



Mr. Carlos Jimenez, CAD Consulting Co., representing the applicant,

Mr. Melendez asked Mr. Jimenez if he measures from the foundation or the stucco.

Mr. Jimenez responded from the foundation.

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.**

**ITEM 2:**

PZBA11-00009

5108 Round Rock Drive

Ramon and Rosa Piñon

Applicants requests Special Exceptions under Section 2.16.050 C (Rear Yard Setback) and Section 2.16.050 K (Carport over a Driveway) in an R-3 (Residential) zone. This would permit an 18'9" by 20' carport that is proposed to encroach into the required front yard setback and to be located to within 3 feet of the front property line. This would also permit an existing 12'3" by 9'8" addition that encroaches in the rear yard setback and is located to within 20 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 case was postponed from the May 9, 2011, meeting to the June 13th meeting to allow the applicant's contractor to submit a revised site plan that shows the existing addition and the accessory building in the rear yard. The case was re-notified to the neighbors as a request for the existing rear yard encroachment and the proposed carport. The revised plans show a carport that will match the house in materials and design. The carport roof will not rise higher than the roof of the house. The Engineering & Construction Management, Building Permits and Inspections Division, has provided written approval of the structural plans for the carport. The 24.6' by 16.25' accessory building exceeds the 180 square feet of accessory structure allowed by the rear yard Special Exception. **STAFF RECOMMENDATION IS FOR APPROVAL OF THE SPECIAL EXCEPTION C FOR THE ENCLOSED ADDITION THAT ENCROACHES IN THE REAR YARD SETBACK, WITH THE CONDITION THAT THE ACCESSORY BUILDING IS REDUCED IN SIZE TO BE NO MORE THAN 180 SQUARE FEET, AND FOR APPROVAL OF THE SPECIAL EXCEPTION K FOR THE CARPORT.**

Ms. Castle gave a PowerPoint presentation and noted Staff did not receive any phone calls, letters or emails opposing the request.

Mr. Carlos Carreto, representing the applicant, was aware he would have to reduce the size and/or remove the storage shed.

Ms. Jorgensen asked Mr. Carreto if he was involved in the construction of the storage shed. She made comments regarding the use of an orange extension cord as a means of providing electricity to the storage shed.

Mr. Carreto was not the contractor when the storage shed was constructed. He would remove the extension cord if requested.

Ms. Castle explained a city Inspector has been out the home. She added there is no utility easement.

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 AS RECOMMENDED BY STAFF.**

After the vote, Chair Cordova asked Staff if Mr. Carreto understood that the Board had approved the request with the condition that the accessory structure would have to be reduced.

Ms. Castle responded she had informed Mr. Carreto of the proposed changes to the Special Exceptions; however, he wanted to ahead with the case today.

**Other Business:**

3. Approval of Minutes: May 9, 2011

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

**MOTION:**

Motion made by Mr. Skarda, seconded by Ms. Jorgensen **AND UNANIMOUSLY CARRIED TO APPROVE THE MAY 9, 2011 MINUTES.**

**AYES:** Ms. Jorgensen and Messrs. Garland, Aguilar, Cordova, Mendez, Melendez and Skarda

**ABSTAIN:** Messrs. Gezelius and Bray

Motion passed. (7-2)

4. Discussion and action regarding proposed changes to Chapter 2.16, Zoning Board of Adjustment ordinance.

Prior to the discussion, copies of the PowerPoint presentation were distributed to the Board.

Posting changes to the Code on the internet

Chair Cordova noted the recently approved changes to Title 20 were not posted on the internet.

Ms. Castle responded it takes a couple of months before the changes are posted on the web.

### Proposed changes to the Code

For simplification, Ms. Castle explained, Staff is proposing that the requirement restricting the square footage for accessory buildings be deleted from the rear yard Special Exception because the Zoning Code now allows Accessory Dwelling Units (ADU's) in the rear yard.

Mr. Skarda suggested renaming accessory dwelling units other than ADUs. He felt retaining the 180 square foot requirement is more important now if applicants want to maintain any semblance of a backyard. It is his understanding that by removing the 180 square foot requirement, applicants could install 20' x 30' accessory structure/storage shed in the rear yard.

Ms. Castle responded ADUs could be as much as 800 square feet and accessory storage buildings will be calculated as no more than 50% of the main structure or 40% of the area of the rear yard, whichever is the lesser calculation.

