

THE STATE OF TEXAS §
CITY OF BROWNSVILLE §
COUNTY OF CAMERON §

MINUTES of a **Regular Meeting** of Board of Adjustment of the City of Brownsville, Texas, held in the Commission Chambers, on the Second Floor of the Brownsville City Hall – Old Federal Building, located at 1001 East Elizabeth Street, Brownsville, Cameron County, Texas, on **Wednesday, May 1, 2019 at 5:30 P.M.** with the following members present:

PRESENT:

ROY DE LOS SANTOS
HOWARD SLACKMAN
DILLON VANDERFORD
MARY ALICE LOYA
JOHN KINCH
MARTIN METZGER
MICHELLE GARCIA
JOSE HINOJOSA
OMAR OCHOA
MYRNA LEAL
JENNIFER AVENDAÑO
ANA HERNANDEZ

CHAIRMAN
VICE CHAIRMAN
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER
ALTERNATE BOARD MEMBER
ALTERNATE BOARD MEMBER
ALTERNATE BOARD MEMBER
BUILDING OFFICIAL
PLANNER I
ASSISTANT CITY ATTORNEY
PLANNING & DEVELOPMENT SERVICES
ASSISTANT DIRECTOR

ABSENT:

CONSTANZA MINER

PLANNING & DEVELOPMENT SERVICES
DIRECTOR

A quorum being present, Chairman Roy De Los Santos **called the meeting to order at 5:30 PM.**

For record keeping purposes and for the public’s understanding Chairman Roy De Los Santos noted that Board Member Mary Alice Loya, due to ambulatory restrictions, would be seated at the City Attorney’s station but is still a voting member of the Board of Adjustment.

Item No. 1: Approval of minutes for the meeting of April 3, 2019.

Board Member Howard Slackman made a motion to **approve** the minutes with corrections for the meeting of April 3, 2019; the motion was seconded by Board Member Mary Alice Loya and **unanimously carried.**

Item No. 2: Public Hearing and Action to consider a variance from Chapter 320, Article II.- Sidewalk Facilities, to allow for a 36” sidewalk for a property at Lot 2, Block 1, Mejia & Rose Subdivision, located at 1625 W. Price Road, as requested by Hector Guerra.

Mr. Omar Ochoa, Building Official, presented on the variance request and stated that the Planning and Development Services Department does not support variance because it does not comply with Chapter 320, Article II.- Sidewalk Facilities requirements.

Board Member Howard Slackman stated that the letter the applicant submitted to the Board stated that there would be drainage issues if the sidewalk were to be built as required, no other sidewalks exist along Price Road, and that the lot is an odd shape.

Mr. Omar Ochoa, Building Official, stated that according to the approved site plan the sidewalk would be built outside property lines therefore it should not affect lot drainage and the odd shape of the lot should not have any interference as to the size of the sidewalk. Mr. Omar Ochoa stated that the applicant is correct that there are no other sidewalks along Price Road but it is a requirement and therefore that is the reason this item was brought before the board.

Mr. Hector Guerra, property owner, approached the Board and stated that he wanted to reiterate that no sidewalks existed from Central Boulevard to Price Road. Mr. Hector Guerra stated that not too many people walk along the street and that the limited space on the property is would keep him from building the required 5’ sidewalk; and any available space would be needed for a swale.

Chairman Roy De Los Santos asked Mr. Omar Ochoa if the proposed swell was in conjunction with the plans that the Engineering Department approved. Mr. Ochoa stated that the proposed swell was approved by the Engineering Department and that it should be located inside property lines. Mr. Ochoa also stated that the survey shows at least 8’ between the curb and property line.

Chairman Roy De Los Santos addressed Mr. Hector Guerra, property owner, and stated that had the applicant requested to be exempt from building a sidewalk at all he believes that the request would stand since there are no other sidewalks on the street.

Chairman Roy De Los Santos asked Mr. Hector Guerra, property owner, what other hardship or mitigating factor is affecting his property; Mr. Hector Guerra said he had no response.

Board Member John Kinch stated that a 4’ sidewalk could be built without it needing a variance.

Board Member Howard Slackman moved to close public hearing, motion was seconded by Board Member John Kinch; motion carried unanimously.

Board Member Howard Slackman motioned to **deny** the variance to allow for a 36" sidewalk. Board Member Dillon Vanderford seconded the motion and **carried unanimously**.

