ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR - CITY COUNCIL CHAMBERS
FEBRUARY 8, 2010
1:30 P.M.
(REVISED)

The Zoning Board of Adjustment meeting was called to order at 1:32 p.m.

The following Board Members answered roll call:

Mr. Rick Cordova, Chair
Ms. Alisa Jorgensen, Vice-Chair
Mr. Sam Barela
Mr. Rigoberto Mendez
Mr. Randy Bowling
Mr. Kenneth J. Gezelius
Mr. Lamar Skarda
Mr. Oscar Perez

The following City Staff were present:

Ms. Linda Castle, Development Services Department, Planning, Senior Planner
Mr. Juan Estala, Development Services Department, Building Permits & Inspections, Chief Plans Examiner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Chair Cordova asked if there were any changes to the agenda.

Ms. Castle noted the applicant requests ZBA10-00002, 445 Pinewood Street, be postponed to the meeting of March 8th.

ITEM 1:
ZBA10-00001 1660 Lou Graham Drive Eva M. Moya
Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3 (Residential) zone. This would permit an 18'6" by 7'6" addition that is proposed to encroach 7'6" into the required rear yard setback. The required front and rear yard cumulative setback total is 50' in the R-3 zone district. The applicant enclosed her patio for the addition of an office. She is seeking to legalize the addition which does meet the requirements of the Special Exception C. She also constructed an accessory building that is located in the rear yard and is closer than 5 feet to the main house and is located at 0' of the side property line. In addition, a site visit reveals that there is another accessory structure, a roofed seating area, in the rear yard. The applicant states this structure is 10' by 10'. She reports the dimensions of the storage building as 7.5' by 10'. The applicant is limited to 180 square feet of accessory structure in the rear yard and any accessory building closer than 5 feet to the main structure is considered part of the main structure. She is required to relocate the storage building to another area of the yard and to fire-rate any structures closer than 3 feet to any property line. **STAFF RECOMMENDS APPROVAL OF THE REQUEST FOR THE SPECIAL EXCEPTION FOR THE ADDITION OF AN OFFICE WITH CONDITIONS THAT THE COMBINED AREA OF ALL ACCESSORY STRUCTURES CANNOT EXCEED 180 SQUARE FEET AND THAT THE STORAGE BUILDING EITHER BE REMOVED OR RELOCATED TO ANOTHER AREA OF THE REAR YARD AND LOCATED NO CLOSER THAN 3 FEET TO ANY PROPERTY LINE.**

Ms. Castle gave a PowerPoint presentation and explained, regarding the storage building, the applicant may:

1. Remove;
2. Relocate, as long as it is five feet away from the home and no closer to three feet to any property line; or
3. Fire-rate

Ms. Castle reiterated any accessory structure, closer than five feet to the main structure, is considered part of the main structure.

Ms. Eva Moya, applicant, responded, if necessary, she would remove the storage building.

Per the site plan, Ms. Jorgensen noted the accessory building dimensions were not shown and wondered if Staff had taken measurements.

Ms. Castle responded Staff relies on the applicant's measurements; additionally, Staff refers to the site visit photographs for additional confirmation. Ms. Castle explained the applicant had reported the accessory structure measured 7.5' x 10' and 10' x 10' for the gazebo.

Ms. Moya agreed.

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. Perez, seconded by Mr. Mendez and unanimously carried to **APPROVE WITH THE CONDITION THE SHED BE REMOVED OR RELOCATED.**

AYES: Ms. Jorgensen and Messrs. Perez, Gezelius, Bowling, Cordova, Mendez, Barela and Skarda
NAYS: N/A

Motion passed. (8-0)

ITEM 2:
ZBA10-00002 445 Pinewood Street Victor A. and Juana Flores
Applicant requests a Special Exception under Section 2.16.050 K (Carport over a Driveway) in an R-4 (Residential) zone. This would permit a 21'6" by 22'6" carport that is located to within 0' of the front property line. The required front and rear yard cumulative setback total is 45 feet for a single-family residence in the R-4 (Light Density Residential) zone district. The ZBA previously denied the request for this carport on November 12, 2007. Staff recommended denial based on an already over-intensive use of the site. The applicants are again requesting the addition of a carport that is proposed to be located to within 0' of the front property line. There are no utility easements at the front property line. The applicant has not submitted the structural or elevation drawings per the requirements of the carport Special Exception and has been advised to provide these plans prior to the Board considering the request. **STAFF RECOMMENDS POSTPONING THE CASE TO THE NEXT MEETING TO ALLOW THE APPLICANT TIME TO SUBMIT THE REQUIRED DRAWINGS.**

Applicant requests ZBA10-00002, 445 Pinewood Street, be postponed to the meeting of March 8th.

