



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES  
CITY COUNCIL CHAMBERS, 2<sup>ND</sup> FLOOR, CITY HALL  
MARCH 14, 2011  
1:30 P.M.**

Chair Cordova called the meeting to order.

The following Board Members answered roll call:

Mr. Rick Cordova, Chair  
Mr. Oscar Perez  
Mr. Ken Gezelius  
Mr. Robert Garland  
Mr. Rick Aguilar  
Mr. Rigoberto Mendez  
Mr. Jose Melendez  
Mr. Lamar Skarda

The following City Staff were present:

Ms. Linda Castle, Planning & Economic Development, Planning, Senior Planner  
Mr. Juan Estala, Engineering & Construction Management, Chief Plans Examiner  
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

**CHANGES TO THE AGENDA**

*Staff requested ZBA11-00002, 7341 Royal Arms Drive be postponed for one month.*

**MOTION:**

Motion made by Mr. Perez, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO APPROVE THE CHANGE TO THE AGENDA.**

**AYES:** Messrs. Perez, Garland, Gezelius, Aguilar, Cordova, Mendez, Melendez and Skarda

**NAYS:** N/A

Motion passed. (8-0)

**Mayor**  
John F. Cook

**City Council**

District 1  
Ann Morgan Lilly

District 2  
Susannah M. Byrd

District 3  
Emma Acosta

District 4  
Carl L. Robinson

District 5  
Rachel Quintana

District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
Beto O'Rourke

**City Manager**  
Joyce A. Wilson



**ITEM 1:**

ZBA11-00004

7124 Armistad Avenue

Delia Garcia

Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3 (Residential) zone. This would permit a 23' by 15' addition that is proposed to encroach 15' feet into the required rear yard setback and to be located to within 10 feet of the rear property line. The required front and rear yard setback cumulative total is 50 feet in the R-3 zone district. The applicant is requesting an addition which will encroach in the required rear yard setback. Staff received no responses from the public on this request.

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

Chair Cordova asked Staff if Board Members are approving the dimensions or the 345 square feet as requested by the applicant.

Ms. Castle responded the square footage.

The representative for Ms. Delia Garcia, property owner, stated the fireplace and the existing porch would be removed.

Mr. Estala noted the outdoor fireplace/barbeque pit is not required to be removed.

Ms. Castle explained the fireplace/barbeque pit is not an accessory structure; Staff does not object to leaving the fireplace/barbeque as is.

Per the site plan, Ms. Osborn commented on the 9'1" plot plan dimension notation.

Ms. Castle responded there is 9'1" plus the 1'2" as noted above.

Chair Cordova asked if Board Members had any questions for staff or the representative. There were none.

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

**MOTION:**

Motion made by Mr. Skarda, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO APPROVE.**

**AYES:** Messrs. Perez, Garland, Gezelius, Aguilar, Cordova, Mendez, Melendez and Skarda

**NAYS:** N/A

Motion passed. (8-0)

**ITEM 2:**

ZBA11-00005

14230 Gil Reyes Drive

Desert View Homes

Applicant requests a Special Exception under Section 2.16.050 G (Builder Error) in an R-5 (Residential) zone. The request is for an existing residence which encroaches in the required side yard setback and is located to within 4.7' of the easterly side property line. The required side yard setback total is 5 feet in the R-5 zone district. The applicant is submitting three builder error requests for three new residences on Gil Reyes Drive and has submitted a letter stating that the error is unintentional for the subject property. Furthermore, the builder, Desert View Homes, will not be allowed to apply for another Builder Error Special Exception until 2012.

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

Chair Cordova clarified two houses were side by side, the third house was down the street. Per the PowerPoint photo for this application, Chair Cordova questioned which house was the one being discussed.

Ms. Castle responded 14230 Gil Reyes is on the right, 14232 Gil Reyes is on the left.

Ms. Teresa Kemp, Desert View Homes representative, explained the surveys show the rock wall encroaching on one of the lots.

