



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
CITY COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL
NOVEMBER 14, 2011
1:30 P.M.**

Chair Aguilar called the meeting to order at 1:30 p.m.

The following Board Members answered roll call:

Mr. Rick Aguilar, Chair
Mr. Rigoberto Mendez, Vice-Chair (1:34 p.m.)
Mr. Ken Gezelius
Mr. Robert Garland
Mr. Robert Concha, Jr.
Mr. Rick Cordova
Mr. Sam Barela
Mr. Scott Walker
Mr. Lamar Skarda

The following City Staff were present:

Ms. Linda Castle, Planning & Economic Development, Senior Planner
Mr. Juan Estala, Engineering & Construction Management, Chief Plans Examiner
Mr. Robert Almonte, City Attorney's Office, Assistant City Attorney
Ms. Kimberly Forsyth, Planning & Economic Development, Lead Planner
Ms. Geena Maskey, Planning & Economic Development, Planner
Ms. Sandra Hernandez, Department of Transportation, Planner

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CHANGES TO THE AGENDA:

Staff requested Board Members move item 7 to the forefront.

ITEM 1:

PZBA11-00032 8417 Park Haven Avenue Sandra & Alejandro Sanchez
Applicants request a Special Exception under Section 2.16.050 K (15 Years or More, Rear and Side Yard Setbacks) in an R-4 (Residential) zone. This would permit existing additions to the main structure that are located in the required side and rear yard setbacks that are built to within 0' of the westerly and easterly side setbacks and to within 0' of the rear yard setback. The required front and rear yard setback cumulative total is 45 feet and the required side yard setback is 5' in the R-4 zone district. The applicants are requesting to legalize a carport and storage building that are built to within 0 feet of the westerly property line and to within 0 feet of the rear property line; and, an addition that is built to within 0 feet of the easterly side property line, all attached to the main structure. The additions are existing 15 years ago, as shown in the 1996 aerial. The current owners purchased the property in November 2010 and are not responsible for the additions that encroach in the required setbacks. The addition in the rear yard is built over a 10' utility easement. The applicants have been informed that they, or any future owner, are required to remove the 10.2' by 10' portion of the structure built over the utility easement. **STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST FOR THE SPECIAL EXCEPTION K WITH THE FOLLOWING CONDITIONS: 1) THAT THE 10.2' BY 10' PORTION OF THE ADDITION BUILT OVER THE UTILITY EASEMENT IN THE REAR YARD BE DEMOLISHED WITHIN ONE YEAR PER SECTION 2.16.060, 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...; 2) THAT THE ADDITIONS DO NOT MEET THE ACCESSORY DWELLING UNIT**

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REQUIREMENTS AND SHALL NOT BE USED AS SUCH; 3) THAT BUILDING PERMITS BE OBTAINED FOR ANY UNPERMITTED ADDITIONS; AND, 4) THAT THE STRUCTURES CLOSER THAN 5 FEET TO ANY PROPERTY LINE MEET THE BUILDING CODE FIRE RATING REQUIREMENTS.

Ms. Castle gave a PowerPoint presentation and noted Staff received two phone calls from neighbors; neighbors were not opposed to the request.

Mr. and Mrs. Sanchez, applicants, were present and responded to questions and/or comments from Staff and Board Members.

Mr. Cordova asked Staff if the applicants would be permitted to enclose the carport.

For the motion language, Ms. Castle recommended Board Members add a condition *that the applicants not enclose the carport.*

Mr. Gezelius noted the survey shows the irrigation ditch inside the property.

Mr. Sanchez responded the irrigation ditch is outside the property.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request.

Mr. Rene Gonzalez, future property owner, was present and responded to questions and/or comments from Staff and Board Members.

1st MOTION:

Motion made by Mr. Walker **TO APPROVE AS IS.**



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Mr. Almonte stated the applicants would not be permitted a future condition delaying the demolition.

