



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBERS
JULY 12, 2010
1:30 P.M.**

Chair Cordova called the meeting to order at 1:31 p.m.

The following Board Members answered roll call:

Mr. Rick Cordova, Chair
Ms. Alisa Jorgensen, Vice-Chair
Mr. Ken Gezelius
Mr. Sam Barela
Mr. Rigoberto Mendez
Mr. Jose Melendez
Mr. Lamar Skarda

The following City Staff were present:

Ms. Linda Castle, Development Services Department, Planning, Senior Planner
Mr. Mike Neligh, Development Services Department, Building Permits & Inspections, Senior Plans Examiner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Staff requested the following:

2. **ZBA10-00023**, 3129 Sunny Prairie, *Withdrawn by applicant; applicant resurveyed the property; not encroaching into the side setbacks.*
3. **ZBA10-00024**, 3121 Sunny Prairie, *Withdrawn by applicant; applicant resurveyed the property; not encroaching into the side setbacks.*
4. **ZBA10-00025**, 1235 Galloway Drive, *Applicant requests a four week postponement to the August 9th ZBA Meeting.*
5. **ZBA10-00026**, 104 Colina Alta Drive, *Staff requests a four week postponement to the August 9th ZBA Meeting.*

MOTION: Motion made by Mr. Melendez, seconded by Mr. Barela and unanimously carried **TO APPROVE THE CHANGES TO THE AGENDA.**

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

NAYS: N/A

Motion passed. (7-0)

ITEM 1:

ZBA10-00022

900 Gomez Road

Edward Evan and Wendy A. Roderick

Applicants request a Variance (Accessory Building, Height) under Section 2.16.030 in an R-1 (Residential) zone. The request is for a detached garage that is proposed to be 17 feet in height. The maximum permitted height for an accessory structure is 15 feet. The applicant is requesting a variance from the El Paso City Code, Title 20, Zoning, Section 20.10.030, Accessory Buildings and Structures, Height, for a proposed detached garage to house his motor home.

Ms. Castle gave a PowerPoint presentation and noted Staff did not receive any phone calls, letters or emails in favor of or opposition to the request. To grant a variance, Ms. Castle requested Board Members carefully considered the following questions:

1. Is the variance consistent with public interest?
2. Is the need for the variance due to special conditions?
3. Would a literal enforcement of the ordinance create an unnecessary hardship?
4. Would the spirit of the ordinance be observed and substantial justice done if the variance is approved?

Ms. Castle read the following into the record:

Definition of Unnecessary Hardship, Section 20.02.1128, "Unnecessary hardship" means a hardship by reason of exceptional shape of a lot, exceptional topographic conditions, or other exceptional physical conditions of a parcel of land. Unnecessary hardship shall not include personal or financial hardship or any other hardship that is self-imposed.

STAFF RECOMMENDS DENIAL OF THE REQUEST FOR A VARIANCE BECAUSE THERE ARE NO SPECIAL CONDITIONS OF THE APPLICANT'S PROPERTY THAT CAUSE AN UNNECESSARY HARDSHIP. IN ADDITION, THE APPLICANT ALREADY HAS THE FULLEST AND BEST USE OF HIS PROPERTY WITH THE EXISTING SINGLE-FAMILY DWELLING IN THE R-1 ZONE DISTRICT.

At this time, Chair Cordova swore in those who would be speaking and/or giving testimony.

To the applicant, Chair Cordova explained, all seven Board Members must vote unanimously in favor to approve the request.

Mr. Evan Edward Roderick and Mrs. Wendy Roderick, applicants, were present. Mr. Roderick explained he would like to construct a 14' x 14' door in the garage to accommodate the motor home. He stated he needed over 13' clear space to prevent damaging the motor home when backing in and that the overall height of the building would be 17'. He has spoken with his neighbors, none of whom are opposed to the request. If at all possible, he would like to build the accessory structure to match the existing home.

Chair Cordova explained Board Members cannot grant a variance if it does not meet certain conditions.

Mr. Roderick responded he selected this location for the proposed accessory structure due to the drainage/irrigation; lot layout and not having to cut down/remove any of his trees.

Chair Cordova, Vice-Chair Jorgensen and Commissioners Melendez, Gezelius and Skarda made comments and/or offered possible suggestions/solutions for the applicant's consideration.

Vice-Chair Jorgensen suggested the applicant postpone the request so that Staff can discuss all possible options with him.

