



**CITY DEVELOPMENT DEPARTMENT-PLANNING
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
COUNCIL CHAMBERS, CITY HALL BUILDING
NOVEMBER 11, 2013
1:30 P.M.**

Chairman Concha called the meeting to order at 1:30 p.m.

The following Board Members answered roll call:

Mr. Robert Concha, Jr., Chairman
Mr. Robert Garland, Vice-Chairman
Mr. Roy Gilyard
Ms. Margaret Livingston
Mr. Sam Barela
Mr. Rick Cordova
Mr. Jeff Gonzalez
Mr. Lamar Skarda
Mr. James Graham

The following City Staff were present:

Mr. Michael McElroy, City Development Department, Planning, Planner
Mr. Alex Hoffman, City Development Department, Planning, Lead Planner
Mr. Tony De La Cruz, City Development Department, Plan Review, Senior Plans Examiner
Ms. Kristen Hamilton, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

1. Item 1, PZBA13-00033 – Consent Agenda - no discussion, no motion necessary
2. Item 2, PZBA13-00024 – Postponed to January 9, 2013 meeting
3. Item 4, PZBA13-00035 – Postponed to January 9, 2013 meeting
4. Item 6, PZBA13-00037 – Postponed to January 9, 2013 meeting

MOTION:

Motion made by Mr. Garland, seconded by Mr. Gonzalez AND UNANIMOUSLY CARRIED TO APPROVE THE CHANGES TO THE AGENDA.

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CONSENT AGENDA

ITEM 1:

PZBA12-00033

5160 Mace Street

Ricardo Sifuentes

Extension request to a Special Exception under Section 2.16.050 J (Carport over a Driveway) in an R-3 (Residential) zone. Extension to November 12, 2014. This would permit an extension to November 12, 2014 for a 20' by 21'10" (437 square feet) carport located to within 2 feet of the front property line in an R-3 (Residential) zone district. The required front and rear yard cumulative setback total is 50 feet in the R-3 zone district. The owner built a carport without permit. It has existed at least since 1996 and is larger than what is permitted under the Special Exception J, at approximately 608 sq. ft. (24'3" x 25'). There is no utility easement at the front property line. The submitted plans show how the carport will be reduced in size to meet the current ZBA size requirement of 437 square feet, measured overhang to overhang, and the requirement to match the materials used on the house. However, the applicant is requesting to keep the painted pipe columns instead of the brick-faced columns shown on the elevation drawing. Building Permits & Inspections has reviewed the structural plans.

STAFF RECOMMENDATION IS FOR APPROVAL OF A ONE YEAR EXTENSION TO NOVEMBER 12, 2014.

Mr. Adam Lozano, representing his father-in-law, and Mr. Ricardo Sifuentes, applicant, were present. Mr. Lozano clarified that Board Members had approved the request for a Special Exception J at the November 12, 2012 ZBA meeting.

Chair Concha clarified the extension request will allow the applicant to reduce the existing carport to meet current Code requirements. He asked for a motion to approve.

Prior to the motion, Mr. Skarda stated the request for an extension had already been extended one time from 2012.

1ST MOTION:

*Motion made by Vice-Chairman Garland, seconded by Mr. Gonzalez **TO APPROVE**.
No vote was taken.*

Prior to the vote, Mr. Skarda requested further discussion on the matter.

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To allow further discussion, Ms. Kristen Hamilton, Assistant City Attorney, asked Mr. Gonzalez to withdraw his second to motion.

Mr. Gonzalez withdrew his second to the Vice-Chairman's motion.

Per the Code, Ms. Hamilton explained, Staff posted the agenda item under the CONSENT AGENDA due to no notice and hearing being required. The applicant must apply for and receive approval for the extension prior to tomorrow, November 12, 2013. Furthermore, the Board approved the request for a Special Exception J (Carport over a Driveway) at the November 12, 2012 ZBA meeting.

Mr. Skarda noted the applicant is requesting an extension of time to apply for a building permit. The applicant built the carport without a permit(s) and because the carport does not meet the code, he must demolish a portion of it. From the backup material, Mr. Skarda read the following into the record *"Extension of time may not be requested when demolition of non-permitted structure is required"*.

