



**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBER
AUGUST 27, 2007
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order at 1:42 p.m.

The following Board Members answered roll call:

Mr. Larry Nance, Chairman
Mr. Robert Veliz, Vice-Chairman
Mr. Oscar Perez
Mr. Rick Cordova
Mr. Randy Bowling
Mr. Sam Barela
Ms. Anna Gill
Mr. Servando Hernandez

The following City Staff members were present:

Ms. Mirian Spencer, Development Services Department, Planning Division, Planner
Mr. Robert Peña, Secretary, Zoning Board of Adjustment
Ms. Linda Castle, Development Services Department, Planning Division, Senior Planner
Mr. Tony De La Cruz, Building Permits & Inspections, Building Plans Examiner
Mr. Ernie Rodriguez, City Attorney's Office, Assistant City Attorney

REVISIONS TO THE AGENDA:

Motion made by Mr. Veliz, seconded by Mr. Perez, and unanimously carried to move to the forefront of the agenda, Item 6, ZBA07-00133, 10051 Railroad Drive.

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (8-0)

Motion made Mr. Veliz, seconded by Mr. Nance to discuss Item 1 - ZBA07-00127, 6253 Wildwood Court, Item 9 - ZBA07-00137, 6245 Wildwood Court, and Item 10 - ZBA07-00138, 6249 Wildwood Court, concurrent.

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (8-0)

ITEM 1:

ZBA07-00127

6253 Wildwood Court

Arnold Peinado/Gustavo Quintana

Applicant requests a Special Exception under Section 2.16.050 G (Rear Yard Setback) in an R-3 zone of the City of El Paso Zoning Ordinance. This would permit a 2' by 2' portion of a structure; a 4' by 6' portion of a structure; and, a 1' by 1' portion of a structure located to within 19' of the rear property line. A rear yard setback of 25' is required in an R-3 zone.

Ms. Spencer presented the case and noted Staff recommended approval of the request as it met the requirements of the Special Exception G and noted the applicant was proposing to construct a new house that encroached at three points into the rear setback for a total width of 7'. Staff received phone calls from two neighbors expressing opposition to this request.

Ms. Kelly Carpenter, Deputy Director – Planning, addressed granting Special Exceptions in undeveloped subdivisions, site plans and plats for undeveloped subdivisions and read into the record Special Exception language of the El Paso City Code, specifically within Sections 2.16.050 Special Exceptions, 1 and 4., 2.16.050G.5., 2.16.050G.6., and 2.16.050G.7.:

Section 2.16.050 Special Exceptions:

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 is located the property for which the exception is sought.”*
4. *“Set conditions and safeguards which the Board deems appropriate, such as site arrangement, landscaping and hours of operation”; and*

And

Section 2.16.050 G:

“. . . an extension of a single-family residential structure into the required rear yard . . . “

5. *“Unless otherwise provided in this ordinance, all remaining areas of the required rear yard shall be permanent open space.”*
6. *“The extension shall not permit the creation of an additional dwelling unit or an over-intensive use or coverage of the site.”*
7. *“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 is located the property for which the exception is sought.”*

Ms. Carpenter responded to questions and/or comments of the Board Members and requested the Board deny the application based on Sections 2.16.050, Special Exceptions, and 2.16.060.G.5., 6., and 7.

Ms. Castle commented and Mr. Rodriguez provided legal advice.

Mr. Gustavo Quintana, representing the Applicant, commented on the points of encroachment.

The following members of the public spoke in opposition to the application:

1. Mr. Richard Schecter, Vice-President, Mountain Arroyos Neighborhood Association;
2. Ms. Janet Eschenbrenner, resident, Espada Drive; and
3. Ms. Loy Doty, resident, Espada Drive, read into the record and provided copies of her prepared statement to the Board Members.

1ST MOTION:

Mr. Cordova moved to **TABLE THE APPLICATION UNTIL A GRADING PLAN HAS BEEN SUBMITTED. THERE WAS NO SECOND.**

The Motion failed due to lack of a second.

2ND AND FINAL MOTION:

Chairman Nance asked if members of the audience were present to speak in favor of or in opposition to the application. Following those remarks, Mr. Bowling moved, Mr. Hernandez seconded, and carried to **APPROVE THE APPLICATION, PER ORIGINAL STAFF RECOMMENDATION.**

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Nance, Veliz and Hernandez

NAYS: Mr. Barela

The Motion passed. (7-1)

ITEM 2:

ZBA07-00129

705 Rio Valle Court

Eloy Galindo

Applicant requests a Special Exception under Section 2.16.050 C (Front and Side Yard Setbacks) in an R-1 zone of the City of El Paso Zoning Ordinance. This would permit the existence of a house built to within 41.3' of the front property line. This would also permit the construction of an attached garage located to within 11' of the side property line. A 50' front setback and a 20' side yard setback are required in an R-1 zone.

