



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES  
2ND FLOOR – CITY COUNCIL CHAMBERS  
OCTOBER 13, 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. Rigoberto Mendez  
Mr. Sam Barela  
Mr. Servando Hernandez  
Mr. Jose Melendez  
Ms. Alisa Jorgensen

The following City Staff members were present:

Ms. Mirian Spencer, Development Services Department, Planning Division, Planner  
Mr. Robert Pena, Development Services Department, Planning Division, ZBA Secretary  
Ms. Linda Castle, Development Services Department, Planning Division, Senior Planner  
Mr. Mike Neligh, Development Services Department, BP&I, Senior Plans Examiner  
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney  
Mr. Mark Shoosmith, City Attorney's Office, Assistant City Attorney

**CHANGES TO THE AGENDA**

Staff requested the following:

8. ZBA08-0037 5005 Love Road be **POSTPONED FOUR (4) WEEKS UNTIL THE NEXT ZBA MEETING TO BE HELD NOVEMBER 10, 2008.**

Motion made by Ms. Jorgensen, seconded by Mr. Mendez and unanimously carried to **POSTPONE ZBA08-00037, 5005 LOVE ROAD FOUR (4) WEEKS UNTIL THE NEXT ZBA MEETING TO BE HELD NOVEMBER 10, 2008.**

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Melendez, Barela, Veliz, Marquez, Hernandez and Mendez

**NAYS:** N/A

The Motion passed (9-0)

**ITEM 1:**

ZBA08-00072

4848 Tetons Drive

Pedro Natividad

Applicant requests a Special Exception under Section 2.16.050 K (Carport over a Driveway) in an R-4 zone. This would permit the construction of a 23' by 24' carport of which a 23' by 9' portion is proposed to encroach 9' into the required front yard setback. The required cumulative front and rear yard setback total is 45' in an R-4 (Light Density Residential) zone. The applicant is requesting to add a carport that is proposed to be located to within two feet of the front property line. There are no utility easements located at the front property line. Building Permits & Inspections has reviewed the plans and notes no problems with the structural plans.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS APPROVAL OF THE REQUEST FOR THE CARPORT AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION.**

*Prior to the meeting, Staff distributed a memorandum from Mr. Juan Estala, Chief Plans Examiner, Building Permits and Inspections Division, which stated he reviewed the plans submitted for 4848 Tetons Drive and found the carport's structural design to be acceptable. Furthermore, the memorandum was written pursuant to Title 2.16.050 K.2., and provided written approval for the carport design based upon structural design considerations from the Building Permits & Inspections Division of the Development Services Department.*

Mr. Elmer Stene, Astro Builders, representing the applicant, was present.

Mr. Cordova asked Staff if there were any issues regarding easements.

Ms. Spencer responded no.

Ms. Jorgensen reiterated that, as per the schematic, all materials would match the home as closely as possible.

Mr. Stene responded, yes, correct.

Mr. Hernandez asked Mr. Stene whether or not the archway would be removed.

Mr. Stene answered the archway would be removed and the beams would be set against the original foundation of the home.

Mr. Perez asked Staff if there were other carports in the neighborhood.

Mr. Pena replied no, he did not see any carports on this street.

Mr. Hernandez asked if the curbing and/or part of the sidewalk would be removed.

Mr. Stene responded the curbing would be removed to allow vehicles to enter and exit.

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. Cordova moved, Mr. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION.**

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez

**NAYS:** N/A

The Motion passed. (9-0)

**ITEM 2:**

ZBA08-00073

748 Woodland Avenue

Jared and Kay Becker

Applicants request Special Exception from Section 2.16.050 C (Rear Yard Setback) and Section 2.16.050 M (Front Yard Setback) in an R-1 zone. This would permit the construction of a 12'-3" by 11'10" addition that is proposed to encroach 10' into the required front yard setback. This would also permit the construction of a 38'1" by 13'5" addition that is proposed to encroach 13'5" into the required rear yard setback. The required cumulative front and rear yard setback total is 100 feet in an R-1 (Light Density Residential) zone. The applicants are requesting additions to their house that are proposed to encroach in the front and rear yard setbacks.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS APPROVAL OF THE REQUESTS TO ENCROACH IN THE FRONT AND REAR YARD SETBACKS AS THEY MEET THE REQUIREMENTS OF THE SPECIAL EXCEPTIONS.**

Mr. Keith Alexander, BAR Construction, representing the applicants, was present.