Mr. Garland asked hypothetically, since the square footage limits have been removed, what are the limitations for applicants requesting a 180 square foot accessory building.

Ms. Castle responded 50% of the main structure, 40% of the area of the rear year, whichever is less. In addition, applicants are not required to submit for a permit if the accessory structures are 200 square feet or less.

### ADUs and Setbacks

Chair Cordova asked if there are any restrictions on any setbacks for Accessory Dwelling Units.

(At this time, Mr. Bray arrived at 1:46)

Ms. Castle responded the code states the ADU must be located a minimum of 10 feet from any property line and must be 5 feet from the main structure. Smaller lots will be very restricted in acquiring an ADU.

### Attached ADUs

Chair Cordova wondered if the ADU was attached to the main structure, would that change the setbacks, would the applicant revert back to the original setbacks.

Ms. Castle responded applicants must comply with the yard setback; however, under the Special Exceptions, applicants may have an attached ADU that encroaches into the yard setbacks.

### Intent of the ADU ordinance

Mr. Melendez wondered if the intent of the ADU ordinance was to allow property owners to construct a small apartment for a relative.

Ms. Castle explained the intent is to allow property owners to rent out the ADUs, not just for a relative anymore. Additionally, she noted there are limits to the number of bedrooms, in addition to other limitations.

Ms. Jorgensen asked what Staff was trying to guard against in terms of subverting the zoning code, overuse of the land or building of the land.

Ms. Castle responded typically Staff wants to protect light, air, space from encroachments.

Mr. Melendez thought the intent was to increase the densities of the residential areas to prevent sprawl using SmartCode.

#### Detached ADUs

Chair Cordova asked Staff if basically, the Board will not allow any encroachments.

Ms. Castle explained a detached ADU has to be 10 feet from any property line, it doesn't have to meet the yard standards; it does have to be five feet from any existing structure.

#### Variance

Mr. Melendez asked should an applicant not meet the proper setbacks, would the applicant request a variance.

Ms. Castle explained the requirements for a variance. Staff would discourage requests for a variance on the locating of an ADU.

#### Special Exception for a Builder Error/Height

Chair Cordova wondered if the Board could grant a variance in Builder Error or requests to exceed height restrictions.

Ms. Castle explained the Special Exception for a Builder Error applies to the principal building or structure. In the event an error in construction is made, the contractor will have to demolish and/or re-do the construction.

#### Accessing Accessory Dwelling Units with Garages from an Alley

Chair Cordova asked Staff what the setback requirements for ADUs with garages with access from an alley would be.

Ms. Castle responded the setback is 5 feet; additionally, the ADU must be 5 feet from the main structure.

**Proposed changes to the El Paso City Code, Title 2, Chapter 2.16, Zoning Board of Adjustment:**

- changes proposed by Staff so that the ZBA is not in conflict with Title 20 which now permits Accessory Dwelling Units (ADU's)—Special Exceptions C, F, K, and M (new L)
- change proposed by the ZBA to the duplex carport language, Special Exception K, requirement # 6
- deletion proposed by Staff of Special Exception J, Condemnation or Eminent Domain, as this is provided for in Title 20
- re-alphabetizing Special Exceptions K, L and M after deletion of Special Exception J
- deletion proposed by Staff of unnecessary language in Special Exceptions C and D regarding "centerline of alley"
- addition of "setback" in several instances, suggested by ZBA for clarification

**[El Paso, Texas, Code of Ordinances, Title 2 - ADMINISTRATION AND PERSONNEL](#)**

**[Chapter 2.16 - ZONING BOARD OF ADJUSTMENT](#)**

**Sections:**

**[2.16.010 - Appointment and terms.](#)**

**[2.16.020 - Powers.](#)**

**[2.16.030 - Variances.](#)**

**[2.16.040 - Appeals.](#)**

**[2.16.050 - Special exceptions.](#)**

**[2.16.060 - Administration.](#)**

**[2.16.010 - Appointment and terms.](#)**

A. Appointment and Terms. There shall be a zoning board of adjustment consisting of nine members and nine alternates. The nine members will be appointed by the mayor and city council; the nine alternates will be appointed by the mayor and the city council. The alternate members shall sit in the absence of regular members when requested to do so by the chair of the board. The first alternate selected to replace an absent regular member shall be the alternate nominated by the same city council representative, or the mayor, who nominated the absent regular member. If both the member and alternate nominated by that city council representative or the mayor are absent, any other alternate may be selected. All cases before the board shall be heard and decided by at least seven members.