Item No. 3: Public Hearing and Action to consider a variance from Chapter 348, Article V, Sec. 348-812.- Yards, to allow a 2.9' side yard encroachment for an existing structure at Lot 32, Block 1, Isla de Palmas Subdivision, located at 825 St. James Drive, as requested by Maria G. Luna and Julio C. Luna.

Mr. Omar Ochoa, Building Official, presented on the variance request and stated that the Planning and Development Services Department had no objections to allow a 2.9' side yard encroachment of an existing structure.

Mr. Omar Ochoa, Building Official, stated that at the right side the existing structure was encroaching into the required setback and that the applicant had gone through the proper permitting process during construction but due to prior practices surveys for setbacks were not required. Mr. Omar Ochoa, Building Official, stated that no further encroachment would occur as the work to be done will only be façade improvements.

Board Member Howard Slackman asked Planning and Development Staff what the outcome would be if the variance were to be denied.

Mr. Omar Ochoa, Building Official, stated that the permit would be denied and the residence would remain a non-conforming structure.

Mr. Julio Luna, property owner, approached the Board and stated that he was requesting the variance to make improvements to the front façade of his home. Mr. Julio Luna stated that when they enclosed the carport they had no knowledge of the 5' side setback; he has also spoken with his neighbor who said he has no issues with the current setback of the property or the façade improvements.

Chairman Roy De Los Santos questioned Mr. Omar Ochoa, Building Official, if there were any known violations at the time of the construction of the house. Mr. Omar Ochoa, Building Official, responded by saying that at the time the residence was built a form survey was not required.

Board Member John Kinch moved to close public hearing, motion was seconded by Board Member Dillon Vanderford; motion carried unanimously.

Board Member John Kinch motioned to **approve** the variance to allow a 2.9' side yard encroachment for an existing structure. Board Member Howard Slackman seconded the motion and **carried unanimously**.

Item No 4: Public Hearing and Action to consider a variance from Chapter 348, Article V, Sec. 348-750.- Lot Width, to allow a 53' wide residential lot at Lot 8, Block 11, Garden Park Subdivision, located at 375 Garden Street, as requested by Maria G. De Leon and Eduardo De Leon.

Mr. Omar Ochoa, Building Official, presented on the variance request and stated that Planning and Development Services has no objection to allow a 53' wide residential lot because the property exceeds the minimum lot size requirements.

Chairman Roy De Los Santos asked staff if the property exceeds the min requirements why a variance would be required. Mr. Omar Ochoa explained the two requirements to allow a two-family dwelling, lot size and lot width. Lots should be a minimum of 9,000 sq. ft. and a minimum of 75 ft. wide.

Mr. and Mrs. Eduardo and Maria G. De Leon, property owners, approached the Board and stated that the existing house is over 50 years old and they plan to demolish and build a duplex. Mrs. Maria G. De Leon stated that the proposed duplex would be built to the rear of the property.

Chairman Roy De Los Santos voiced a concern on how the item was worded on the agenda and public notices. Chairman Roy De Los Santos felt that that the noticed neighbors may not have had knowledge of the proposed duplex.

Ms. Myrna Leal, Planner I, addressed the Chairman's concerns and stated that there were about six property owners within the 200' radius that received the notices and contacted the Planning and Development Services Department with questions regarding the item. Ms. Myrna Leal, Planner I, stated that she personally explained the item and informed the neighboring property owners of the proposed duplex and no objections or concerns were raised.

Board Member Howard Slackman moved to close public hearing, motion was seconded by Board Member John Kinch; motion carried unanimously.

Board Member Dillon Vanderford motioned to approve the variance to allow a 53' wide residential lot.

Mr. Omar Ochoa, Building Official, stated that there was a discrepancy on what the application read and what was actually on the survey, the survey shows 39.45' and application read 53'.

Mrs. Jennifer Avendano, Assistant City Attorney, stated that the item should be tabled due to the wrong information being noticed.

Board Member Dillon Vanderford withdrew the approval motion.

Board Member Dillon Vanderford motioned to **table** the variance to allow a 53' wide residential lot. Board Member John Kinch seconded the motion and **carried unanimously**.

Item No 5: Public Hearing and Action to consider a variance from Chapter 348, Article V, Sec. 348-750.- Lot Width, to allow a 43.21' wide residential lot at Lot 4, Rosita Subdivision, located at 535 Rosita Street, as requested by Bulmaro Guzman.