Mr. Lozano explained, at the time the Board approved the request for a Special Exception J, his father-in-law did not have the funds to construct the new carport.

Ms. Hamilton clarified the request is not for demolition for a non-permitted building.

Mr. Garland explained the applicant is requesting an extension to apply for a permit to construct a carport over the driveway. The applicant did not construct a home outside the setback requirements.

Mr. Skarda replied the carport was built without a permit(s); it is the carport that needs to be brought into compliance.

Ms. Hamilton clarified a portion of the carport will be demolished; furthermore, Staff is recommending approval of a one year extension to November 12, 2014.

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FINAL MOTION:

Motion made by Mr. Garland, seconded by Ms. Livingston AND CARRIED TO APPROVE.

AYES: Mr. Gilyard, Ms. Livingston, Mr. Barela, Mr. Garland, Chair Concha, Mr. Gonzalez, and Mr. Graham

NAY: Mr. Skarda
Motion passed. (8-1)

REGULAR AGENDA

ITEM 2:

POSTPONED TO THE 12-9-13 ZBA MEETING

PZBA13-00024 1901 Roswell Road Elena De La Rosa

CHANGES TO THE AGENDA

Item 2, PZBA13-00024 – Postponed to January 9, 2013 meeting

MOTION:

Motion made by Mr. Garland, seconded by Mr. Gonzalez AND UNANIMOUSLY CARRIED TO APPROVE THE CHANGES TO THE AGENDA.

ITEM 3:

PZBA13-00031 815 Rim Road Norman G. Haddad

Applicant requests a Special Exception under Section 2.16.050 B (Two or More Non-Conforming Lots) in an R-3/NCO (Residential/Neighborhood Conservancy Overlay) zone. This would allow a 23' x 22.5' garage addition, 25' feet in height, totaling 517.5 sq. ft., to encroach to within zero feet of the side lot line. The required side yard setback in the R-3/NCO zone district is 5 feet. The applicant applied and was denied a variance to permit a two-story addition to the existing accessory garage building on July 9, 2007 (ZBA07-00099). Two-story accessory dwelling units are prohibited under our current code and the applicant failed to demonstrate the economic or topographic necessity to warrant a variance. The City Review Committee, which reviews all construction in NCO overlay districts, approved the architectural elements of the proposed construction on September 23, 2013 (PLRG13-00004). The adjoining property at 811 Rim, constructed in 1929, includes a two story detached garage 0' on the side lot line. Furthermore, the property at 711 Rim, constructed in 1939, also features a detached garage 0'

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on the side lot line. At the October 14, 2013, meeting the ZBA was presented the request for the Special Exception B for the encroachment in the side yard setback for a garage addition. The applicant requested to postpone until November so that staff can review the height restriction modification. The Planning Division received one phone call in support of this application.

STAFF RECOMMENDATION IS FOR APPROVAL WITH CONDITIONS: THE WALL ON THE ZERO SIDE SETBACK SHALL BE FIRE-RATED AND STORM WATER SHALL BE HANDLED ON THE APPLICANT'S PROPERTY.

Mr. Michael McElroy gave a presentation and noted at the October 14, 2013, meeting the ZBA was presented the request for the Special Exception B for the encroachment in the side yard setback for a garage addition. The applicant requested to postpone until November so that Staff could review the height restriction modification.

Chairman Concha asked if Staff received any responses from the neighbors.

Mr. McElroy responded Staff received one letter and one phone call in support of the request.

Chair Concha asked if anyone in the audience wished to speak in favor of or in opposition to the request. *No response from the audience.*

Regarding the accessory structure exceeding the 15' height requirement, as discussed at the October 14, 2013 meeting, Mr. Alex Hoffman stated the applicant submitted revised site plans attaching the accessory structure to the principal building, making the accessory structure a building addition. In so doing, the accessory structure may exceed the 15' height requirement.

