

Prior to the discussion, Ms. Newbold was sworn in.

Ms. Osborn noted the Board had heard the presentation; however, she asked if Staff would restate their recommendation.

Ms. Spencer stated Staff recommended approval of the Special Exception C with the condition that the accessory building be relocated to 5' from the side property line and 5' from the main structure, and that the width of the proposed addition is not to exceed 23.3'.

Ms. Castle added the accessory structure must be 5' from the side, could be placed 5' from the rear property line; however, must be 5' from the new porch.

Mr. Veliz opined if the porch were built on the other side the accessory structure would not have to be moved.

Ms. Newbold responded that relocating the accessory building would be expensive and she wanted to keep costs down. She noted the accessory structure was there when she bought her home.

Ms. Jorgensen explained in the event the porch were built on the other side, the accessory structure must be 5' from the side property line

Mr. Veliz asked Staff where the side yard property line began.

Ms. Castle clarified accessory structures must be 5' from the side property line. Ms. Castle added the contractor would be able to configure the porch to accommodate the accessory structure.

Mr. Bowling explained to the applicant that because she is renovating her home, the accessory structure must be moved; however, if she decides not to renovate, the structure could stay where it is.

2ND MOTION:

Chair Veliz 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, Mr. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION BASED ON STAFF RECOMMENDATIONS.**

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Nance, Veliz, Hernandez, Bowling and Melendez

NAYS: N/A

The Motion passed. (8-0)

After the vote, the applicant asked if she moved the accessory structure could she have 29' rather than the 23.3' Staff recommended.

Mr. Veliz explained she was allowed 1/3 the size of her lot which equaled 23.3'.

Mr. Bowling clarified the applicant could pour 29' concrete slab; however, it cannot be covered or she could have 23.3' of covered porch.

Mr. Neligh noted if the slab was not going to support a structure a permit was not required.

ITEM 3:

ZBA08-00070

2019 Myrtle Avenue

Florencio E. Medina

Applicant requests Special Exception under Section 2.16.050 B (Front and Rear Yard Setbacks) in a C-4 zone. This would permit the existence of a 50' by 49' building that encroaches 10 feet into the required rear yard setback. This would also permit the construction of a 49' by 71' addition that is proposed to encroach 10 feet into the required front yard setback. The required front yard setback is 15 feet and the required rear yard setback is 10 feet in a C-4 (Regional Commercial District) zone. The applicant is requesting to legalize the existing building that is located to within 0 feet of the rear property line. The applicant is also requesting to construct a 49' by 71' addition located to within 0' of the front property line. The addition will allow the property owner to enclose his parking area to protect the vehicles located at the site. The property owner was granted a similar Special Exception for his property that is adjacent to this site at 2015 Myrtle on June 24, 2002. Also, the property located at 2011 Myrtle Avenue was granted a special exception to permit construction to the rear property line on October 6, 1986. There are several structures within the block and across the street that are nonconforming, and the proposed construction is not more nonconforming than the least of the nonconforming structures within the block.

Ms. Spencer gave a PowerPoint presentation and stated Staff recommends **APPROVAL OF THE SPECIAL EXCEPTION B AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION AS SUBMITTED.**

Mr. Carlos Medina, Representative, was present.

Mr. Hernandez questioned if the existing wall was solid, would the proposed addition be located in front of that wall for storage space of the vehicles and where would the painting take place. He explained he had concerns regarding the environmental impact.

Mr. Medina replied the painting would take place inside the building; additionally, he noted the paint booths were towards the rear. He commented on the tubes sticking out of the roof.

Mr. Melendez asked where the fire exit would be located.

Mr. Veliz clarified the Board request before the Board was review of the site plan for the special exception request.

Ms. Castle explained Building Permits & Inspections would review the plans but the applicant must first seek the 0' setback approval from the Board.

Mr. Neligh added the applicant must submit plans in order that all safety requirements are met.

Mr. Veliz referred to the aerial photograph and asked the location(s) of other non-conforming properties.

