



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
5TH FLOOR, AMERICAS CONFERENCE ROOM
MAY 5, 2008
1:30 P.M.**

Due to a Legislative Review of the Whole Committee meeting in City Council chambers, the Zoning Board of Adjustment meeting was held in the Americas Conference Room, 5th Floor.

The Zoning Board of Adjustment meeting was called to order at 1:30 p.m. by Chair Larry Nance.

The following Board Members answered roll call:

Mr. Larry Nance (Chair)
Mr. Robert Veliz (Vice-Chair)
Mr. Oscar Perez
Mr. Rick Cordova
Mr. Randy Bowling
Mr. Sam Barela (arrived at 1:35 p.m.)
Mr. Servando Hernandez
Mr. Jose Melendez

The following City staff members were present:

Ms. Mirian Spencer, Development Services Department, Planner
Ms. Linda Castle, Development Services Department, Senior Planner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney
Mr. Robert Peña, Development Services Department, ZBA Secretary
Ms. Margarita Molina, Engineering-Traffic
Mr. Tony De La Cruz, Development Services Department, Building Plans Examiner

CORRECTIONS - REVISIONS TO THE AGENDA

Ms. Spencer read the following corrections to the **REVISED AGENDA** into the record:

- Item 3. 5532 Emerald Valley Drive, should read "5532 Emerald View Drive";
- Item 6. Change the Representative from Carlos Perez to "Dorado Engineering Inc."

Motion made by Mr. Veliz, seconded by Mr. Melendez and unanimously carried to **APPROVE THE CORRECTIONS OF THE REVISED AGENDA.**

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

The Motion passed. (8-0)

ITEM 1:

ZBA08-00028

5533 Emerald View Drive

Lee Limas

Applicant requests a Special Exception under Section 2.16.050 V (Front Yard Setback) in an R-1 zone. This would permit the construction of a new residence of which a 36' by 10' portion is proposed to encroach 10' into the required front yard setback. The required cumulative front and rear yard setback total is 100' in an R-1 zone. The applicant is requesting to build a new residence that will encroach into the required front yard setback. The site plan includes a detached garage in the rear yard setback which is allowed as an accessory structure. *Staff recommends denial of this request because new houses should be designed and built within the required setbacks.*

Ms. Spencer gave a PowerPoint presentation and noted Staff recommends *denial of the request, new houses should be designed and built within the required setbacks. Additionally, Staff feels the request is not 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.*

Mr. Lee Limas, Applicant, clarified the 10' portion proposed to encroach into the required front yard setback is actually 6.06'.

Mr. Nance asked Staff whether City Council had approved the proposed Zoning Board of Adjustment ordinance.

Ms. Castle responded no, the ordinance will be posted for public hearing on the May 13, 2008, City Council agenda. Additionally, Special Exception requests will be honored under the current ordinance language until City Council approves the proposed ordinance language.

Mr. Bowling noted approximately 90% of homes within this subdivision have applied for the same Special Exception. He added Staff felt that due to the significant number of homes requesting the same Special Exception, the request was no longer a "Special Exception," rather a zoning change request.

Ms. Osborn noted if the City Council approves the proposed ordinance language at the May 13th, City Council meeting, applications submitted after that will be heard under the new ordinance language.

Mr. Veliz reiterated there is no guarantee City Council will approve the proposed ordinance language and until then the Board will make decisions based on the current ordinance language.

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. Bowling moved, Mr. Veliz seconded and carried to **APPROVE ZBA08-00028.**

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

NAY: Mr. Barela

The Motion passed. (7-1)

ITEM 2:

ZBA08-00029

10805 John Schlee Court

Enrique and Linda Sarabia

Applicants are requesting a Variance (Rear Yard Setback) from Section 20.12.020, Table of Density and Dimensional Standards, A-2 Zoning District, Building Setbacks, Single-family dwelling). This would permit the construction of an addition of which a 41'5" by 5' portion is proposed to encroach 5' into the required rear yard setback. The required cumulative front and rear yard setback total is 45' for a single-family residence in an A-2 (Medium Density Residential) zone. The applicants are requesting to build an addition that has a greater width (41'5") than the one-third average lot width (26.66') permitted under the Special Exception G. The applicants' representative was advised that if the applicants continued with this request, it would have to be a request for a Variance from the Zoning Code setback requirements. The applicants' representative was also advised that the Staff would not support the request since there are

no special conditions inherent in the lot that create an unnecessary hardship. *Staff recommends denial of the Variance request as the need for the variance is 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 20.02.1128 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.

Mr. Manny Moreno, Representative, distributed documents to the Board Members prior to his presentation (documents on file). Mr. Moreno explained he had interpreted the ordinance language that he could build on 1/3 the width of the front and 3/5 the width of the rear, in addition, taking 5 feet from the side for the side setback and 10 feet from the rear property line. He added the ordinance language did not state how the portion of property should be distributed.