Mr. Melendez asked Mr. Alexander whether or not the construction would impact the on-site ponding.

Mr. Alexander responded no.

Mr. Neligh reiterated Mr. Estala, Chief Plans Examiner, had reviewed the plans and had no issues regarding on-site ponding.

Mr. Mendez asked Staff if there were any phone calls and/or letters opposing the application.

Staff responded that there was no opposition.

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. Melendez moved, Mr. Marquez seconded and unanimously carried to **APPROVE THE APPLICATION.**

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez

**NAYS:** N/A

The Motion passed. (9-0)

**ITEM 3:**

ZBA08-00074

1524 Phil Gibbs Drive

Ricardo Bueno

Applicant requests a Special Exception under Section 2.16.050 M (Front Yard Setback) in an R-3 zone. This would permit the existence of a 19.25' by 7.1' portion of a residence that encroaches 7.1' into the required front yard setback. The required cumulative front and rear yard setback total is 50 feet in an R-3 (Light Density Residential) zone. The applicant is requesting approval of an existing addition to his residence that encroaches in the required front yard setback. The applicant was issued a correction notice for building without a permit on August 19, 2008, after a complaint was received for the construction. The driveway length of 17' does not meet the 20' required by the Special Exception for a garage. The applicant is proposing a new curved driveway, in the front yard, to meet the 20' driveway length.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS DENIAL OF THE REQUEST BASED ON THE REQUIREMENT #6 OF THE SPECIAL EXCEPTION THAT: IF THE PROPOSED MODIFICATION IS FOR AN ENCLOSED GARAGE, A MINIMUM TWENTY FOOT DRIVEWAY SHALL BE REQUIRED; AND, FURTHER, THE PROPOSED NEW DRIVEWAY DOES NOT COMPLY WITH REQUIREMENT #7 OF THE SPECIAL EXCEPTION THAT: UNLESS OTHERWISE**

**PROVIDED IN THIS SECTION, ALL REMAINING AREAS OF THE REQUIRED FRONT YARD SHALL BE PERMANENT OPEN SPACE. "OPEN SPACE" AS DEFINED IN THE ZONING CODE, SECTION 20.01.648, DOES NOT INCLUDE DRIVEWAYS:**

**20.02.648 Open space.**

*"Open space" means an area that is intended to provide light and air and is designed for either scenic or recreational purposes. Open space may include, but is not limited to, lawns, decorative planting, desert areas, foothills, walkways, active and passive recreation areas, playgrounds, fountains, river banks, swimming pools, wooded areas and water courses. Open space shall not include driveways, parking lots or other surfaces designed or intended for vehicular travel or storage.*

The Zoning Board of Adjustment is empowered under Section 2.16.050 M to:
<i>"Permit an extension of a single-family residential structure into the required front yard, which shall be measured to the property line, provided, however, that:</i>
<b>6. If the proposed modification is for an enclosed garage, a minimum twenty foot driveway shall be required.</b>
<b>7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space; and,</b>

*Prior to the meeting, Staff distributed copies of a revised site plan.*

Mr. Andres Lopez, representing the applicant, was present.

Mr. Ricardo Bueno, applicant, was present and explained in 2006 he was granted a permit to add 27' of carport and convert his original garage into a master bedroom. He subsequently enclosed the carport, without proper permit, and was not aware of the 20' driveway requirement.

Ms. Castle reiterated, per the code, that a minimum 20' driveway is required and per the special exception regarding encroaching onto front yard setbacks, the remaining yard must be open space. She explained the applicant was trying to meet the 20' minimum driveway requirement by adding the circular drive which is not allowed per Section 20.02.648 Open Space.

Mr. Veliz clarified Mr. Bueno could add the circular driveway; however, he was requesting a special exception to encroach into the front yard setback.

Mr. Melendez questioned if the garage doors were inset to allow the 20' minimum driveway, could the applicant leave the structure as it currently exists.

