



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBER
OCTOBER 22, 2007
1:30 P.M.**

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

The following Board Members answered roll call:

Mr. Larry Nance (Chair)
Mr. Robert Veliz (Vice-Chairman)
Mr. Oscar Perez
Mr. Rick Cordova
Mr. Randy Bowling
Mr. Servando Hernandez
Mr. Jose Melendez
Mr. David Marquez
Mr. Sam Barela (*Mr. Barela arrived immediately following the introduction of City Staff.*)

The following City Staff were present:

Ms. Mirian Spencer, Planner
Mr. Robert Peña, Secretary, Zoning Board of Adjustment
Ms. Linda Castle, Senior Planner
Mr. Juan Estala, Building Plans Examiner
Mr. Ernie Rodriguez, Assistant City Attorney

CHANGES TO THE AGENDA:

Motion made by Mr. Veliz, seconded by Mr. Perez, and unanimously carried to **POSTPONE:**

- 1. ITEM 10, ZBA07-00152, 5324 DEBEERS DRIVE, UNTIL THE NOVEMBER 12, 2007, ZBA MEETING; AND**
- 2. ITEM 12, ZBA07-00165, 5333 VICEROY DRIVE, UNTIL THE DECEMBER 10, 2007, ZBA MEETING.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 1:

ZBA07-00167 5625 Sherbrooke Avenue Ernesto D. and Irene Hernandez
Applicants request a Special Exception under Section 2.16.050 Q (Carport over a Driveway) in an R-4 zone of the City of El Paso Zoning Ordinance. This would permit the construction of a carport of which a 23'7" by 17.5' portion is proposed to be located to within 2.5' of the front property line. A front yard setback of 20' is required in an R-4 zone.

Mr. Robert Peña gave a PowerPoint presentation and noted the Applicants would like to construct a 413 square foot carport, proposed to encroach in the front yard setback. Engineering-Traffic reviewed the site and had no traffic concerns with the proposed carport. Building Permits & Inspections reviewed the structural plans and found them to be acceptable. He stated Staff recommended approval of the application as it met the requirements of Special Exception Q.

Mr. Ernesto Hernandez, Applicant, stated he would instruct the builder to pitch the roof of the carport to match the home. He added the architect had concerns regarding the thickness of support structure and requested thicker steel; furthermore, the architect did not include the corner braces.

Mr. Melendez commented on the 2" clips and questioned the lateral bracing/support for the carport.

Mr. Estala responded Staff would request the bracing/support as suggested by Mr. Melendez.

Prior to the vote, Ms. Linda Castle explained, if the Board Members approved the application with the condition the carport roof match the pitch of the home, then the Applicant would be required to submit revised drawings.

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. Hernandez moved, Mr. Marquez seconded, and unanimously carried to **APPROVE THE APPLICATION, WITH THE CONDITION THE CARPORT ROOF BE PITCHED AND THE STRUCTURE MATCH THE EXISTING HOME.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 2:

ZBA07-00169 12040 Braveheart Avenue Gerardo and Claudia Rojas
Applicants request a Special Exception under Section 2.16.050 Q (Carport over a Driveway) in an R-5/c zone of the City of El Paso Zoning Ordinance. This would permit the construction of a carport of which an 18.5' by 15' portion is proposed to be located to within 5' of the front property line. A front yard setback of 20' is required in an R-5/c zone.

Mr. Robert Peña presented the case and noted the Applicants would like to construct a 283 square foot carport that encroaches in the front yard setback. Building Permits & Inspections reviewed the structural drawings and found them acceptable. Engineering-Traffic reviewed the site and noted no problem with the carport over the driveway. Additionally, Staff recommends approval of the application as it meets the requirements for the Special Exception Q.

Ms. Claudia Rojas, Applicant, stated the carport would match the home.

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. Melendez seconded, and unanimously carried to **APPROVE THE APPLICATION.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 3:

ZBA07-00170 1369 Luz Carpio Way Paul R. Armendariz and Gabriela Leano
Applicants request a Special Exception under Section 2.16.050 G (Rear Yard Setback) in an A-2/sc zone of the City of El Paso Zoning Ordinance. This would permit an addition of which a 10' by 5' portion is proposed to be located to within 20' of the rear property line. A rear yard setback of 25' is required in an A-2/sc zone.

