



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBER
APRIL 7, 2008
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order at 1:32 p.m. by Mr. Larry Nance, Chairman.

The following Board Members answered roll call:

Mr. Larry Nance (Chair)
Mr. Robert Veliz (Vice-Chair)
Mr. Rigoberto Mendez
Mr. Rick Cordova
Mr. Randy Bowling
Mr. Sam Barela
Mr. Servando Hernandez
Mr. Jose Melendez
Ms. Alisa Jorgensen

The following City staff members were present:

Ms. Mirian Spencer, Development Services Department, Planner
Mr. Robert Peña, Development Services Department, ZBA Secretary
Ms. Linda Castle, Development Services Department, Senior Planner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney
Ms. Cindy Crosby, Outside Counsel, Bickerstaff Heath Delgado Acosta LLP

**REVISED
AGENDA**

Ms. Castle read the opening remarks into the record.

DEVELOPMENT SERVICES REPORT:

1. Discussion and action on proposed Ordinance that amends Chapter 2.16 (Zoning Board of Adjustment) of the El Paso City Code in its entirety, updates and clarifies the code, deletes obsolete special exceptions, adds conditions to other special exceptions and amends the administrative process.

Ms. Castle explained that the DCC ("Development Coordinating Committee") had requested **Section 2.16.050, Special Exceptions, J., Modify the yard requirement for public schools where the following conditions are met:** . . . ", in its entirety, remain as part of the ordinance language.

Ms. Jorgensen asked Staff whether or not the DCC would then review the revisions/additions/corrections approved by the ZBA. today.

Ms. Castle responded yes and stated she would place an item on the April 9th DCC agenda.

1ST MOTION:

Chair Nance asked if members of the audience were present to speak in favor of or in opposition to the matter. There being none, motion made by Mr. Melendez, seconded by Mr. Hernandez and unanimously carried **THAT SECTION 2.16.050, SPECIAL EXCEPTIONS, J., IN ITS ENTIRETY, REMAIN AS PART OF THE ORDINANCE LANGUAGE.**

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

NAYS: N/A

The Motion passed. (9-0)

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Ms. Castle explained that the DCC had requested **Section 2.16.050, Special Exceptions, P., 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, that the following conditions are met:** . . . “, in its entirety, remain as part of the ordinance language.

Ms. Osborn explained legal non-conforming pertained to the structure; special exception pertained to the property. For example, if a portion(s) of the property is taken by eminent domain, making the structure non-compliant in setbacks, applicants could apply for a special exception. However, if the ordinance language was removed and a special exception was not granted, or the city had condemned or taken the property by eminent domain, applicants could apply for legal non-conforming. Additionally, if the structure was destroyed, it must be rebuilt according to the setback requirements. In conclusion, if the ordinance language were removed applicants could not rebuild the structure as originally built; however, they could, if the language remained.

Ms. Jorgensen asked Staff to clarify “a structure to be relocated on any lot,”.

Ms. Crosby explained the provision addressed structures threatened by condemnation or eminent domain, be relocated on the same lot. Additionally, she provided legal advice regarding setbacks, relocated structures and non-conforming status.

Ms. Castle questioned at what point would the applicant apply for special exception, for example, rebuilding on the same property taken by eminent domain.

Ms. Crosby responded at the time the applicant submitted the building permit application, Staff would direct the applicant to apply for the special exception.

Ms. Jorgensen wondered whether the ordinance language was too narrow.

Ms. Crosby responded without this Section, property owners would not have any recourse and would have to apply for a variance.

2ND MOTION:

Motion made by Mr. Bowling, seconded by Mr. Melendez and unanimously carried **THAT SECTION 2.16.050, SPECIAL EXCEPTIONS, P., IN ITS ENTIRETY, REMAIN AS PART OF THE ORDINANCE LANGUAGE.**

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

NAYS: N/A

The Motion passed. (9-0)

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Ms. Castle explained that DCC suggested changing “Canopy over a Driveway” to “Carport over a Driveway”.