Ms. Spencer clarified the ordinance language reads “the depth not to exceed 3/5 and width not to exceed one-third the average lot width”.

Mr. Peña added comments.

Ms. Castle noted the request did not meet the Special Exception requirements for the setbacks.

Mr. Nance asked Staff to clarify which measurement is being questioned - 2'7" or 41.5".

Ms. Castle responded the Applicant would need to reduce the width of the encroachment to 26.6" in order to meet the Special Exception.

Chair Nance read the following question from the Variance worksheet and requested Staff poll the Board.

1. Is the request for a variance owing to a special condition inherent in the property itself?

AYES: None

NAYS: Messrs. Perez, Cordova, Bowling, Barela, Nance, Veliz, Hernandez and Melendez

Mr. Bowling asked whether the Applicant would consider a Special Exception and/or request the item be postponed to consider other options. The Applicant indicated he would consider bringing it back as a Special Exception request.

Ms. Osborn provided legal advice.

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. Barela seconded and unanimously carried to **POSTPONE ZBA08- 00029 FOR TWO (2) WEEKS, TO THE MAY 19, 2008, ZBA MEETING.**

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

NAYS: N/A

The Motion passed. (8-0)

ITEM 3:

ZBA08-00030

5532 Emerald View Drive

Zima Properties, LLC

Applicant requests a Special Exception under Section 2.16.050 V (Front Yard Setback) in an R-1/sp (Light Density Residential/special permit) zone. This would permit the construction of a new residence of which a 38' by 10' portion is proposed to encroach 10' into the required front yard setback. The required cumulative front and rear yard setback total is 100' in an R-1/sp zone. The applicant is proposing to

Ms. Castle added the Stanton Street carport was located just outside the 300 foot notification area. Mr. Hernandez opined the Stanton Street carport was too large and out of character for the neighborhood.

Ms. Elsa Taracena, Representative, explained the request for the carport over the driveway and added the carport would be constructed of the same material as the home. She noted brick would be around the columns.

Mr. De La Cruz noted Building Permits & Inspections had reviewed the plans and requested the Applicant re-modify them in two areas: the original drawing showed the overhang was over the right-of-way and beams were replaced with micro-lams and trusses in the actual structural design. He added the columns did not need modifying and are shown as originally submitted.

Mr. Nance opined the carport design would not be conducive to the neighborhood.

Mr. Barela asked how many cars would be parked in the driveway.

Mr. Peña responded four.

Ms. Taracena explained that when the Applicant's purchased the home, the garage had shelves on the wall; therefore, the vehicles could not be parked in the garage. She explained surrounding neighbors had carports; however, the carports were on the side of the homes.

Mr. Barela stated he would approve the application if the Applicant reduced the length of the carport by one-half. He would approve a 20 foot driveway, not the requested 40 feet.

Mr. Nance reiterated the issue before the Board was whether or not to approve the request for a 40 foot carport. He added the applicant could apply for a 20 foot carport over a driveway permit, without having to come before the Board.

Mr. Bowling asked whether or not the character of the neighborhood was changed by having four cars in the driveway or four cars in the driveway covered by a carport. He felt the ordinance language was very broad.

Mr. Nance responded one way of looking at this was cars are temporary; carports are permanent.

Mr. Veliz noted the Applicants were permitted approximately 22.5 feet of carport, from the beginning of the carport against the house.

Ms. Taracena explained she had originally requested a 20 foot carport.

Mr. Nance explained the Board was prepared to vote on the request and asked Ms. Taracena if she would like to:

1. leave the application stand as it is;
2. withdraw the application; or
3. postpone the application;

Mr. Nance added based on the Staff's recommendation, 150 square foot encroachment was permitted without having to obtain the approval of the Special Exception from the Board.

Mr. Peña requested the Board take a vote on the request, as the Applicants had already paid for the application.

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. Veliz moved, Mr. Bowling seconded to **APPROVE ZBA08-00031**.

AYES: Messrs. Bowling and Veliz

NAYS: Messrs. Perez, Cordova, Barela, Nance, Hernandez and Melendez

The Motion FAILED, 6-2, the APPLICATION WAS DENIED.

ITEM 5:

ZBA08-00032

3290 Sal Berroteran Drive

Rosa Martinez

Applicant requests a Special Exception under Section 2.16.050 K (Side Yard Setback) in an R-3 zone. This would permit the construction of an 18'6" by 18' addition, a portion of which is proposed to encroach 5' into the required side street yard setback. The required side street yard setback is 10' in an R-3 zone. The applicant is requesting to build an addition that is proposed to encroach into the side street yard and to be located to within 5' of the side street property line. The Engineering-Traffic Division has reviewed the site and states no objection to the encroachment in the side street yard setback. *Staff recommends approval of the request as it meets the requirements of the Special Exception K.*

Ms. Spencer gave a PowerPoint presentation and noted *Staff recommends approval of the request as it meets the requirements of the Special Exception K.*

Mr. Peña noted a difference in elevation existed between the rockwall and sidewalk.