Ms. Osborn clarified the applicant could not apply for a similar request within one year without some changed conditions, for example, the applicant could not apply for another variance higher than a 15' building.

ITEM 3:

ZBA10-00024

3121 Sunny Prairie

Xavier Homes Inc.

Applicant requests a Special Exception under Section 2.16.050 G (Builder Error, Side Yard Setback) in an R-3A (Residential) zone. This would permit the existence of a residence that is located to within 4.8' of the southerly side of the property line. The required side yard setback is 5' in the R-3A zone district.

MOTION:

Motion made by Mr. Melendez, seconded by Mr. Barela and unanimously carried **TO WITHDRAW ZBA10-00024 PER THE APPLICANT'S REQUEST.**

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

NAYS: N/A

Motion passed. (7-0)

ITEM 4:

ZBA10-00025

1235 Galloway Drive

Maria L. Ramirez

Applicant requests a Variance (Yard Setbacks) under Section 2.16.030 in an R-4 (Residential) zone. The request is for a Variance from Title 20, Zoning, Section 20.12, Density and Dimensional Standards, Yard Setback Requirements. The required front and rear yard setback cumulative total is 45 feet; the required side street setback is 10 feet; and, the required side yard setback is 5 feet in the R-4 zone district. The request is for a new, two story residential structure that encroaches into the required yard setbacks. Applicant requests the following set backs: front 43'8", rear 9' 6", sides 10'. The zoning administrator determined that the front setback is along Galloway Drive, the rear setback is along Morrow Drive, and the side setbacks are at the west and east. The zoning administrator also determined that the front setback along Galloway should be 15'. Staff recommends approval of a Variance due to the odd shape of the lot with a recommendation that the front setback along Galloway be 15' from the property line.

MOTION:

Motion made by Mr. Melendez, seconded by Mr. Barela and unanimously carried **to POSTPONE ZBA10-00025 FOUR WEEKS TO THE AUGUST 9TH ZBA MEETING PER THE APPLICANT'S REQUEST.**

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

NAYS: N/A

Motion passed. (7-0)

ITEM 5:

ZBA10-00026

104 Colina Alta Drive

Mario Cuevas

Applicant requests a Special Exception under Section 2.16.050 K (Carport over a Driveway) in an R-3 (Residential) zone. The request is for 20'11" by 20' carport of which a 20'11" by 19'5" portion is encroaching in the required front yard setback and that is located to within 1'6" of the front property line. The required front yard setback is 20' in the R-3 zone district. The applicant is requesting a special exception for an existing carport. The applicant is required to apply for the Special Exception as he is encroaching more than the 150 square feet of permitted open porch in the required front yard setback. There is no utility easement at the front property line. The structural review by Building Permits & Inspections is pending. The elevation drawing indicates that the building materials match the house. The roof of the carport shall not rise higher than the roof of the house. Staff recommends approval of the request as it meets all of the requirements of Special Exception K.

MOTION:

Motion made by Mr. Melendez, seconded by Mr. Barela and unanimously carried **TO POSTPONE ZBA10-00026 FOUR WEEKS TO THE AUGUST 9TH ZBA MEETING PER STAFF'S REQUEST.**

Ms. Osborn asked Ms. Castle if, prior to her conversation with the applicant before the meeting, the recommendation was to approve the request with the condition the applicant reduce the size of the carport. Ms. Osborn urged Board Members that the motion language be clearly stated.

Ms. Castle agreed and added she would verify whether the property was registered legal non-conforming.

Per the PowerPoint presentation photographs, Mr. Melendez commented that construction had already begun. He asked Mr. Castro, Jr. whether or not a permit was issued.

Mr. Antonio Castro, Jr., speaking on behalf of his father, Mr. Antonio Castro, Sr., applicant, explained he was in the process of obtaining a permit. He explained his uncle had built the carport approximately 30 years ago.

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

Chair Cordova asked if there were any other questions and/or comments. There being none.

1st MOTION:

Motion made by Ms. Jorgensen **TO APPROVE THE 34' X 15' ADDITION AND THE ENCROACHMENT INTO THE REAR YARD SETBACK ALONG WITH A 10' SETBACK PENDING THE STAFF INVESTIGATION INTO THE LEGALITY OF THE CARPORT.**

There was no second. Motion failed.

Ms. Osborn explained Board Members can include conditions in the motion language. She suggested the Board approve the encroachment to the rear yard setback with the condition that either:

1. The carport be brought to within no closer than two feet; or
2. Unless there has been a previous legal non-conforming filed; or
3. Unless the applicant applies for a Special Exception for 15 Years or More, Current Owner Not Responsible.