B. Term of Office. The term of office for members and alternates shall be staggered.

Terms of office shall be two years.

*(Ord. 16888 § 2 (part), 2008)*

**2.16.020 - Powers.**

A. The board shall have the powers granted by, and be controlled by, Texas Local Government Code, Chapter 211.

B. The concurring vote of seven members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under Title 2 or Title 20 of this code, or to effect any variation in requirements of Title 20.

C. Where, as part of its power to issue permits, the board imposes conditions, the permits are valid only when all conditions are met.

D. 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.

*(Ord. 16888 § 2 (part), 2008)*

**2.16.030 - Variances.**

The board of adjustment may 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.

*(Ord. 16888 § 2 (part), 2008)*

**2.16.040 - Appeals.**

The board is empowered to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of Title 20. In exercising these powers the board may, in conformity with the state act and this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

*(Ord. 16888 § 2 (part), 2008)*

**2.16.050 - Special exceptions.**

The zoning board of adjustment, in specific cases, may, after notice and a public hearing, make special exceptions to the zoning code only as provided in Titles 2 and 20 of this code. More than one special exception may be made for a lot so long as the total of the exceptions granted do not exceed the maximum exception which could have been obtained if all the requests for exceptions were combined into one request. The board shall not grant a special exception unless it makes, and records in its minutes, specific findings that:

1. The exceptions will be in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which the property is located;
2. The public convenience and welfare will be substantially served;
3. The use of neighboring property will not be substantially injured; and
4. Include any conditions and safeguards which the board deems appropriate, such as, but not limited to, site arrangement, landscaping and hours of operation.

The board may authorize the following special exceptions:

**A.** The special exceptions identified in this chapter and in the district regulations established in Title 20 of this code.

**B. Two or More Nonconforming Lots.** Permit the modification of setback requirements as the board deems necessary to secure an appropriate development of a lot; provided, however, that:

1. The lot is in a legally recorded and developed subdivision of at least ten years;
2. There are two or more lots that do not conform to Title 20 located within the same block on the same side of the street or within the block directly across and abutting the street;
3. The modifications are in the same nature as the existing nonconforming lots and do not permit construction less conforming than the least conforming of the nonconforming lots; and
4. If the subject lot is located at the intersection of two streets (a corner lot), then nonconforming lots within the same block on the same side of either intersecting street or directly across and abutting either intersecting street, but not lots located diagonally from the subject lot, may be used in determining the nonconforming lot restrictions of this special exception.

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**C. Rear yard setback, single-family residence.** 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:

*Note: This language is not relevant to the measurement of a setback and is not required.*

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
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 ~~setback~~;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yards ~~setbacks~~ shall not be reduced;
5. ~~The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred eighty square feet;~~

*Note: An accessory dwelling unit (ADU) that is 800-1,200 square feet is now allowed by Title 20 on lots that are a minimum of 5,500 square feet.*

6. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and
7. ~~The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~

*Note: An attached accessory dwelling unit (ADU) is now allowed by Title 20 on lots with a minimum area of 5,500 square feet.*

Ms. Castle explained the proposed changes to the Board.

Regarding requirement #7, Mr. Skarda felt that a property owner with a big lot could build a shop in the backyard.

Ms. Castle responded Staff felt that the requirements that accessory structures must be 5 feet from any structures and that ADUs must be 10 feet from any property line would restrict property owners from overbuilding on smaller lots.

Mr. Skarda felt the language for requirement #7 should not be deleted.

#### ADUs versus Accessory Structures

Chair Cordova clarified currently an accessory structure or storage shed could be built to the property line.

Ms. Castle concurred and clarified accessory structures are for storage and can be built to the rear property line; however, ADUs must be 10 feet from the property line. Ms. Castle read **Section 20.10.035.8 Accessory dwelling unit (ADU)** into the record: *The ADU shall be located a minimum of 10 feet from any property line, except that when the rear property line abuts an alley with a minimum ROW of 20 feet, the rear setback for an ADU may be reduced to 0 feet; and when the rear property line abuts an alley with ROW less than 20', the rear setback for an ADU may be reduced to 5 feet, or less if approved by the Traffic Engineer.*

#### ADUs versus duplex/ADUs versus Accessory Structures

Mr. Estala explained ADUs can sometimes be confused with a duplex; both structures can be built on the side and rear of the main structure, be two stories in height and require buffers between them. ADUs must meet setback and tree height requirements whereas accessory structures can be built to the property line. ADUs can also be rented to individuals other than relatives of the property owner.