Mr. Omar Ochoa, Building Official, presented on the variance request and stated that The Planning & Development Services Department has no objection to allow a 43.21' wide residential lot because the property is a platted lot and both the Subdivision Ordinance and Zoning Ordinance are not harmonious and do not work together.

Chairman Roy De Los Santos questioned as to whether staff was working or recommendations to amend ordinance to allow when it comes to something like this. Mr. Ochoa responded that there were upcoming changes and amendments to the ordinance.

Board Member Howard Slackman asked what the difference was between Subdivision and Zoning Ordinances and they do not working harmoniously. Mr. Omar Ochoa, Building Official, stated that the year the plat was recorded, according to the subdivision ordinance, this may have been an approved lot but now the minimum size of lot in the Zoning Ordinance is 50' wide.

Board Member Dillon Vanderford moved to close public hearing, motion was seconded by Board Member Howard Slackman; motion carried unanimously.

Board Member Howard Slackman motioned to **approve** the variance to allow a 43.21' wide residential lot. Board Member John Kinch seconded the motion and **carried unanimously**.

Chairman Roy De Los Santos stated that due to the upcoming cases (Item No. 6 - Case Number 2019-011-V and Item No. 7 - 2019-0012-V) he filed a conflict of interest form due to being employed by AT&T and because his cousin is a shareholder with Baker Donaldson, who is representing AT&T. Chairman Roy De Los Santos will step away from the dais and leave the Commission Chamber as required by Chapter 38 of the City of Brownsville Code of Ordinances. Vice Chairman and Board Member Howard Slackman will now lead the Board of Adjustment. Alternate Board Member Jose Hinojosa took Board Member Howard Slackman's place to fulfill quorum requirements.

Item No 6: Public Hearing and Action to consider a variance from Chapter 338, Article II, Sec. 338-34.- Development Standards, to allow a wireless communications facility antenna 150' in height, at Lot 1, R.A. Lieck Estate, Partition Share 22, Espiritu Santo Grant, located at the corner of Fish Hatchery Road and Expressway 77, as requested by Ken McKay.

Item No 7: Public Hearing and Action to consider a variance from Chapter 338, Article II, Sec. 338-34.- Development Standards, to allow a 72.6' encroachment of a wireless communications facility antenna, at Lot 1, R.A. Lieck Estate, Partition

Share 22, Espiritu Santo Grant, located at the corner of Fish Hatchery Road and Expressway 77, as requested by Ken McKay.

Vice Chairman Howard Slackman stated that both Item No. 6 - Case Number 2019-011-V and Item No. 7 - 2019-012-V be heard at the same time as both variance requests are for the same property

For Case Number 2019-011-V - Mr. Omar Ochoa, Building Official, presented on the item and stated that the Planning and Development Services Department does not support the variance request to allow a wireless communications facility antenna 150' in height because it does not comply with the height requirements as required by the Telecommunications Ordinance (Sec.338-34 (d)) or Zoning Ordinance (Sec.348-928).

For Case Number 2019-012-V - Mr. Omar Ochoa, Building Official, presented on the item and stated that the Planning and Development Services Department does not support the variance request to allow a 72.6' encroachment of a wireless communications facility antenna because it does not comply with the distance requirements of the Telecommunications Ordinance (Sec.338-34 (C)).

Mr. Omar Ochoa, Building Official, stated that the applicant had not submitted full construction drawings that would provide details of the antenna or its safety provisions in case of structural failure.

Alternate Board Member Jose Hinojosa questioned if the main reason for not allowing the encroachment was due to the safety provisions in case of structural failure. Mr. Omar Ochoa, Building Official, stated that the Department does not support the request because of the height of the antenna and because of the proximity to a residential area.

Mr. Ken McKay, representative for New Singular Wireless PCS an AT&T company, stated that AT&T's first choice was to comply and find locations that comply with all requirements.

Mr. Ken McKay stated that there are no locations within the City of Brownsville that can provide the space in order for the tower to do what it needs to do; and that this particular area is dramatically under served in terms of wireless signal.

Mr. Ken McKay stated that there are towers north and south of the proposed property but they are serving at maximum capacity. Ms. Ken McKay also stated that the proposed tower would allow AT&T off load the demand of the towers that are at capacity and that all modern cell towers are designed to collapse on itself in the event of structural failure.

Mr. Ken McKay stated that concerned neighbors, who attended the Planning & Zoning Commission that also heard items concerning the proposed tower, were given his contact information so that he could provide answers to questions or concerns they might have but no one has contacted him or AT&T to his knowledge.