Mr. Robert Peña presented and noted the Applicants were adding a garage, a patio and a storage room and noted they received a building permit for everything they are proposing to add, excluding the 10' by 5' portion of the storage room that is encroaching in the rear yard setback. A site visit revealed that they have built the storage room without ZBA approval and contrary to the building permit they received. He noted Staff recommended denial of the request for the portion of the storage room that encroaches in the rear yard setback because the Applicants constructed the room without ZBA approval.

Paul R. Armendariz and Gabriela Leano, Applicants, were present and explained that the builder did not speak or understand English and misunderstood the directions given to him and continued to build. Additionally, the Applicants had taken out a homeowner's permit to save money.

Ms. Linda Castle explained the permit had indicated the storage room was not to be built.

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. Marquez seconded, and unanimously carried to **APPROVE THE APPLICATION.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 4:

ZBA07-00171

4849 Love Road

Jaime and Kathy Chavando

Applicants request a Special Exception under Section 2.16.050 Q (Carport over a Driveway) in an R-2 zone of the City of El Paso Zoning Ordinance. This would permit the existence of a carport of which a 27' by 25.5' portion is located to within 4.5' of the front property line. A 30' front yard setback is required in an R-2 zone.

Mr. Robert Peña gave a PowerPoint presentation and explained the Zoning Board of Adjustment granted the Applicants a Variance to build a 68.67' by 49.83' house located to 10' of the rear property line on a triangle-shaped lot, at the March 8, 2004 ZBA meeting. The Variance was granted "*contingent on meeting sides and front setbacks.*" The Applicants were cited in September 2007 for building the carport without a permit. Engineering-Traffic reviewed the site and has no traffic concerns with the proposed carport; however, the Building Permits & Inspections' review is pending.

Mr. Pena explained Staff recommended denial of the request for the following reasons:

- the applicant was previously granted a Variance contingent on meeting the side and front setbacks
- the addition of the carport is an over-intensive use of the site
- the applicant built the carport without permit.

Ms. Linda Castle noted the Building Permits & Inspections Division had since reviewed the structural plans and found them to be acceptable. She noted the carport had been built without a permit, sometime during this year.

Mr. Nance reiterated the Applicant's home was built in accordance with the Variance; however, the carport was not. He explained that as a condition of the Variance, the Applicant was not allowed to build in the front yard.

Mr. and Mrs. Chavando, Applicants, were present and distributed documents to Board Members for their review (copy on file).

Mr. Marquez asked Staff to define "over-intensive use of the property" and questioned where that language could be found in the El Paso Municipal Code.

Mr. Peña responded in addition to front and rear yard setbacks, Staff felt that the property had been overly constructed. He explained in order for the Applicants to become compliant the carport must be removed, in its entirety.

Ms. Spencer added a definition of "over-intensive" was not listed in the El Paso Municipal Code; however, "over-intensive" is listed in each Special Exception requirement.

Mr. Melendez noted the drawings provided in the backup documentation did not match what the Applicants were requesting.

Ms. Castle responded the Applicants had submitted a revised Site Plan prior to the meeting and copies were distributed to Board Members. She added the revised Site Plan showed the carport as it currently exists.

Mr. Bowling reiterated the Applicants had agreed to angle the carport to alleviate the need for the Special Exception for the side yard. He noted that by granting the Variance the City is collecting property taxes; otherwise, that property would be useless. He added the home met the setbacks at the time the Variance was granted.

Mr. Chavando commented on the material distributed to the Board, specifically pictures of his property and carport. He explained his lot was 10,000 feet, 5,000 feet was front yard, with 169 feet of frontage.

Ms. Spencer clarified the Variance had been approved “contingent on meeting front and side setbacks” and added due to those conditions, the Applicant must build the carport in the buildable area.

Mr. Veliz commented on the shape of the lot and size of the home and noted the Variance was granted for the home. He opined that the Variance contingencies addressed the front and rear setbacks as there were no references to the side setback.

Mr. Cordova noted the size of the carport was smaller than the permitted area, based on the lot size and commented on the unusual lot configuration. He suggested moving the carport to the back yard.