Previously, accessory structures could not be used as a rental unit, could only be used by a relative of the property owner and there could only be one utility connection from the main house. ADUs can be rented out to individuals other than relatives of the property owner and have separate utility connections.

Converting an *accessory storage unit* into *accessory dwelling unit* is permissible so long as the *proposed accessory dwelling unit* meets all code requirements. The applicant declares the intended use of the land on the application; Staff will then determine whether or not the applicant meets the requirements for the intended use. The usage determines the proper setbacks. Prior to issuing a permit, Staff will do a site visit and determine whether or not the proposed use meets code requirements.

Ms. Castle stated it is assumed there will be parking on the street; parking on the street is not being used to its fullest.

#### Accessory Buildings 200 Square Feet or Less

Ms. Castle explained no permit is necessary for accessory buildings 200 square feet or less. Staff would never know unless the building already existed.

Mr. Melendez stated the accessory building would have to meet code requirements. He wondered if there was any control/enforcement. Mr. Melendez suggested adding language in the code *“that the accessory building must comply with the code; if not, then (insert some type of requirement/modification).”* The structure must be constructed with fire proof material, able to withstand very strong wind, etc.

Mr. Estala responded the accessory building should comply with fire rating, setback and anchoring code requirements; however, a permit is not required. For safety purposes, Staff will look into this.

Mr. Almonte read into the record from Title 18 Building and Construction, Chapter 18.08.030, Section 105.2, Work exempt from permit, Building, item #1 amended, which states: *Buildings not exceeding one story in height and 200 square feet in area shall be exempt from these requirements provided such building is properly anchored to resist overturning and sliding as required in 1605.1.*

Mr. Almonte noted Staff will research requirements for accessory buildings 200 square feet or more.

**MOTION:**

Motion made by Mr. Melendez, seconded by Ms. Jorgensen and **UNANIMOUSLY CARRIED TO DELETE** ~~not to the centerline of the alley, if one exists.~~

**MOTION:**

Motion made by Mr. Melendez, seconded by Ms. Jorgensen and **CARRIED TO DELETE** ~~5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred eighty square feet;~~

**NAYS:** Messrs. Garland and Skarda

Motion passed. (7-2)

Following the vote, Chair Cordova asked Staff if the Motion failed due to lack of a majority vote.

Ms. Castle responded the majority vote is only when voting on ZBA cases.

Mr. Almonte will research.

**MOTION:**

Motion made by Mr. Melendez, seconded by Mr. Aguilar and **UNANIMOUSLY CARRIED TO DELETE** ~~7. The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~

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**D. Rear yard setback, duplex.** Permit an extension of a duplex 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:

*Note: This language is not relevant to the measurement of a setback and is not required.*

1. The duplex has been in existence with a valid certificate of occupancy for one continuous year;
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; except that, subject to the approval of all owners, 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;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yards shall not be reduced;
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred square feet per unit;
6. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and
7. The extension shall not permit the creation of an additional dwelling unit ~~for rental purposes.~~

*Note: The restrictive wording "for rental purposes" is unnecessary.*

Ms. Castle explained the proposed changes.

For continuity, Mr. Skarda suggested changing 6. to 7. and 6. add a period after "space".

**MOTION:**

Motion made by Mr. Melendez, seconded by Mr. Skarda and **UNANIMOUSLY CARRIED TO DELETE** ~~, not to the centerline of the alley, if one exists~~

**MOTION:**

Motion made by Mr. Melendez, seconded by Mr. Skarda and **UNANIMOUSLY CARRIED TO DELETE**  
 7. The extension shall not permit the creation of an additional dwelling unit ~~for rental purposes.~~

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**E. Yard Requirements for Public Schools.** Modify the yard requirement for public schools where the following conditions are met:

1. The applicant is a governmental body to whom the Legislature has delegated the Constitutional duty to "establish ... an efficient system of public free schools" and has conferred upon its trustees "exclusive power to manage and govern the public free schools of the district"; and
2. The proposed modification is for one or more of the following purposes:
  - a. To construct, remodel, revitalize, upgrade or add to existing school facilities in order to preserve a school campus in an existing neighborhood,
  - b. To make the best utilization of available school campus land for the academic and physical educational needs of students,
  - c. To conform with existing structures on the school campus,
  - d. To prevent or reduce the need for portable buildings on the school campus,

- e. To prevent or reduce the need to transport students out of their neighborhood school due to the lack of sufficient facilities,
- f. To avoid or reduce the need for the school district to condemn adjacent properties,
- g. In all of the above cases, before granting a special exception, the board shall:
  - i. Obtain written verification from authorized representatives of the school district that the above required condition or conditions are met and that the granting of the special exception will not be detrimental to the health, safety or welfare of the students and personnel of the school. This verification is presumed to be valid as to the students and personnel, and
  - ii. Find that the granting of the special exception is not detrimental to the public health, safety or welfare of the general public, particularly the neighborhood in the vicinity of the school.

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**F. Side street yard setback.** Modify district side street yard requirements where the following conditions are met:

- 1. The proposed modification does not exceed fifty percent of the required side street yard setback requirement;
- 2. The minimum front and rear setbacks shall not be reduced;
- 3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer; and
- ~~4. The proposed modification does not permit the creation of an additional dwelling unit for rental purposes.~~

*Note: Attached ADU's are allowed by Title 20 on lots with minimum area of 5,500 square feet and could be located in the side street yard.*

Ms. Castle explained the proposed changes.

**MOTION:**

Motion made by Mr. Melendez **AND UNANIMOUSLY CARRIED TO INSERT "setback"**

- 1. The proposed modification does not exceed fifty percent of the required side street yard setback requirement;

**MOTION:**

Motion made by Ms. Jorgensen, seconded by Mr. Melendez **AND UNANIMOUSLY CARRIED TO DELETE**

~~4. The proposed modification does not permit the creation of an additional dwelling unit for rental purposes.~~

**DELETE "; AND";**

**INSERT A "." AFTER ENGINEER**

- 3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer, ~~and~~

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**G. Builder Error.** Permit the encroachment of the principal building or structure into the required yard setbacks in all districts, caused by an error in construction; provided, however, that:

1. The permitted encroachment into any front yard setback shall not exceed ten percent of the required setback, or one foot whichever is greater;
2. The permitted encroachment into any side yard or side street yard setback shall not exceed ten percent of the required setback or one foot whichever is greater;
3. The permitted encroachment into any rear yard setback shall not exceed fifteen percent of the required setback or one foot whichever is greater;
4. The owner shall demonstrate through testimony or documentation that the error causing the encroachment was inadvertent and not intentional; and
5. The number of properties requesting encroachment permission under this section which involve the same builder, contractor, or owner shall not exceed three in any twelve-month period.

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**H. Lot Size.** Permit the construction of a single-family residence in a residential (R) district on a lot that does not meet the required minimum lot width, minimum lot depth, or minimum lot area; provided, however, that:

1. The lot is in a legally recorded and developed subdivision of at least ten years;
2. A minimum of one of the required amounts, lot width, lot depth or lot area, meets the required minimum amount;
3. The lot width, lot depth or lot area amounts which do not meet the required minimum amounts are not less than ninety percent of the respective required minimum amount;
4. The residential structure conforms to the yard setbacks of the zone in which it is located; and
5. The maximum number of lots for which this exception may be granted in any subdivision shall be five percent of the total number of lots in the subdivision or one lot, whichever is greater.

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**I. Authorize the reduction of off-street parking requirements;** provided, however, that:

1. The owner shall demonstrate through testimony or documentation that the required number of off-street parking spaces cannot be reasonably accommodated on the property involved;
2. The zoning board of adjustment has received the written approval of the city traffic engineer who shall review the request to determine the impact on the surrounding properties. The city traffic engineer may request a parking study in order to determine the impact on the surrounding properties; and
3. The reduction authorized shall not modify the number of required off-street parking spaces by more than fifteen percent.