Per the plot plans, Ms. Kemp, Board Members and Staff discussed whether or not the surveys for the properties located at 14230 and 14232 Gil Reyes Drive were accurate.

Ms. Kemp asked if Board Members would be approving the request pending her surveyor redoing the survey.

Chair Cordova responded yes. He stated surveys are official documents and should be accurate.

Chair Cordova asked if Board Members had any questions for staff or the representative. There were none.

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

**MOTION:**

Motion made by Mr. Gezelius, seconded by Mr. Mendez and **UNANIMOUSLY CARRIED TO APPROVE WITH THE CONDITION THAT THE SURVEYOR CORRECT THE DISCREPANCY.**

**AYES:** Messrs. Perez, Garland, Gezelius, Aguilar, Cordova, Mendez, Melendez and Skarda

**NAYS:** N/A

Motion passed. (8-0)

**ITEM 3:**

ZBA11-00006

14232 Gil Reyes Drive

Desert View Homes

Applicant requests a Special Exception under Section 2.16.050 G (Builder Error) in an R-5 (Residential) zone. The request is for an existing residence which encroaches in the required side yard setback and is located to within 4.2' of the easterly side property line. The required side yard setback total is 5 feet in the R-5 zone district. The applicant is submitting three builder error requests for three new residences on Gil Reyes Drive and has submitted a letter stating that the error is unintentional for the subject property. Furthermore, the builder, Desert View Homes, will not be allowed to apply for another Builder Error Special Exception until 2012.

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

Ms. Teresa Kemp, Desert View Homes representative, was present.

Chair Cordova stated there is obviously a problem with this whole block. He asked if the adjacent home owners have the same problems could they come in for a special exception.

Ms. Castle responded yes; however, in this case these homes were built by Desert View Homes. Typically lenders do not allow the home to be sold until all discrepancies have been remedied.

Chair Cordova asked if Board Members had any questions for staff or the representative. There were none.

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

**MOTION:**

Motion made by Mr. Aguilar, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO APPROVE WITH THE STIPULATION THAT THEY VERIFY THE SURVEY AND MAKE ANY CORRECTIONS IF NECESSARY.**

**AYES:** Messrs. Perez, Garland, Gezelius, Aguilar, Cordova, Mendez, Melendez and Skarda

**NAYS:** N/A

Motion passed. (8-0)

**ITEM 4:**

ZBA11-00007

14242 Gil Reyes Drive

Desert View Homes

Applicant requests a Special Exception under Section 2.16.050 G (Builder Error) in an R-5 (Residential) zone. The request is for an existing residence which encroaches in the required side yard setback and is located to within 4.6' of the easterly side property line. The required side yard setback total is 5 feet in the R-5 zone district. The applicant is submitting three builder error requests for three new residences on Gil Reyes Drive and has submitted a letter stating that the error is unintentional for the subject property. Furthermore, the builder, Desert View Homes, will not be allowed to apply for another Builder Error Special Exception until 2012.



Ms. Carol Casarez, property owner, residing directly behind the applicant, has lived in her home for almost 40 years. Ms. Casarez brought photos of her yard and rock wall and explained her rock wall is 24 to 30 feet high. She stated she has repaired her rock wall three different times and will not do it again. She explained the pool was installed prior to the applicant moving in; however, the pool is now leaking into her rock wall. Via her photos, Ms. Casarez noted, there is color differentiation in the rock wall showing where there is leakage. She was concerned that adding the weight of another building on the same side that is leaking into her rock wall, in addition to the pool, would bring down the rock wall. Ms. Casarez stated she has not notified the city regarding her rock wall concerns.

Ms. Black was unaware her pool was leaking; she did not think it was.

Mr. Estala explained Engineering & Construction Management Staff will review the plans prior to approving any building permits. The applicant will have to prove whether or not the rock wall would be affected. He stated that Ms. Casarez can request an engineering analysis of the soil.

Mr. Mendez was concerned that the rock wall was truly a retaining wall; he could not see the foundation.