ITEM 3:
ZBA09-00054 8533 Euphrates Drive Ignacio F. Acosta
Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3/A/sc (Light Density Residential/Special Contract) zone. This would permit a 17.75' by 15' addition to encroach 15' into the required rear yard setback. The required front and rear yard cumulative setback total is 45 feet in the R-3/A zone district. The required side yard setbacks are 5 feet per side in the R-3/A zone district. The applicant purchased his residence as a new home in 1993 and has since constructed additions to his house without permit that are located to 0' of the rear and side property lines. The applicant's representative has been provided with a letter from the Planning Division that explains the El Paso City Code requirements as far as setbacks and also explains the Special Exceptions that are available from the ZBA. The applicant requested a Variance in order to keep everything that he has built. The Board considered the request for a Variance at the January 11, 2010, meeting,

but postponed the request to the February 8, 2010, meeting to allow the applicant to come in with a site plan that would meet the Special Exception C requirements and Code requirements. The applicant has submitted a site plan that shows a 29'6" wide by 13'1" deep addition located to within 0' of the side property line and to within 12' of the rear property line. The applicant understands that the site plan does not meet the Special Exception requirements. **STAFF RECOMMENDS DENIAL OF THE REQUEST SINCE IT DOES NOT MEET THE REQUIREMENTS OF THE SPECIAL EXCEPTION C.**

Ms. Castle gave a PowerPoint presentation.

Mr. Ignacio F. Acosta, applicant, and Ms. Deliah Acosta, daughter of the applicant, were present and Ms. Acosta translated for her father. Mr. Acosta understood the site plan did not meet the Variance and Special Exception requirements. Mr. Acosta proposed demolishing the whole back side of the home, over 500 square feet; however, he requested the Board allow him to retain the entire rear wall to include the restroom. Regarding water runoff, Ms. Acosta brought letters from the neighbors and explained the water drains into the courtyard and does not affect the neighbors.

Ms. Jorgensen stated the additions were built to the rear and side property lines without permits and inspections and thought the neighbors might be at risk.

Ms. Acosta responded her father was issued a permit initially; however, he did not apply for any subsequent permits. She noted the additions were built over 10 years ago.

Ms. Osborn explained if the applicant does not meet the Special Exception requirements, the Board cannot approve the Special Exception. The Zoning Board of Adjustment is the exception to the Code.

To avoid demolition, Mr. Bowling suggested the applicant purchase a portion of the rear neighbor's property.

Ms. Osborn and Messrs. Cordova and Bowling explained the minimum requirements for a Special Exception and differences between a Variance and Special Exception.

Ms. Castle said the applicant has proposed retaining the restroom and demolishing 500 square feet of the rear home, which does not meet the minimum requirements of the Special Exception. The applicant would be allowed a 17.75' feet wide addition located to within 10' of the rear; however, they would have to remove the bathroom. The applicant would have to submit revised site plans and, in addition, demolition plans.

Ms. Osborn suggested the Board postpone the item with the understanding that if it does not meet the minimum requirements of the Special Exception it would be denied and that the applicant would have to remove the entire addition. Staff will assist the applicant to meet the minimum Special Exception requirements.

1st MOTION:
Motion made by Mr. Bowling **TO POSTPONE TO THE NEXT ZBA MEETING WITH THE UNDERSTANDING THAT IF IT DOES NOT MEET THE MINIMUM REQUIREMENTS OF THE SPECIAL EXCEPTION IT WOULD BE DENIED AND THE APPLICANT WOULD HAVE TO REMOVE THE ENTIRE ADDITION. STAFF WILL EXPLAIN THE MINIMUM SPECIAL EXCEPTION REQUIREMENTS.**

No vote was taken.

Ms. Acosta responded one month was not enough time.

Mr. Cordova explained to the applicant he would have to have building and site plans at the next meeting for the Board to review.

Mr. Jared Mendoza, Traffic Engineering, translated the Board Member's request and requirements to the applicant.

Ms. Acosta reiterated her father was issued a permit for the storage unit to be built to the rear and side property lines.

Mr. Bowling explained the five foot requirement is a fire code requirement.

For the applicant, Mr. Estala would explain the requirements for accessory structures and additions in Spanish.

Ms. Osborn explained a motion was made to postpone the item with the condition that when the item comes before the Board the request will have met the minimum requirements. Due to the various ways in which the minimum requirements could be met, Staff will assist the applicant in determining which method he preferred.

Mr. Estala responded Staff will discuss with the applicant the best and most appropriate method to resolve the matter; in addition to, what is feasible and the law allows.