Mr. Garland explained the addition was built to the property line and over an easement, without a permit. The applicants could request letters from the utility companies asking to vacate the easement. He suggested the applicants request their item be postponed to the next ZBA meeting.

Additionally, Ms. Castle noted that in order to keep the addition, depending upon the response from the utility companies, the applicants will have to request a vacation of the easement from the Planning Department.

Mr. Gonzalez agreed to contact the utility companies regarding the easement vacation; come back to the Board, hopefully with a positive response, at the next meeting.

Should the utility companies agree to vacate the easement, Ms. Forsyth explained, the Planning Department vacation process takes approximately 90 days. However, no permits would be issued for any structures encroaching into the easement.

Ms. Castle requested Board Members add the condition that the carport not be enclosed in their motion.

2nd MOTION:

Motion made by Mr. Garland, seconded by Mr. Gezelius **TO RECOMMEND APPROVAL AS LONG AS IT'S ACCORDING TO THE STAFF RECOMMENDATIONS AND THAT THE CARPORT IS NOT ENCLOSED. STAFF RECOMMENDS THAT ALL THE BUILDING'S PARTS ARE WITHIN FIVE FEET OF THE PROPERTY LINE AND THAT IT BE FIRE RATED ACCORDING TO CODE, IMPROVEMENTS NEED TO BE DONE. AND RECOMMENDATION THAT THE 10 FEET OF THE ONE PORTION OF THE ADDITION BE DEMOLISHED.**



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Prior to the vote, Mr. Cordova asked if the motion included the condition that the addition be demolished subject to the easement vacation.

3rd AND FINAL MOTION:

Motion made by Mr. Garland, seconded by Mr. Gezelius **AND UNANIMOUSLY CARRIED TO APPROVE WITH THE CONDITIONS THAT THE APPLICANTS EITHER DEMOLISH THE 10 FEET OR GET A VACATION OF THE EASEMENT AND GET THE FIRE IMPROVEMENTS AND THE REST OF THE RECOMMENDATIONS.**

ITEM 2:

PZBA11-00033 1665 Billie Marie Drive Joseph F. and Lourdes Acosta
Applicants request a Special Exception under Section 2.16.050 J (Carport over a Driveway) in an R-3 (Residential) zone. This would permit a 20' by 18' carport that is proposed to encroach into the front yard setback and to be located to within 7' feet of the front property line. The required front and rear yard setback cumulative total is 50 feet in the R-3 zone district. The applicants are requesting a carport that does not rise higher than the roof of the house and will match the existing house in design and materials. There is no utility easement at the front property line. The Engineering & Construction Management Department has reviewed the structural plans and found them acceptable. **STAFF RECOMMENDATION IS FOR APPROVAL AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION J.**

Ms. Castle gave a PowerPoint presentation and noted Staff received one phone call from the neighbors, the caller did not object to the carport.

Mr. and Mrs. Acosta, applicants, were present.



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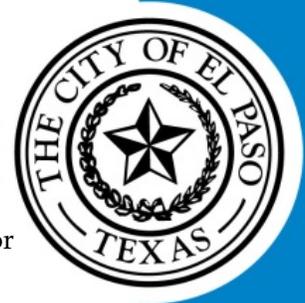
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Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was none.

MOTION:

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

ITEM 3:

PZBA11-00034 2609 Tanning Rock Way BIC Homes LLC
Applicant requests a Special Exception under Section 2.16.050 G (Builder Error, Rear Yard Setback) in an R-5 (Residential) zone. This would permit a 1.0' encroachment into the rear yard setback for a new residential structure, to within 24' of the rear property line. The required front and rear yard setback cumulative total is 45 feet in the R-5 zone district. The applicant submitted a letter stating that the error in measurement was inadvertent. BIC Homes LLC (Border Investment Capital) has not had a request for a builder error in the past 12 months. **STAFF RECOMMENDATION IS FOR APPROVAL AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION G.**

Ms. Castle gave a PowerPoint presentation.

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

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was none.