Mr. Ken McKay stated that this site was specifically chosen by Border Patrol to contain equipment which would facilitate the immigration program of the Border Patrol. Mr. Ken McKay stated that the proposed tower would also function as part of First Net which is a separate network dedicated solely to first responders.

Ms. Myrna Leal, Planner I, stated that the Telecommunications Ordinance has a requirement of 100' setback if antennas were 135' in height but because antenna is 150' that setback would not work.

Ms. Myrna Leal, Planner I, also stated that the City of Brownsville recently had a study done that showed that the City has a plethora of agricultural land and there are also neighboring lots for sale.

Ms. Myrna Leal, Planner I, stated that the Planning and Development Services Department's main concern is safety; the city should not sacrifice citizen safety for higher reception areas.

Mr. Ken McKay stated that there is no showing or evidence that there are any safety issue. Tower is designed to collapse on itself.

Board Member John Kinch dismissed himself from the meeting due to another engagement. Alternate Board Member Michelle Garcia took his place on dais. Vice Chair Howard Slackman stated for the record that Alternate Board Member Michelle Garcia had been present the entire meeting and had heard all previous comments and information on the meeting.

Board Member Jose Hinojosa stated that in case of a hurricane the tower would not collapse on itself and would fly off in whatever direction the wind was blowing and he was concerned that no documentation on the design of the tower has been submitted.

Mr. Omar Ochoa, Building Official, stated that the department has also not received documentation that the property would be used for official agency purposes.

Mr. Ken McKay stated that all documentation on the design of the tower had been turned in.

Mr. Ken McKay stated that he had asked staff twice if all documentation had been submitted and department staff responded by saying all documents required had been submitted.

Ms. Myrna Leal, Planner I, stated that all documentation for the Board of Adjustment application had been submitted.

Board Member Dillon Vanderford asked Mr. Ken McKay what would happen when the property lease expires and would the tower be removed. Mr. McKay responded by saying their leases are long term and when the term expires the lease is renewed.

Mr. Ken McKay stated that exhibit "J" (Complete Constructions Drawings) contains every drawing required by federal, state, and local government.

Mr. Ken McKay stated that there is no requirement, in the City Ordinance that states that a complete set of construction plans be submitted for a variance, but AT&T submitted them even though it is not required by ordinance.

Mr. Abraham Galonski, part owner of the property located at the corner of Fish Hatchery Road and Expressway 77, stated that the closest structures to the proposed tower location were sheds, not houses; and that the first house in the vicinity is over 100' from property line.

Alternate Board Member Michelle Garcia asked Ms. Myrna Leal, Planner I, if all residences within the 200' radius were notified. Ms. Myrna Leal, Planner I, stated that all residences within 200' radius, even if only a portion of their property or a corner of their property is within the radius had been notified; members of the public did call and some are present to speak on the item.

Mr. and Mrs. Ricardo and Graciela Villarreal, citizens who live within the 200' radius, approached the Board. Mr. & Mrs. Villarreal stated that they live in the neighborhood of the proposed tower and that they submitted a petition with 14 signatures against the proposed tower.

Mrs. Graciela Villarreal stated that River Creek Subdivision is a private family owned neighborhood and that a home is the biggest investment people make in their lifetime therefore is it very import to protect it.

Mrs. Graciela Villarreal stated she had done research with realtors and she was told that the proposed tower may reduce the value of their property, making it very difficult to sell.

Mrs. Graciela Villarreal stated that it would not only be an eyesore but it would also raise health issue concerns and that Border Patrol has their own antennas.

Mrs. Graciela Villarreal stated that there were 15 antennas within a 10 mile radius.

Mr. Ricardo Villarreal asked for consideration as they grow older and try to sell and that they are fighting for their life time investment.

Mrs. Graciela Villarreal stated that there were 5 locations that AT&T could look into for proposed tower which were on sale. Mrs. Villarreal also stated that right next to drainage ditch two trucking companies had the properties listed \$5 million dollars. Mrs. Villarreal went on to mention a number of properties for sale.

Ms. Iris Perales, resident within the 200' radius, approached the Board. Ms. Iris Perales stated that she was the most affected property owner because she lives right behind the proposed tower. Ms. Iris Perales stated that the flea market is very close and people walk to flea market by this location and the tower would cause safety concerns.

