

ITEM 3:

ZBA09-00054

8533 Euphrates Drive

Ignacio F. Acosta

Applicant requests a Variance from Section 20.12.020, Table of Density and Dimensional Standards, Building Setback Requirements, Single-family dwelling in an R-3 (Light Density Residential) zone district. This would permit an existing residential structure that is encroaching 30' into the required rear yard setback and 5' into each of the required side yard setbacks. The required front and rear yard cumulative setback total is 50 feet in the R-3 zone district. The required side yard setbacks are 5 feet per side in the R-3 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 wishes to request a Variance in order to keep everything that he has built. **STAFF RECOMMENDS DENIAL OF THE REQUEST FOR A VARIANCE FROM THE REQUIRED REAR AND SIDE YARD SETBACKS AS THERE ARE NO EXCEPTIONAL TOPOGRAPHIC CONDITIONS OR OTHER EXCEPTIONAL CONDITIONS OF THE PROPERTY. THE APPLICANT SHALL DEMOLISH ALL ENCROACHING STRUCTURES.**

Ms. Castle gave a PowerPoint presentation and added seven of eight Board Members must vote in favor of the request to approve the variance. Staff received one phone call in favor of the request, from the neighbor's across the street. Ms. Castle explained 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. Abraham De Leon, representing the applicant, and Ms. Deliah Acosta, daughter of the applicant, were present.

Ms. Castle explained there are utility easements in the front and rear of the property.

Mr. De Leon added there were no overhead power lines.

Mr. Melendez asked Mr. De Leon if roof water drained into the neighbor's yard.

At this time, Ms. Castle and Mr. De Leon discussed the site plans he brought with him.

Additionally, Board Members and Staff discussed photos from the PowerPoint presentation.

Ms. Castle noted the site plan shown in the backup information was correct.

Mr. De Leon stated site plans were not approved by the City; additionally, he stated the plans were drawn after the additions were constructed.

Ms. Acosta explained different contractors were hired throughout the project; the project was completed more than 10 years ago. She stated the house was very small for a family of six; the additions were constructed little by little with no objection from neighbors. Her parents applied for a permit to construct the porch and storage area, that permit was granted.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There being none.

Mr. Melendez asked if the Board could consider removing a portion of the existing building, for example, the den.

Ms. Castle responded the applicant could reduce the existing building to what is allowed by a Special Exception; however, they would have to come before the Board as a Special Exception.

Mr. Cordova read the following into the record:

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 style="text-align: center;">↓</p>		<p>The property is/has ... (e.g., odd-shaped, unusual topography, etc.)</p>

AYE: Mr. Wakeem

NAYS: Messrs. Barela, Aguilar, Bowling, Cordova, Hernandez, Mendez and Melendez

MOTION:

Motion made by Mr. Melendez, seconded by Mr. Mendez **TO DENY.**

Prior to the vote, Ms. Osborn gave legal guidance.

Ms. Castle explained the request for a Special Exception C would be different in that the applicant would be requesting a portion of what they are asking with the variance.

Mr. Melendez withdrew his motion.

MOTION:

Motion made by Mr. Aguilar, seconded by Mr. Wakeem and unanimously carried **TO POSTPONE UNTIL THE NEXT ZBA MEETING.**

Prior to the vote, Mr. Barela requested the applicant get approval letters from utility companies regarding the possible encroachment in the rear yard utility easement.

AYES: Messrs. Barela, Wakeem, Aguilar, Bowling, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

ITEM 4:

ZBA09-00055 10701 Lobo Lane Bertha Payan
 Applicant requests a Special Exception under Section 2.16.050 L (15 years or more, Rear Yard Setback) in an R-4 (Residential) zone. This would permit an existing 18' by 20' patio that is located to within 5' of the rear property line. The required front and rear yard cumulative setback total is 45 feet for a single-family residence in the R-4 zone district. The applicant is requesting to re-roof her house, but there is an existing patio that is larger than the 180 square feet of porch that is permitted to encroach in the rear yard setback. The 1986 aerial shows the patio structure in the rear yard. The applicant purchased the property in October 2000 and supplied photos of the property that show the patio. The carport that the applicant is requesting to build in the side yard is not part of this application. **STAFF RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION L WITH THE CONDITION THAT 5/8" FIRE RATED WALLBOARD BE APPLIED TO THE INTERIOR WALLS THAT FACE THE REAR AND SIDE PROPERTY LINES OF THE ACCESSORY BUILDING.**

Ms. Castle gave a PowerPoint presentation and explained the 5/8" fire rated wallboard will ensure the fireproofing of the accessory building that is too close to the rear and side property lines. The applicant is proposing to build a carport on the side of the home and since the home was built prior to 1979, the applicant may encroach into the side yard.