Ms. Castle commented on the Variance, setbacks, the revised Site Plan, and noted that Staff had not received any phone calls or letters in opposition to the application; however, there was opposition in 2004.

Mr. Ernie Rodriguez referred to the Zoning Board of Adjustment meeting minutes of March 8, 2004 and clarified that the Variance was granted contingent on meeting the front and side setbacks. He added the carport was within 5 feet of the main house, making the carport a part of the home.

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, **TO APPROVE THE SPECIAL EXCEPTION FOR THE ADDITION WITH THE CONTINGENCY THAT THERE BE NO ADDITIONAL SPECIAL EXCEPTIONS AND/OR VARIANCES GRANTED FOR THE PROPERTY.**

AYES: Messrs. Cordova, Veliz, and Hernandez

NAYS: *Messrs. Perez, Barela, Nance, Melendez, and Marquez*

The Motion failed (4-5)

ITEM 5:

ZBA07-00172

5512 Woodgreen Drive

Winton Custom Builders

Applicant requests Special Exceptions under Section 2.16.050 G (Rear Yard Setback) and Section 2.16.050 V (Front Yard Setback) in an R-1 zone of the City of El Paso Zoning Ordinance. This would permit the construction of a new residence of which a 46'3" by 10' portion is proposed to be located to within 40' of the rear property line. This would also permit a 23' by 5' portion and 9' by 2' portion proposed to be located to within 45' of the front property line. A 50' rear yard setback and a 50' front yard setback are required in an R-1 zone. The applicant is proposing to build a new house that encroaches in front and rear setbacks. In this subdivision of 77 lots, there have been 40 requests to date for Special Exceptions, 14 of the 40 submitted by the Applicant.

Ms. Mirian Spencer gave background information and noted new houses in new subdivisions should be designed and built within the required setbacks. Additionally, Staff recommended denial of the request to encroach in the front and rear yard setbacks. She noted that three homes in the subdivision had been built without the recommendation from Staff.

Mr. Hernandez questioned why Staff would previously recommend approving these Special Exceptions; however, are recommending denial now. Additionally, he suggested Staff enforce setbacks on future subdivisions.

Mr. Veliz noted in the past Neighborhood Associations would come to ZBA meetings to oppose items placed on the agenda; however, they have stopped due to Staff recommendations.

Mr. Perez explained that the City Plan Commission had imposed the zoning regulations. Additionally, he requested the applicant adjust the house dimensions.

Mr. Scott Winton, Applicant, explained the request for the Special Exception. Additionally, he hoped he would not have to come before the Board for a Special Exception, for this particular subdivision. He felt that due to the approval of the Special Exceptions, the neighborhood and streets are much more attractive.

Mr. Bowling said the request was to encroach on a portion of the setback, not to change the setback.

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 THE APPLICATION.**

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

NAY: Mr. Barela

The Motion passed. (8-1)

ITEM 6:

ZBA07-00173

2217 Sea Palm Drive

Richard and Ana Ortega

Applicants request a Special Exception under Section 2.16.050 Q (Driveway over a Carport) in an R-3 zone of the City of El Paso Zoning Ordinance. This would permit the construction of a carport of which a 23.5' by 15' portion is proposed to be located to within 10' of the front property line. A 25' front yard setback is required in an R-3 zone.

Ms. Mirian Spencer gave a PowerPoint presentation, and explained the Applicants were proposing to construct a 389.17 square foot carport of which a 352.50 square foot portion encroaches in the front setback. Engineering-Traffic had reviewed the site and noted no problems with the proposed carport. Building Permits & Inspections had reviewed the structural plans and found them acceptable. Staff recommended approval of the request as it met the requirements of the Special Exception Q; additionally, revised site plans were submitted and copies were distributed to Board Members prior to the meeting.

Mr. Richard Ortega, Applicant, added the gable would match the house.

Mr. Hector Loya, Armor Construction, explained the placement of the carport columns.

Mr. Estala noted the plans had been reviewed and approved by Staff.