Ms. Spencer pointed to many properties that were non-conforming and added several of those properties were built all the way to the rear.

Chair Veliz 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, Mr. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION.**

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Nance, Veliz, Hernandez, Bowling and Melendez

NAYS: N/A

The Motion passed. (8-0)

RECONSIDERATION:

ITEM 6:

ZBA08-00058

12008 Sal Rasura Court

David Pedregon

Mr. Nance asked if any changes had been made since the last ZBA meeting.

Ms. Spencer responded no.

Ms. Osborn explained the applicant had requested an opportunity to be heard; additionally, Staff recommended the application be reconsidered.

1ST MOTION:

Motion made by Mr. Hernandez, seconded by Mr. Bowling and carried to **RECONSIDER ZBA08-00058**

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Veliz, Hernandez, Bowling and Melendez

NAY: Mr. Nance

The Motion passed. (7-1)

Applicant requests a Special Exception from Section 2.16.050 K (Carport over a Driveway) in an R-5 (Residential) zone. This would permit the existence of a 24' by 14' carport proposed to encroach 14' into the required front yard setback. The required cumulative front and rear yard setback total is 45' in an R-5 zone. The staff is bringing this item back for reconsideration as the applicant has protested that he was not afforded an opportunity to represent his case to the Board at the August 12, 2008 meeting. The Zoning Board of Adjustment denied the request for a carport at the August 12, 2008 meeting. The applicant was cited for building without permit on March 31, 2008, for constructing a carport that encroaches 14' into the required front yard setback. The applicant submitted his application for the Zoning Board of Adjustment on June 17, 2008 after the second inspection and certified letter were sent to the property owner.

The applicant has been advised by staff of the following:

1. The carport is structurally unacceptable and unsafe, encroaching in the required 5' side yard setback, and higher than the roof line of the house.
2. Due to the extensive problems with the existing structure, the only remedial action is to obtain a demolition permit and take down the carport.
3. His submitted plans have been reviewed by Building Permits & Inspections and determined to be structurally unacceptable.
4. If he continues with his request for a carport, he will need to submit revised plans that meet the building code and ZBA requirements. If his revised plans show an encroachment within the 5' utility easement at the front of the property, he will need to provide letters from the utility companies that allow him to build within the easement.

To date, he has not obtained a demolition permit, nor submitted new plans.

Ms. Spencer gave a PowerPoint presentation and stated Staff recommends **DENIAL OF THE SPECIAL EXCEPTION AS THE APPLICATION DOES NOT MEET REQUIREMENTS 2, 3, AND 4 OF SECTION 2.16.050 K OF THE EL PASO MUNICIPAL CODE.**

The Zoning Board of Adjustment is empowered under Section 2.16.050 K to:
"Permit the encroachment into the required front yard setback for a lot in a residential (R) district beyond other allowed modifications for a carport covering a driveway; provided, however, that:
2. The zoning board of adjustment has received the written approval of the structural design from the building permits and inspection division of the development services department; and,

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| <p>3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, open on three sides, and attached to the main structure; and,</p> |
| <p>4. The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling, nor shall the carport rise above the highest point of the roof of the dwelling; and,</p> |

Mr. David Pedregon, Applicant, asked if to become compliant he must meet the requirements of items 2, 3 and 4.

Ms. Spencer explained to Mr. Pedregon directly to become compliant:

1. The structure was unfinished;
2. Support beams were missing;
3. Support post encroaching into side property line;
4. Missing beams
5. Submit revised plans showing proper placement of the beams
6. Carport roof is higher than the highest point of the roof of the home

She concluded by stating in order to remediate these safety concerns he would have to start over.

Mr. Pedregon noted he was 7.5' from the utility easement. He stated the carport was not higher than the roofline and brought photos for review. He concurred with Staff regarding the encroachment; however, he explained he had built the carport himself and did not want to demolish. He stated he had built the carport without permit because the carport was used as shade, there was no electrical or plumbing. He explained a Code Enforcement inspector had told his wife the carport looked good and there shouldn't be any problem.

