CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Planning & Economic Development, Planning Division**

AGENDA DATE: **Introduction: October 11, 2011**
Public Hearing: November 1, 2011

CONTACT PERSON/PHONE: Linda Castle, (915) 541-4029, castlelj@elpasotexas.gov

DISTRICT(S) AFFECTED: All

SUBJECT:
An Ordinance amending Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions), of the El Paso City Code to amend the special exceptions for front and side street yard setbacks, duplex and single-family rear yard setbacks, carport over a driveway, and to delete the special exception for condemnation or eminent domain. The penalty is as provided in Chapter 20.24 (Enforcement-Penalty) of the El Paso City Code. **(All Districts)**

BACKGROUND / DISCUSSION:
N/A

PRIOR COUNCIL ACTION:
N/A

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
Zoning Board of Adjustment – Approval Recommendations
Development Coordinating Committee (DCC) - Approval Recommendation, August 24, 2011

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) N/A **FINANCE:** (if required) N/A

DEPARTMENT HEAD: Mathew S. McElroy
Deputy Director, Planning & Economic Development

_____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO._____

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.16 (ZONING BOARD OF ADJUSTMENT), SECTION 2.16.050 (SPECIAL EXCEPTIONS), OF THE EL PASO CITY CODE TO AMEND THE SPECIAL EXCEPTIONS FOR FRONT AND SIDE STREET YARD SETBACKS, DUPLEX AND SINGLE-FAMILY REAR YARD SETBACKS, CARPORT OVER A DRIVEWAY, AND TO DELETE THE SPECIAL EXCEPTION FOR CONDEMNATION OR EMINENT DOMAIN. THE PENALTY IS AS PROVIDED IN CHAPTER 20.24 (ENFORCEMENT-PENALTY) OF THE EL PASO CITY CODE.

WHEREAS, Texas Local Government Code, Chapter 211, grants municipalities authority to provide for the appointment of a board of adjustment to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance; and

WHEREAS, the City Council of the City of El Paso authorized the Zoning Board of Adjustment, by Ordinance No. 012681, enacted January 9, 1996, to grant certain Special Exceptions in the event specific conditions have been met; and

WHEREAS, the City Council of the City of El Paso, by Ordinance No. 016888, enacted May 13, 2008, amended Chapter 2.16 (Zoning Board of Adjustment) in its entirety; and by Ordinance 017288, enacted March 16, 2010; and

WHEREAS, the Zoning Board of Adjustment, after public hearing, has reviewed and recommended the adoption of further changes to the current code, to amend the special exceptions for front and side street yard setbacks, duplex and single-family rear yard setbacks, carport over a driveway, and to delete the condemnation or eminent domain special exception so that the allowable exceptions will be in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which the property is located; and

WHEREAS, the El Paso City Council, having considered the recommendations and held a public hearing at which the public was allowed to comment on the proposed amendments, finds that the adoption of the proposed amendments as submitted will further protect and provide for the public health, safety, morals, and general welfare of the community, and will be in harmony with the spirit and purposes of Titles 2 and 20 of the El Paso City Code.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That the above findings are adopted and incorporated herein as if fully set out.

SECTION 2. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph C (Rear yard setback, single-family residence) of the El Paso City Code is hereby amended to read:

C. Rear Yard Setback, Single-Family Residence. Permit an extension of a single-family residential structure into the required rear yard setback, which shall be measured to the rear property line; provided, however, that:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed shall not exceed the result of multiplying one-third of the average width of the lot by three-fifths of the required rear yard setback;
3. A minimum ten foot rear yard setback shall be required;
4. The minimum side and side street yard setbacks shall not be reduced; and,
5. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space.