If the rock wall is a retaining wall, Mr. Melendez explained, there should be weep holes; if not, the rock wall was engineered improperly.

Chair Cordova asked Ms. Casarez if there was no problem with the pool, would she have any objection to the addition.

Ms. Casarez stated she had no objections to the request; however, she would like the Board to tell her the rock wall won't fall down.

Chair Cordova responded the Board cannot make any assurances. He suggested someone come out and check the rock wall. Chair Cordova added the rock wall is built on the property line; therefore, both property owners own the rock wall.

Ms. Casarez will be glad to talk to the applicant regarding any repairs to the rock wall.

To Ms. Black, Chair Cordova explained, your neighbor and the Board have no objections to the encroachment of the building, subject to the rock wall stability. He asked her if she could provide some type of assurance to her neighbor that she would look at the rock wall as she goes through her building plans.

Ms. Black responded she did not think the pool was leaking; furthermore, she had the rock wall repaired four years ago. She would check her irrigation line and/or any landscaping for leakages.

Chair Cordova asked if Board Members had any questions for staff or the representative. There were none.

**MOTION:**

Motion made by Mr. Melendez, seconded by Mr. Perez and **UNANIMOUSLY CARRIED TO APPROVE.**

**AYES:** Messrs. Perez, Gezelius, Garland, Aguilar, Cordova, Mendez, Melendez and Skarda

**NAYS:** N/A

Motion passed. (8-0)

**ITEM 6:**

ZBA11-00009                      12305 Robert Dahl Drive                      Agustin Payan and Jeanette A. Payan  
Applicants request a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an A-O/sp (Apartment/special permit) zone. The request is for a 116 square feet addition that is proposed to encroach in the required rear yard setback and to be located to within 10 feet of the rear property line. The required front and rear yard setback cumulative total is 45 feet for a single-family dwelling in the A-O/sp zone district. The applicants have been cited for building an addition in their rear yard without permit. They are requesting a one-story addition that will encroach in the required rear yard setback. The Special Permit was granted for a planned residential development to permit a reduction in lot size, from the required 45' lot width to 40'.

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

Chair Cordova stated the site plan did not meet Board requirements.

Ms. Castle responded Staff was satisfied with the site plan. She explained the applicants drew the site plan themselves, it is to scale; however, the driveway was not shown in the site plan.

Mr. Perez wondered what the measurements were for the accessory structure in the rear.

Ms. Castle responded 8'10", 80 square feet.

According to the diagram, Mr. Aguilar noted, the accessory structure is encroaching 3' in the side yard setback.

Mr. Skarda responded the accessory structure will be removed after the proposed addition is constructed.

According to the site plan, Mr. Skarda wondered if the proposed addition would encompass the entire lined area.

Ms. Castle responded yes; however, the portion that is encroaching is from the setback line.

Mr. Skarda noted the site plan shows the proposed addition going across the entire back of the house; however, the PowerPoint presentation photos show existing French doors which were not included in the site plan.





**MOTION:**

Motion made by Mr. Perez, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO POSTPONE ZBA11-00002 FOR ONE MONTH.**

**AYES:** Messrs. Perez, Garland, Gezelius, Aguilar, Cordova, Mendez, Melendez and Skarda  
**NAYS:** N/A

Motion passed. (8-0)

**Other Business:**

- 9. Approval of Minutes:            January 10, 2011 (*revised*)  
   February 14, 2011

Chair Cordova asked Board Members if they had any corrections/revisions to the minutes. There being none.

**MOTION:**

Motion made by Mr. Perez **AND UNANIMOUSLY CARRIED TO APPROVE THE JANUARY 10, 2011 (*revised*) AND FEBRUARY 14, 2011 MINUTES.**

**AYES:** Messrs. Perez, Garland, Aguilar, Cordova, Mendez, Melendez and Skarda  
**NAYS:** N/A  
**ABSTAIN:** Mr. Gezelius (*for both meeting minutes*)

Motion passed. (7-0)

- 10. Discussion and action regarding changes to Chapter 2.16, Zoning Board of Adjustment, including Special Exception K (Carport over a Driveway).

