



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBER
SEPTEMBER 10, 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 V. Perez
Mr. Rick Cordova
Mr. Randy Bowling
Ms. Anna Gill
Mr. Servando Hernandez
Ms. Alisa Jorgensen
Mr. David Marquez

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
Ms. Kelly Carpenter, Director, Planning Division
Mr. Ernie Rodriguez, City Attorney's Office, Assistant City Attorney
Mr. Tony De La Cruz, Building Permits & Inspections, Building Plans Examiner

- *Prior to ZBA07-00145 discussion, Ms. Jorgensen recused herself and left the meeting.*

ITEM 1:

ZBA07-00145 5000 and 5016 Love Road Robert H. and Cynthia C. Humphries
Applicants have filed an Appeal of an Administrative Official's Decision under Section 2.16.040, Appeals, in an R-1 zone.

Mr. Nance, Chairman, reiterated Board Members would be listening to Mr. and Mrs. Humphries presentation in order that they may present their case to the Board.

Mr. Robert H. Humphries, Appellant, gave a PowerPoint presentation on issues of Standing and responded to questions and/or comments of the Board Members.

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.

Additionally, the Board postponed this application on August 27, 2007, to the September 10, 2007, meeting. Celtic Homes is requesting a Variance for a reduction in the 25' rear yard setback requirement for two apartment buildings, constructed without building permits, located 15' from the rear property line.

The applicant submitted plans for building permit in April 2007. The plans were returned to the applicant for corrections in May and again in June, but the applicant had already begun construction without a building permit. A stop work order for building without building permits was issued by Building Inspector, William Stern, on July 24, 2007. The applicant continued work on the project and a second stop work order was issued by Inspector Stern on August 1, 2007.

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.

Mr. Larry Baskind, Attorney, representing the Applicant, requested the Board approve the application. He stated the property was zoned C-4 with special contract at the time of purchase and responded to comments and/or questions of the Board Members.

⇒ **FOR THE RECORD** Mr. Baskind clarified that other than to secure the worksite, his client did shut down when asked, and he did not ignore any valid City orders.

Mr. Owen Burgess, owner, Celtic Homes, responded to questions and/or comments from the Board Members.

- ***During this discussion, the audio equipment in Council Chambers failed; therefore, the ZBA meeting was relocated to the Main Conference Room, 2nd Floor, City Hall Building.***

The following City Staff commented:

1. Mr. Larry Nichols, Deputy Director, Building Permits & Inspections, responded to comments of Mr. Baskind regarding the City's plan review process, issuance of zoning and grading permits, inspections, stop work order and securing the building/materials on site. Additionally, he gave a chronological history of events with respect to the application.
2. Mr. Tony Bustillos, Civil Engineering Associate, Land Development, explained the City had issued a Pre-Final Grading Permit and noted he reviews grading and drainage.

3. Ms. Linda Castle, Senior Planner, made comments regarding the El Paso City Code and noted the subject property is zoned Commercial and noted that the Special Exception for rear yard setback applies to residential properties only; therefore, the Applicant must apply for the Variance. Additionally, she noted the Site Plan showed the 25 foot setback.
4. Mr. Tony De La Cruz, Building Plans Examiner, commented on the issuance of permits and building cards.
5. Ms. Mirian Spencer commented on the special permit and reduced setback regarding the adjacent residential property.
6. Mr. Robert Pena commented on the use and zoning of the subject property.

Chairman Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, the following question was read into the record and a vote taken:

“Is the request for a variance owing to special condition inherent in the property itself?”

AYES: Messrs. Bowling, Veliz and Marquez

NAYS: Ms. Gill and Jorgensen and Messrs. Perez, Cordova, Nance and Hernandez

Mr. Perez moved, Mr. Hernandez seconded, and carried to **DENY THE APPLICATION.**

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

NAYS: Messrs. Bowling, Veliz and Marquez

The Motion to deny passed. (6-3)

ITEM 3:

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. 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. Mirian Spencer presented the case and noted Staff recommended approval of the request for the Special Exception C to allow the encroachment into the front setback because there are other properties on the same street built as close or closer to the front property line as the subject property. However, Staff recommended denial of the request for the Special Exception C to build a new attached garage encroaching in the side setback.

Additionally, Ms. Spencer noted there were other garages and carports encroaching in the side setback, on the same street or on the intersecting street, but none encroaching into the side setback with the same or more nonconforming side setback as the applicant’s proposed garage. The case was postponed at the August 27, 2007, meeting to the meeting of September 10, 2007. The applicant was requesting the Special Exception C to allow the encroachment of 8.7’ into the front setback and to allow the construction a new attached garage that is proposed to encroach 9’ into the required 20’ side setback.