Mr. Veliz responded, in addition to the encroachment and building without a permit, the most important aspect was Staff had determined the structure to be unsafe, the first step would be to submit proper plans. He asked Staff whether or not the applicant could submit the proper plans, even though the Board had previously denied the request.

Ms. Castle responded Development Services Department Staff reviews structural plans, Code Enforcement inspectors do not. She explained Staff has recommended that the Board reconsider the request; however, it is the Board's discretion whether or not to the applicant would be granted that opportunity.

Mr. Perez stated the applicant needs to demolish the carport.

Ms. Castle concurred and added unless the applicant submits documentation showing how the existing carport would be remediated.

Mr. Nance opined the Board should postpone the request and allow the applicant the opportunity to submit proper plans.

Ms. Castle explained Staff had previously informed the applicant his request would be postponed to allow him sufficient time to bring new plans and obtain the demolition permit; however, he failed to do so. Additionally, Staff requests the Board place a deadline on the submittal of the new plans.

Mr. Hernandez asked Staff what a reasonable amount of time would be.

Ms. Castle responded September 22nd, two weeks prior to the next ZBA meeting scheduled for October 13th.

Mr. Hernandez asked Mr. Pedregon if he was in agreement that he would submit new plans two weeks prior to the October 13, 2008, ZBA meeting.

Mr. Pedregon responded yes.

Ms. Osborn requested that the Board include language in their motion such as, "either way, the item would be heard at the October 13th ZBA meeting, because the structure is unsafe", in the event the applicant does not submit new plans or does **NOT** show up for the meeting. She explained that the Board would be postponing today's item.

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Ms. Jorgensen asked Staff for clarification regarding which department was concerned with the height and which department would measure. She stated she did not want to make a determination based on the applicant's photograph. She noted the burden would be placed on the applicant to show the height of the carport and the roof of the home.

Ms. Castle responded the Zoning Board of Adjustment had concerns regarding the height and aesthetics. She explained the site plan would show the roofline of the house and carport, additionally the Board considers the aesthetic qualities of the design and materials. She stated the inspector would ensure the carport was built per the site plans submitted.

Mr. Bowling interjected if the applicant submits false plans and Staff verifies those plans are false then construction is halted.

Mr. Melendez added the drawings must be certified by an engineer.

Mr. Perez noted ZBA approves setbacks but not the building plans.

Ms. Spencer explained the applicant cannot obtain the building permit until the Board approves or denies the carport.

Chair Veliz 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, Mr. Perez seconded and unanimously carried to **POSTPONE UNTIL THE NEXT ZBA MEETING WITH THE UNDERSTANDING THE APPLICANT HAS BEEN ADVISED THE BOARD WILL HEAR THE REQUEST WHETHER OR NOT THE APPLICANT IS PRESENT AND PLANS MUST BE SUBMITTED BY SEPTEMBER 22ND.**

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Nance, Veliz, Hernandez, Bowling and Melendez

NAYS: N/A

The Motion passed. (8-0)

OTHER BUSINESS:

Mr. Nance asked Staff to explain it is required that someone obtain a demolition permit to remove a structure.

Mr. Neligh responded when plans are submitted demolition permits are incorporated within; however, when someone is just taking something down, a demolition permit is required by ordinance.

Mr. Veliz added that a demolition permit is required to ensure that there is no asbestos and that the structure is removed and disposed of properly.

Mr. Nance commented on perpetual non-conforming.

7. Approval of Minutes August 11, 2008

Chairman Veliz asked if Board Members had questions, comments or corrections regarding the ZBA meeting minutes of August 11, 2008.

Ms. Osborn noted she would research and respond to the Board's questions raised regarding postponements of agenda items at the July 28, 2008 ZBA meeting.

