

AGENDA

ZONING BOARD OF ADJUSTMENT

COUNCIL CHAMBER

OCTOBER 20, 2021

8:30 A.M.

1. Invocation
2. Approve the minutes of the September 15, 2021, Zoning Board of Adjustment meeting
3. DOCKET NO. 2021-10-V
Open a public hearing to consider approval of the request of Jimmy Garcia and Veronica Garcia, owners, for a variance from Section 14-7-8 (5) of the City of Odessa Zoning Ordinance to locate a structure (carport) with a three feet (3') side yard setback instead of the five feet (5') side yard setback in a General Residence (GR) Zoning District, Lot 7, Block 1, Beall Subdivision (207 Ellis Dr)
4. Other business
5. Adjourn

Be it said and remembered that at 8:30 a.m. on the 15th day of September, 2021, there came on and was held a Zoning Board of Adjustment meeting in the Council Chamber, 5th Floor, 411 W. 8th St., Odessa, Texas.

MEMBERS PRESENT: Mark Windham, Chairman
Brooke Harper
Tim Harry
Kyle Newton
Anthony Rios
Kirk Strahan

MEMBERS ABSENT: Gerardo Arzate
Priscilla Contreras (Alternate)
Craig Stoker (Alternate)

OTHERS PRESENT: Lorraine Quimiro, Planning Manager; Maria Prieto, Planner; Jared Aguilar, Planning Tech; Jan Baker, Senior Assistant City Attorney; and Anne Roney, Secretary.

Chairman Windham called the meeting to order, with Member Strahan giving the Invocation.

The minutes of the August 4, 2021, Zoning Board of Adjustment meeting were approved, motion for approval being made by Member Harry, seconded by Member Harper, with the vote being a unanimous "aye".

DOCKET NO. 2021-09-V (approved with conditions)

Open a public hearing to consider approval of the request of Gilbert and Flora Garza, owners, for a variance from Section 14-7-5 and 14-7-6 (11) of the City of Odessa Zoning Ordinance to allow a structure (carport) to be located with a zero (0') front yard setback instead of a twenty-five feet (25') front yard setback and from Section 14-7-7 to allow said structure (carport) to be located one foot (1') side yard setback instead of the required five feet (5') side yard setback in a Light Commercial (LC) Zoning District, Lot 8, Block 1, Mary Flanagan (803 E. 4th St.)

Ms. Prieto gave the following presentation: There were 20 notices mailed to surrounding property owners, with no notices returned, no written protests and 3 written approvals.

The property involved in this request is located at 803 E. 4th St. This site is currently zoned Light Commercial (LC) and is occupied by a single family residence. The property is surrounded by residential development.

The applicant is Flora Garza, owner, and the purpose of the request is for a variance to allow a structure (carport) with a zero (0') front yard setback instead of a twenty-five feet (25') front yard setback and one foot (1') side yard setback instead of the required five feet (5') side yard setback. In order to allow the structure zero feet (0') forward on the twenty-five feet (25') front yard setback and four feet (4') forward on the five feet (5') side yard setback, the applicant is requesting a variance from Sections 14-7-5, 14-7-6 (11) and 14-7-7 of the City of Odessa Zoning Ordinance, which states:

14-7-5 and 14-7-6 (11) FRONT YARD

In the following zoning districts the minimum required front yard shall be in accordance with the following schedule and no building or structure shall hereinafter be located, erected or altered so as to have a smaller front yard than hereinafter required, and no front yard existing at the time of passage of this ordinance shall be reduced below the minimum set forth in the following schedule except as hereinafter provided:

| | | |
|------------------|-----|----|
| Light Commercial | 25' | LC |
|------------------|-----|----|

14-7-7 SIDE YARD

In the Following Zoning Districts The Minimum Required Side Yard Shall Be In Accordance With The Following Schedule And No Building, Structure Or Use Shall Hereafter Be Located So As To Have A Smaller Side Yard On Each Side Of Such Building Than Herein Required, And No Side Yard Existing At The Time Of Passage Of This Ordinance Shall Be Reduced Below The Minimum Set Forth Herein:

| | | |
|------------------|----|----|
| Light Commercial | 5' | LC |
|------------------|----|----|

The following criteria as outlined in the Zoning Ordinance are to be used by the Board of Adjustment in evaluating variance requests. The burden of proof in meeting each of these criteria is upon the applicant.

