



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBERS
AUGUST 11, 2008
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order at 1:30 p.m. by Mr. Robert Veliz, Chair.

The following Board Members answered roll call:

Mr. Robert Veliz (Chair)
Mr. David Marquez (Vice-Chair)
Mr. Oscar Perez
Mr. Rick Cordova
Mr. Sam Barela
Mr. Randy Bowling
Mr. Rigoberto Mendez
Mr. Jose Melendez
Mr. Larry Nance

The following City Staff members were present:

Ms. Mirian Spencer, Development Services Department, Planning Division, Planner
Ms. Linda Castle, Development Services Department, Planning Division, Senior Planner
Mr. Juan Estala, Development Services Department, BP&I, Chief Plans Examiner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Staff requested the following changes:

1. ZBA08-00062, 10512 Tareyton Street, delete per the Applicant
2. ZBA08-00037, 5005 Love Road, postpone four (4) weeks per the Representative

Motion made by Mr. Nance, seconded by Mr. Melendez and unanimously carried to **APPROVE THE CHANGES TO THE AGENDA AS FOLLOWS:**

- 1. ZBA08-00062, 10512 TAREYTON STREET, DELETE PER THE APPLICANT; AND**
- 5. ZBA08-00037, 5005 LOVE ROAD, POSTPONE FOUR (4) WEEKS PER THE REPRESENTATIVE**

AYES: Messrs. Perez, Cordova, Barela, Bowling, Veliz, Mendez, Melendez, Nance and Marquez

NAYS: N/A

The Motion passed. (9-0)

ITEM 1:

ZBA08-00062

10512 Tareyton Street

Ignacio Fonseca

Applicant requests a Special Exception under Section 2.16.050 K (Carport over a Driveway) in an R-3 (Residential) zone. Staff is not making a recommendation as the applicant has withdrawn his request for the carport.

Motion made by Mr. Nance, seconded by Mr. Melendez and unanimously carried to **DELETE ZBA08-00062.**

AYES: Messrs. Perez, Cordova, Barela, Bowling, Veliz, Mendez, Melendez, Nance and Marquez

NAYS: N/A

The Motion passed. (9-0)

ITEM 2:

ZBA08-00064

4201 Marcus Uribe Drive

Juan Mimbela, Jr.

Applicant requests a Special Exception under Section 2.16.050 F (Side Street Yard Setback) in an R-3/sc (Residential/special contract) zone. This would permit the existence of an addition located to within 5' of the side street property line. The required side street yard setback is 10 feet in an R-3/sc zone. The applicant received a building permit for an addition that encroaches 5' into the required side street yard setback. The encroachment was detected at the foundation inspection. The addition does not encroach into the required rear yard setback, nor does it encroach into the required front yard setback. The applicants have also received the written approval from the utility companies permitting construction over a 10' utility easement. The Engineering Department – Traffic Division has reviewed the plans and has found them to be acceptable. The applicant has a storage shed located in the side street yard setback. The storage shed will need to be relocated into the rear yard.

Ms. Spencer gave a PowerPoint presentation and stated at this time Staff is recommending approval of the Special Exception F with the conditions that the applicant relocate or remove the storage shed located in the side street yard setback and that the applicant will not be permitted to request any additional requests for reductions in setbacks from the Zoning Board of Adjustment as per condition 2 of Section 2.16.050 F of the El Paso City Code.

The Zoning Board of Adjustment is empowered under Section 2.16.050 F to:
“Modify district side street yard requirements where the following conditions are met:
2. The minimum front and rear setbacks shall not be reduced; and,

Mr. Juan Mimbela, Jr., Applicant, noted he had received letters from all utility companies.

Mr. Veliz asked Staff whether or not a house could be built on an easement.

Ms. Castle responded the house would slightly encroachment onto the easement.

Mr. Barela noticed the Time Warner Cable Encroachment Agreement did not have a signature from the Time Warner Cable representative.

Mr. Mimbela added the Time Warner Cable representative had explained to him that his signature authorized the encroachment.

Ms. Castle responded the City would accept Mr. Mimbela’s statement and that would suffice.

Mr. Nance stated the Encroachment Agreement could not be enforced without proper signature.

Mr. Mimbela, Jr. assured the Board he would continue trying to obtain the proper signature and added the storage shed had already been moved.