Mr. Peña responded as long as the structure is not enclosed.

Mr. Melendez restated, if the garage doors were inset 2.3' to allow the minimum 20' driveway length, the structure could remain.

Ms. Castle responded yes, that would be a solution.

Mr. Perez asked if the proposed circular driveway would suffice as a 20' driveway.

Ms. Castle responded if the Board approves the special exception request, the remaining front yard must be open space.

Ms. Osborn explained the special exception requirements were listed in the agenda backup information, if the applicant does not meet those requirements, the board cannot grant the special exception. She referred to *Section 2.15.060 M.6. If the proposed modification is for an enclosed garage, a minimum twenty foot driveway shall be required.* Additionally, a special exception allows someone to build into the

buildable area of the property. She clarified the applicant was requesting a special exception to enclose the driveway that encroaches into the setback; the Board may approve the request if the applicant meets the minimum requirements.

Mr. Lopez asked if the applicant built a parking pad on the opposite side of the property, would that meet the minimum 20' driveway requirement.

Ms. Castle explained having two driveways would encroach into the open space. "Open space" as defined in the Zoning Code, Section 20.01.648, does not include driveways.

Ms. Jorgensen asked Staff if there was a legal requirement stating the driveway must be located in front of the garage.

Ms. Castle responded, as a practical matter, the driveway must be located in front of the garage.

Mr. Hernandez asked the applicant if he would consider Mr. Melendez' suggestion regarding recessing the garage doors.

Mr. Bueno responded whatever he needs to do, he would do.

Staff noted there were no phone calls or letters opposing the request.

Ms. Jorgensen requested the Chair restate the options the Board could consider.

Mr. Veliz responded the Board cannot provide legal advice; however, the applicant could consider recessing the garage doors.

Mr. Lopez responded he would recess the garage doors 2.1'.

Ms. Castle explained recessing the garage doors would provide the minimum 20' driveway and added the Board could then grant the applicant a special exception to encroach into the front setback.

Ms. Osborn explained the Board can approve the special exception request with conditions.

Mr. Melendez suggested the motion state, "the applicant must maintain a 20 foot driveway."

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. Melendez moved, Mr. Mendez seconded and unanimously carried to **APPROVE THE APPLICATION WITH THE CONDITION THAT THE APPLICANT MAINTAIN A 20 FOOT DRIVEWAY.**

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez

**NAYS:** N/A

The Motion passed. (9-0)

**ITEM 4:**

ZBA08-00075

584 Pat Cruz Lane

Santiago Hernandez

Applicant requests a Variance from Section 20.12.040 E.2., Side and Rear Yard Regulations, in an R-2/c/sp zone. This would permit the existence of a new residence with a roof overhang that encroaches 4.25' into the southerly side yard setback. Roof overhangs may project a distance not to exceed 24 inches (2 feet) into the required side yard. The required side yard setback is 6' in this R-2/c/sp (Light Density Residential) zone. The applicant is seeking a Variance from the Zoning Code regulations regarding permitted roof overhangs. Special Permit No. 91-25 granted a side setback of 6', reduced from

the required 8' for the R-2 zone, for this subdivision. The site plan submitted with the building permit application conforms to the required setback requirements at the time of permitting. The property is located on a standard cul-de-sac lot. The property does not have any topographical conditions. The condition necessitating the variance is self-imposed. Denial of the variance would not prohibit any use whatsoever. Literal enforcement of the zoning ordinance would not result in unnecessary hardship for the property owner.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS DENIAL OF THE VARIANCE AS THE VARIANCE IS NOT DUE TO SPECIAL CONDITIONS INHERENT TO THE PROPERTY ITSELF. LITERAL ENFORCEMENT OF THE ORDINANCE WOULD NOT CREATE AN UNNECESSARY HARDSHIP AS DEFINED IN SECTION 20.02.1128 OF THE EL PASO CITY CODE WHICH STATES "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."**

The Zoning Board of Adjustment is empowered under Section 2.16.030 to:

*"Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done."*

**The following questions should be carefully considered in order to grant a variance:**

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?