Additionally, Ms. Osborn suggested the Board may approve the request with the condition that the carport be reduced in size, or the property has been registered legal non-conforming, or the applicant chooses to submit a Special Exception to be made legal.

Mr. Melendez requested including a condition that the applicant obtain a permit in the motion language.

2ND MOTION:

Motion made by Ms. Jorgensen, seconded by Mr. Gezelius and unanimously carried **TO APPROVE THE REQUEST WITH THE CONDITION THAT EITHER THE CARPORT BE REDUCED TO WITHIN TWO FEET OF THE SIDE PROPERTY LINE, OR UNLESS THERE IS EVIDENCE OF IT BEING REGISTERED LEGAL NON-CONFORMING, OR THE APPLICANT SUBMITS ANOTHER APPLICATION FOR A SPECIAL EXCEPTION L, 15 YEARS OR MORE, CURRENT OWNER NOT RESPONSIBLE.**

Mr. Melendez noticed the condition regarding the applicant obtaining a permit was not included in the motion.

Ms. Osborn noted the permit is a given; however, you can include the language in the motion as you would like.

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

NAYS: N/A

Motion passed. (7-0)

Regarding vacant corner lots, Mr. Melendez stated property owners can designate either side to be the front of the home.

Regarding residential zoning, Ms. Castle explained how Staff determines which side would be designated the front. Commercial properties located on a corner may designate which side is the front, rear, etc.; however, that decision cannot change during the course of the development.

Ms. Castle will make the requested changes to the sample site plan and present the revised ZBA application at the next ZBA meeting.

9. Board Appointment Training schedule

Ms. Castle asked if Board Members would prefer scheduling a training session immediately after a ZBA meeting or a special ZBA training meeting. All Board Members, Regular and Alternates; are requested to attend.

Mr. Skarda preferred immediately after a ZBA meeting.

Chair Cordova suggested Staff email Alternate Board Members asking what their preference would be regarding the proposed training.

Staff will confirm whether or not Council Chambers will be available August 9th.

10. Approval of Minutes: June 14, 2010

Chair Cordova asked Board Members if they had any corrections/revisions to the minutes.

Vice-Chair Jorgensen referred to page 2, the last paragraph and wondered what the appropriate wording should be.

Chair Cordova revised the sentence as follows:

From – ~~“To the applicant’s sister, Chair Cordova reiterated, should the inspector find the structure is not code compliant, the applicants will be required to correct the code violation and/or remove the structure entirely.”~~

To – “To the applicant’s sister, Chair Cordova reiterated, should the inspector find the structure is not code compliant, the applicants will be required to correct the code violation and/or remove the structure entirely.”

MOTION:

Motion made by Mr. Barela and unanimously carried **TO APPROVE THE JUNE14, 2010 MEETING MINUTES, AS CORRECTED.**

AYES: Ms. Jorgensen and Messrs. Barela, Cordova, Mendez, Melendez and Skarda

NAYS: N/A

ABSTAIN: Mr. Gezelius

Motion passed. (6-0)

Following the vote, Chair Cordova referred to agenda item 1. ZBA10-00022, 900 Gomez Road, regarding the accessory structure and/or porch options. He asked if it were possible to somehow correlate the Variance and Special Exception language, regarding height. He would like to increase the height without having to attach to the existing structure.

Ms. Osborn clarified the Chair was asking Staff to review the height requirements for accessory structures.

Chair Cordova responded he was wondering what would need to be done to look into that, especially if the applicant wanted to match the existing house, aesthetically, thereby increasing the height.

Ms. Osborn suggested the Chair ask Staff to review the code language. Ms. Castle will meeting with Mr. Mathew McElroy, Deputy Director, Planning, to discuss and review the issues and whether or not the language should be revised.

Mr. Melendez noted the accessory structure might restrict the view in smaller lots in residential areas.

Ms. Osborn suggested Staff place an item on the next ZBA agenda so that Board Members can discuss and make recommendations/suggestions regarding limiting to R-1 zoning, limiting the height, etc.

No further discussion. Meeting was adjourned.

ADJOURNMENT:

MOTION:

Motion made by Mr. Gezelius and unanimously carried **TO ADJOURN AT 2:39 P.M.**

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

NAYS: N/A

Motion passed. (7-0)

Linda Castle, Senior Planner