In the future, Ms. Castle explained, Staff may be required to request additional changes to Chapter 2.16 with regard to the rental unit language that was added to some of the special exceptions. Staff will present all proposed changes to Board Members for correction, review and/or approval.

**NO ACTION WAS TAKEN.**

-----

**PRIOR TO ADJOURNING, FOR CLARIFICATION**

Mr. Melendez referred to the site plan for agenda item 6. **ZBA11-00009, 12305 Robert Dahl Drive.** He asked Staff to verify the 10' dimension to the property line, you go perpendicular to the building and the property line is at an angle. If you were to go perpendicular to the property line, you will be encroaching on the 10'.

Mr. Skarda concurred with Mr. Melendez and added the property line is at an angle to the house and they measured it from the back of the house to the property line. If you use the property line to the house, it would be less than 10'.

Mr. Estala questioned: so the 10' should be perpendicular to the property line.

Mr. Melendez agreed.

Ms. Castle thought it would be more than 10'; additionally, the way it is measured is the way we measure.

Mr. Melendez responded it would be less than 10'; the way you measure it is wrong. In truth, the shorter distance is perpendicular to the property line.

Ms. Osborn clarified the applicant should have measured from the corner to the property line, not the flat side.

Mr. Melendez responded the applicant should have measured from the corner to the property line at a 90° angle. He explained the proper way to measure.

Mr. Aguilar added when you show where the applicant is encroaching, by that admission; the applicant is measuring wrong.

Ms. Osborn referred to the site plan note "*Imaginary Border Line*" and stated that line is parallel to the property line; therefore, the 10' encroachment should be parallel to that line and the property line. Three lines of the same angle; the corner would be encroaching.

Mr. Aguilar explained Board Members have requested applicants submit site plans that are not hand drawn.

In the event the site plans submitted by the applicant(s) are not acceptable by the Board's standards, Ms. Osborn suggested, Board Members postpone the item until the proper document(s) are submitted.

Ms. Castle reiterated the site plan for 12305 Robert Dahl Drive was to scale.

Ms. Osborn was not sure if there was a written policy how measurements should be taken.

Mr. Aguilar referred to a previous case where the applicant had built without a permit. Board members explained to the applicant what he needed to do prior to applying for the permit; however, the applicant did not follow the Board's instructions. It was very frustrating.

To be accurate, Mr. Melendez reiterated, measurements should be taken parallel to the property line. What the applicant did was acceptable to Staff.

Chair Cordova concurred with Mr. Aguilar and added, regarding encroachments, the Board is being asked to make decisions based on site plans that are not accurate.

Mr. Melendez stated sometimes surveys are not accurate.

Mr. Garland stated all measurements should be measured from the property line accurately.

-----

Regarding Board Member terms and establishing a quorum, Chair Cordova asked Staff, if there is a vacancy could the current Board Member remain on the Board until a replacement is appointed. He thought this change could be included with the other changes to Chapter 2.16, Zoning Board of Adjustment. Chair Cordova noted there are some districts without a Regular and Alternate Board Member.

Ms. Osborn responded that would require a change in the ordinance language that requires City Council approval. This is a decision-making Board, it is possible City Council would approve that change. Additionally, this Board requires seven affirmative votes; therefore, it is important to have consistency in the transition.

Ms. Castle noted most of the vacancies have been filled.

Staff will place an item on the next ZBA agenda for discussion and action.

-----

**MOTION:**

Motion made by Mr. Gezelius **AND UNANIMOUSLY CARRIED TO ADJOURN THE MEETING AT 2:50 P.M.**

**AYES:** Messrs. Perez, Garland, Gezelius, Aguilar, Cordova, Mendez, Melendez and Skarda

**NAYS:** N/A

Motion passed. (8-0)

---

Linda Castle, Senior Planner