Mr. Santiago Hernandez, applicant, was present and displayed the Building Inspector's Permits and Inspection Record notes. He explained after each phase of construction was complete he would call for an inspection and added the inspector had no concerns regarding the two corners of the roof, even approving the structural on April 15, 2008. He noted he had ordered the roof from 84 Lumber; however, once the roof was set he noticed the overhang. He stated he had depended on the inspector and the inspector should have failed the roof.

Mr. Veliz asked Staff why the application was not considered a builder's error.

Ms. Castle responded the overhang was encroaching 2.5 feet which is more than the one foot or less requirement for the builder's error.

Ms. Spencer read into the record the definition of builder's error *"the permitted encroachment into any side yard or side street yard setback shall not exceed 10 percent of the required setback or one foot, whichever is greater."*

Mr. Veliz noted the inspector should have taken notice, prior to the roof being added, that the overhang was already protruding.

Mr. Servando Hernandez opined the applicant should not have depended on the inspector to verify the measurements.

Mr. Marquez asked if the applicant knew his measurements were off.

Mr. Santiago Hernandez responded he was not aware his measurements were off.

Mr. Melendez asked Staff how the 10 percent was determined.

Ms. Castle explained, in this case, the required side yard setback is 6 feet; therefore, 10 percent of 6 feet would be 7.2 inches or one foot, whichever is greater.

Mr. Veliz asked if Staff had received any phone calls or letters opposing the request.

Ms. Castle responded no.

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

Mr. Carl Sowell, neighborhood resident, questioned whether or not the pad and framing for the foundation were placed erroneously and/or the plan dimensions and lot size were not reviewed properly. He stated if the Board grants the variance, the surrounding property values will go down and noted he was opposed to the Board granting the variance request.

Mr. Mendez asked the applicant whether or not the carpenter had checked the trusses according to the plans and specifications or perhaps 84 Lumber had erred.

Mr. Santiago Hernandez responded it appears 84 Lumber erred, it was delivered that way.

#### APPENDIX A: Findings – Variances

INQUIRY	FINDINGS
Mr. Veliz read the following into the record:  Is the request for a variance owing to special condition inherent in the property itself?  If yes, <b>CONTINUE</b> If no, <b>STOP</b>	The property is/has ... (e.g., odd-shaped, unusual topography, etc.)
	<u><i>The condition being the shape of the lot</i></u>  <b>AYES:</b> Messrs. Cordova, Mendez, Barela, Veliz, Marquez, Melendez and Hernandez <b>NAYS:</b> Mr. Perez and Ms. Jorgensen

<p>Mr. Veliz read the following into the record:</p> <p>Is the condition one unique to the property requesting the variance?</p> <p>If yes, <b>CONTINUE</b> If no, <b>STOP</b></p>	<p>The condition is unique to this property.</p>
	<p><u>The condition being the shape of the lot.</u></p> <p><b>AYES:</b> Messrs. Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez</p> <p><b>NAYS:</b> Mr. Perez and Ms. Jorgensen</p>
<p>Mr. Veliz read the following into the record:</p> <p>Is the condition self-imposed or self-created?</p> <p>If yes, <b>STOP</b> If no, <b>PROCEED</b></p>	<p>The condition necessitating the request was not created by the property owner.</p>
	<p><u>The condition being the shape of the lot.</u></p> <p><b>AYES:</b> Messrs. Perez, Cordova, Mendez, Barela, Hernandez, Melendez and Ms. Jorgensen</p> <p><b>NAYS:</b> Messrs. Veliz and Marquez</p> <p><i>Mr. Veliz explained there was more than one party at fault.</i></p>
<p><u>At this point, the Board stopped asking the Variance – Finding questions.</u></p>	

Mr. Perez moved, Mr. Barela seconded and carried to **DENY THE APPLICATION.**

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Marquez, Hernandez and Melendez

**NAYS:** Mr. Veliz

The Motion passed. (8-1)

Following the vote, Ms. Castle informed the applicant he could either appeal the Board's decision to District Court within 10 days and/or submit corrected plans for BP& I Staff to review.