Mr. Bowling questioned whether or not the accessory structure would obstruct driver's line of sight when making a right turn.

Mr. Peña responded no, the structure would be way in the back.

Mr. David Alvarez, Representative, was sworn in and stated his name for the record.

Mr. Cordova asked Staff whether or not there was an easement located on the east side of the street.

1ST MOTION:

Motion made by Mr. Cordova, seconded by Mr. Barela and unanimously carried to **POSTPONE ZBA08-00032 UNTIL THE END OF THE AGENDA.**

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

NAYS: N/A

The Motion passed. (8-0)

2ND MOTION:

Motion made by Mr. Bowling, seconded by Mr. Veliz and unanimously carried to **RECONSIDER ZBA08-00032.**

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

NAYS: N/A

The Motion passed. (8-0)

Mr. Peña stated the easement was not located on the east side of the street.

3RD AND FINAL MOTION:

Chair Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Mr. Bowling moved, Mr. Veliz seconded and unanimously carried to **APPROVE THE STAFF RECOMMENDATIONS.**

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

NAYS: N/A

The Motion passed. (8-0)

ITEM 6:

ZBA08-00033

3013 Lee Trevino Drive

Good Time Stores

Applicant requests a Variance from the requirements of Section 20.12.020 T.1 (Front Yard Setback, C-1 Zoning District, Other permitted uses) in a C-1 (Neighborhood Commercial District) zone. This would permit the existence of a convenience store that has been constructed encroaching 5' into the required front yard setback. The required front yard setback is 20' for a retail store in a C-1 zone.

The applicant is requesting a Variance for a convenience store that has been built encroaching in the front setback. Building permit #BLD07-07941 was issued; however, an inspector failed the building for encroachment into the rear setback. The applicant was unsuccessful in trying to purchase 10 feet from the adjoining property owner in order to meet the rear setback. After meeting with the Planning staff, the applicant re-arranged the setback configuration and is requesting a Variance for a 5 foot encroachment into the front yard setback (with frontage on Pebble Hills). The lot is transected at the rear and side property lines with a total of 40 foot wide utility easements for a gas pipeline and electric lines. The required yard setbacks of zero feet interior yard, 10 feet side street yard and 10 feet rear yard are met or exceeded. The existing building under the canopy will be demolished. *Staff recommends approval of the request for a Variance because a literal enforcement of the front yard setback requirements in Section 20.12.020 T.1 of the Zoning Code would create an unnecessary hardship due to the special condition of the 40 foot wide gas pipeline and electric utility easements transecting the lot. "Unnecessary hardship" is defined in Section 20.02.1128 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."

Ms. Spencer gave a PowerPoint presentation.

Mr. Nance asked Staff if the structure is built or proposed to be built.

Ms. Castle responded the structure is already built and explained the exact location of the encroachment and the direction of the structure on the lot. She explained that the setbacks were originally approved; however, during the inspection process, the inspector opined the building was encroaching on the rear setback at the property line. The Applicants are questioning what measures to take to remedy the rear setback. She explained Staff reconfigured the drawing with the Pebble Hills side of the building as the front. In so doing, the building encroaches 5 feet into the required 20 feet on the Pebble Hills side. Now, what was previously considered the rear of the building (after reconfiguration is now the side of the building) the Applicants are able to meet the side setback at 0 feet and satisfy the other two setback requirements.

Mr. Veliz clarified Staff was changing front and side views of the building in order to meet the setback requirements.

Mr. De La Cruz explained when zoning, especially corner lots, setback requirements for commercial and residential properties differ greatly. He added commercial district side setbacks can be 0' if abutting other commercial properties.

Mr. Bowling added that when applying for commercial zoning, you can name which side of the building you want to be the front, side and back, to manipulate the building best suited for the site.

Prior to the discussion, Messrs. Fermin Dorado, Jr., Representative, and Oscar Venegas, Builder, were sworn in.

Mr. Perez asked whether or not Mr. Dorado, Jr. had corresponded with the utility companies.

Mr. Dorado, Jr. responded no, he hadn't notified them and added the encroachment was 5" in the front setback.

Ms. Molina explained she had visited the site and recommended the Applicant block the passage of vehicles onto the driveways.

Mr. Venegas stated he would install bollards and noted large boulders would be placed in that area as part of the landscape.