- A. The variance request is not contrary to the public interest.
- B. Special conditions exist for the applicant that do not generally exist for others.
- C. A literal enforcement of the ordinance will result in unnecessary hardship.
- D. The spirit of the zoning ordinance is observed and substantial justice is done.

Staff analysis of this request is that there are no special conditions associated with the property that do not exist for others in the area. The applicant, Flora Garza, owner, failed to obtain a building permit which would have provided the setbacks to adequately fit the structure on the property. The Planning Staff cannot support the variance request, and recommends that the request be denied, and that the structure (carport) be placed on the lot to meet building setback requirements.

There being no questions for City Staff, Chairman Windham opened the public hearing.

Ms. Flora Garza, applicant, approached the lectern. She stated the concrete was placed on her lot when she moved in. Since the concrete was already in place, that is where she put the carport. Mr. Harry asked if she was advised by her contractor she needed a permit, being told she was not.

There being no further questions, Chairman Windham closed the public hearing.

Mr. Rios asked if one of the pictures indicated where the carport is at this time, being told it was. Ms. Prieto indicated there is a space between the house and the carport. If the applicant had moved it back she would only need to request a variance for 5' forward of the required setback. Ms. Prieto stated there is a 20' right-of-way for this area and a 25' front yard setback. Mr. Strahan asked how far the carport was set back, being told the carport is right on the property line. Mr. Rios clarified the carport is located right at the property line and the house meets the 25' front yard setback. Mr. Prieto then pointed out the carport is also 1' from the side yard setback. Mr. Newton asked about the fence, being told the fence is right on the property line. The carport is 1' away from the fence. Ms. Garza stated there had been a fence that the City took down when repairs were being made to the house. The existing fence belongs to her neighbor.

Member Strahan stated he felt the applicant needed to have the property permitting and moved the request for variance be denied. Member Harry seconded the motion with the vote as follows: Members Harper, Windham and Strahan – "aye".

Mr. Newton stated he was having a difficult time with this request and mentioned the right-of-way is usually much smaller. Mr. Windham mentioned there are building codes which need to be met. Mr. Windham stated there were 3 votes to deny the request and asked what happens, being told there needed to have 4 votes to approve a request. Mr. Newton stated this has a larger right-of-way so that if the street were ever widened the carport could be right at the street. Mr. Harry stated the main issue in this request is a permit had not been obtained and asked what the penalty was. Ms. Quimiro stated that was up to Building Inspection, however if the variance is denied the applicant would have to remove the carport. Mr. Rios stated his concern was the side setback being only 1' from the property line and Mr. Windham stating his concern was the carport being located right at the front property line. The Board has never approved a variance for a structure being located at the front property line. If the structure were moved back he would not object to approving the request. Ms. Harper asked if the Board could approve the variance with the stipulation being the carport be moved in. Ms. Garza stated she did not have the money to add additional concrete to move the carport closer to the house. Mr. Harry asked if the motion could be to move the carport back and in from the side yard. Ms. Garza again stated she did not have the money to move the carport back. Ms. Harper stated if this request were approved as requested a precedent would be set for more requests at the property line. Mr. Windham stated the biggest problem was the applicant did not come in to apply for the proper permit. If the carport were only moved back 4' it would be easier

to approve the variance. It was then pointed out the motion to deny the variance was 3 votes to deny the variance and 3 no response. Ms. Baker stated they can do another motion so the applicant does not have to come back in or they could table the motion and have the applicant come back for another meeting. Mr. Strahan stated the applicant will have to obtain the permit.

