

Mr. Nance commented on the number of parking spaces for employees and customers.

Ms. Jorgensen asked Mr. Gutierrez if parking was available in front of the restaurant and reiterated the applicant was requesting a parking reduction from eight to seven parking spaces.

Mr. Gutierrez responded yes there is parking on the side; additionally, he is in the process of purchasing the alley behind his property for additional parking and has already paved the alley.

Mr. Hernandez commented on the width of the handicapped parking space.

Ms. Molina explained when only one handicapped parking space is needed; the parking space must be van accessible, eight feet for parking and eight feet for the landing.

Ms. Jorgensen wondered if the Engineering Department – Traffic Division Staff recommendations should be included in the Motion. Ms. Jorgensen read the recommendations into the record:

1. Alley on side of property shall be paved to City standards.
2. Proposed 3 ft ADA accessible route from back to front of restaurant shall be used only for ADA and pedestrian traffic
3. Parking lot shall be upgraded to City standards.
4. No objection to proposed Parking reduction.

Ms. Molina replied yes and added the alley was not paved according to City standards.

Mr. Gutierrez responded he would repave the alley and was aware of and accepted the recommendations of the Engineering Department – Traffic Division Staff.

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

1st MOTION:

Motion made by Mr. Hernandez, seconded by Mr. Cordova and unanimously carried **TO APPROVE.**

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez, Mendez and Melendez

NAYS: N/A

The Motion passed. (9-0)

1st MOTION AMENDED:

Motion made by Mr. Hernandez, seconded by Mr. Cordova and unanimously carried **TO APPROVE WITH ENGINEERING DEPARTMENT – TRAFFIC DIVISION STAFF RECOMMENDATIONS.**

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez, Mendez and Melendez

NAYS: N/A

The Motion passed. (9-0)

ITEM 2:

ZBA09-00036

718 Blacker Avenue

Donald Luciano

Applicant requests a Special Exception under Section 2.16.050 G (Builder Error, Side Yard Setback) in an R-3/NCO zone. This would permit the existence of a new single-family dwelling that was built encroaching 0.7 inches within 5 feet side yard setback. The required side yard setback is 5' in the R-3/NCO (Residential/Neighborhood Conservancy Overlay) zone. This property was previously reviewed and approved for the construction of a new single-family dwelling by the City Review Committee on May 18, 2009, as a requirement of the NCO zone overlay. The applicant is now requesting the Builder Error Special Exception for an encroachment of 8.4 (0.7) inches into the westerly side setback. Please see applicant's letter stating events that resulted in the encroachment.

CLARIFICATION: Ms. Guerrero explained, per Policy, Staff is to use the property legal description provided by El Paso Central Appraisal District. She noted a recent survey has revised the legal description to read "only the West 13 feet ..."; however, as of today, El Paso Central Appraisal District has corrected the legal description.

Ms. Guerrero gave a PowerPoint presentation and noted **STAFF RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION.** Staff did receive one letter of opposition; copies of the letter were distributed to Board Members.

CLARIFICATION: Ms. Jorgensen clarified the encroachment measurements should read 0.7 feet, 8.4 inches.

Mr. Clint Armstrong, Palms West Enterprises, LLC, representing the applicant, explained the measurement error occurred due to a mistake in an older Title policy that was never corrected. A new survey was requested and the legal description was revised.

CLARIFICATION: Chair Bowling clarified 13.5 means 13 feet six inches.

Ms. Castle explained Planning Staff mailed notification letters for both the Zoning Board of Adjustment and City Review Committee meetings. City Review Committee notification letters are mailed to property owners immediately abutting the subject property; seven letters were mailed to abutting neighbors and one to the Rim/University Neighborhood Association Representative. Zoning Board of Adjustment letters were mailed on September 30th to property owners within 300 feet.

Mr. Armstrong stated City Staff reviewed and approved the plans and issued permits for construction. He clarified the encroachment was in the northwest section.

Chair Bowling asked if members of the audience were present to speak in favor of or in opposition to the application.

Mr. Flip Lyle, residing at 811 Rim Road, spoke in favor of the proposed construction.

Ms. Osborn explained the City Review Committee, utilizing the Rim-University Neighborhood Plan guidelines adopted by the City, reviews and approves all construction projects for properties designated NCO ("Neighborhood Conservancy Overlay").

Ms. Christina Ainsworth, Development Services Department, Planning, Lead Planner, explained the applicant submitted a site plan which was approved by the City Review Committee. The primary role of the City Review Committee is to review the design of the proposed structure, per the Rim-University Neighborhood Plan guidelines; setbacks are reviewed at the time the applicant applies for permits.

MOTION:

Motion made by Ms. Jorgensen, seconded by Mr. Hernandez and unanimously carried **TO APPROVE**.