SECTION 3. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph D (Rear yard setback, duplex) of the El Paso City Code is hereby amended to read:

D. Rear Yard Setback, Duplex. Permit an extension of a duplex residential structure into the required rear yard setback which shall be measured to the rear property line; provided, however, that:

1. The duplex has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed to each unit of the duplex shall not exceed the result of multiplying one-sixth of the average width of the lot by three-fifths of the required rear yard setback; except that, subject to the approval of all owners, the total of all extensions that could be granted to each unit may be combined and granted to one unit provided that the total of all extensions granted for both units of the duplex shall not exceed the result of multiplying one-third the average lot width by three-fifths of the required rear yard setback;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yard setbacks shall not be reduced;
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred square feet per unit;
6. The extension shall not permit the creation of an additional dwelling unit; and,

7. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space.

SECTION 4. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph F (Side street yard setback) of the El Paso City Code is hereby amended to read:

F. <u>Side Street Yard Setback</u>. Modify district side street yard requirements where the following conditions are met:

1. The proposed modification does not exceed fifty percent of the required side street yard setback requirement;
2. The minimum front and rear yard setbacks shall not be reduced; and,
3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer.

SECTION 5. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph J (Condemnation or Eminent Domain) of the El Paso City Code is hereby deleted as Title 20, Chapter 20.22, Nonconforming situations, contains provisions for relocation of property affected by right-of-way acquisition under threat of condemnation or eminent domain.

SECTION 6. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph K (Carport over a driveway) of the El Paso City Code is hereby amended as follows:

J. <u>Carport over a driveway</u>. 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:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
2. The zoning board of adjustment has received the written approval of the structural design from the building official;
3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, shall be open on three sides, shall be attached to the main structure and shall rise no higher than the highest point of the roof of the dwelling;
4. The area of the carport shall not exceed one-fifth of the first-floor area under roof of the dwelling and shall be measured as the area covered by the carport roof, to include overhangs;
5. Elevation drawings of the proposed structure shall be submitted;
6. For a duplex, the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit;
7. There is no other reasonable alternative to provide a carport in the front yard of the subject property without exceeding the encroachments allowed in Title 20 of this code; and,

8. Unless otherwise provided in this chapter, all remaining areas of the required front yard shall be permanent open space.

SECTION 8. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph L (In Existence Fifteen Years or More) of the El Paso City Code is hereby amended as follows:

K. In Existence Fifteen Years or More. Permit the encroachment into the required yard setbacks for structures; provided, however, that the applicant can prove the following conditions:

1. The encroachment into the required yard setback has been in existence for more than fifteen years;
2. Neither the applicant nor current property owner is responsible for the construction of the encroachment;
3. Neither the applicant nor the current property owner owned the property at the time the encroaching structure was constructed or built;
4. The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback; and,
5. The encroachment does not violate any other provision of the Municipal Code.

SECTION 9. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph M (Front yard setback) of the El Paso City Code is hereby amended as follows:

L. <u>Front yard setback</u>. Permit an extension of a single-family residential structure into the required front yard setback, which shall be measured to the property line; provided, however, that:

1. The residential structure has been in existence with a valid certificate of occupancy for one continuous year;
2. The total length of all extensions granted shall not project into the required front yard setback a depth in excess of ten feet;
3. The total width of all extensions granted shall not exceed one-third of the average width of the site;
4. The minimum side and side street yard setbacks shall not be reduced;
5. A minimum of a ten-foot front setback from the property line shall be maintained;
6. If the proposed modification is for an enclosed garage, a minimum twenty-foot driveway shall be required; and,
7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space.

SECTION 10. Except as herein amended, Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment) shall remain in full force and effect.

APPROVED this _____ day of _____ 2011.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
Municipal Clerk

APPROVED AS TO FORM:

_____
Robert Almonte
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Deputy Director
Planning and Economic Development
Department

ORDINANCE NO._____

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WHEREAS, the Zoning Board of Adjustment, after public hearing, has reviewed and recommended the adoption of further changes to the current code, to amend the special exceptions for front and side street yard setbacks, duplex and single-family rear yard setbacks, carport over a driveway, and to delete the condemnation or eminent domain special exception so that the allowable exceptions will be in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which the property is located; and

WHEREAS, the El Paso City Council, having considered the recommendations and held a public hearing at which the public was allowed to comment on the proposed amendments, finds that the adoption of the proposed amendments as submitted will further protect and provide for the public health, safety, morals, and general welfare of the community, and will be in harmony with the spirit and purposes of Titles 2 and 20 of the El Paso City Code.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That the above findings are adopted and incorporated herein as if fully set out.