Member Harry moved the variance for the front yard setback be approved and the side yard setback must be moved in 5'. Ms. Harper pointed out the could have a 4' overhang, with Mr. Rios stating the poles for the front would have to be moved in. The motion died for lack of a second.

Member Harper moved the variance be approved with the carport be located with a five feet front yard setback with a four feet overhang and to meet the five feet side yard setback. Member Harry seconded the motion, with the vote being a unanimous "aye".

FINDINGS OF FACT

The Zoning Board of Adjustment for the City of Odessa finds as a matter of fact that the applicant has sustained his burden of showing that :

1. The variance request is not contrary to the public interest.
2. Special conditions exist for the applicant that do not generally exist for others.
3. A literal enforcement of the ordinance will result in unnecessary hardship.
4. The spirit of the zoning ordinance is observed and substantial justice is done.

ORDER OF THE BOARD

Therefore, the Zoning Board of Adjustment of the City of Odessa acting on the basis of the required concurring vote of four (4) members of the Board hereby orders the variance sought by the applicant in this case be, in all things granted subject to the following appropriate conditions and safeguards, to wit: Structure (carport) to be located with a five feet (5') front yard setback with a four feet (4') overhang and to meet the five feet (5') side yard setback.

There being no further business to come before the Board, the meeting was adjourned at 8:53 a.m.

Anne Roney, Secretary, placed the minutes in the Minute Book on September 15, 2021.

Mark Windham, Chairman

TO: ZONING BOARD OF ADJUSTMENT
FROM: LORRINE QUIMIRO, PLANNING MANAGER
SUBJECT: DOCKET NO. 2021-10-V
APPLICANT: Jimmy Garcia & Veronica Garcia, Owner
REQUEST: Variance from Sec 14-7-8(5) of the City of Odessa's Zoning Ordinance
PROPERTY INVOLVED: Lot 7, Block 1, Beall Subdivision (207 Ellis Dr)

The property involved in this request is located at 207 Ellis Dr. This site is zoned General Residence (GR) and is currently occupied by single-family residential development. The property is surrounded by single family residential development.

The applicant is Jimmy Garcia & Veronica Garcia, owner, and the purpose of the request is to allow a carport to be placed three feet (3') forward of the five feet (5') side yard setback. In order to allow the structure two feet (2') forward in the five feet (5') setback, the applicant is requesting a variance from Section 14-7-8(5) of the City of Odessa Zoning Ordinance, which states:

14-7-8 Special Side Yard Regulations

(5) A single-family attached dwelling or special housing development shall provide a minimum required side yard adjacent to a side street of ten (10) and no complex of attached single-family dwellings or attached special housing units shall exceed three hundred (300) feet in length. A minimum required side yard of five (5) feet shall be provided at the end of each single-family attached or special housing group so that the end of any two adjacent building complexes shall be at least ten (10) feet apart. A side yard other than herein specified may be indicated on a Site Plan and if approved by the Planning and Zoning Commission shall be observed:

General Residence 5' GR

The following criteria as outlined in the Zoning Ordinance are to be used by the Board of Adjustment in evaluating variance requests. The burden of proof in meeting each of these criteria is upon the applicant.

- A. The variance request is not contrary to the public interest.
- B. Special conditions exist for the applicant that do not generally exist for others.
- C. A literal enforcement of the ordinance will result in unnecessary hardship.
- D. The spirit of the zoning ordinance is observed and substantial justice is done.

Staff analysis of this request is that the applicant's request to reduce the side yard to two feet (2') is reasonable and will not create any hazards or hardships to surrounding properties related to light, air, or open space.

Based on analysis of the site, staff recommends approval of the request as shown with the following conditions:

- 1. No other structures or additions may be placed within the 5' side yard setback.
- 2. Water runoff from the roof should be directed away from the side yard.