Mr. Bowling responded he was not opposed to postponing the item two months.

Mr. Philip Etiwe, Development Services Department, Planning Development Review Manager, recommends the Board postpone the item for 30 days or a maximum of 45 days. During that time, Staff will meet with the applicant to discuss all options.

Mr. Bowling requested the item be postponed one month and if the applicant is making progress; leave it to Staff's discretion whether or not to permit the applicant additional time.

Ms. Castle agreed.

1ST MOTION REVISED:
Motion made by Mr. Bowling, seconded by Mr. Gezelius and unanimously carried **TO POSTPONE TO THE NEXT ZBA MEETING.**

AYES: Ms. Jorgensen and Messrs. Perez, Gezelius, Bowling, Cordova, Mendez, Barela and Skarda
NAYS: N/A

Motion passed. (8-0)

Other Business:

4. Approval of Minutes: January 11, 2010

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

MOTION:
Motion made by Mr. Bowling, seconded by Mr. Cordova and unanimously carried **TO APPROVE THE JANUARY 11, 2010 MEETING MINUTES.**

AYES: Messrs. Bowling, Cordova, Mendez and Barela
NAYS: N/A
ABSTAIN: Ms. Jorgensen and Messrs. Perez, Gezelius and Skarda

Motion passed. (4-0)

Development Services Report:

5. Discussion and action regarding changes to the Zoning Board of Adjustment ordinance, Chapter 2.16.

Ms. Castle explained Board Members will discuss and revise and/or make recommendations regarding three proposed changes to the Zoning Board of Adjustment ordinance, Chapter 2.16. Revisions/Recommendations approved by the Zoning Board today will be discussed at the February 11th City Plan Commission meeting.

1. "**owner occupied"**
Ms. Castle explained the proposed ordinance language was presented to the City Plan Commission at the January 28, 2010 meeting. There was no opposition; however, Commissioners suggested removing the "owner occupied" language for Special Exceptions C., D., K. and M.

Ms. Osborn responded Zoning Board Members had requested the "owner occupied" language as a preventive measure when the "one year in existence" requirement was added.

Mr. Bowling clarified the intent of the language was to prevent builders from applying for a Special Exception prior to construction.

Mr. Etiwe explained the intent of City Plan Commission was that the structure and/or property have a valid Certificate of Occupancy on file for one year.

Ms. Castle added Staff requested the "owner occupied" language so that the owner, having lived in the structure, would be the individual requesting the Special Exception.

Special Exception D. Rear Yard Setback, Duplex "owner occupied
As most duplexes are rented, Ms. Castle explained, City Plan Commissioners requested *"owner occupied"* be deleted.

Ms. Jorgensen wondered how Staff can prove whether or not the structure was occupied by the property owner.

Ms. Castle responded the property owner must notarize the application; additionally, the application requests the property owner designate *"YEAR BUILT".*

MOTION:
Motion made by Mr. Bowling, seconded by Mr. Mendez and unanimously carried to remove **THE "OWNER OCCUPIED" LANGUAGE AND REPLACE WITH "CERTIFICATE OF OCCUPANCY".**

AYES: Ms. Jorgensen and Messrs. Perez, Gezelius, Bowling, Cordova, Mendez, Barela and Skarda
NAYS: N/A

Motion passed. (8-0)

Following the vote, Ms. Osborn reiterated the revised language for *Special Exceptions C. and D.*, would read that *"The residence has been in existence and has a valid Certificate of Occupancy for one continuous year".*

Ms. Castle clarified the revised language would apply to *Special Exceptions C., D., K. and M.*

Ms. Osborn asked if the Board had intended the revised language for all four Special Exceptions.

Mr. Cordova asked Board if they were in favor of the revised language for *Special Exceptions C., D., K. and M.*

The Board responded "Aye".

2. **"the extension shall not permit the creation of an additional dwelling unit"**
Regarding Special Exceptions C., D., K. and M., requirement 7., Ms. Castle explained the City Plan Commission Chair wondered if the language *"the extension shall not permit the creation of an additional dwelling unit,"* prevented the construction of or the addition of *mother-in-law quarters.* Ms. Castle provided the definition of "Dwelling unit", per Section 20.02.332 of the Code, for the Board and noted the definition includes kitchen and bathroom facilities.

Mr. Estala explained separate meters for an accessory structure are not permitted unless the property is zoned for apartments or duplex; however, it is permissible to have two kitchens in one home.

Ms. Osborn asked if the intent of the Zoning Board is to deny Special Exception requests for mother-in-quarters.

Ms. Jorgensen responded the language specifically refers to detached only.

Ms. Osborn explained a Special Exception is only for an extension, not a detached structure.