**ITEM 5:**

ZBA08-00078

4845 Maureen Circle

Jose E. Flores

Applicant requests Special Exception under Section 2.16.050 K (Carport over a Driveway) in an R-3A zone. This would permit the construction of a 23.5' by 23' carport of which a 23.5' by 14' portion is proposed to encroach 14' into the required front yard setback. The required cumulative front and rear yard setback total is 45' in an R-3A (Light Density Residential) zone. The applicants are requesting the addition of a carport that is proposed to be located to within 1' of the front property line. There is a 10' utility easement at the front property line and the applicant has received letters from the utility companies granting him permission to build over the easement. Building Permits & Inspections has reviewed the structural drawings for the carport and notes that they meet structural requirements.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS APPROVAL OF THE REQUEST FOR THE CARPORT AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION.**

*Prior to the meeting, Staff distributed a memorandum from Mr. Juan Estala, Chief Plans Examiner, Building Permits and Inspections Division, which stated he reviewed the plans submitted for 484 Maureen Circle and found the carport's structural design to be acceptable. Furthermore, the memorandum was written pursuant to Title 2.16.050 K.2., and provided written approval for the carport design based upon structural design considerations from the Building Permits & Inspections Division of the Development Services Department.*

Ms. Marisela Flores, representing the applicant, was present and explained the carport would be in front of the garage, additionally, she will be converting her garage.

Mr. Veliz asked Staff if there were any phone calls or letters opposing the request.

Ms. Castle responded no.

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. Mendez moved, Mr. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION.**

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez

**NAYS:** N.A

The Motion passed. (9-0)

**ITEM 6:**

ZBA08-00079

823 East Yandell Avenue

Centro de Salud Familiar La Fe, Inc.

Applicant requests a Special Exception under Section 2.16.050 B (Side Street Yard Setbacks) in a C-4/sp zone. This would permit the construction of an addition to a medical clinic that is proposed to encroach 10' into the required side street yard setback. The required side street yard setback is 10' in a C-4/sp (Regional Commercial District/Special Permit) zone. The applicants are requesting to construct a new building, adjacent to an existing medical clinic, that is proposed to be located to 0' of the side street property line. The ZBA granted the La Fe clinic at 815 E. Yandell, a Special Exception C on June 25, 2007, to construct a new building located to 0' of the side street and rear property lines for their property at 815 E. Yandell. The subject property has been registered legally nonconforming as to the front and side street setbacks, existing prior to 1955, the effective date of the zoning code. Other nonconforming lots within the same block on the same side of the street or the intersecting street are the subject property at 823 E. Yandell and the building at 816 Montana Avenue, located to within 0' side street property lines. Further, the buildings at 805 E. Yandell, 806 E. Yandell and 719 N. St. Vrain are located to within 0' side street property lines. The applicant's site plan shows 23 parking spaces.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS APPROVAL OF THE REQUEST TO ENCROACH ON THE SIDE STREET SETBACK WITH THE CONDITIONS THAT THE PARKING LOT WILL BE PROVIDED AS SHOWN ON THE SITE PLAN AND THAT NO STRUCTURES WILL BE BUILT ON THE PROPOSED PARKING LOT.**

Mr. Hector DeSantiago, representing the applicant, was present and explained the applicant would be utilizing and adding onto the existing corner building to become the Adult Care Clinic.

Mr. Melendez asked Mr. DeSantiago if a portion of the building encroached beyond the property line.

Mr. DeSantiago responded the overhang did encroach; however, not the actual building.

Mr. Cordova asked Staff if parking requirements were met.

Ms. Castle responded parking requirements had been met, and, in addition, the applicant was granted a special permit for parking at the First Baptist Church on Montana. She added Staff requests the Board include the following conditions in the motion: 1) that the parking lot will be provided as shown on the site plan, and 2) that no structures be built on the proposed parking lot.

Mr. DeSantiago explained, per the Agreement with First Baptist Church, there is no expiration date on the special permit. Additionally, the applicant had recently acquired the parking lot located adjacent to the new Adult Care Clinic.

Mr. Veliz asked Staff if there were any phone calls or letters in opposition to the application.

Ms. Castle responded no.

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

Mr. John Rollins, owner of adjacent property, explained he had called the applicant's representative; however, no one had returned his phone call.