MOTION:

Motion made by Vice-Chair Mendez, seconded by Mr. Gezelius and **UNANIMOUSLY CARRIED TO APPROVE.**



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ITEM 4:

PZBA11-00037 140 - 150 Castellano Drive EPT Mesa Development, LP
Applicant requests a Variance (Front Yard Setback) under Section 2.16.030 for a SmartCode development. The variance request is for a proposed 149 unit apartment building to be developed under Title 21 (SmartCode) with a front yard setback of 44 feet. The maximum permitted front yard setback for a SmartCode T-4O transect is 12 feet. The applicant's representative has submitted an application for SmartCode (SCZ), T-4O Transect (General Urban-Open), zoning for this property that is currently zoned C-2 (Commercial). A community infill plan has been submitted as part of the application for rezoning. The plan shows a 149 unit apartment building for senior living on 5 acres of land. The request is for a Variance from the El Paso City Code, Title 21, SmartCode, Section 21.80, Tables, Table 4B, Public Frontages. The T-4O Transect requires shallow front setbacks with buildings located close to the street, defining a street wall. The applicant is requesting the variance for the front setback from the required 12 feet to 44 feet along Castellano Drive, with the contention that the topography does not accommodate the building to be 12 feet from the street edge. The contour map submitted by the applicant shows an elevation difference between the centerline of Castellano and the building site of approximately 0 feet at the most easterly point and ranging to approximately 20 feet at the most westerly point of the building site. Over the span of the building site frontage Castellano drops in elevation approximately 23 feet, from east to west. **STAFF RECOMMENDS APPROVAL OF THE VARIANCE REQUEST FOR A FRONT YARD SETBACK OF 44 FEET AS THE REQUEST SERVES THE PUBLIC INTEREST; THE NEED EXISTS DUE TO THE EXCEPTIONAL TOPOGRAPHICAL CONDITIONS OF THE PROPERTY CREATING AN UNNECESSARY HARDSHIP; AND, THE SPIRIT OF THE ORDINANCE WILL BE OBSERVED AND SUBSTANTIAL JUSTICE WILL BE DONE.**

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

The board of adjustment may authorize in specific cases a variance from the terms of the zoning ordinance (Title 20) or as specified in (Title 21) SmartCode if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.

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

1. Is the variance consistent with public interest?
2. Is the need for the variance due to special conditions?
3. Would a literal enforcement of the ordinance create an unnecessary hardship?
4. Would the spirit of the ordinance be observed and substantial justice done if the variance is approved?

Definition of Unnecessary Hardship, Section 20.02.1128

"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. Conrad Conde, Conde, Inc., representing the applicant, thanked Staff for their recommendation and assistance.



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Ms. Castle gave a PowerPoint presentation and explained the proposed development must meet landscaping requirements, per the code.

1st MOTION:

Motion made by Mr. Walker, seconded by Vice-Chair Mendez and **UNANIMOUSLY CARRIED TO APPROVE AS WRITTEN.**

Prior to the vote, Board Members answered the following questions:

APPENDIX A: Findings – Variances

INQUIRY	FINDINGS
<p>Is the request for a variance owing to special condition inherent in the property itself?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	<p>The property is/has ... (e.g., odd-shaped, unusual topography, etc.)</p>

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<p>Is the condition one unique to the property requesting the variance?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	<p>The condition is unique to this property.</p>
<p>Is the condition self-imposed or self-created?</p> <p>If yes, STOP If no, PROCEED</p> <p>NO: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	<p>The condition necessitating the request was not created by the property owner.</p>
<p>Will the literal enforcement of the zoning ordinance result in an unnecessary hardship?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	<p>Strict enforcement of the zoning ordinance would impose a hardship above that suffered by the general public.</p>

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<p>Will the hardship prevent any reasonable use whatsoever?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	<p>Without the grant of the requested variance, the property owner would be deprived of the right to use his property. Financial considerations alone cannot satisfy this requirement.</p>
<p>Would the grant of the variance be contrary to public interest?</p> <p>If yes, STOP If no, CONTINUE</p> <p>NO: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	
<p>Is the request within the spirit of the ordinance and does it further substantial justice?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Messrs. Gezelius, Garland, Concha, Mendez, Aguilar, Cordova, Barela, Walker and Skarda</p>	

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Ms. Forsyth asked the Board to include in their motion that this is subject to the future rezoning to SmartCode.