Mr. James A. Lyle, 811 Rim Road, next door neighbor to the applicant, stated he was in favor of the request. Due to Mr. Haddad's hearing condition, Mr. Lyle explained he would be assisting him today.

Mr. Haddad provided background information regarding his property and the proposed Special Exception request.

Mr. McElroy noted copies of the revised site plans, submitted by the applicant, were included in the backup material.

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Mr. Michael McElroy gave a presentation.

Chairman Concha asked if Staff received any responses from the neighbors.

Mr. McElroy responded no.

Chair Concha asked if anyone in the audience wished to speak in favor of or in opposition to the request. *No response from the audience.*

Mr. Geoffrey Wright, representing the applicant, and Mr. Hector Barragan, applicant, were present.

Mr. Skarda asked Staff if the wall, located at the 0' lot line, should be fire-rated.

Per the International Building Codes, Mr. Tony De La Cruz responded, any portion of a building less than 3' from the property line must be fire-rated.

Mr. Wright responded the one foot in diameter, existing brick wall, adjacent to the adjoining property, is most certainly fire-rated.

To Ms. Hamilton, Mr. Gonzalez noted the reconstruction would follow the previous existing footprint that has existed for 64 years. Regarding the C-4 (Commercial) zone, he wondered if the reconstruction was in conflict with City Code, Title 21, SmartCode.

Mr. Hoffman explained this property is not SmartCode zoned, C-4 (Commercial) zoning is explained in Title 20 – Zoning, of the Code.

MOTION:

Motion made by Mr. Cordova, seconded by Vice-Chairman Garland AND UNANIMOUSLY CARRIED TO APPROVE.

ITEM 6:

POSTPONED TO THE 12-9-13 ZBA MEETING

PZBA13-00037

7304 Ramada Drive

Lorena Chiu

CHANGES TO THE AGENDA

Item 6, PZBA13-00037 – Postponed to January 9, 2013 meeting

MOTION:

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Motion made by Mr. Garland, seconded by Mr. Gonzalez AND UNANIMOUSLY CARRIED TO APPROVE THE CHANGES TO THE AGENDA.

ITEM 7:

PZBA13-00038 3201 Killarney Road Elizabeth Rosales

Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3 (Residential) zone. This would allow a 285 square feet addition which is proposed to encroach in the required rear yard setback and to be located to within 13 feet 6 inches of the rear property line. The applicants are requesting a bed and bathroom addition to extend from the existing structure into the rear yard. The required rear yard setback in the R-3 zoning district is 20'. The required cumulative setback is 50' feet. The resulting cumulative is 38.9 feet.

STAFF RECOMMENDATION IS FOR APPROVAL WITH A CONDITION THAT THE STORAGE SHED BE REMOVED.

Mr. McElroy gave a presentation.

Chairman Concha asked if Staff received any responses from the neighbors.

Mr. McElroy responded no.

Chair Concha asked if anyone in the audience wished to speak in favor of or in opposition to the request. *No response from the audience.*

Ms. Rosales, applicant, stated City of El Paso, Code Compliance Staff issued a stop work order due to the contractor not submitting plans, no permits were issued.

MOTION:

Motion made by Mr. Gonzalez, seconded by Vice-Chairman Garland AND UNANIMOUSLY CARRIED TO APPROVE.

ITEM 8:

01-017-03

PZBA13-000 2437 Gairloch David & Pat Tellez

Applicant requests a release of a condition placed as part of a previously granted Special Exception under Section 2.16.050 "G" (Rear Yard Setback) R-3 Zone of the City of El Paso Zoning Ordinance. Montclair Addition, Block 23, Lots 9 & 10.

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This item is being brought before the ZBA for reconsideration on a request to release a condition placed by the Board on 01-17-2003. The release of the condition would permit the construction of a new accessory structure that meets the current accessory structure requirements. The condition placed on the property would limit the proposed accessory structure to only 120' square feet. The previously granted exception permitted a 33.8' by 27' addition located to within 10' of the rear property line. A 25' rear yard setback is required in an R-3 zone.