**FOR THE RECORD:** Mr. Rollins requested that he be permitted/allowed the same consideration(s) in the future as the Board permits/allows the applicant today.

Mr. Veliz responded the Board cannot guarantee the future.

Mr. DeSantiago noted the addition to the existing building would be one-story.

Mr. Cordova asked whether or not the parking lot would access the alley.

Mr. DeSantiago responded alley access had not been discussed; however, if required, the applicant would provide access. He stated the intent was to access the parking lot from St. Vrain; however, he was open to suggestions.

Mr. Hernandez requested Mr. DeSantiago consider access through the alley for the disabled.

Ms. Castle stated the applicant would be required to pave the alley. She explained because of the construction/addition of the new facility, the applicant will need to pave the alley to the end of the property.

Mr. Robert Gonzalez, Chief Operating Officer, Central De Salud Familiar La Fe, Inc., opined paving the alley was the City's responsibility. He explained the alley is not currently paved; additionally, you cannot drive through the alley due to the large potholes caused by water drainage.





**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,**

Prior to the meeting, Staff distributed a memorandum from Mr. Juan Estala, Chief Plans Examiner, Building Permits and Inspections Division, which stated he had reviewed the plans submitted for 12008 Sal Rasura Court and found the carport's structural design to be **unacceptable**. Furthermore, the memorandum was written pursuant to title 2.16.050 K.2., and provided written approval for the carport design based upon structural design considerations from the Building Permits & Inspections Division of the Development Services Department.

Mr. David Pedregon, applicant, was present and stated he had met Staff requirements, submitting his revised plans prior to the September 22<sup>nd</sup> deadline. He explained Staff had not informed him his revised plans were not acceptable. He called last Friday and spoke with Mr. Estala regarding the revised plans he had submitted; however, he was unable to come and make the necessary corrections prior to today's meeting. Mr. Pedregon complimented Mr. Estala for his help and recommendations regarding the revised plans.

Mr. Veliz asked the applicant who had drawn the revised plans.

Mr. Pedregon responded he and a friend.

Mr. Veliz added the Board has concerns regarding the safety of the existing structure and would like to take action today. He added if the Board postpones the item he would recommend an engineer review the plans.

Ms. Castle noted the next ZBA meeting would be held November 10, 2008.

Mr. Pedregon suggested the Board deny his request and added he would then probably remove the existing structure.

Per the last ZBA meeting, Mr. Veliz understood the applicant would remove the existing structure and submit new plans in order to ensure that the structure would be constructed properly.

Mr. Neligh explained the applicant would be required to follow proper procedure to ensure the structure is safe.

Ms. Jorgensen added the Board had issues regarding the height of the structure and asked Staff who verifies the height, the applicant or City staff.

Mr. Neligh responded City staff; however, he was unsure if Staff had measured the existing structure's height.

Mr. Veliz noted the applicant has yet to submit proper plans; therefore, postponing the item would not be necessary. He asked Staff if there were any phone calls, emails or letters opposing the application.

Staff responded no.

Mr. Pedregon added he had brought with him photos of the existing structure and commented that the structure was not higher than the roof. Ms. Spencer projected Mr. Pedregon's photos for viewing by the Board.

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. Hernandez moved, Mr. Marquez seconded and unanimously carried to **DISAPPROVE THE APPLICATION**.

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez  
**NAYS:** N/A

The Motion passed. (9-0)

Following the vote, Ms. Castle explained the applicant must wait one year before he can apply for a carport.

-----

**OTHER BUSINESS:**

10. Approval of Minutes September 8, 2008

Chairman Veliz asked if Board Members had questions, comments or corrections regarding the ZBA meeting minutes of September 8, 2008.

Ms. Jorgensen asked Staff what the status was of the letter that Mr. Nance was writing on behalf of the Board.

Ms. Castle responded Staff had not proceeded with that.