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~~J. Condemnation or Eminent Domain.~~ Authorize the reduction of zoning restrictions as to lot area, yards or setbacks as applied to a structure that is to be relocated on any lot, a portion of which was acquired under the threat of condemnation or in an eminent domain action; provided, however, that the following conditions are met:

- ~~1. The proposed configuration of the lot, including setbacks, yards, location of structures, landscaping and other proposed buffers prevents adverse impact on adjacent property;~~
- ~~2. The board receives a recommendation from the zoning administrator or any department required to provide relevant input;~~
- ~~3. The use of the structure or structures does not extend into an area that was previously used to accommodate off street parking, unless the applicant demonstrates that the parking provided adequately serves the need generated by the use; and~~
- ~~4. The board imposes those conditions reasonably necessary to protect the health, safety and welfare of the surrounding property owners and the general public.~~

*Note: Already addressed in Title 20, Zoning, Chapter 20.22.080, Nonconforming situations, property affected by right-of-way acquisition, which provides for condemnation or eminent domain situations.*

Ms. Castle explained "J. Condemnation or Eminent Domain." would be deleted in its entirety.

**MOTION:**

Motion made by Mr. Melendez, seconded by Mr. Aguilar and **UNANIMOUSLY CARRIED TO DELETE "J. Condemnation or Eminent Domain."**

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~~K. I. Carport over a driveway.~~ 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:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year; and,
2. The zoning board of adjustment has received the written approval of the structural design from the building official; and,
3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure; shall be open on three sides, attached to the main structure and shall rise no higher than the highest point of the roof of the dwelling; and,
4. The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling; shall be measured from outside of posts to outside of posts (or from exterior face of posts to exterior face of posts?); and, carport eaves and cornices shall extend no more than twenty-four inches into a required side or side street yard and no more than thirty inches into a required front yard setback; ~~nor shall the carport rise above the highest point of the roof of the dwelling;~~ and,
5. Elevation drawings of the proposed structure shall be submitted; and,

6. For a duplex, ~~the total of all extensions granted shall not exceed one third the average width of the site, and~~ the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit; and,

*Note: This deletion was approved by the ZBA on February 14, 2011.*

7. Unless otherwise provided in this chapter, all remaining areas of the required front yard shall be permanent open space; and,

8. There is no other reasonable alternative to provide a carport in the front yard of the subject property without exceeding the encroachments allowed in Title 20 of this Code; and,

~~9. The extension shall not permit the creation of an additional dwelling unit for rental purposes nor shall it constitute an extension of the living area of the dwelling.~~

*Note: Language in Item 9 is unnecessary for the addition of a carport.*

Ms. Castle explained the proposed changes and subsequent re-lettering.

**MOTION:**

Motion made by Mr. Melendez, seconded by Mr. Garland and **UNANIMOUSLY CARRIED TO DELETE FROM "M. Front yard setback."**

~~8. The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~  
**TO ADJUST ~~K.~~ TO J. Carport over a driveway., ~~L.~~ TO K. In Existence Fifteen Years or More. AND ~~M.~~ TO L. Front yard setback.**  
**AND ALL REMAINING CORRECTIONS.**

Staff will review the correct insertion of setback and "s" where appropriate. Once that is complete, Staff will present the revisions to the DCC. Following DCC action, Ms. Castle will forward the final revised language to Board Members.

**MOTION:**

Motion made by Mr. Jorgensen, seconded by Mr. Gezelius **AND UNANIMOUSLY CARRIED TO APPROVE THE DELETIONS IN OUR PACKET THAT WAS MAILED HOME.**

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~~L.~~ **K. In Existence Fifteen Years or More.** Permit the encroachment into the required yard setbacks for structures; provided, however, that the applicant can prove the following conditions:

1. The encroachment into the required yard setback has been in existence for more than fifteen years;
2. Neither the applicant nor current property owner is responsible for the construction of the encroachment;
3. Neither the applicant nor the current property owner owned the property at the time the encroaching structure was constructed or built;
4. The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback; and
5. The encroachment does not violate any other provision of the Municipal Code.

Ms. Castle noted the Special Exception will be re-lettered due to the deletion of Special Exception J.