Mr. Nance concurred.

Mr. Melendez suggested “Canopy/or Carport”, canopies are legitimate structures. He explained canopies do not necessarily house vehicles and could be extended.

Mr. Nance asked if carports could be used as canopies.

Mr. Peña explained that the Special Exception Q was originally written for carports only, not for canopies, of any type. He opined that various sizes and types of canopies would be showing up in front yards.

Ms. Crosby suggested the following language (*italics and underlined*) inserted into **Section 2.16.050, Q., 3.:** “The canopy shall be constructed of the same material “architectural design and color scheme” as the residential structure, open on three sides, and attached to the main structure;”

Mr. Veliz asked whether carports sold at Wal-Mart would then be considered obsolete.

Ms. Crosby responded, if the applicant met setbacks, they would not be considered obsolete; however, if the applicant was considering extending into the setback, that would be subject to the jurisdiction in the language. She added past ZBA action requested site plans showing the carport matching or very similar to the existing structure.

Prior to the vote, Mr. Bowling stating it was his understanding that drawings or specs would not bear the seal of an engineer or architect.

Ms. Castle responded the language had been removed and added the decision regarding the design, materials, and color scheme, would be determined by the ZBA.

3RD MOTION:

Motion made by Ms. Jorgensen, seconded by Mr. Mendez and unanimously carried to **APPROVE THE LANGUAGE REVISIONS FOR:**

1. **SECTION 2.16.050, Q, CHANGE THE WORD CANOPY TO CARPORT; AND**
2. **SECTION 2.16.050, Q., 3. INSERT “ARCHITECTURAL DESIGN AND COLOR SCHEME” LANGUAGE.**

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

NAYS: N/A

The Motion passed. (9-0)

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Ms. Crosby suggested **Section 2.16.010, Appointment and Terms, A.** be revised to read: "All cases before the board shall be heard "and decided" by at least seven members."

4TH MOTION:

Motion made by Mr. Bowling, seconded by Mr. Melendez and unanimously carried that **SECTION 2.16.010, APPOINTMENT AND TERMS, A., BE REVISED TO READ: "All cases before the board shall be heard and decided by at least seven members."**

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

NAYS: N/A

The Motion passed. (9-0)

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Ms. Crosby suggested **Section 2.16.020, Powers, C.**, be revised to read: "Where, as part of its power to issue permits, the board "imposes" conditions, the permits are valid only when all conditions are met."

And

Section 2.16.020, Powers, D., be revised to read: "The board is empowered and encouraged to recommend to the city council any changes to the special exceptions "to Title 20" which it believes are necessary or useful to the welfare of the community."

5TH MOTION:

Motion made by Mr. Cordova, seconded by Mr. Hernandez and unanimously carried that **SECTION 2.16.020, POWERS, C., BE REVISED TO READ: "Where, as part of its power to issue permits, the board imposes conditions, the permits are valid only when all conditions are met."**

And

SECTION 2.16.020, POWERS, D., BE REVISED TO READ: The board is empowered and encouraged to recommend to the city council any changes to the special exceptions, to Title 20 which it believes are necessary or useful to the welfare of the community."

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

NAYS: N/A

The Motion passed. (9-0)

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Ms. Crosby suggested **Section 2.16.050, Special Exceptions, B. 2.**, be revised to read: "There are two or more lots that do not conform to ~~these regulations~~ Title 20 (Zoning) located within the same block on the same side of the street or within the block directly across and abutting the street; and"

6th MOTION:

Motion made by Mr. Cordova, seconded by Mr. Bowling and unanimously carried **SECTION 2.16.050, SPECIAL EXCEPTIONS, B. 2., BE REVISED TO READ: "There are two or more lots that do not conform to Title 20 (Zoning) located to within the same block on the same side of the street or within the block directly across and abutting the street."**

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

NAYS: N/A

The Motion passed. (9-0)

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Ms. Crosby suggested **Section 2.16.060, Administration**, be relocated to the beginning of the Chapter.