Chair Aguilar asked if Board Members had any questions for Staff or representative. There were none.

Chair Aguilar asked if anyone in the audience wished to speak in favor of or opposition to the request. There was none.

2nd AND FINAL MOTION:

Motion made by Mr. Walker, seconded by Vice-Chair Mendez and **UNANIMOUSLY CARRIED TO APPROVE IF THE ZONING IS CHANGED TO SMARTCODE.**

PREVIOUSLY POSTPONED

ITEM 5:

PZBA11-00031 10181 Saigon Drive Carlos R. and Lupe Castaneda
Applicants request a Special Exception under Section 2.16.050 J (Carport over a Driveway) in an R-3 (Residential) zone. This would permit a 15' by 20' carport that is proposed to encroach into the front yard setback and to be located to within 5' feet of the front property line. The required front and rear yard setback cumulative total is 50 feet in the R-3 zone district. This case was postponed from the October 24, 2011 meeting to allow the applicant to submit a revised site plan that shows all curb cuts for driveways, revised structural drawings that accurately reflect the location of the carport and an architectural design to match the house. The applicant submitted a carport design with a flat roof that does not rise higher than the roof of the house with roof materials and paint to match the existing house. There is no utility easement at the front property line. The Engineering & Construction Management Department has reviewed the structural plans and found them acceptable. Staff suggested to the applicant that



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the carport design be changed to a pitched roof and to include columns faced with brick to match the house. A site visit shows a shed located less than 5 feet from the main structure and located in the side setback. The applicant provided a survey that shows that the structure was there when she purchased the house. **STAFF RECOMMENDATION PENDING. REVISED PLANS HAVE NOT YET BEEN SUBMITTED.**

Ms. Castle explained the applicant has requested the item be postponed to the next meeting.

MOTION:

Motion made by Mr. Cordova, seconded by Vice-Chair Mendez and **UNANIMOUSLY CARRIED TO POSTPONE TO THE NEXT MEETING.**

Other Business:

6. Approval of Minutes: October 24, 2011

Chair Aguilar asked Board Members if they had any additions/corrections/revisions to the minutes.

MOTION:

Motion made by Vice-Chair Mendez, seconded by Mr. Walker **AND UNANIMOUSLY CARRIED TO APPROVE THE OCTOBER 24, 2011 MINUTES.**

AYES: Messrs. Garland, Concha, Mendez, Aguilar, Cordova, Barela, and Walker

ABSTAIN: Messrs. Gezelius and Skarda

Motion passed. 7-2



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7. Presentation of plaques for service to the ZBA, Oscar Perez and Joe Melendez.

Staff requested Board Members move item 7 to the forefront.

Ms. Castle was pleased to present plaques for service to the ZBA to Mr. Joe Melendez and Mr. Oscar Perez. Messrs. Melendez and Perez served full terms as both Regular and Alternate Board Members. Mr. Melendez served on the Board from November 30, 2004, to October 1, 2011. Mr. Perez served on the Zoning Board of Adjustment from February 15, 2005, to October 1, 2011.

Ms. Castle stated Messrs. Perez and Melendez were excellent Board Members, diligent and helpful, assisting Staff in determining the outcome of applicants' requests.

Mr. Perez thanked Staff and hoped that both he and Mr. Melendez had a positive impact as Board Members and in the community.

Chair Aguilar thanked Messrs. Perez and Aguilar for their service to the community.

Chair Aguilar asked Board Members and Staff if there was any other business. There being none.

MOTION:

Motion made by Mr. Barela, seconded by Mr. Cordova **AND UNANIMOUSLY CARRIED TO ADJOURN.**

Linda Castle, Senior Planner



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