SECTION 2. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph C (Rear yard setback, single-family residence) of the El Paso City Code is hereby amended to read:

C. Rear Yard Setback, Single-Family Residence. Permit an extension of a single-family residential structure into the required rear yard setback, which shall be measured to the rear property line~~, not to the centerline of the alley, if one exists~~; provided, however, that:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed shall not exceed the result of multiplying one-third of the average width of the lot by three-fifths of the required rear yard setback;
3. A minimum ten foot rear yard setback shall be required;
4. The minimum side and side street yard~~s~~ setbacks shall not be reduced; and,
5. ~~The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred eighty square feet;~~
6. ~~5~~. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space~~; and~~.
7. ~~The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~

SECTION 3. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph D (Rear yard setback, duplex) of the El Paso City Code is hereby amended to read:

D. Rear Yard Setback, Duplex. Permit an extension of a duplex residential structure into the required rear yard setback which shall be measured to the rear property line~~, not to the centerline of the alley, if one exists~~; provided, however, that:

1. The duplex has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed to each unit of the duplex shall not exceed the result of multiplying one-sixth of the average width of the lot by three-fifths of the required rear yard setback; except that, subject to the approval of all owners, the total of all extensions that could be granted to each unit may be combined and granted to one unit provided that the total of all extensions granted for both units of the duplex shall not exceed the result of multiplying one-third the average lot width by three-fifths of the required rear yard setback;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yard~~s~~ setback shall not be reduced;

5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred square feet per unit;

~~6~~7. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space~~; and~~.

~~7~~6. The extension shall not permit the creation of an additional dwelling unit~~ for rental purposes.~~and,

SECTION 4. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph F (Side street yard setback) of the El Paso City Code is hereby amended to read:

F. Side Street Yard Setback. Modify district side street yard requirements where the following conditions are met:

1. The proposed modification does not exceed fifty percent of the required side street yard setback requirement;
2. The minimum front and rear yard setbacks shall not be reduced; and,
3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer~~; and~~.
4. ~~The proposed modification does not permit the creation of an additional dwelling unit for rental purposes.~~

SECTION 5. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph J (Condemnation or Eminent Domain) of the El Paso City Code is hereby deleted as Title 20, Chapter 20.22, Nonconforming situations, contains provisions for relocation of property affected by right-of-way acquisition under threat of condemnation or eminent domain:

~~**J. Condemnation or Eminent Domain.** Authorize the reduction of zoning restrictions as to lot area, yards or setbacks as applied to a structure that is to be relocated on any lot, a portion of which was acquired under the threat of condemnation or in an eminent domain action; provided, however, that the following conditions are met:~~

~~1. The proposed configuration of the lot, including setbacks, yards, location of structures, landscaping and other proposed buffers prevents adverse impact on adjacent property;~~
~~2. The board receives a recommendation from the zoning administrator or any department required to provide relevant input;~~
~~3. The use of the structure or structures does not extend into an area that was previously used to accommodate off-street parking, unless the applicant demonstrates that the parking provided adequately serves the need generated by the use; and~~
~~4. The board imposes those conditions reasonably necessary to protect the health, safety and welfare of the surrounding property owners and the general public.~~

SECTION 6. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph K (Carport over a driveway) of the El Paso City Code is hereby amended as follows:

~~K~~J. **Carport over a driveway**. 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:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
2. The zoning board of adjustment has received the written approval of the structural design from the building official;
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~~, shall be open on three sides, shall be attached to the main structure and shall rise no higher than the highest point of the roof of the dwelling;
4. The area of the carport shall not exceed one-fifth of the first-floor area under roof of the dwelling~~, nor shall the carport rise above the highest point of the roof of the dwelling; and,~~ and shall be measured as the area covered by the carport roof, to include overhangs;
5. Elevation drawings of the proposed structure shall be submitted;
6. For a duplex,~~ the total of all extensions granted shall not exceed one-third the average width of the site, and~~ the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit;

~~7~~8. Unless otherwise provided in this chapter, all remaining areas of the required front yard shall be permanent open space~~; and,~~.