Mr. Antonio Saenz, representing the applicant, noted the storage unit is 20 inches from the rear wall and the covered patio is three feet from the rear wall.

Mr. Cordova asked Staff if the applicant would need letters from utility companies allowing the patio to encroach into the rear yard utility easement.

Ms. Castle responded yes.

Mr. Aguilar wondered if the neighbors complain of any roof water in their yard.

Ms. Payan responded no.

Mr. Bowling explained the patio has been in existence for 15 years or more and would not require letters from utility companies.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There being none.

1st MOTION:

Motion made by Mr. Aguilar **TO APPROVE AS RECOMMENDED BY STAFF.**

Prior to the vote, Mr. Barela amended the motion as follows: *The patio cannot be enclosed at all, it has to remain open as it is and with the understanding that the utility easement, the utility companies have the right to come in and demolish if they need to.*

Mr. Aguilar withdrew his motion.

1ST MOTION AMENDED:

Motion made by Mr. Barela **TO APPROVE WITH THE AMENDMENT THAT THE PATIO REMAINS OPEN, AS IT IS NOW, UNDERSTANDING THAT THE STORAGE HOUSE COULD POSSIBLY BE DEMOLISHED AS REQUIRED BY THE UTILITY COMPANY.** There was no second.

Ms. Castle interjected, in addition to the requirement to provide fire code wallboard on the interior walls of the storage building.

Mr. Barela clarified his motion to approve per Staff's recommendation with three amendments:

1. That the patio remains open, as it is now, no enclosures in the future;
2. The accessory building have fireboard/gypboard placed on the inside to protect either direction from fire;
3. The understanding about the utility easement

Mr. Bowling asked if the applicant understood the motion or if she would like to withdraw the application.

Ms. Payan understood the motion.

2ND AND FINAL MOTION:

Motion made by Mr. Barela, seconded by Mr. Bowling and unanimously carried **TO APPROVE PER STAFF'S RECOMMENDATION WITH THE FOLLOWING AMENDMENTS:**

1. **THAT THE PATIO REMAINS OPEN, AS IT IS NOW, NO ENCLOSURES IN THE FUTURE;**
2. **THE ACCESSORY BUILDING HAVE FIREBOARD/GIPBOARD PLACED ON THE INSIDE TO PROTECT EITHER DIRECTION FROM FIRE;**

3. THE UNDERSTANDING ABOUT THE UTILITY EASEMENT

AYES: Messrs. Barela, Wakeem, Aguilar, Bowling, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

ITEM 5:

ZBA09-00056 532 Crossbend Court Carol D. Rios
Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-2 (Residential) zone. This would permit an existing 40' by 7' addition that is located to within 18' of the rear property line and to within 8' of the side property line. The required front and rear yard cumulative setback total is 60 feet in the R-2/spc zone district. The applicant was cited for building a garage enclosure without permit. She will be required to demolish a portion of the building so that it is located no closer than 8 feet of the side property line. She is requesting the Special Exception to encroach into the rear yard setback. **STAFF RECOMMENDS APPROVAL OF THE REQUEST FOR THE ENCROACHMENT IN THE REAR YARD WITH THE CONDITION THAT THE GARAGE SHALL NOT ENCROACH INTO THE REQUIRED 8 FOOT SIDE YARD SETBACK.**

Ms. Castle gave a PowerPoint presentation and noted Staff received no phone calls and/or emails from neighbors in favor of or opposition to the request. *Ms. Castle corrected the site plan language to read "Property Over SETBACK (230 sq. ft.) from "Property Over EASEMENT (230 sq. ft.)"*

In response to a question about the house trailers in the rear yard, Ms. Carol Rios, applicant, and Mr. Ramon Frias, representative, explained the trailers were trapped and unable to be moved because the rock wall fell down.

Ms. Castle explained that the garage cannot be closer than 8 feet to the side property line .

Ms. Rios was aware of recommendation from Staff and added she will remove three feet of the existing garage.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There was none.

MOTION:

Motion made by Mr. Bowling, seconded by Mr. Wakeem and unanimously carried **TO APPROVE STAFF RECOMMENDATION WITH THE CONDITION THE GARAGE NOT ENCROACH INTO THE REQUIRED 8 FOOT SIDE YARD SETBACK.**

AYES: Messrs. Barela, Wakeem, Bowling, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

ABSTAIN: Mr. Aguilar

Motion passed. (7-0)

ITEM 6:

ZBA09-00057 3705 Tierra Isela Drive Rio Grande Homes
Applicant requests a Special Exception under Section 2.16.050 G (Builder Error, Side Yard Setback) in an R-5 (Residential) zone. This would permit the existence of a new single-family dwelling that is built encroaching 0.7' into the northerly side yard setback. The required side yard setback in the R-5 zone district is 5 feet. The applicant has submitted a letter stating that the error that resulted in an encroachment of 0.7' (8.4 inches) into the required side yard setback is unintentional and inadvertent. **STAFF RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION.**

Ms. Castle gave a PowerPoint presentation.