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. Marquez moved, Mr. Veliz seconded, and unanimously carried to **APPROVE THE APPLICATION.**

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

NAYS: N/A

NOT PRESENT FOR THE VOTE: Mr. Perez

The Motion passed. (8-0)

ITEM 7:

ZBA07-00174

12366 Paseo Lindo Drive

Eduardo Gameros

Applicant requests a Special Exception under Section 2.16.050 G (Rear Yard Setback) in an R-3A/sp zone of the City of El Paso Zoning Ordinance. This would permit the construction of a 17'9" by 10' second floor addition that is proposed to be located to within 16' of the rear property line. A 20' rear yard setback is required in an R-3A/sp zone.

Ms. Mirian Spencer gave background information and explained the applicant would like to construct an addition that encroaches in the rear yard setback. The addition is a bedroom on the second floor with two open balconies. She noted Staff recommends approval of the request as it meets the requirements of the Special Exception G.

Mr. Carlos Fragoso, representing the Applicant, was present.

ITEM 9:

ZBA07-00176 10362 Kellogg Street Consuelo and Armando Yanez, Jr.
Applicants request 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 the construction of an addition of which an 8' by 6' portion is proposed to be located to within 19' of the rear property line. A 25' rear yard setback is required in an R-3 zone.

Ms. Mirian Spencer gave a PowerPoint presentation and explained the Applicants were adding a bathroom in the side street yard, a corner of which encroaches in the rear yard setback. Additionally, Staff recommends approval of the request as it met the requirements of the Special Exception G.

Mr. Miguel Rosas, Representative, was sworn in prior to Staff's presentation.

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. Marquez seconded, and unanimously carried to **APPROVE THE APPLICATION.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 10:

ZBA07-00152 5324 DeBeers Drive Miguel and Maria Elena Rojas
Motion made by Mr. Veliz, seconded by Mr. Perez, and unanimously carried to **POSTPONE ZBA07-00152, 5324 DEBEERS, UNTIL THE NOVEMBER 12, 2007, ZBA MEETING.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 11:

ZBA07-00153 445 Pinewood Street Victor A. and Juana Flores

Prior to the discussion, Mr. Marquez recused himself from the discussion and left the meeting. (Affidavit on file)

Applicants request a Special Exception under Section 2.16.050 Q (Carport over a Driveway) in an R-4 zone. This would permit the construction of a 21'6" by 22'6" carport proposed to be located to within 0' of the front property line. A 20' front yard setback is required in an R-4 zone.

Ms. Mirian Spencer explained the Applicants had requested postponement of this item from the October 8, 2007, meeting to the meeting of October 22, 2007. The Applicants are requesting a 483.75 square foot carport that encroaches in the front yard setback. The Applicants were permitted an addition in 1985 that encroaches in the rear yard setback more than one-third the lot width and is located to within 6' of the rear property line. The Engineering-Traffic Division has reviewed the request and notes no problem with the carport over the driveway. The Building Permits & Inspection Division has reviewed the structural drawings for the carport and has found the design to be acceptable. Additionally, Staff recommended denial of the request for the proposed carport as it would add to the already over-intensive use of the site. Furthermore, the existing 10' high gate at the front of the driveway opened outward onto the sidewalk, creating an unsafe condition for the property owner, for drivers turning the corner and for pedestrians using the sidewalk.

Mr. Ray Mancera, Representative, was sworn in prior to the discussion. He explained the request for the Special Exception and asked the Board Members to approve the application. He felt the term "over-intensive use of the site" was a selective decision made by Staff; additionally, the term was not defined within the El Paso Municipal Code. He commented on Staff's recommendation regarding the driveway doors opening up on the sidewalk and noted the driveway doors were not a part of the application.

Mr. Peña commented on the design of the home and lot, noting the two addresses.

Mr. Victor A. Flores, Applicant, commented on the two addresses for the property: the mailing address is 445 Pinewood and for building purposes, the Dell Haven address is used.

Mr. Perez clarified on-site ponding, addressed excessive ground cover, specifically not more than 50% of ground could be covered.

Ms. Spencer noted the property did not require on-site ponding.

Mr. Bowling reiterated Staff's concern was the over-intensive use of the site.

Ms. Castle expounded on the unsafe opening of the driveway doors.

Mr. Melendez noted the drawings provided in the backup material were inaccurate and suggested that Applicants submit accurate drawings with their applications.

Mr. Hernandez added the drawings provided in the backup material were confusing and do not reflect the intent of the Applicants.

