



## ZONING BOARD OF ADJUSTMENTS

OCTOBER 6, 2021

12:00 PM

CITY HALL TOWN HALL  
118 E. TYLER AVENUE  
HARLINGEN, TEXAS

**This is not a Meeting of the Harlingen Elective Commission; however, a quorum of the City Commission may be present. Other City Board members may also be present.**

Notice is hereby given of a regular meeting of the Zoning Board of Adjustments of the City of Harlingen, Texas to consider the following:

### PLEDGE OF ALLEGIANCE/WELCOME

1. Approval of Minutes: Meeting of June 16, 2021
2. Public hearing and take action to consider a request to allow a carport to encroach 3 feet into the required 7-foot side yard setback, located at 15754 Sunnyside Lane, bearing a legal description of Lot 4 Countryside Estates. Applicant: David Akins

The City of Harlingen Zoning Board of Adjustments reserves the right to convene into Executive Session at any time during the meeting regarding any agenda item in compliance with the Texas Open Meetings Act, Chapter 551 Government Code.

POSTED this 1<sup>th</sup> day of October 2021, at 4:00 p.m. in compliance with Chapter 551 of the Government Code and continuously remaining posted for at least 72 hours prior to meeting time and date.

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Xavier Cervantes, AICP  
Planning and Development Director

## **ZONING BOARD OF ADJUSTMENTS**

**June 16, 2021**

The regular meeting of the Zoning Board of Adjustments was held at 12:01 P.M., June 16, 2021 via video conference, Harlingen, TX with the following present:

### **BOARD MEMBERS PRESENT:**

Cesar Perez	Chairman
Minerva Simpson	Vice Chairman
Elizandro Muñoz	Member
Michael Boland	Member
Michelle Franco-Mar	Member

### **BOARD MEMBERS NOT PRESENT:**

Robert Garza	Member
Frank Garcia	Member
Rudy Martinez	Member
Ernesto Flores	Member

### **CITY STAFF**

Xavier Cervantes	Planning and Development Director
Joel Olivo	Assistant Planning and Development Director
Albert Molina	City Planner
Jennifer Prado	Planning and Development Executive Secretary
Gabriel Gonzalez	Assistant City Manger
Allison B. Rodriguez	City Attorney

### **PLEDGE OF ALLEGIANCE/WELCOME**

Chrm. Cesar Perez called the meeting to order with a quorum present on June 16, 2021 at 12:01 p.m. and led the Pledge of Allegiance.

### **APPROVAL OF THE MINUTES: MEETING OF APRIL 14, 2021**

Mr. Boland made a correction regarding wording on a motion.

There was a motion by Mr. Boland to approve the minutes with corrections. Ms. Simpson seconded. The motion carried unanimously.

**Public hearing and take action to consider a request for a variance to allow a storage building to encroach 7 feet into the required 10-foot rear building setback and 2.5 feet into the required 5-foot side building setback in a Multi-Family ("M2") District, located at 705 Bush Street, bearing a legal description of Lot 7, Block 6, Coakley Estates Subdivision Phase 3. Applicant: Jessie Casares.**

Mr. Albert Molina summarized the following:

- Pursuant to the City of Harlingen Code of Ordinances, Section 111-304(b)(2) and Section 111-304(b)(3):

*"Side yard. There shall be a side yard not less than five feet from any side lot line or alley line, except that, adjacent to a side street, the side yard shall never be less than ten feet."*

*"Rear yard. There shall be a rear yard not less than three feet from any lot line or alley line, except that, if no alley exists, the rear yard shall be not less than ten feet as measured from the rear lot line."*

