



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBERS
NOVEMBER 10, 2008
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order at 1:30 p.m.

The following Board Members answered roll call:

Mr. Robert Veliz (Chair)
Mr. David Marquez (Vice-Chair)
Mr. Rigoberto Mendez
Mr. Rick Cordova
Mr. Randy Bowling (arrived at 1:37 p.m.)
Mr. Larry Nance
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. Juan Estala, Development Services Department, BP&I, Chief Plans Examiner (arrived at 1:40 p.m.)
Mr. Mark Shoosmith, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Staff requested the following:

6. ZBA08-0037 5005 Love Road be **WITHDRAWN PER THE REPRESENTATIVE'S REQUEST.**

Motion made by Mr. Nance, seconded by Mr. Hernandez and unanimously carried to **WITHDRAW ZBA08-00037, 5005 LOVE ROAD.**

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

NOT PRESENT FOR THE VOTE: Mr. Bowling

The Motion passed (8-0)

ITEM 1:

ZBA08-00082

5527 Beth View Drive

Lisa Albert

Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-4 zone. This would permit the construction of a 12' by 19' addition of which a 12' by 13.5' portion is proposed to encroach 13.5' into the required rear yard setback. The required cumulative front and rear yard setback total is 45 feet in an R-4 (Light Density Residential) zone. The applicant is requesting an addition to her house that will encroach in the rear yard setback. A previous owner was granted a Special Exception by the ZBA on March 14, 2005, for a 9' by 9' addition in the rear yard. This request is for a 12' wide addition. The applicant is also proposing to construct a porch of which a 6' by 14' portion, or 84 square feet, encroaches in the required rear setback.

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

Prior to the discussion, Mr. Estala was sworn in.

Ms. Lisa Albert, applicant, was present.

Ms. Jorgensen requested clarification regarding the previous addition approved March 14, 2005 and the proposed site plan. She noted the site plan shows an 8' x 8' square jutting out, then a separation and the porch area seems to jut out as well.

Ms. Spencer explained the combination of the previous addition and proposed addition equals the permitted 1/3 lot width.

Ms. Castle noted the current porch aligns with the previous addition.

Mr. Veliz asked Staff whether or not a new property owner must adhere to the 1/3 rule for any future additions.

Staff responded yes.

Ms. Albert explained the previous owner added a bathroom.

Mr. Hernandez requested further clarification regarding the previous and proposed additions.

Ms. Spencer explained the location of the proposed enclosed and open porch areas.

Mr. Nance noted the existing porch would not be part of the new addition.

Ms. Jorgensen wanted to ensure the site plan matched the home, she noted the site plan didn't appear to match the photograph.

Ms. Castle explained if Staff had taken a photo of the opposite side, you would be able to see the portion that juts out.

Mr. Veliz stated there will be a space between the previous and proposed additions.

Mr. Hernandez asked about reroofing.

Mr. Bill Albert, representative, explained what would be removed.

Ms. Jorgensen noted the site plan showed the existing addition measured 8' x 8'.

Ms. Castle responded Staff used the dimension approved previously by the ZBA and added the applicant is permitted a total of 21', 1/3 the total width.

Mr. Cordova noted the site plan showed a 25' easement line and asked Staff whether or not it should read a "setback line".

Staff responded it should read "setback line".

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. Mendez seconded and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Bowling, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

The Motion passed (9-0)

ITEM 2:

ZBA08-00083

14268 Patriot Point Drive

Classic American Homes

Applicant requests a Special Exception under Section 2.16.050 G (Builder Error, Side Yard Setback) in an R-5 zone. This would permit the existence of a new residence that encroaches 0.55' into the easterly side yard setback. The required side yard setback is 5 feet in an R-5 (Light Density Residential) zone. The applicant is requesting a builder error for a new residence that was placed incorrectly and encroaches 0.55 feet (or 6.6") into the required side yard setback. The applicant submitted a letter stating that the error was inadvertent (copy of letter on file). This is the second request from Classic American Homes for a builder error in the last 12 months.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION G WITH A CONDITION THAT THE APPLICANT IS ONLY ALLOWED ONE MORE REQUEST FOR THE BUILDER ERROR THROUGH OCTOBER 2009.**

Prior to the discussion, Mr. Conde was sworn in.

Mr. Conrad Conde, Conde, Inc., representing the applicant, thanked Staff for the recommendation.

Mr. Nance asked if the applicant understood the condition whereby the applicant would be allowed one more builder error request through October 2009.

Mr. Conde responded yes. Additionally, the applicant feels the situation has been remedied and there will not be any additional builder error requests.