STAFF RECOMMENDATION IS FOR APPROVAL OF THE CONDITION RELEASE.

Mr. Michael McElroy gave a presentation and clarified the accessory structure, as discussed at the January 27, 2003, ZBA meeting, has been removed and is no longer on the property. The applicant is requesting the condition, per the January 27, 2003 ZBA meeting, be removed to allow new construction to occur.

Chairman Concha asked if Staff received any responses from the neighbors.

Mr. McElroy responded no.

Chair Concha asked if anyone in the audience wished to speak in favor of or in opposition to the request. *No response from the audience.*

Mr. David Tellez, applicant, was present.

No questions from Board Members.

MOTION:

Motion made by Mr. Skarda, seconded by Mr. Cordova AND UNANIMOUSLY CARRIED TO APPROVE.

Other Business

9. Approval of Minutes: October 14, 2013

MOTION:

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Motion made by Mr. Cordova, seconded by Mr. Barela AND UNANIMOUSLY CARRIED TO POSTPONE APPROVAL OF OCTOBER 14, 2013 MINUTES TO THE DECEMBER 9, 2013 ZBA MEETING.

PRIOR TO ADJOURNMENT

1. SMARTCODE – Mr. Gonzalez

Mr. Gonzalez stated he was under the impression that, as of September 1, 2013, the ZBA would be utilizing Title 21 – SmartCode. He asked Staff if this was for new districts, was it on a volunteer basis, and when would Staff begin to apply those regulations.

Mr. De La Cruz responded that Title 21 – SmartCode is specific to areas located within SmartCode zones.

Mr. McElroy noted there are currently five or six SmartCode zones within the City of El Paso. He added that Pershing Drive is in an area that was proposed to City Council to be rezoned to SmartCode; however, Council did not approve the rezoning.

Chair Concha wondered if, not only new construction areas, but existing areas as well are SmartCode.

Mr. De La Cruz replied rezoning is requested by the City or requested by the property owners.

Mr. Hoffman commented on Title 20 and Title 21 zoning districts and Title 21 sub-districts, and noted that the case today is on Pershing Drive and is zoned C-4, with C-4 yard setback requirements and is not zoned SmartCode.

Per Staff's comments, Mr. Gilyard clarified, that under Title 21 – SmartCode there are no setback requirements. Therefore, the 3000 Pershing Drive property, if it was SmartCode zoned, would not be required to be presented to the ZBA today. He explained that the C-4 (Commercial) zone district does require a rear yard setback when a property is located adjacent to a residential or apartment district or use.

Mr. McElroy agreed.

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FOR THE RECORD

Mr. Gonzalez requested, for the record, that Mr. Gilyard's explanation be written in the record.

MOTION:

Motion made by Mr. Gonzalez TO ADJOURN THE MEETING. There was no second, no vote was taken.

2. STAFF DECISION LETTER LANGUAGE – Mr. Skarda

Mr. Skarda referred to the 5160 Mace, November 12, 2012 decision letter, bottom of the page "PLEASE NOTE" language and asked Staff to explain: "PLEASE NOTE: Any privilege granted by this decision must be exercised within 12 months of the date of this decision after obtaining the necessary building permits for the proposed construction at the Building Permits & Inspections Division of the City Development Department."

Mr. Skarda noted that it seems that the applicant has 12 months to obtain a building permit and that the carport project should have been done by this time, that it appears the applicant is gaming the system.

Mr. De La Cruz responded with an explanation of the building permit process, noting that once a building permit is granted, the applicant has 6 months to complete the permit. If there is no activity on the permit, the permit expires after 6 months. He explained, however, if an inspection is called for prior to the 6 month expiration date, that action will continue the permit for another 6 months. He explained that applicants sometimes do keep a permit going for several years, and can do so, as long as there is activity. He further explained that the ZBA requires that a building permit be obtained within 12 months of the decision or else the approval expires.

MOTION:

Motion made by Mr. Gonzalez, seconded by Mr. Skarda AND UNANIMOUSLY CARRIED TO ADJOURN THE MEETING.

Linda Castle, Senior Planner

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