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez, Mendez and Melendez

NAYS: N/A

The Motion passed. (9-0)

ITEM 3:

ZBA09-00037

5741 Manila Street

ESM Investments, LLC

Applicant requests a Special Exception under Section 2.16.050 F (Side Street Yard Setback) in an R-5 zone. This would permit the existence of a two-family structure (duplex) that is located to within 5 feet of the side street property line. The required side street yard setback is 10 feet in the R-5 (Residential) Districts. The applicant is requesting the special exception to legalize a duplex that was constructed encroaching on public right-of-way at the side street yard. The City Council approved an Ordinance on May 19, 2009, to sell a portion of the right-of-way to Mountain Vista Builders. Please see enclosed explanation provided to City Council by the Financial Services Department. The applicant is requesting to reduce the required 10 foot side street yard setback to 5 feet. The Engineering Department-Traffic Division has reviewed the site and has no objections to the request.

Ms. Castle gave a PowerPoint presentation and explained the building was built to the property line without a side street yard setback. Staff **RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION.**

Chair Bowling asked Staff if the structure was 10 feet from the street.

Ms. Molina explained Engineering Department – Traffic Division Staff checks visibility for the side street yard Special Exception, not the width of the street. Ms. Molina added Traffic Division Staff has no objection with the curbing; however, Mr. Ted Marquez, Engineering Division Manager, Traffic Division, had requested the representative move the power poles from the middle of the sidewalk.

Mr. Carlos Jimenez, CAD Consulting Co., representing the applicant, gave lengthy background information regarding the property and explained the position of the power poles per "Exhibit A" in the backup information.

Ms. Molina responded Traffic Division Staff requests sidewalks be clear of any obstacles; however, Staff does not object if a wheelchair can easily maneuver around the power poles.

Mr. Estala explained the building permit set of plans did not show the location of City property, and the required 10 foot setback was shown; therefore, the permit was approved. After the structure was built, via a Title search, the property was sold.

Chair Bowling wondered if the subdivision plans might be wrong.

Mr. Jimenez responded yes, the subdivision plans are wrong; the subdivision plan shows the lot line using the 10 feet owned by the City.

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

Ms. Jorgensen questioned the location of the five foot encroachment.

Ms. Erika Ruiz, representing Alejandro Restrepo, explained the proposed water vending machine will have two parking spaces located in the front. She noted the water dispenser is located at the front of the water vending machine. Ms. Ruiz clarified the Engineering Department – Traffic Division Staff requested there be 10 feet for vehicles to pull up next to the water vending machine and an additional 10 feet in the event the vehicle door opens. Ms. Ruiz added permits have been approved and issued for the setback and curbing; however, the final issue is the additional 10 feet for vehicles parked next to the water vending machine.

Mr. Hernandez requested clearer drawings to include drive-thru and/or parking capability/spaces and defined traffic lanes; additionally, the site plan does not show any parking spaces.

Ms. Jorgensen also requested clearer drawing(s) that show the location of the water dispenser, where the drivers pull up, which side of the water vending machine the drivers pull up to and orient which side of the structure patrons receive service from.

Mr. Aguilar stated he too would like a clearer site plan as he could not approve the request based on the drawing submitted.

Chair Bowling noted additional parking is not required for water vending machines located at Walgreen's and Circle K's. He stated if the site plan is correct, there is no need for the Special Exception.

1st MOTION:

Motion made by Mr. Hernandez **TO POSTPONE ZBA09-00039 TO THE NOVEMBER 9TH ZBA MEETING AND HAVE THE APPLICANT COME BACK WITH AN ADEQUATE PLAN, CLEARER THAN THE ONE SUBMITTED.** There was no second.

Chair Bowling reminded Board Members of the Special Exception request; other City Staff will ensure the applicant's plans are according to Code. He requested Board Members state specifically what it is they would like the applicant to include in the new drawing; however, it must be within the purview of the Board.

Ms. Osborn explained other City Departments may have additional requirements for the representative.

Ms. Castle suggested Board Members postpone the item to the next ZBA meeting; if the encroachment into the side yard setback is not needed the representative would withdraw the request.

Mr. Hernandez referred to his previous motion. Mr. Nance seconded.

Prior to the vote, Mr. Mendez asked that the representative bring with her a detailed site plan that clearly shows the parking spaces and the location of the encroachment.

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

2nd AND FINAL MOTION:

Motion made by Mr. Hernandez, seconded by Mr. Nance and unanimously carried **TO POSTPONE ZBA09-00039 TO THE NOVEMBER 9th ZBA MEETING AND THAT THE REPRESENTATIVE BRING A DETAILED SITE PLAN, MUCH LIKE AN ENGINEER'S DRAWING.**

No further discussion from Board Members. The vote was taken.

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez, Mendez and Melendez

NAYS: N/A

The Motion passed. (9-0)

ITEM 6:

ZBA09-00040

Dyer Street

NLIGP, LLC

Applicant requests a Special Exception under Section 2.16.050 I (Reduction in Off-Street Parking Requirements) in a C-2 (Commercial) zone. This would permit a 15 percent reduction in the off-street parking requirements for a proposed 612 unit apartment complex, from the required 1,216 parking spaces to 1,034 parking spaces. The applicant is requesting the maximum permitted 15% reduction offered by the Special Exception (182 spaces) in off-street parking requirements for a new apartment complex. The applicant is requesting the reduction in order to meet park/pond area requirements and fire lane width and location requirements. The Engineering Department-Traffic Division has reviewed the request and has no objections.