Mr. Eloy Galindo, Applicant, explained the request for the Special Exception and added his neighbors had no issue with the proposed construction.

Ms. Linda Castle clarified front and side yard setback language of the El Paso City Code and suggested the Board add the following language to the motion: "the other side setback was less than 20'".

Mr. Robert Peña commented.

Mr. Nance clarified the board would legalize both encroachments but deny the building of the garage on the side.

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. Nance moved, Ms. Jorgensen seconded, and carried to **APPROVE THE APPLICATION, AS RECOMMENDED BY STAFF, WITH THE ADDITION OF LEGALIZING THE SIDE SETBACK.**

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

NAY: Mr. Bowling

The Motion passed. (8-1)

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- At this time Mr. Nichols announced the audio/visual equipment was repaired and if the Board Members desired, the meeting could resume in Council Chambers.

Mr. Nance moved to resume the meeting in Council Chambers. There was no second. The Motion died due to lack of a second.

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ITEM 4:

ZBA07-00143	3816 Tierra Fiji Lane	Zia Homes Inc
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Applicant requests a Special Exception under Section 2.16.050 N (Lot Width) in an R-5 zone. This would permit the existence of a single-family residence on a 44.95' wide lot. A minimum lot width of 45' is required in an R-5 zone.

Ms. Castle explained the Applicant had left to attend another meeting and requested the item be postponed to the September 24th ZBA meeting date.

ITEM 7

ZBA07-00140 5500 Emerald View Drive Phil Youngblood Custom Building, Inc.
Applicant requests a Special Exception under Section 2.16.050 Q (Canopy over a Driveway) in an R-1/sp zone. This would permit the construction of a 25'6" by 25'6" carport located to within 15' of the front property line. A 50' front yard setback is required in an R-1/sp zone.

Ms. Linda Castle presented and noted Staff recommended approval of the request as it met the requirements of the Special Exception Q. She explained that at the December 11, 2006, meeting the Board approved a Special Exception V for this property for a 26' by 3.5' portion of the new residence located to within 46.5' of the front property line. The applicant was now requesting a canopy over the curved front driveway. The Building Permits & Inspection Division has reviewed the structural drawings for the carport and has found them to be acceptable. The Engineering Department-Traffic Division has reviewed the plans and has no apparent traffic concerns with the proposed carport, but notes that carports shall not encroach onto sidewalks.

Mr. Phil Youngblood, Applicant, explained the request for the Special Exception and requested the Board approve 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, Ms. Gill moved, Mr. Perez seconded, and unanimously carried to **APPROVE THE APPLICATION.**

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

NAYS: N/A

The Motion passed. (9-0)

ITEM 8

ZBA07-00141 1034 Calle Flor Place Stephen and Claire Rudderham
Applicants request a Special Exception under Section 2.16.050 G (Rear Yard Setback) in an R-3A zone. This would permit the construction of a two-story addition of which a 25' by 15' portion is proposed to be located to within 10' of the rear property line. A rear yard setback of 25' is required in an R-3A zone.

Ms. Linda Castle presented and noted Staff recommended approval of the request as it met the requirements of the Special Exception G. Additionally, the applicants are proposing a 25' by 18' addition, of which a 25' by 15' portion encroaches in the rear yard setback.

Mr. Stephen Rudderham, Applicant, explained the request for the Special Exception and requested the Board approve the application. He noted he had reviewed the proposed construction with his neighbor and the neighbor was not opposed to the proposed construction.

DEVELOPMENT SERVICES REPORT:

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

Mr. Veliz asked Staff to place St. Mark's issue at the beginning of next week's agenda.

Mr. Bowling stated the bigger zoning cases should be placed at the end of the agenda.

Mr. Nance asked who can appeal ZBA decisions. Mr. Rodriguez provided legal advice.

Mr. Bowling asked what defines "aggrieved". Mr. Rodriguez provided legal advice.

Mr. Hernandez commented on factors affecting property value decreases.

Mr. Nance thanked Staff for providing maps noting the ZBA agenda items.

ADJOURNMENT:

Motion made by Mr. Veliz, seconded by Mr. Hernandez, and unanimously carried to adjourn the meeting at 4:45 p.m.

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

NAYS: N/A

The Motion passed. (9-0)

Robert Peña, Secretary
Zoning Board of Adjustment