Mr. Veliz asked Staff if the applicant could wait until after October 2009 to apply for another builder error.

Ms. Castle responded yes.

Ms. Jorgensen stated the applicant would lose financially due to the inability to complete the inspection process and sell the property.

Ms. Jorgensen reiterated materials used to construct the carport must match the existing home; additionally, the height of the carport cannot exceed the height of the home.

Mr. Woods understood.

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. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Bowling, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

The Motion passed (9-0)

ITEM 4:

ZBA08-00086

756 Azalea Place

Francisco S. Uranga

Applicant requests a Special Exception under Section 2.16.050 L (In existence 15 years or more) in an R-1 zone. This would permit the existence of a 50' wide attached garage and carport that encroach 15' into the required side yard setback and 32' into the required rear yard setback. The required side yard setback is 20' and the required rear yard setback is 50' in the R-1 (Light Density Residential) zone. The applicant purchased this house in 2006 and is requesting the Special Exception to keep an attached garage and carport that encroach in the side and rear yard setbacks. In addition, the encroachment is 50' wide which is greater than the 1/3 width permitted by the ZBA. The house was built in 1962, and the 1965 aerial shows the encroaching structure existing at that time as it exists today.

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

Mr. Javier Gutierrez, representing the applicant, stated there have been no improvements to the home since 1965.

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. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Bowling, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

The Motion passed (9-0)

ITEM 5:

ZBA08-00087

1409 Pintoresco Drive

Joe and Mary De Angelis

Applicants request a Special Exception under Section 2.16.050 L (15 years or more, Side Yard Setback) and a Variance from Section 20.12.040 (Yards, Side Yard Setback) in an R-3 zone. This would permit the existence of a 5' by 20' structure that encroaches 5' into the northerly side yard setback in an R-4 zone. The required side yard setback is 5 feet in an R-3 (Light Density Residential) zone. The applicant was cited in 2006 and again in 2008 for building an enclosed storage in his side yard without permit. The applicants are requesting to keep the 5' by 20' attached structure that is located to within 0' of the northerly side property line. The applicants are requesting the Special Exception for a portion of the existing structure that they claim was there when they purchased the house in 1989. The 1986 aerial shows a very small white object at the corner of the house, projecting slightly into the front, which could be a roof or a concrete slab. The 1996 aerial is not clear but appears to show the same small roofed area

at the corner of the house plus the addition of driveway area. The 2003, 2006 and 2007 aerials show a roofed structure that continues at the front roofline of the house and appears to be the existing 5' by 20' structure located to within 0' of the side property line. The applicants are requesting a Variance to keep the 5' by 20' structure. There are no topographic or special conditions inherent in the lot that prevent reasonable use of the lot. The condition of the structure located to 0' of the side property line is self-imposed by the applicant.

Ms. Spencer gave a PowerPoint presentation and stated **STAFF RECOMMENDS DENIAL OF THE REQUEST FOR THE SPECIAL EXCEPTION BECAUSE THE APPLICANT HAS NOT PROVED THAT THE STRUCTURE EXISTED PRIOR TO HIS PURCHASE OF THE HOUSE IN 1989.**

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."

Mr. Joe De Angelis, applicant, affirmed the enclosed storage was in existence when he purchased the home in 1989.

Mr. Veliz noted the applicant was requesting a variance of 5' x 20' and asked what the special exception request was for.

Ms. Castle responded the same, 5' x 20'.

Mr. Bowling clarified if the applicant can prove the enclosed storage existed in 1989, the Board would consider the request for a special exception. However, if the enclosed storage did not exist in 1989, the Board would consider the request for a variance.

Ms. Castle responded the applicant has requested that.

Mr. Marquez asked the applicant if he had any documentation stating the enclosed storage existed when he purchased the home.

Mr. De Angelis brought photos that were taken at the time he purchased the home. Staff displayed them for the Board.

Ms. Castle explained the applicant installed a garage door which ends at the rock wall. Additionally, the applicant roofed the enclosed storage.

Ms. Spencer stated it was Code Enforcement Staff that noticed the encroachment.

Ms. Jorgensen asked Mr. De Angelis if he had documentation from the closing which showed the existing enclosed storage.

Mr. De Angelis responded no; however, he provided letter from two neighbors stating that Mr. De Angelis was not responsible for adding the storage area.

Mr. Bowling asked the applicant if he had a survey of the home when it was purchased.

At this time Staff and Board Members discussed and reviewed aerial photos of the property taken in 1986, 1996 and 2006.

Ms. Jorgensen asked the applicant if he had any documents when he closed on the home. She asked Staff whether or not the burden of proof was on the applicant to affirm when the house was purchased in 1989 that the structure existed as it does now.