Ms. Spencer presented the case and noted the applicant is requesting the Special Exception C to legalize the nonconforming front setback and to construct a new attached garage that is proposed to encroach 9' into the required 20' side setback. There appeared to be four homes in the same block as nonconforming or less conforming than the existing front yard setback and proposed garage. A site visit revealed there are several houses built as close or closer to the front property line as the applicant's. However, there no other properties on Rio Valle Court or the intersecting street (Montoya) with attached garages with the same or greater encroachment in the side setback as the applicant's proposed garage.

Staff recommended approval of the request for the Special Exception C to legalize the nonconforming front setback as there are other properties on the same street built as close or closer to the front property line as the subject property.

Staff recommended denial of the request for the Special Exception C to build a new attached garage encroaching in the side setback.

1ST MOTION:

Motion made by Mr. Veliz, seconded by Mr. Barela **TO MOVE ZBA07-00129, 705 RIO VALLE COURT, TO THE END OF THE AGENDA, AS THE APPLICANT WAS NOT PRESENT.**

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (8-0)

1ST MOTION:

Ms. Gill moved to approve and Mr. Bowling seconded to **APPROVE THE APPLICATION.**

NO VOTE WAS TAKEN.

Mr. Barela commented on the 457 square feet of covered patio and requested the Motion be amended read "**MAINTAIN 180 SQUARE FEET COVERED PATIO, TOTAL**".

Ms. Castle explained the amended language would deny the application.

Mr. Barela withdrew his amendment.

2ND MOTION:

Chairman Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Ms. Gill moved, Mr. Bowling seconded, and carried to **APPROVE THE APPLICATION.**

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Veliz and Hernandez

NAYS: Messrs. Barela and Nance

The Motion failed. (6-2)

3RD MOTION:

Mr. Bowling moved to reconsider the application. There was no second. Motion failed due to lack of a second.

4TH MOTION:

Mr. Veliz moved to discuss why . . . There was no second. Motion failed due to lack of a second.

Ms. Castle clarified the Board Member voting and discussed in detail the covered patio square footage.

Ms. Gill seconded Mr. Bowling's Motion. The Board gave an oral vote, all Ayes.

Chairman Nance requested Staff poll the Board Member's vote.

Prior to the vote, Mr. Bowling commented on the City's recommendations regarding Special Exceptions and added the Board has set precedent approving previous Special Exceptions.

5TH AND FINAL MOTION:

Mr. Bowling moved to **RECONSIDER THE EXACT SAME MOTION – TO APPROVE THE APPLICATION.** Mr. Hernandez seconded.

Prior to the vote, Mr. Hernandez opined the extension did not create an additional dwelling, given the conditions the Board was asked to consider.

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (8-0)

ITEM 5:

ZBA07-00132 1 Mina Perdida Court Wayne Germano and Violeta Radenovich
Applicants request Special Exceptions under Section 2.16.050 G (Rear and Side Yard Setback) and Section 2.16.050 L (Builder Error, Side Yard Setback) in an R-3 zone of the City of El Paso Zoning Ordinance. This would permit the existence of a 32' by 4' portion of a house located 21' from the rear property line. This would also permit the existence of a house located to within 4.9' of the side property line. A 25' rear yard setback and a 5' side yard setback are required in an R-3 zone. The applicants hired several surveying companies to stake the building corners before beginning construction on their house to be built on an odd-shaped lot that required extensive grading. A survey performed after the house was built showed that the house was built too close to the rear property line and the northerly side property line. The applicants are requesting the Special Exception G for the 32' wide encroachment in the rear setback. The applicants are requesting the Builder Error for the side setback encroachment. The property owners are the builders of the house, and have not requested the Special Exception L in the last 12 months.

Ms. Mirian Spencer presented and noted Staff recommended approval of the requests as they met the requirements of Special Exceptions G and L.

Mr. Wayne Germano, Applicant, commented on the survey error and noted the neighbor to the north was not opposed.

Chairman Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Mr. Perez moved, Mr. Hernandez seconded, and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz and Hernandez
NAYS: N/A

The Motion passed. (8-0)

ITEM 6:

ZBA07-00133 10051 Railroad Drive Celtic Homes Inc.
Applicant requests a Variance from Section 20.42.080 of the El Paso City Code (Multi-family Dwelling, Rear Yard Setback) in a C-4/sc/sp zone of the City of El Paso Zoning Ordinance. This would permit the existence of two apartment buildings located to within 15' of the rear property line. A 25' rear yard setback is required for apartment buildings in a C-4/sc/sp zone. Celtic Homes began construction on this apartment project without a building permit. The applicant has roughed-in the plumbing, poured the foundations and started framing of two apartment buildings that are located too close to the rear property line. The applicant is requesting a Variance for a reduction in the 25' rear yard setback requirement. The Special Contract on the property required platting of the property prior to development; the Special Permit allowed reduced setbacks in the Residential portion of the subdivision.

Ms. Mirian Spencer presented the case and noted Staff recommended denial of the Variance request as the need for the variance was not due to special conditions inherent in the property itself and literal enforcement of the ordinance would not create an unnecessary hardship as defined in Section 20.02.864 of the El Paso Municipal Code:

“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 which is self-imposed.