Additionally, she requested the Board allow the City Attorney's office to discuss the possibility of rewording **Section 2.16.060, Administration, C.**, *The building permits and inspections deputy director shall only issue a building permit for construction authorized by board action during the first twelve months after board authorization unless otherwise directed by the board at the time the authorization is approved.*

She explained that the intent of the Section is, that the Board's decision is valid for one year, not that the building permits and inspections deputy director issue the permit within the year.

Ms. Castle suggested Section 2.16.060, Administration, C., read as follows: "The Board authorization is for 12 months unless otherwise directed by the Board at the time the authorization is approved."

Mr. Cordova suggested **Section 2.16.060, Administration, D. Extension of time.**, read as follows: "Extension of time to apply 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.

Ms. Crosby suggested **Section 2.16.060, Administration, F., Reapplication.**, be revised to read: "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 one year, unless the Board finds that a substantial change in conditions has occurred."

Prior to the vote, Ms. Jorgensen asked:

1. Procedurally, would the board then make a decision and a motion whether or not a substantial change had occurred?; and then,
2. Hear the application.

Ms. Osborn responded yes. Ms. Crosby concurred and added the CPC is required to do the same.

Mr. Hernandez added the board would be made of aware of the both conditions, before and after.

Ms. Crosby explained at the time the application is submitted, the applicant submits in writing, justifying what change(s) have occurred.

7TH MOTION:

Motion made by Mr. Mendez, seconded by Mr. Melendez and unanimously carried to **APPROVE THE CHANGES AS SUBMITTED.**

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

NAYS: N/A

The Motion passed. (9-0)

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2. **Training for City Staff and Zoning Board of Adjustment Board Members.**

In open session, Ms. Crosby gave a PowerPoint presentation (copy on file) regarding ZBA matters and updated Board Members on Texas Local Government Code, Chapter 171 and El Paso City Code, Chapter 2.92.

She thanked Board Members for their time and effort in coming to ZBA meetings and added City Council members seek out individuals with expertise in matters of building, engineering, real estate, etc., to serve as Board Members.

In conclusion, she encouraged Board Members to re-read Chapter 2.92, Standards of Conduct.

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3. Training for Zoning Board of Adjustment Board Members. (Executive Session)

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4. Legal Report: (Executive Session)
Humphries v. City of El Paso, et al; Cause No. 2007-4401.

Mr. Nance read the following into the record:

The ZBA of the City of El Paso may retire into Executive Session pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, Consultation with Attorney, Section 551.071, to discuss Humphries v. City of El Paso, et al; Cause No. 2007-4401.

Motion made by Mr. Bowling, seconded by Mr. Cordova and unanimously carried to **RETIRE INTO EXECUTIVE SESSION** at 3:20 p.m.

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

NAYS: N/A

NOT PRESENT FOR THE VOTE: Mr. Veliz

The Motion passed. (8-0)

Motion made by Mr. Bowling, seconded by Mr. Melendez and unanimously carried to **RECONVENE THE ZBA MEETING** at 3:30 p.m.

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

NAYS: N/A

The Motion passed. (9-0)

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5. Location and time for training for Zoning Boards of Adjustment on Wednesday, April 16, 2008. (American Planning Association teleconference)

Ms. Castle explained that the American Planning Association teleconference, specifically for Zoning Boards of Adjustment, will be held Wednesday, April 16th, at 1:00 p.m., City Hall Building, 10th Floor Conference Room.

Mr. Nance requested a reminder email be sent to the Board.

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Motion made by Mr. Veliz, seconded by Mr. Barela and unanimously carried to **ADJOURN** the ZBA meeting at 3:30 p.m.

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

NAYS: N/A

The Motion passed. (9-0)

Robert Peña, Secretary
Zoning Board of Adjustment