Ms. Castle explained the carport must be five feet from the property line. She concurred with Ms. Jorgensen's statement and added the survey would be the best proof.

Mr. Melendez asked if the overhang extended over the property line.

Staff responded no.

Mr. De Angelis did not remember the name of the Title Company he used when he purchased the home. He explained he re-roofed the enclosed storage area due to hail damage and it was the roofer that used a different color.

Mr. Nance explained it would be to the applicant's benefit to obtain a copy of the survey and perhaps the Board could postpone the item to the next meeting.

Mr. Veliz noted the applicant was cited in 2006 and asked Staff if the matter came before the Board at that time.

Ms. Castle responded no and added she recalled speaking to the applicant in 2006; however, she didn't hear from him again until now.

Mr. Veliz explained Central Appraisal District may have a blueprint of the outside of the home and suggested Mr. De Angelis contact the Title Company and obtain a copy of the closing statement. The closing statement may indicate whether or not a survey was done on the property.

1ST MOTION:

Motion made by Mr. Bowling to postpone. There was no second.
The Motion died.

Ms. Castle noted the next ZBA meeting will be December 8, 2008.

Board Members suggested the applicant obtain documentation from the Central Appraisal District and/or the Title Company.

2ND AND FINAL MOTION:

Motion made by Mr. Bowling, seconded by Mr. Nance and unanimously carried to **POSTPONE ZBA08-00087 UNTIL THE DECEMBER 8, 2008, ZBA MEETING.**

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Bowling, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

The Motion passed (9-0)

PREVIOUS POSTPONEMENT:

ITEM 6:

ZBA08-00037

5005 Love Road

St. Mark's United Methodist Church

Motion made by Mr. Nance, seconded by Mr. Hernandez and unanimously carried to **WITHDRAW ZBA08-00037, 5005 LOVE ROAD.**

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

NOT PRESENT FOR THE VOTE: Mr. Bowling

The Motion passed (8-0)

OTHER BUSINESS:

7. Approval of Minutes October 13, 2008

Motion made by Mr. Veliz, seconded by Mr. Marquez and unanimously carried to **APPROVE THE MINUTES OF THE OCTOBER 13, 2008 ZBA MEETING.**

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

NAYS: N/A

ABSTAIN: Messrs. Bowling and Nance

The Motion passed (7-0)

8. Election of Officers for 2009

Ms. Castle explained the By-Laws state the Board should elect new officers every November; additionally, only Regular Board Members can serve. She noted Messrs. Veliz and Marquez were recently appointed Chair and Vice-Chair respectively.

1ST MOTION:

Motion made by Mr. Nance, seconded by Mr. Hernandez to appoint Mr. Veliz, Chair, and Mr. Marquez, Vice-Chair.

AYES: Ms. Jorgensen and Messrs. Mendez, Cordova, Bowling, Marquez, Veliz, Nance, Hernandez and Melendez

NAYS: N/A

The Motion passed (9-0)

Mr. Veliz asked Staff if he would preside over the February meeting(s) as his board appointment expires in February 6, 2009.

Ms. Castle responded yes.

DEVELOPMENT SERVICES REPORT:

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

Ms. Castle would provide the Board copies of the 2009 ZBA meeting schedule at the next ZBA meeting. She explained that ZBA meetings would be just once a month and added Staff would prefer the meetings on the second Monday of the month.

She surmised applications have decreased due to:

- 1. the cumulative setback in R-4 and R-5 Districts allows more buildable area for rear yard additions without the need for ZBA approval;
- 2. the economy; and
- 3. new home construction not qualifying for the Special Exceptions.

Mr. Bowling asked Staff when an applicant is cited and the applicant petitions the ZBA, do they have to pay the application fee.

Ms. Castle responded yes, and added the applicant has the option to comply with the zoning code. She added if the applicant wanted to legalize the structure, they would pay the application fee and come before the Board for approval.

Regarding enforcement, Mr. Nance asked Staff how the actions of the Board and the Inspector's actions are enforced.

Mr. Estala responded the applicant has the option to take action (remove the structure) prior to having to come before the Board. There is a large area to cover, Inspectors are limited. Normally after the Board has made a determination, quick action is taken. He said BP&I would investigate any properties that brought to their attention.

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ADJOURNMENT:

Motion made by Mr. Veliz, seconded by Mr. Hernandez and unanimously carried to **ADJOURN THE ZBA MEETING AT 2:29 P.M.**

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

NAYS: N/A

The Motion passed (9-0)

Robert Peña, Secretary, Zoning Board of Adjustment