Mr. Nance then read into the record the following Variance Finding question:

1. *Is the request for a variance owing to special condition inherent in the property itself?*

AYES: Messrs. Perez, Cordova, Barela, Bowling and Melendez

NAYS: Messrs. Nance, Veliz and Hernandez

Ms. Osborn read the following into the record: *"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.* She added anything on the lot that would prevent using that portion of the lot, such as the 40 foot easement, would be an exceptional physical condition preventing building on that portion of the lot. She reiterated the 40 foot easement limits where the Applicant can build thus creating a hardship for the Applicant.

Mr. Veliz reiterated the Variance request consists of 200 square feet that is encroaching.

Mr. Venegas explained that without the Variance, the men's and women's restrooms would not be built or rather having to build one uni-sex restroom.

Mr. Veliz questioned why Staff recommended approving the request for the Variance.

Mr. Nance then read into the record:

2. *Is the condition one unique to the property requesting the variance?*

Ms. Osborn explained the condition is the easement and unique to the property.

No poll was taken.

Mr. Nance then read into the record:

3. *Is the condition self-imposed or self-created?*

Ms. Osborn explained the easement was already part of the property.

No poll was taken.

Mr. Nance then read into the record:

4. Will the literal enforcement of the zoning ordinance result in an unnecessary hardship?

Mr. Peña responded yes and explained the men's and women's restrooms would not be built.

No poll was taken.

Mr. Nance read into the record:

5. Will the hardship prevent any reasonable use of the property whatsoever?

(inaudible)

Mr. Nance requested Staff poll the Board Members; however, prior to the poll, Mr. Veliz asked Staff to explain their recommendation to approve the Variance request. No poll was taken.

Ms. Castle responded Staff felt had the Applicants requested the five feet encroachment into the front setback prior to constructing the convenience store, the request would have been considered "reasonable," due to the width of the gas pipeline and electric utility easement.

Mr. Bowling commented on the Board's approval of Special Exception requests within an Upper Valley subdivision and questioned the value of those lots had the Board not approved those requests.

Mr. Barela explained that relocating the canopy and gas pumps would be a definite hardship and opined the Applicants built on the only buildable area on the lot, due to the easement and existing conditions.

Mr. Melendez concurred.

Mr. Nance responded it was not the Board's responsibility to ensure a business's success.

Mr. Hernandez added this is a Catch-22 situation.

Mr. Venegas discussed the designs of the Dyer Street and Pebble Hills Good Time Stores and added banks lend money based on square footage.

Mr. Nance asked Mr. Venegas whether or not there would be any reasonable use of the property without the 200 feet.

Mr. Venegas responded it would restrict the commercial-ability of it.

Mr. Nance replied he would take that as a no answer and restated the question, "Will the hardship prevent any reasonable use whatsoever?"

Mr. Venegas replied yes, it would restrict it and added all the electrical service are located in that area. Chair Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Mr. Bowling moved, Mr. Melendez seconded and carried to **APPROVE THE VARIANCE AS RECOMMENDED BY STAFF.**

OTHER BUSINESS:

8. Approval of Minutes – April 21, 2008

Chair Nance asked if Board Members had any revisions / corrections. There being none, Mr. Hernandez moved, Mr. Cordova seconded and unanimously carried to **APPROVE THE APRIL 21, 2008, ZBA MEETING MINUTES.**

AYES: Messrs. Perez, Cordova, Barela, Nance, Hernandez and Melendez

NAYS: N/A

ABSTAIN: Messrs. Bowling and Veliz

The Motion passed. (6-2)

DEVELOPMENT SERVICES REPORT:

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

1. Mr. Barela asked if Staff had revised the Staff Report for ZBA08-00031, 3975 Las Vegas Drive.

Ms. Castle responded yes and noted Ms. Spencer had read into the record the revised Staff Report language: *“The Engineering-Traffic Division has reviewed the site and has no apparent traffic concerns with the proposed carport, but notes that carports shall not encroach onto City property”.*

2. Mr. Bowling asked Staff with regard to Special Exceptions, as opposed to width and depth, could there be a total area of encroachment with language such as “no closer to”. He preferred longer/shorter encroachment into the rear yard setback, than a longer/narrower. He opined the front and rear yard setbacks were outdated and suggested that language be updated.

Ms. Castle explained the language affected R-3 zones; however, asked the Board to make recommendations what language should be revised.

Mr. Nance suggested Staff start a list of Code language to be revised. Additionally, he requested Staff denote on the drawing where easements are located.

Mr. Melendez stated easements should be properly shown.

3. Ms. Spencer noted Mr. Tony De La Cruz had been promoted to the Planning Division and this was his last meeting as the Building Permits & Inspections representative.

Mr. Nance thanked Tony for all the work he had done for the Board.

ADJOURNMENT:

Motion made by Mr. Veliz, seconded by Mr. Hernandez and unanimously carried to **ADJOURN THE ZBA MEETING AT 3:36 P.M.**

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

NAYS: N/A

The Motion passed. (8-0)

Robert Peña, Secretary

Zoning Board of Adjustment