Ms. Castle responded applicants are allowed 180 square feet of accessory building, which could be mother-in-law quarters.

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Ms. Osborn added Special Exceptions are for an extension of the home, there's not a Special Exception for an accessory building. For example, an applicant requests a Special Exception for an addition to the home; not a separate structure or accessory building. The CPC Chair is asking whether or not the language prohibits mother-in-law quarters.

Ms. Jorgensen clarified if the Special Exception is only to extend a connection to the home, outside the buildable area, then by definition it is never separate. She asked whether or not the language *"the extension shall not permit the creation of an additional dwelling unit,"* was necessary.

Ms. Castle read the definition of Dwelling unit, Section 20.02.332, into the record.
"Dwelling unit" means a room or group of rooms occupied or designed to be occupied as separate living quarters by a single-family or other group of persons living together as a household or by a person living alone, and having its own permanently installed cooking and sanitary facilities.

Ms. Osborn stated according to the definition of dwelling unit, it could also include mother-in-law quarters. The CPC Chair was questioning whether or not the intent of the Zoning Board was to rule out mother-in-law quarters. Ms. Osborn concurred with Ms. Jorgensen; however, the definition of "Dwelling unit" rules out mother-in-law quarters.

Ms. Jorgensen asked could an applicant apply for a mother-in-law quarters, as an accessory structure, and not come before the Zoning Board.

Ms. Castle explained, per the formula for an accessory building, the applicant is allowed 400 square feet as long as they were not encroaching into the rear yard setback and the accessory building does not have a separate meter for utilities

Ms. Jorgensen did not want the language used to subvert the zoning code. For example, the property is zoned Single-family Residential and the applicant uses the Zoning Board to go around the zoning code.

Ms. Osborn concurred and added that was the reason for requirement #7, the Special Exception cannot be used to create a separate dwelling unit.

Mr. Cordova suggested including *additional units for multi-family* to the requirement language, keep it single-family use.

Ms. Castle read the definition of Family, Section 20.02.360 of the code, into the record.
"Family" means any individual or group of persons related by blood, adoption or marriage, or not more than five unrelated persons living as a single housekeeping unit or home.

Mr. Gezelius suggested adding *"creation of an additional rental unit"* to the requirement language.

Ms. Castle explained, when requesting a kitchen, the applicant must file a *Letter of Intent* whereby they will not rent to the public.

Ms. Osborn restated the proposed requirement language *"the extension shall not permit the creation of an additional dwelling unit for rental purposes."* She clarified an applicant could create an additional rental unit, according to the definition of dwelling unit, for a mother-in-law. She noted the definition of dwelling unit includes a kitchen, restroom and bedroom; however, the current requirement language would have prevented that. If the Board revises the language to state "for rental purposes" an applicant could create an additional dwelling unit if it were not rented out.

From a safety and fire perspective, Ms. Jorgensen questioned having kitchens and bathrooms.

Mr. Estala explained unless they were separate dwellings, duplexes are required to have fire separation; however, in this case it's another kitchen and bathroom.

MOTION:
Motion made by Mr. Cordova, seconded by Mr. Bowling and unanimously carried **TO REVISE REQUIREMENT #7 TO READ "*THE EXTENSION SHALL NOT PERMIT THE CREATION OF AN ADDITIONAL DWELLING UNIT FOR RENTAL PURPOSES".***

AYES: Ms. Jorgensen and Messrs. Perez, Gezelius, Bowling, Cordova, Mendez, Barela and Skarda
NAYS: N/A

Motion passed. (8-0)

Per the memorandum distributed to Board Members, Ms. Castle explained Staff has been asked not to consider the third item, Builder Error Special Exception G.

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Prior to adjourning the meeting, Mr. Cordova asked why portable gazebo type canvas structures are considered "roofed structures".

Ms. Castle responded it is a roofed structure and therefore an accessory structure.

Mr. Gezelius asked if a patio umbrella would be considered an accessory structure.

Ms. Castle responded Staff would not consider that an accessory structure.

Ms. Osborn asked Staff if the accessory structure previously discussed in case ZBA10-00001 was permanently in the ground.

Ms. Castle responded yes, the accessory structure was permanently attached via concrete slab. By removing the posts, the applicant can remove the accessory structure.

ADJOURNMENT:

MOTION:
Motion made by Mr. Gezelius, seconded by Mr. Skarda and unanimously carried to **ADJOURN THE ZBA MEETING AT 2:50 P.M.**

AYES: Ms. Jorgensen and Messrs. Perez, Gezelius, Bowling, Cordova, Mendez, Barela and Skarda
NAYS: N/A

Motion passed. (8-0)

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Linda Castle, Senior Planner