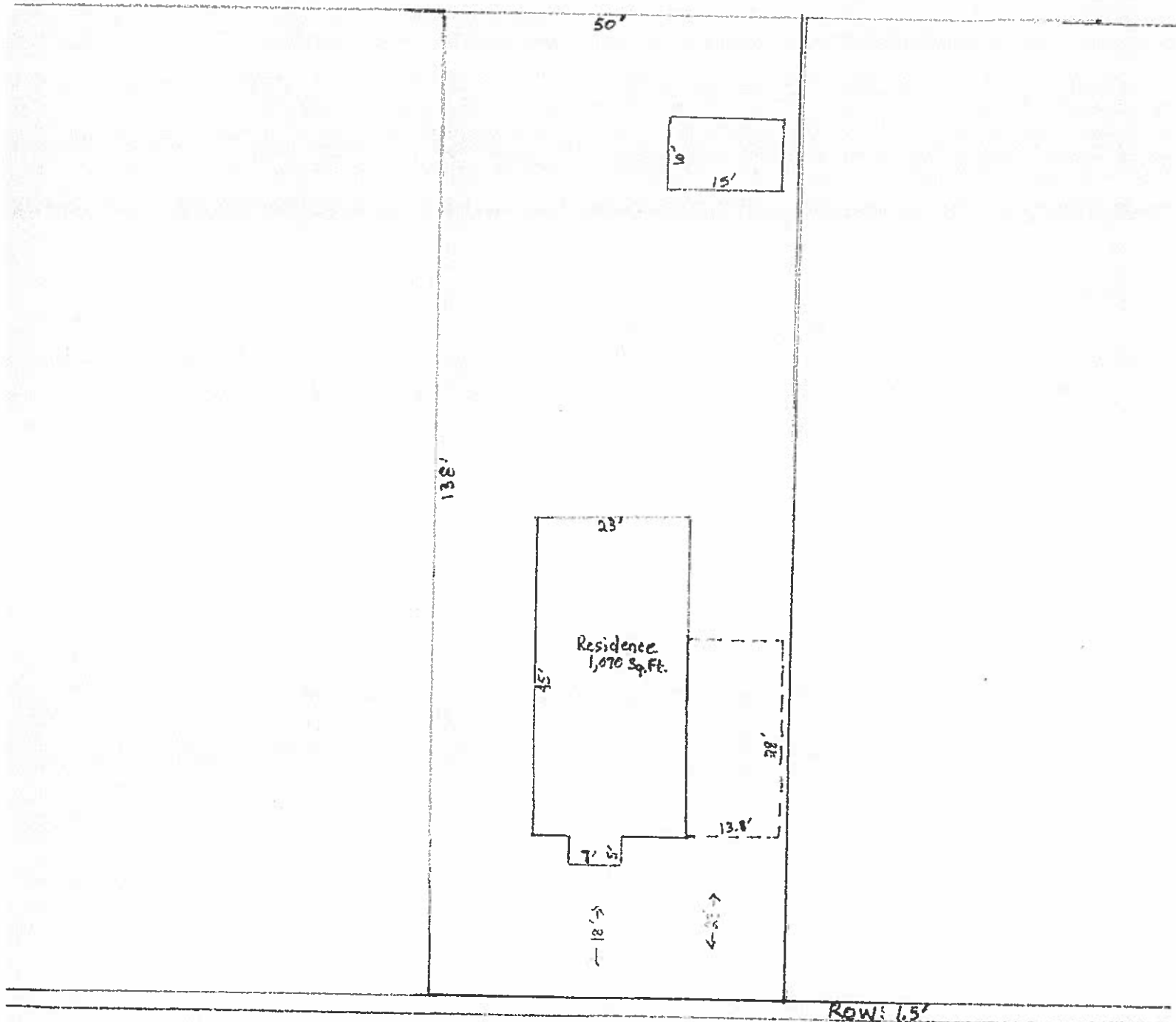
Information in order of inclusion:

- Area of notification map
- Copy of site plan



1 inch = 100 feet

LC



Ellis Dr.