- The applicant is requesting a variance to allow an accessory building to be built 2.5' from the west side yard and 3' from the rear yard. The applicant wants to replace an existing structure with a 10'x14' accessory structure in the same location. The replacement will remain at approximately 16' from main building. A storage building less than 144 square feet does not require any building permits. (**Attachment II**)
- The subject property fronts Bush Street with a width of 59.00' and has a length between 101.03' on the west side and 103.02' on the east side. The lot has an area of 6,064 square feet. There is an existing accessory building on the east side of the backyard. There is a 15' utility easement in the front yard, and there are no utility easements in the side yards or the rear yard. The adjacent property to the west has an existing storage building that is at their east property line. (**Attachment III**)
- The requested variance was reviewed by the Building Inspections Department and Fire Prevention Bureau. Both departments reported approval. (**Attachment IV**)
- There is no case history of a similar variance request being granted in the area.
- To the present, staff has not received any calls from property owners in objection to the variance request. Staff mailed 25 notices to the surrounding property owners.

- The City of Harlingen Code of Ordinances Chapter 111-Zoning states the ZBA may:
  - “Permit the reconstruction, extension, or enlargement of a building occupied by an non-conforming use on the lot or tract occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use”, and
  - “Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.”
  - A concurring vote of four regular or alternate ZBA members is required to grant any variance.

Staff recommends **disapproval** of the variance request as:

1. The request does not meet the standards for the issuance of a variance as described in the City of Harlingen Code of Ordinances. There is no special circumstance preventing the construction within the setbacks; and
2. This is a self-imposed hardship; and
3. There is no case history of a similar case being granted in the area. If a variance is granted, it would set a precedent for future cases.

Chrm. Perez asked there were any questions for staff.

Chrm. Perez asked if there was an existing building on the property.

Mr. Molina responded that there is a dog kennel on the east side of the property.

Mr. Boland asked if the applicant has indicated why they would like to encroach into the setbacks of the property.

Mr. Molina responded that the applicant stated in the application that they do not want their storage unit too close to the home.

Chr. Perez opened the public hearing.

Mr. Molina stated that the applicant was present.

Mr. Jesse Casares 705 Bush street, spoke in favor of this item and informed the board members that he would like to comply with all city permits and rules. He further stated that he has a very small lot and finds himself in the need to place the storage unit on his setbacks so that it is not too close to the home and have enough room near the fence. Mr. Casares informed the members that their used to be an old storage shed that was falling apart but he removed it and would like to replace it with a new one of the same size and on the same location.

Chrm. Perez asked if there were any questions for the board members. "

Ms. Simpson asked if there two existing storage units in the back yard.

Mr. Casares responded no, the storage unit shown on the survey has been removed because it was old and falling apart and would like to bring in a new storage unit and replace the old one on the same location.

Ms. Simpson asked if the new storage unit will be on a concrete slab or on piers and beams.

Mr. Casares responded it will be on a concrete slab.

Chrm. Perez asked if the previous storage unit was encroaching on the setbacks and grandfathered in.

Mr. Casares responded yes he was grandfathered in with the setbacks and the new storage unit will be placed on the exact same location.

Chrm. Perez asked if there were any further questions for the applicant.

Chrm. Perez closed the public hearing.

Cmr. Minerva Simpson made a motion to approve the variance request. Cmr. Elizandro Muñoz seconded. The motion passed 4 to 1.

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Cesar Perez, Chairman

Zoning Board of Adjustments

**AGENDA ITEM  
EXECUTIVE SUMMARY**

Meeting Date: **October 6, 2021**

**Agenda Item:**

Public hearing and take action to consider a request for a variance to allow a carport to encroach 3 feet into the required 7-foot side yard building setback in a Single Family ("R1") District, located at 15754 Sunnyside Lane, bearing a legal description of Lot 4, Countryside Estates. Applicant: David Akins.

Prepared By: Esteefanía Hernández

Title: City Planner

Signature: *Esteefanía Hernández*

**Brief Summary:**

**Project Timeline**

- August 21, 2021 – Application for variance submitted to the City (**Attachment I**).
- September 24, 2021 – In accordance with State and local law, notice of required public hearings published in the Valley Morning Star and mailed to all property owners within 200 feet of subject tract.
- October 6, 2021 – Public hearing and consideration of requested variance by the Zoning Board of Adjustment (ZBA).