~~8~~7. There is no other reasonable alternative to provide a carport in the front yard of the subject property without exceeding the encroachments allowed in Title 20 of this code; and,

~~9. The extension shall not permit the creation of an additional dwelling unit for rental purposes nor shall it constitute an extension of the living area of the dwelling.~~

SECTION 8. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph L (In Existence Fifteen Years or More) of the El Paso City Code is hereby amended as follows:

~~L~~K. **In Existence Fifteen Years or More.** Permit the encroachment into the required yard setbacks for structures; provided, however, that the applicant can prove the following conditions:

1. The encroachment into the required yard setback has been in existence for more than fifteen years;
2. Neither the applicant nor current property owner is responsible for the construction of the encroachment;
3. Neither the applicant nor the current property owner owned the property at the time the encroaching structure was constructed or built;
4. The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback; and,

5. The encroachment does not violate any other provision of the Municipal Code.

SECTION 9. That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), Section 2.16.050 (Special Exceptions) Paragraph M (Front yard setback) of the El Paso City Code is hereby amended as follows:

~~M~~L. **Front yard setback.** Permit an extension of a single-family residential structure into the required front yard setback, which shall be measured to the property line; provided, however, that:

1. The residential structure has been in existence with a valid certificate of occupancy for one continuous year;
2. The total length of all extensions granted shall not project into the required front yard setback a depth in excess of ten feet;
3. The total width of all extensions granted shall not exceed one-third of the average width of the site;
4. The minimum side and side street yard~~s~~ setbacks shall not be reduced;
5. A minimum of a ten-foot front setback from the property line shall be maintained;
6. If the proposed modification is for an enclosed garage, a minimum twenty-foot driveway shall be required; and,
7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space~~; and,~~.
8. ~~The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~

SECTION 10. Except as herein amended, Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment) shall remain in full force and effect.

APPROVED this _____ day of _____ 2011.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
Municipal Clerk

APPROVED AS TO FORM:

_____

Robert Almonte
Assistant City Attorney

APPROVED AS TO CONTENT:

_____

Mathew S. McElroy, Deputy Director
Planning and Economic Development
Department

MEMORANDUM

DATE: October 3, 2011

TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager

FROM: Linda Castle, Senior Planner

SUBJECT: **ZBA Ordinance Amendment, Title 2, Chapter 2.16**

The Zoning Board of Adjustment (ZBA), after review and approval, recommends to City Council the following changes to the ZBA Ordinance:

- The Board requests changes to the Special Exception for a Carport over a Driveway to clarify that the calculation of the total permitted carport area is to be 1/5 of the square foot area of the house under roof and to clarify that the carport area is to be measured from overhang to overhang. Further, other Carport Special Exception requirements, including for a duplex, were rearranged or reworded for clarity.
- The Board requested that the words "yard" or "setback" be added to the Special Exceptions where needed for clarity.
- To avoid conflict with the Accessory Dwelling Unit (ADU) ordinance, the Staff recommended deleting references to "rental unit" in several of the Special Exceptions and deleting the restriction on accessory buildings in the Rear Yard Special Exception C.
- The Staff recommended deleting references to measuring a setback as "not to the centerline of the alley, if one exists" as unnecessary language in the Rear Yard Special Exceptions C and D.
- The Staff recommended deleting Special Exception J as it duplicates Title 20, Zoning, Section 20.22.080, Nonconforming situations, property affected by right-of-way acquisition.

Attachments: Proposed ZBA Ordinance
Current ZBA Ordinance, with proposed changes