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**M. L. Front yard setback.** 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:

1. The residential structure has been in existence with a valid certificate of occupancy for one continuous year; and,
2. The total length of all extensions granted shall not project into the required front yard setback a depth in excess of ten feet; and,
3. The total width of all extensions granted shall not exceed one-third of the average width of the site; and,
4. The minimum side and side street yard setbacks shall not be reduced; and,
5. A minimum of a ten-foot front setback from the property line shall be maintained; and,
6. If the proposed modification is for an enclosed garage, a minimum twenty-foot driveway shall be required; and,
7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space; and,
- ~~8. The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~

*Note: Attached ADU's are allowed by Title 20 on lots with minimum area of 5,500 square feet and could be located in the front yard.*

*(Ord. 16888 § 2(part), 2008)*

*(Ord. No. 17288, §§ 2—8, 3-16-2010; Ord. No. 17398, § 1, 8-24-2010, eff. 9-1-2010)*

Ms. Castle explained the proposed changes and noted the Special Exception will be re-lettered due to the deletion of Special Exception J.

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**2.16.060 - Administration.**

- A. All applications to the board will be in writing on forms provided by the planning official and with documents as required and shall be accompanied by the fee as set by city council to help defray the cost of publication, the giving of notice, and general expense in connection with the application. Before acceptance, all applications submitted shall be complete in all details.
- B. The owners of property within three hundred feet of the subject property shall be provided written notice of the appeal or application for a special exception or variance ten days prior to the hearing of the board.
- C. The board authorization is for twelve months unless otherwise directed by the board at the time the authorization is approved.
- D. Extension of the time to apply for a building permit may be requested from the board during the one-year period. Extension of time may not be requested when demolition of non-permitted structure(s) is required. The request for an extension shall be acted upon by the board at the regular meeting, but no notice and hearing shall be required. If a board authorization expires, a new application accompanied by a new fee is required.
- E. Applications for special exceptions may be granted, denied or granted with conditions by the board.
- F. Reapplication. The board will not consider an appeal or application that is the same or very similar to one that has been denied, for a period of twelve months unless the board finds that a substantial change in conditions has occurred.

G. Revocation. The board of adjustment shall have authority to revoke a variance or special exception if it finds development and/or operation is not in accordance with the conditions under which a variance or special exception was permitted.

H. Appeals of board decisions. Appeals from the zoning board of adjustment lie directly to the district court.

*(Ord. 16888 § 2 (part), 2008)*

*(Ord. No. 17398, § 2, 8-24-2010, eff. 9-1-2010)*

#### Extending Existing Board Member Terms

Following the discussion regarding proposed changes to Chapter 2.16, Zoning Board of Adjustment ordinance, Chair Cordova stated that come October the Zoning Board of Adjustment will lose five appointments. He asked Staff if they could consider revising the ZBA appointments and terms to extend the terms of existing Board Members. By extending existing Board Members appointment terms, Staff could ensure there will be enough, and backup, Board Members for ZBA meetings.

Ms. Castle commented on recent election results and stated Staff will request the new Council Members appoint Board Members as soon as they possibly could.

Chair Cordova requested Ms. Castle email the approved ordinance for Accessory Dwelling Units (ADUs).

Ms. Castle will email that information to the Board; Staff will make the corrections as approved by the Board, the revised language will then be presented to the DCC (Development Coordinating Committee), CPC (City Plan Commission) and ultimately City Council for approval.

#### Builder Error Logs

Ms. Jorgensen requested Staff include the Builder Error Log in future ZBA meeting backup information.

#### Carports and How They Are Measured

Due to the inconsistency regarding the presentation of the proposed carports over a driveway; Mr. Skarda asked Staff how carports are measured:

- a. is it to the edge of the roofline; or
- b. is it to the edge of the post

Ms. Castle explained she and Mr. Estala had discussed the matter previously and determined that the measurements would be from post to post. Applicants are allowed 24" of overhang into the side or front yard setback.

Chair Cordova wondered if the measurements would be front of the face of the wall.

Ms. Castle clarified the measurement would be from the center of the post to the center of the post. Additionally, if applicants are providing brick to match the house; Staff can measure from the centerline.

Mr. Melendez explained the brick cannot extend into the setback; therefore, measurements should be taken from the outside face of the post to the setback line.

Since the discussion was off the agenda, Mr. Almonte suggested Staff post an item on the next agenda.

**MOTION:**

Motion made by Mr. Gezelius, seconded by Mr. Skarda **AND UNANIMOUSLY CARRIED TO ADJOURN THE MEETING AT 2:41 P.M.**

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Linda Castle, Senior Planner