*

*Motion passed. (8-0)*

**ITEM 4:**

**CHANGES TO THE AGENDA**

Ms. Castle noted the Representatives for **Item 4. PZBA12-00013** requested a four week postponement to the next regularly schedule ZBA meeting.

**MOTION:**

Motion made by Vice-Chair Mendez, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO POSTPONE ITEM 4. PZBA12-00013 FOUR (4) WEEKS TO THE NEXT REGULARLY SCHEDULED ZBA MEETING.**

**Other Business:**

5. Approval of Minutes: April 9, 2012

Chair Aguilar asked Board Members if they had any additions/corrections/revisions to the minutes. There was no response from the Board.

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**MOTION:**

Motion made by Mr. Skarda, seconded by Mr. Garland AND UNANIMOUSLY CARRIED TO APPROVE THE APRIL 9, 2012 MINUTES.

**ABSTAIN:** Messrs. Gezelius and Concha

*Prior to the meeting, Staff distributed copies of updated Chapter 2.16, Zoning Board of Adjustment, as of November 1, 2011.*

6. Distribute copies of updated Chapter 2.16, Zoning Board of Adjustment, as of November 1, 2011.

Ms. Castle noted copies of the updated ZBA Ordinance, Chapter 2.16 was distributed. She asked Board Members to insert the updated Ordinance in their binders.

Chair Aguilar asked if Board Members had any other questions, comments and/or concerns.

**PRIOR TO ADJOURNMENT**

**AGENDA ITEM 3.PZBA12-00018**

Mr. Cordova asked Staff why the Special Exception K for 5001 Dyer Street was incomplete.

Ms. Castle responded there are several issues Staff thought could be handled here at the meeting.

Vice-Chair Mendez noted this case is just for re-sale, there is no intention to do any construction. He was very close to motioning for approval.

Mr. Cordova felt the Board was placed in an unfair position as there was no legal backup history/information for the Board to review.

Ms. Hamilton clarified that Staff knew all that was needed to determine that the request did not meet the Special Exception requirements.

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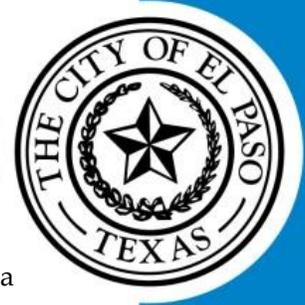
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Chair Aguilar noted the Representatives had documentation that a previous Special Exception had been approved.

Ms. Hamilton added yes, in a separate way.

Ms. Castle explained she did not have the Special Exception documentation; however, she did have the Building Permits documents.

Chair Aguilar felt that that might be the cause of all the confusion. Based on that, he would approve the Special Exception.

Ms. Hamilton reiterated the Board could not grant the Special Exception.

Mr. Cordova asked if the Representatives had asked for the Special Exception or was that a recommendation of Staff.

Ms. Castle responded they did request a Special Exception after she had made that recommendation to them. She agreed there was a great deal of confusion.

Chair Aguilar asked Staff, if after researching this and you see that approvals were done (*at whatever time*), then there would be no reason to bring this up again, correct.

Ms. Hamilton agreed.

Chair Aguilar then asked so even if the Board postponed the item, it may not be on the next agenda.

Ms. Castle responded yes and added the Representatives may withdraw their request.

In retrospect, Mr. Garland asked Staff, the fact that this was previously approved, the previous ruling could not be changed.

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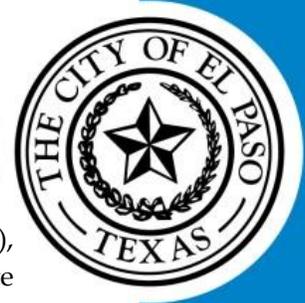
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Ms. Castle elaborated on the Special Exception K (15 years or more), property owners wanting to legalize the property for sale, permits and site plans.

**CARPORT OVER A DRIVEWAY**

Mr. Skarda referred to the April 9<sup>th</sup> meeting, PZBA12-00014 case, regarding a Carport over a Driveway. He noted that, in the background information, there were two different square footages given for the 1/5 living space. He asked if the garage was included as "living space".

Ms. Castle responded that language is not in the Ordinance; the language reads "first floor area under roof".

Mr. Skarda remembers Mr. Garland making a recommendation. Mr. Skarda thought it said "living space under roof". He added if you had a really big garage you could have a really big carport.

Ms. Castle reiterated the ZBA Ordinance language states "first floor area under roof"; however, the Board could consider changing the language.

Ms. Hamilton reminded the Board that the discussion was not on today's agenda and could not be discussed.

Mr. Skarda thought it was something that should be cleared up and requested that it be on the next agenda.

*No further discussion from the Board.*

**MOTION:**

Motion made by Mr. Gezelius, seconded by Mr. Garland AND UNANIMOUSLY CARRIED TO ADJOURN AT 2:29 P.M.

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Linda Castle, Senior Planner

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