Mr. Barela suggested postponing the item to allow the Applicants the opportunity to submit proper drawings.

Mr. Bowling suggested approving the item with the caveat that the Applicants contain the water using a gutter system and/or sufficient space between the gutter system and the property line.

Mr. Mancera concurred with Mr. Bowling's recommendation, with the additional recommendation that the Applicants work with Staff to bring the property into compliance.

Mr. Veliz noted Traffic-Engineering had no traffic concerns regarding the three existing driveways on the property.

Ms. Molina stated that there was no language in the Code that addresses the number of driveways a property owner can or cannot have. Additionally, as long as the fence did not encroach on the sidewalk, Traffic-Engineering had no concerns. She explained the Code does not address driveway doors opening up into the street, additionally the doors would be open just long enough for the Applicants to back his vehicle out of the driveway, followed by the Applicants closing the driveway doors.

Mr. Melendez requested the Applicants submit a definitive drawing, accurately depicting what the Board is to consider.

NOTE: Mr. Nance interrupted and asked Mr. Ernie Rodriguez questions regarding pending litigation. Mr. Rodriguez explained Staff would place an item on the agenda for the Board. He noted the City had referred the lawsuit to outside counsel and added the suit was addressed to the City of El Paso, Zoning Board of Adjustment; none of the Board Members had been individually named.

Mr. Bowling moved to approve the application with the condition that the Applicant's contain the water. Mr. Veliz seconded. Mr. Nance suggested the addition of "based on Staff reviewing the drawings."

Mr. Estala added yes, Staff would review the structural plans and location of the carport per the Site Plan.

Staff noted no telephone calls or emails were submitted in favor of or opposition to the application.

1st 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, Mr. Bowling moved, Mr. Veliz seconded, and to **APPROVE THE APPLICATION WITH THE CONDITION THAT THE APPLICANTS CONTAIN THE WATER DRAINAGE FROM THE CARPORT ROOF.**

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

NAYS: Messrs. Barela and Nance

ABSTAIN: Mr. Marquez

The Motion failed. (6-2-1)

2ND MOTION:

Motion made by Mr. Veliz, seconded by Mr. Perez to and unanimously carried to **RECONSIDER ZBA07-00153.**

OTHER BUSINESS:

13. Approval of Minutes – September 24, 2007 and October 8, 2007

Motion made by Mr. Veliz, seconded by Mr. Cordova and unanimously carried to **APPROVE THE ZBA MEETING MINUTES FOR SEPTEMBER 24, 2007.**

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

NAYS: N/A

The Motion passed. (9-0)

Motion made by Mr. Bowling, seconded by Mr. Veliz and unanimously carried to **APPROVE THE ZBA MEETING MINUTES FOR OCTOBER 8, 2007**

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

NAYS: N/A

The Motion passed. (9-0)

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- Revising the Zoning/Subdivision Ordinance Language

Mr. Nance questioned what the delay was regarding revising the ordinance language.

Ms. Castle responded Staff was working on revising the ordinance language and the target date was January, 2008. Additionally, Staff was counseling prospective Applicants and requesting that they build within the setbacks.

Mr. Perez commented on how the Emerald Valley Estates applications defeat the City Plan Commission's authority to grant setback reductions in subdivisions.

Mr. Veliz added until the Ordinance language states that new subdivisions will not be allowed any special exceptions, the Zoning Board of Adjustment is available for the public to use.

Mr. Barela commented on building in the buildable area.

- Pending Litigation

Ms. Castle noted the City has retained outside counsel and an item will be placed on the next ZBA agenda to address any issues the Board may have.

- Introduction of New Board Members

Ms. Vivian Rojas, District 5, alternate board member and Mr. Rigoberto Mendez, District 3, alternate board member.

14. Discussion and action regarding Zoning Board of Adjustment issues.
 - World Town Planning Day, Thursday, November 8, 2007

Ms. Spencer invited all Board Members to the World Town Planning Day event.

ADJOURNMENT:

Motion made by Mr. Veliz, seconded by Mr. Hernandez, and unanimously carried to **ADJOURN THE ZBA MEETING AT 3:48 P.M.**

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

NAYS: N/A

The Motion passed. (9-0)

Robert Peña, Secretary
Zoning Board of Adjustment