Mr. Jesus Marquez, owner, Rio Grande Homes, was present.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There being none.

MOTION:

Motion made by Mr. Mendez, seconded by Mr. Barela and unanimously carried **TO APPROVE**.

AYES: Messrs. Barela, Wakeem, Aguilar, Bowling, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

ITEM 7:

ZBA09-00044

3020 Roy Pace Drive

Carlos and Karmina Carlo

Applicants request a Special Exception under Section 2.16.050 K (Carport over a Driveway) in an A-2 (Apartment) zone. This would permit a 23'4" by 20'4" carport that is proposed to encroach 20' into the required front yard setback and to be located to within 5' of the front property line. The required front and rear yard setback cumulative total is 45 feet for a single-family residence in the A-2 (Apartment) zone district. This case was postponed from the meetings of November 9 and December 14, 2009. The applicants are requesting the addition of a carport that is proposed to be located to within 5' of the front property line. There are no utility easements at the front property line. The applicant's plans indicate that the materials used for the carport will match the existing house. The roofline of the existing house is noted as 13' on the elevation drawing. The carport roof shall rise no higher than the roof of the house. The Building Permits & Inspection Division has reviewed the structural plans and notes revisions are necessary. Staff has received one letter in opposition to the request. The applicant's representative has been notified that the wall at the front of the house and at the corner of Roy Pace and Pebble Hills shall meet Zoning Code requirements; he has indicated that the owner will comply with the following requirements in Section 20.16.030:

A screening wall or fence not in excess of forty-two inches high may be erected in that part of a lot in front of the front line of the main building, except that no screening wall or fence may be more than thirty-six inches high within twenty feet of a street intersection or where visibility of vehicle or pedestrian traffic might be impeded.

STAFF HAS REVIEWED THE CARPORT'S STRUCTURAL DESIGN DRAWINGS AND HAVE FOUND THEM TO BE ACCEPTABLE. STAFF RECOMMENDS APPROVAL WITH THE CONDITION THAT THE WALL AT THE FRONT OF THE HOUSE AND AT THE CORNER OF ROY PACE AND PEBBLE HILLS SHALL MEET ZONING CODE REQUIREMENTS FOR PERMITTED WALLS.

Ms. Castle gave a PowerPoint presentation and noted Staff received one letter in opposition to the request. Ms. Castle revised the back up information to note that per the revised site plan the carport will be located to within 4' of the front property line, not 5'.

Mr. Adrian Zamarripa, representing the applicant, explained materials used to construct the carport will match the existing house.

Ms. Castle stated, while inspecting the carport construction, City Inspectors will verify the height of the screening wall to ensure the wall is no more than thirty-six inches high and that it will follow the property line.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There being none.

MOTION:

Motion made by Mr. Hernandez, seconded by Mr. Aguilar and unanimously carried **TO APPROVE.**

AYES: Messrs. Barela, Wakeem, Aguilar, Bowling, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

Prior to the discussion, Mr. Melendez referred Board Members to Item 4, ZBA09-00055, 10701 Lobo Lane and noted Board Members saw three different site plans, all three had different dimensions for location of the covered patio. He requested the accurate information be on the drawings.

Ms. Castle responded Staff was unable to take photographs of the properties until Friday; additionally, survey submitted with the application was wrong.

Other Business:

8. Approval of Minutes: December 14, 2009

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

MOTION:

Motion made by Mr. Mendez, seconded by Mr. Cordova and unanimously carried **TO APPROVE THE DECEMBER 14, 2009 MEETING MINUTES.**

AYES: Messrs. Barela, Aguilar, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

ABSTAIN: Messrs. Wakeem and Bowling

Motion passed. (6-0)

Development Services Report:

9. Discussion and action regarding Zoning Board of Adjustment issues:

There was no discussion.

ADJOURNMENT:

MOTION:

Motion made by Mr. Cordova, seconded by Mr. Hernandez and unanimously carried to **ADJOURN THE ZBA MEETING AT 2:34 P.M.**

AYES: Messrs. Barela, Wakeem, Aguilar, Bowling, Cordova, Hernandez, Mendez and Melendez

NAYS: N/A

Motion passed. (8-0)

Linda Castle, Senior Planner