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

AYES: Messrs. Perez, Cordova, Barela, Bowling, Veliz, Mendez, Melendez, Nance and Marquez

NAYS: N/A

The Motion passed. (9-0)

After the vote, Mr. Nance asked Ms. Osborn whether or not she agreed with his statement regarding the signature from Time Warner.

Ms. Osborn concurred.

ITEM 3:

ZBA08-00065

2912 Schooner Drive

Agustin Arellano

Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3 (Residential) zone. This would permit the construction of a 22.5' by 6' addition located to within 19' of the rear property line. The required cumulative front and rear yard setback total is 50 feet in an R-3 zone. The applicant is proposing to construct a 22.5' by 12' addition of which a 22.5' by 6' portion of the addition is encroaching 6' into the required rear yard setback. The applicant is also constructing a 168 sq. ft. covered patio which cannot be enclosed. The applicant has accessory buildings located in the side yard setbacks. There is a storage shed located in one side yard setback and dog cages in the other side yard setback which will have to be relocated because they encroach into the required side yard setback. The applicant will be required to relocate or remove the accessory buildings from the side yard setbacks, and will also have to reduce the square footage of the accessory buildings to not exceed 180 square feet.

Ms. Spencer gave a PowerPoint presentation and noted Staff recommends approval of the Special Exception C with the conditions that the applicant remove the accessory buildings located in the interior side yard setbacks, and that accessory buildings be reduced to not exceed a maximum of 180 square feet in size per conditions 4 and 5 of Section 2.16.050 C of the El Paso City Code.

The Zoning Board of Adjustment is empowered under Section 2.16.050 C to:
“Permit an extension of a single-family residential structure into the required rear yard, which shall be measured to the rear property line, not to the centerline of the alley, if one exists; provided, however, that:
4. The minimum side and side street yards shall not be reduced; and,
5. The total floor area of all detached accessory structure(s) existing or later constructed on the shall not exceed one hundred eighty square feet; and,

Mr. Veliz asked whether or not the storage unit was attached to the house.

Mr. Agustin Arellano, Applicant, explained he had cut back the one wall that was previously encroaching into the setback. He concurred with Staff recommendations.

Mr. Melendez asked Staff if the front porch was part of the new addition.

"Permit the encroachment into the required front yard setback for a lot in a residential (R) district beyond other allowed modifications for a carport covering a driveway; provided, however, that:
2. The zoning board of adjustment has received the written approval of the structural design from the building permits and inspection division of the development services department; and,
3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, open on three sides, and attached to the main structure; and,
4. The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling, nor shall the carport rise above the highest point of the roof of the dwelling; and,

Ms. Castle explained the Applicant had been advised his item was on the agenda and Staff was requesting the Board consider the request. Additionally, the Applicant has been cited by Code Enforcement and requested the Applicant take down the carport. Furthermore, the carport is encroaching onto the side yard setback, a violation of the Code.

Mr. Bowling asked Staff if the Applicant had requested the item appear on today's agenda.

Ms. Spencer responded that the Applicant had been informed that the item was on today's agenda. Additionally, the item had been postponed at a previous ZBA meeting to allow the Applicant to acquire a demolition permit to remove the carport.

Mr. Veliz noted the Applicant had not requested the item be postponed.

Mr. Bowling questioned whether or not the Board needed to take any action considering the Applicant is violating the Code and also questioned whether the Applicant had submitted a formal request that the Board take some kind of action. Was the Board required to take action when the Applicant has already been cited?

Ms. Castle stated the Board is not required to take action that the Staff was making a recommendation to hear the case and deny the request.

Mr. Veliz asked if the Board does not take action then the Applicant has the opportunity to come before the Board.

Ms. Castle explained if the Board denies the request, the Applicant must wait one year before re-applying.

Mr. Veliz reiterated the carport is unsafe.

Ms. Castle concurred.

Mr. Bowling was unclear whether or not the Board should hear the request today considering the Applicant had not submitted a formal notice requesting that.

Ms. Castle explained the Applicant's formal request is his application to the Zoning Board of Adjustment for the carport.

Mr. Bowling clarified the Applicant does have an application to the ZBA to keep this carport.