**Summary**

- The request is for a variance not to comply with Section 111-119(b)(1)(a) of the Harlingen Code of Ordinances, which states:
  - "Residential zones. Five feet is required to be open and unbuilt on each side of a primary structure. The five-foot side setback shall be maintained except in a subdivision established prior to February 2, 1983. Such previously established subdivisions have side setbacks of three feet on the west and north and seven feet on the east and south. In these instances, the side setbacks shall conform to the established setbacks in the subdivision."
- The applicant is requesting a variance to allow an existing attached carport to encroach 3 feet into the required 7-foot side yard building setback. (**Attachment II**)
- The subject property fronts Sunnyside Lane with a width of 90.00 feet and has a length of 130.00 feet. The lot has an area of 11,700 square feet. There is an existing 2,181 square feet single family residence on the subject property and a 20ft x 24.5 feet carport that was recently built without a city building permit. The applicant assumed the property was in the county and incorrectly obtained the permit through the county. (**Attachment III**)
- The property to the east is currently vacant. The property to the west is developed as a single family residence and has an accessory structure that appears to be encroaching into the side setback. The subdivision was annexed in November

2008 with the accessory structure already there, which makes it a legal nonconforming structure.

- The requested variance was reviewed by the Building Inspections Department, Engineering Department, and Fire Prevention Bureau. Fire Prevention Bureau and Building Inspections Department recommended approval of the variance, while the Engineering Department recommended disapproval of the variance. **(Attachment IV)**
- There is no case history of a similar variance request being granted in the area.
- To the present, staff has not received any calls from property owners in objection to the variance request. Staff mailed 17 notices to the surrounding property owners.
- The City of Harlingen Code of Ordinances Chapter 111-Zoning states the ZBA may:
  - “Permit the reconstruction, extension, or enlargement of a building occupied by an non-conforming use on the lot or tract occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use”, and
  - “Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.”
  - A concurring vote of four regular or alternate ZBA members is required to grant any variance.
- There is a new state law, HB 1475, that allows variances to be granted if:
  - the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
  - compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
  - compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - the municipality considers the structure to be a nonconforming structure.

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**Staff Recommendation:**

Staff recommends **disapproval** of the variance request as:

1. The request does not meet the standards for the issuance of a variance as described in the City of Harlingen Code of Ordinances. Compliance with the ordinance can be easily achieved by adjusting the columns within the required setbacks; and
2. This is a self imposed hardship; and
3. There is no case history of a similar case being granted in the area. If a variance is granted, it would set a precedent for future cases.

## Attachment I—Application

### CITY OF HARLINGEN PLANNING AND DEVELOPMENT DEPARTMENT MASTER APPLICATION

**PROPERTY INFORMATION: (Please PRINT or TYPE)**

Project Address 15754 Sunnyside Ln Nearest Intersection Sunnyside Ln & Atlas Palmas Rd

(Proposed) Subdivision Name Countryside estates Lot 4 Block \_\_\_\_\_

Existing Zoning Designation \_\_\_\_\_ Future Land Use Plan Designation \_\_\_\_\_

**OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)**

Applicant/Authorized Agent David Akins Phone 8176949048 FAX \_\_\_\_\_

Email Address (for project correspondence only): Dakins@synapticsolar.com

Mailing Address 1140 International Pkwy City Richardson State TX Zip 75081

Property Owner Rodolph Vicencio Phone 956-639-5631 FAX \_\_\_\_\_

Email Address (for project correspondence only): rvicencio1983@gmail.com

Mailing Address 15754 Sunnyside Ln City Harlingen State Tx Zip 75081

Select appropriate process for which approval is sought. Attach completed checklists with this application.