The following Staff members commented on the proposed construction and responded to comments and/or questions of the Board Members:

1. Larry Nichols, Deputy Director, Building Permits & Inspections, provided photos of ongoing construction of the same building;
2. Linda Castle, Senior Planner;
3. Mirian Spencer, Planner;
4. Tony De La Cruz, Building Plans Examiner, Building Permits & Inspections;
5. Tom Maguire, Chief Building Inspector, Building Permits & Inspections, explained Third Party Inspectors;
6. Robert Peña, Secretary; and
7. Ernie Rodriguez, Attorney

Mr. Owen Burgess, Owner, Celtic Homes, elaborated on lack of permit(s), issuance of temporary grading permit, out-of-town investors, third-party inspectors/inspection, architect’s drawing and the cause of the encroachment, pouring slabs, weather conditions - installation of trusses but not mechanicals, on-site ponding, and relocating the rockwall. Mr. Burgess stated this was not done intentionally and would not happen again.

FOR THE RECORD - Mr. Burgess provided handouts of the Site Plan to the Board Members; additionally, the Site Plan was displayed for public viewing during the discussion.

Mr. Enrique Escobar, Developer, and owner of the adjacent property (on-site ponding area), spoke in favor of the application.

In response to a question if the Special Exception G could be used in this case, Ms. Castle read the following selection into the record:

Section 2.16.050.G. – “. . . to permit an extension of a single-family residential structure into the required rear yard.”

Additionally, Ms. Castle reiterated Buildings 5 and 6 would have to be demolished if the Applicant could not purchase the 10 feet into the on-site ponding area.

Mr. Veliz read the following into the record: *“Is the request for a variance owing to special condition inherent in the property itself?”*

NO VOTE WAS TAKEN.

Prior to the vote, Board Members discussed abstaining from the vote. Mr. Rodriguez gave legal advice.

Mr. Bowling requested Mr. Burgess be provided a copy of the conditions necessary for the Board to approve a variance.

Ms. Carpenter commented on granting Special Exceptions on recently approved plats.

Ms. Teri Froetschel, representing the Applicant, explained the request for the Special Exception.

Mr. Richard Schechter, Vice-President, Mountain Arroyos Neighborhood Association, spoke in opposition to the application

Chairman Nance asked if members of the audience were present to speak in favor of or in opposition to the application. Following opposition remarks, Mr. Perez moved, Mr. Veliz seconded, and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Veliz and Hernandez

NAYS: Mr. Nance

The Motion passed. (7-1)

ITEM 10:

ZBA07-00137

6249 Wildwood Court

Willis Homes of El Paso

Applicant requests a Special Exception under Section 2.16.050 V (Front Yard Setback) in an R-3 zone of the City of El Paso Zoning Ordinance. This would permit the construction of a new residence with a 23' by 5' portion of the structure located to within 20' of the front property line. A 25' front yard setback is required in an R-3 zone. The applicant is constructing a new house and is requesting the Special Exception for a 22' wide garage that encroaches 5' into the front setback. Staff received phone calls from two neighbors expressing opposition to this request.

Ms. Mirian Spencer presented and noted Staff recommended approval of the request as it met the requirements of the Special Exception V.

Ms. Kelly Carpenter, Deputy Director, Planning, stated Staff recommended denial based on Section 2.15.050.1. and Section 2.16.050.V.7.:

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 is located the property for which the exception is sought.*

And

Section 2.16.050.V.7.

7. *"The extension shall not permit the creation of an additional dwelling unit or an over-intensive use or coverage of the site."*

FOR THE RECORD – Ms. Carpenter clarified Staff and the construction community are moving forward regarding revising the Subdivision Regulations language; however, setbacks are not part of a Subdivision Regulation, they are a part of Zoning Code.

DEVELOPMENT SERVICES REPORT:

ITEM 13:

Discussion and action regarding Zoning Board of Adjustment issues.

Mr. Bowling requested Staff provide a copy of the "Findings – Variance" to applicants when applying for a Variance.

Mr. Veliz questioned why Staff now recommends denial of Special Exception G when previously the Board approved those requests.

Ms. Castle explained due to new leadership and proposed changes to the Zoning and Administrative Codes, Staff recommendation have been revised.

Mr. Bowling opined the City's setback requirements are too stringent.

Regarding third-party inspectors, Mr. Hernandez noted the building community had requested this; however, the application, enforcement, and rules and regulations are bogus and are not being followed.

Chairman Nance requested Staff mail the ZBA Agenda packets to the Board on the Wednesday prior to the ZBA meetings.

ADJOURNMENT:

Motion made by Mr. Hernandez, seconded by Mr. Veliz and unanimously carried to **ADJOURN THE AUGUST 27, 2007 ZBA MEETING** at 3:58 p.m.

AYES: Ms. Gill and Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (8-0)

Linda Castle, Senior Planner