Ms. Osborn revised page 8, to include the word "NOT", as follows:

*Ms. Osborn requested that the Board include language in their motion such as, "either way, the item would be heard at the October 13<sup>th</sup> ZBA meeting, because the structure is unsafe", in the event the applicant does not submit new plans or does **NOT** show up for the meeting. She explained that the Board would be postponing today's item."*

Motion made by Mr. Perez and unanimously carried to **APPROVE THE REVISED MINUTES OF THE SEPTEMBER 8, 2008 ZBA MEETING.**

**AYES:** Messrs. Perez, Mendez, Veliz, Hernandez, Melendez and Jorgensen  
**NAYS:** N/A  
**ABSTAIN:** Messrs. Cordova, Barela and Marquez

The Motion passed. (6-3)

-----

**DEVELOPMENT SERVICES REPORT:**

11. Discussion of Application fees for Special Exceptions.

Ms. Castle explained that Staff had spoken with Mr. Victor Torres, Director, Development Services Department, and was informed that, in addition to the ZBA fees, there were issues with other fees. Mr. Torres and other city Staff are working with the Office of Management and Budget to resolve those issues. When resolved, Mr. Torres will notify ZBA Staff as to the fee schedule outcome.

Ms. Jorgensen clarified it was not the Board's responsibility to set the fee amount; however, either as a Board or private citizen, we can make recommendations. She asked if the Board was prohibited from making recommendations regarding the fees.

Ms. Osborn replied that the board could not make recommendations, "As a Board", because that was not the purview of the Board. According to City Code, the board is empowered and encouraged to recommend to the City Council any changes to the special exceptions or Title 20 which it believes are

necessary or useful to the welfare of the community. The setting of fees is not within the powers of the ZBA, fees are recommended by staff.

Mr. Melendez reiterated the Board could give an opinion if it was not unreasonable.

Mr. Veliz added one could give their opinion as a private citizen; however, not as a Board member.

Mr. Melendez explained no, even as a Board member we can state our opinion that current fee is not reasonable or excessive. We do not have to set a fee or make a recommendation.

Ms. Castle asked if Board members could express that individually.

Ms. Osborn explained Board members could voice their opinions individually, as private citizens, to those who set the fee structure but that the fees are recommended by staff and set by ordinance and not any part of the responsibilities given to the Board.

**No action was taken.**

- - - - -

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

Ms. Castle stated the next ZBA meeting will be held on Monday, November 10, 2008; the October 27<sup>th</sup> meeting was cancelled due lack of applications.

Mr. Marquez noted the Love Road item had been postponed again and explained that, per legal counsel, there was no limit to the number of times the item could be postponed.

Ms. Osborn explained she had researched and found that there is no limit to the number of times an item can be postponed. She explained that generally the representative/applicant requests a postponement, Staff generally concurs with the postponement and it is left to the Board whether or not to grant or deny the postponement. If the Board decides not to grant further postponements, the Board must notify and explain to the representative/applicant that the Board would not be granting any future postponements.

Mr. Cordova asked if the representative/applicant was working with City staff to resolve the issues.

Ms. Osborn responded yes.

Ms. Osborn explained it was the Board's prerogative to grant postponements. She suggested that Staff inform the representative/applicant that the Board will hear the question of the postponement at the next ZBA meeting on November 10<sup>th</sup>.

Mr. Perez suggested the representative/applicant request the item be postponed for six months rather than the item appearing on every agenda.

Mr. Veliz suggested Staff request the representative/applicant be present at the next meeting to explain why there were so many requests to postpone.

Ms. Osborn noted the representative has provided adequate notice when requesting the postponement. She explained should the representative request another postponement, the Board should instruct Staff to inform the representative to be present at the next ZBA meeting to request the postponement in person. At that time, the Board may inform the representative that no further postponements will be granted and the next time the item is on the agenda it will either be heard or withdrawn.

Mr. Marquez suggested there be a fee each time a representative/applicant requests a postponement.

**No action was taken.**

-----

Ms. Osborn introduced Mr. Mark Shoesmith as the legal advisor for the Zoning Board of Adjustment.

Mr. Veliz thanked Ms. Osborn for her services to the Zoning Board.

**ADJOURNMENT:**

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

**AYES:** Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Barela, Veliz, Marquez, Hernandez and Melendez

**NAYS:** N/A

The Motion passed. (9-0)

---

Robert Peña, Secretary, Zoning Board of Adjustment