Ms. Castle opined that was the Applicant's intent and added the plans that were submitted showed some additional structural modifications; however, the carport is encroaching into the side setback and the structure is unsafe and will have to come down.

Mr. Bowling asked hypothetically if the Board votes to deny the request based on Staff recommendations, will the Applicant have to come back to the ZBA for a carport that meets the special exceptions. Ms. Spencer responded he would have to wait one year.

Mr. Bowling then asked hypothetically if the Applicant demolished the existing carport and the Board took no action today, the Applicant could come before the Board next month and request the carport.

Mr. Veliz asked could the Board recommend the Applicant make corrections to the existing carport rather than deny the application and have the Applicant wait a year to resubmit.

Ms. Castle explained the Applicant was cited by Code Enforcement in March of this year and has had ample opportunity to apply for a demolition permit and he has not done so.

Mr. Bowling asked what action does the City take when citations are ignored.

Ms. Castle explained the City pursues citations through the court system.

Ms. Osborn asked Staff if those proceedings had begun.

Ms. Castle responded the Applicant has not gone to court; however, Code Enforcement has sent the Applicant a certified letter.

Mr. Nance asked Staff if the Board determines the structure is unsafe would that stop the enforcement action.

Ms. Castle responded no and added the record would reflect the application was denied by the Board. She explained the posts and beam must be moved inward 5 feet to eliminate the side setback encroachment.

Mr. Veliz asked Staff if the Board could approve the application subject to the applicant correcting the side setbacks and placing the beams properly.

Ms. Castle explained the Applicant is pending letters from the utility companies to allow the encroachment onto the easement.

Mr. Bowling concurred with Mr. Veliz' proposal and suggested the Board do nothing and/or let the City follow the normal course of action to demolish the carport.

Ms. Spencer explained Staff has worked diligently with the Applicant regarding all available avenues he might consider.

Mr. Marquez clarified the Applicant has been made aware of his wrongdoings and has chosen not to make the appropriate corrections and/or not make himself available before the Board. He felt something could be done so that the Applicant be made to demolish the existing carport and be taken to court through the Board.

Mr. Cordova stated the carport looked as though it would fall down by itself and added the Applicant has been given plenty of time to take action.

Mr. Bowling opined that the one thing the Board could do was to vote on assisting the City in District Court; however, he would like to have the Applicant present prior to the Board taking any action.

Mr. Veliz felt since the application was before the Board, the Board should take some kind of action.

Ms. Osborn explained the Board's actions today would confirm to the City that the structure is unsafe, violates setback and height requirements, and the Code. Additionally, the Board is confirming that had the Applicant pursued this special exception it would not have been granted.

Ms. Castle noted Staff had not received any letters in favor or in opposition of the application.

Chair Veliz asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Mr. Nance moved, Mr. Rigoberto seconded and unanimously carried to **DENY THE APPLICATION.**

AYES: Messrs. Perez, Cordova, Barela, Bowling, Veliz, Mendez, Melendez, Nance and Marquez

NAYS: N/A

The Motion passed. (9-0)

OTHER BUSINESS:

6. Approval of Minutes July 28, 2008

Chairman Veliz asked if Board Members had questions, comments or corrections regarding the ZBA meeting minutes of July 28, 2008.

Ms. Osborn noted she would research and respond to the Board's questions raised at the July 28, 2008 ZBA meeting.

Motion made by Mr. Nance, seconded by Mr. Marquez and unanimously carried to **APPROVE THE MINUTES OF JULY 28, 2008.**

AYES: Messrs. Perez, Cordova, Bowling, Nance, Mendez, Melendez and Nance

NAYS: N/A

ABSTAIN: Messrs. Barela and Marquez

The Motion passed. (7-2)

DEVELOPMENT SERVICES REPORT:

7. Discussion and action regarding Zoning Board of Adjustment issues.

Ms. Castle added the next ZBA meeting will be held September 8th.

ADJOURNMENT:

Motion made by Mr. Nance, seconded by Mr. Cordova and unanimously carried to **ADJOURN THE ZBA MEETING AT 1:57 P.M.**

AYES: Messrs. Perez, Cordova, Barela, Bowling, Veliz, Mendez, Melendez, Nance and Marquez

NAYS: N/A

The Motion passed. (9-0)

Robert Peña, Secretary, Zoning Board of Adjustment