Ms. Castle gave a PowerPoint presentation and noted the actual address is 11616 Dyer Street. Staff **RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION.** There were no letters or phone calls in favor of or opposition to the request.

Mr. Jim Smith, representing the applicant, concurred with Staff comments. He explained the project is in response to the City's request to construct apartment complexes for incoming BRAC soldiers and their families, the project has been ongoing for approximately one year. He stated the applicant is requesting a parking reduction from 1.9 to 1.7 parking spaces per unit.

Ms. Castle explained, per the ordinance, the maximum parking reduction allowed is 15%. She explained, per the Code, the increase in parking requirements was revised in the early 1980's.

Mr. Smith explained that the site plan has been revised to a more neighborhood friendly/quad type parking. There will be one marked parking space per each unit; there are 36 units per building. Mr. Smith does not foresee a need for overflow parking. He noted, for a development of this nature, the present design requirements are standard and handicapped parking; there are no design requirements for compact and/or motorcycle parking. For deployed troops and their vehicles, Fort Bliss provides secure, covered parking.

Mr. Nathan Waggner, Cash Waggner & Associates PC, Engineer for the Developer, has been working with developers for 12 years with 1.7-1.9 parking space per unit and to his knowledge there have not been any parking complaints.

Chair Bowling commented on the risk and responsibility of the property owner to provide adequate parking.

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

MOTION:

Motion made by Ms. Jorgensen, seconded by Mr. Hernandez and unanimously carried **TO APPROVE.**

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez, Mendez and Melendez

NAYS: N/A

The Motion passed. (9-0)

Other Business:

7. Approval of Minutes: September 14, 2009

Chair Bowling asked Board Members if there were any corrections to the minutes for September 14, 2009.

Regarding 1501 Lomaland Drive, Ms. Jorgensen thought there were seven apartment buildings encroaching.

Ms. Castle responded there were five.

MOTION:

Motion made by Mr. Melendez, seconded by Mr. Nance and unanimously carried **TO APPROVE THE SEPTEMBER 14, 2009 MEETING MINUTES.**

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez and Melendez

NAYS: N/A

ABSTAIN: Mr. Mendez

The Motion passed. (8-0)

Development Services Report:

8. Discussion and action regarding Zoning Board of Adjustment issues:
Revising Section 2.16 ordinance language

Special Exception C. Rear Yard Setback, Single-Family Residence.

Ms. Castle read the revised language into the record:

2. The maximum square footage allowed shall not exceed the result of multiplying **one-third** of the average width of the lot by three-fifths of the required rear yard

Ms. Castle noted there could be less, if the applicant requested it; however, there could not be more. The language allows the applicant more options, regarding width; however, this will not increase their depth. Additionally, the side yard setbacks cannot be encroached upon and the minimum 10 foot rear yard setback must be maintained.

Ms. Osborn clarified the maximum square footage is the same maximum square footage; however, the applicant can use it in any configuration.

Chair Bowling congratulated Staff on a good job.

Special Exception D. Rear Yard Setback, Duplex.

Ms. Castle read the revised language into the record:

2. The maximum square footage allowed to each unit of the duplex, shall not exceed the result of multiplying **one-sixth** of the average width of the lot by three-fifths of the required rear yard;
3. The total of all extensions that could be granted to each unit may be combined and granted to one unit provided that the total of all extensions granted for both units of the duplex shall not exceed the result of multiplying **one-third** the average lot width by three-fifths of the required rear yard;

Mr. Nance suggested adding a clause whereby both owners must agree.

Ms. Osborn suggested one unit may get the special exception that was allowed for both if it's a single-owner for both units.

Mr. Cordova suggested “by approval of all owners.”

Ms. Osborn concurred and suggested adding to the last phrase, “subject to the approval of all owners.”

Chair Bowling noted taking someone else’s “privilege”, they should certainly acknowledge that.

Ms. Castle responded previously Staff did request acknowledgement from the other owner and/or tenant.

Mr. Hernandez explained having a paper trail for subsequent owners in the event they wanted to add property.

Ms. Castle noted the next step will have the Development Coordinating Committee and City Plan Committee for review and approve.

Chair Bowling thanked Staff for all their effort.

ADJOURNMENT:

MOTION:

Motion made by Mr. Nance, seconded by Mr. Barela and unanimously carried to **ADJOURN THE ZBA MEETING AT 3:15 P.M.**

AYES: Ms. Jorgensen and Messrs. Aguilar, Nance, Cordova, Barela, Bowling, Hernandez, Mendez and Melendez

NAYS: N/A

The Motion passed. (9-0)

Linda Castle, Senior Planner