Motion made by Mr. Nance, seconded by Mr. Perez and unanimously carried to **APPROVE THE MINUTES OF AUGUST 11, 2008.**

AYES: Messrs. Perez, Cordova, Bowling, Nance, Mendez, Melendez and Nance

NAYS: N/A

ABSTAIN: Mr. Barela and Ms. Jorgensen

The Motion passed. (7-2)

DEVELOPMENT SERVICES REPORT:

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

Ms. Castle noted Staff had not received any new cases for the September 22nd ZBA meeting; therefore, the meeting would be canceled.

Mr. Veliz opined due to the rate increase, there may not be as many ZBA meetings. He noted the rate jumped \$500.00 more.

Ms. Castle explained the fee went from \$125.00 to \$625.00 for residential, from \$520.00 to \$625.00 for commercial. She added Staff did not make that recommendation. She noted the average number of cases for 2007 (calendar year) was 200; however, for the calendar year of 2008, through August 2008, there have been approximately 74.

Mr. Nance recommended City Council reconsider the \$625.00 fees for individuals who build without a permit and leave the \$125.00 for those who follow proper procedure.

Mr. Bowling clarified \$125.00 application fee and \$500.00 fine for building without a permit.

Ms. Osborn responded as a Board you have the responsibility to make recommendations to City Council.

1ST MOTION:

Motion made by Mr. Nance, seconded by Mr. Mendez and unanimously carried **THAT THE BOARD RECOMMEND THE CITY REVISE THE CURRENT FEE STRUCTURE SO THAT THE APPLICATION FEE REVERT BACK TO THE \$125.00 AND IF CONSTRUCTION, OF ANY FORM HAS BEEN STARTED WITHOUT A PERMIT, A \$500.00 FINE FOR THE APPLICATION.**

Ms. Jorgensen asked if that was the right language or would it be to just essentially build that punitive measure into the fee.

Mr. Veliz explained if someone is caught building without a permit, the person is charged double to obtain a building permit.

Ms. Osborn noted she would review the motion language.

Prior to the vote, Ms. Jorgensen interjected only if we write our Representatives, we do not want to shift the burden on Staff.

Ms. Castle concurred with Ms. Jorgensen.

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Nance, Veliz, Hernandez, Bowling and Melendez
NAYS: N/A

The Motion passed. (8-0)

2ND MOTION:

Motion made by Mr. Veliz, seconded by Mr. Hernandez and unanimously carried **THAT MR. NANCE WOULD WRITE THE LETTER TO CITY COUNCIL.**

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Nance, Veliz, Hernandez, Bowling and Melendez
NAYS: N/A

The Motion passed. (8-0)

Ms. Osborn advised Mr. Nance to refer to Chapter 2.16 Zoning Board of Adjustment, Section 2.16.020.D. which states "The board is empowered and encouraged to recommend to the city council any changes to the special exceptions or Title 20 which it believes are necessary or useful to the welfare of the community".

Mr. Nance responded he would be happy to write the letter; however, he thought it might be more appropriate to come under the signature of the Chair.

Mr. Veliz responded we all will sign.

Mr. Hernandez asked Staff how the fee structure was presented to Council.

Ms. Osborn noted the fee increase for the Zoning Board of Adjustment may not have been pointed out to Council.

Mr. Nance asked if it would not be more appropriate for Ms. Osborn to draft the letter to Council.

Ms. Osborn responded she would be happy to do that and added she would use the procedures that the City Plan Commission uses when making recommendations to City Council. She concluded by stating she would advise the Board regarding what the best procedure(s) to follow would be.

Ms. Jorgensen asked, per the Motion, Mr. Nance would write the letter. She commented on unsafe carports during the windy season.

ADJOURNMENT:

Motion made by Mr. Perez, seconded by Mr. Hernandez and unanimously carried to **ADJOURN THE ZBA MEETING AT 2:30 P.M.**

AYES: Ms. Jorgensen and Messrs. Perez, Mendez, Nance, Veliz, Hernandez, Bowling and Melendez
NAYS: N/A

The Motion passed. (8-0)

Robert Peña, Secretary, Zoning Board of Adjustment