Ms. Rosalinda Perales, resident within the 200' radius, approached the Board and stated that health issues, privacy, and devaluation of property with the proposed antenna were her main concerns and that she was against the proposed antenna.

Mr. Ken McKay stated that there is no encroachment and that there is no evidence that supports proof of property devaluation.

Mr. Ken McKay stated that the Federal Telecommunications act of 1996 said a jurisdiction cannot deny an application for a cell tower without any substantial evidence of any of the arguments being made, and that he has not heard any evidence of such.

Mr. Ken McKay further addressed the Federal Communications Act of 1996 and the health affect concerns.

Vice Chairman Howard Slackman stated that the Board is not considering approving or denying an application, he stated that the Board's job is to determine whether we should give AT&T two variances to violate current city ordinance based on hardships and other reasons.

Board Member Dillon Vanderford asked if AT&T had information on what noise might be produced from the proposed tower to which the applicant Mr. Ken McKay stated that the noise level is in compliance with every federal, state, and local regulation. Mr. Ken McKay went on to say that because of the height of the antenna the small amount of noise it does produce would dissipate.

Ms. Myrna Leal, Planner I, stated that staff was simply voicing safety concerns and that it is up to the Board to verify if this constitutes a hardship or not.

Board Member Dillon Vanderford moved to close public hearing, motion was seconded by Board Howard Slackman; motion carried unanimously.

Board Member Mary Alice Loya stated that the reason the board is here is to decide on the variances.

For Case Number 2019-011-V, Item No. 6, Board Member Dillon Vanderford motioned to **approve** the variance request to allow a wireless communications facility antenna 150' in height. Vice Chairman Howard Slackman seconded the motion and requested a roll call vote. Board Member Dillon Vanderford ayed the motion, Alternate Board Member Jose Hinojosa nayed the motion, Vice Chairman Howard Slackman ayed the motion, Alternate Board Member Michelle Garcia ayed the motion and Board Member Mary Alice Loya ayed the motion. The motion **carried**.

For Case Number 2019-012-V, Item No. 7, Board Member Dillon Vanderford motioned to **approve** the variance request to allow a 72.6' encroachment of a wireless communications facility antenna; motion was seconded by Board Member Mary Alice Loya. Vice Chairman Howard Slackman requested a roll call vote; Board Member Mary Alice Loya ayed the motion, Alternate Board Member Michelle Garcia ayed the motion, Vice Chairman Howard Slackman ayed the motion, Alternate Board Member Jose Hinojosa nayed the motion, and Board Member Dillon Vanderford ayed the motion. The motion **carried**.

Item No 8: Discussion and Possible Action to amend Section 4.6 Consideration of Evidence and Section 7.3 Amendment Procedure of the Rules of Procedure for the Board of Adjustment.

Chairman Roy De Los Santos rejoined the meeting, Alternate Board Member Jose Hinojosa stepped down from the dais and Board Member Howard Slackman is back as a regular member.

Board Member Howard Slackman requested that the two proposed amendments be voted on separately and Chairman Roy De Los Santos agreed.

Chairman Roy De Los Santos stated that City of Brownsville's City Attorney's office has already reviewed the proposed changes to the Rules of Procedure.

Discussion ensued regarding the changes being proposed to the Board of Adjustment Rules of Procedure.

For the amendment to Sec. 4.6 – Consideration of Evidence of the Rules of Procedure of the Board of Adjustment, Board Member Dillon Vanderford motioned to **approve** the item. Motion was seconded by Board Member Mary Alice Loya and ayed Alternate Board Member Michelle Garcia, Chairman Roy De Los Santos, and nayed by Board Member Howard Slackman. The motion **passed** 4 to 1.

For the amendment to Sec. 7.3 – Amendment Procedure of the Rules of Procedure of the Board of Adjustment, Board Member Dillon Vanderford motioned to **approve** the item; motion was seconded by Board Member Mary Alice Loya and carried **unanimously**.

Board Member Howard Slackman stated that City Attorney Rene De Coss suggested that if the Board would not be able to do on site visits then the Planning and Development Services Department could provide video evidence of the properties in question.

Adjournment:

Alternate Board Member Michelle Garcia moved to adjourn meeting, motion was seconded by Board Member Howard Slackman; motion carried unanimously.

Approved this 5 day of June 2019.


Roy De Los Santos
Chairman

Attest:



**Myrna Leal
Planner I**

**Respectfully submitted by:
Myrna Leal, Planner I
Planning and Development Services Department**