<input type="checkbox"/> Annexation Request .....	<u>No Fee</u>	<input type="checkbox"/> Preliminary Construction Plans and Final Plat.....	<u>\$150.00</u>
<input type="checkbox"/> Administrative Appeal (ZBA).....	<u>\$125.00</u>	<input type="checkbox"/> Minor Plat.....	<u>\$100.00</u>
<input type="checkbox"/> Comp. Plan Amendment Request..	<u>\$250.00</u>	<input type="checkbox"/> Re-Plat.....	<u>\$250.00</u>
<input type="checkbox"/> Re-zoning Request.....	<u>\$250.00</u>	<input type="checkbox"/> Vacating Plat.....	<u>\$250.00</u>
<input type="checkbox"/> SUP Request/Renewal.....	<u>\$250.00</u>	<input type="checkbox"/> Development Plat.....	<u>\$50.00</u>
<input checked="" type="checkbox"/> Zoning Variance Request (ZBA)....	<u>\$250.00</u>	<input type="checkbox"/> Subdivision Variance Request.....	<u>\$25.00 (each)</u>
<input type="checkbox"/> PDD Request.....	<u>\$250.00</u>	<input type="checkbox"/> Right-of-Way / Utility Easement Abandonment.....	<u>No Fee</u>
<input type="checkbox"/> License to Encroach.....	<u>\$250.00</u>		

Please provide a basic description of the proposed project: Patio installation with grid-interactive patio mounted solar panels

I hereby certify that I am the owner and/or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.

Applicant's Signature: David Akins Patriot signed by David Akins  
Date: 2021.05.12 10:55:30 -05'00' Date: 8/12/2021

Property Owner(s) Signature: Rodolph Vicencio Date: 08/16/2021

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

## Attachment I—Application

### ZONING VARIANCE REQUEST (for ZBA) SUBMITTAL CHECKLIST

Please submit the following items along with the completed master application and appropriate fees. The project cannot be scheduled for consideration unless all items are marked complete. Citations come from the City of Harlingen Code of Ordinances Chapter 111-Zoning.

Complete

- When the variance request relates to the development, redevelopment, occupancy, or re-occupancy of a specific tract of land, one (1) copy of a site plan drawn to scale showing existing and proposed development of the property in question.
- A written statement describing the requested variance and an explanation of the special conditions that result in the unnecessary hardship for which the variance is requested.
- Any other information (drawings, pictures, etc.) the applicant would like to submit in support of the subject request.

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- I understand that the variance requested will not be scheduled for Zoning Board of Adjustments (ZBA) review unless all items on this list are completed.
  - I understand that variances cannot be granted for height exceptions in the Airport Overlay zones. (Section 111-443.5)
  - I understand that in accordance State law and the City of Harlingen Code of Ordinances, Chapter 111-Zoning, no later than ten (10) day prior to ZBA consideration:
    - A notice will be published in the Valley Morning Star describing the request and the date, time, and location of the public hearing before the ZBA; and
    - Notices will be mailed to all property owners within 200 feet of the tract for which the variance is requested describing the request and the date, time, and location of the public hearing before the ZBA.
  - I understand that the ZBA may only grant variances:
    - as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without such modifications; and
    - only if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship. (Section 111-443)
  - I have read and understand in its entirety the City of Harlingen Code of Ordinances, Chapter 111- Zoning and understand that the requirements of a variance request are subject to the terms and conditions therein.
  - I understand that while all requirements for the submittal of a variance request may be complete, the ZBA is the sole authority for the consideration and approval or denial of the request.
  - I understand that a 4/5-majority vote (a "super-majority") of the ZBA is required to grant any variance.
  - I understand that the decision of the ZBA is final and any appeals to said decision shall be in accordance with § 211.011 ("Judicial Review of Board Decision") of the Texas Local Government Code.

Owner: Rodolph Vicencio

Date 8/12/2021

Owner Address: 15754 Sunnyside Ln

Phone/Fax: 956-639-5631

Signature: Rodolph Vicencio Aug 12, 2021 11:37 CDT

## Attachment II—Survey of House and Carport

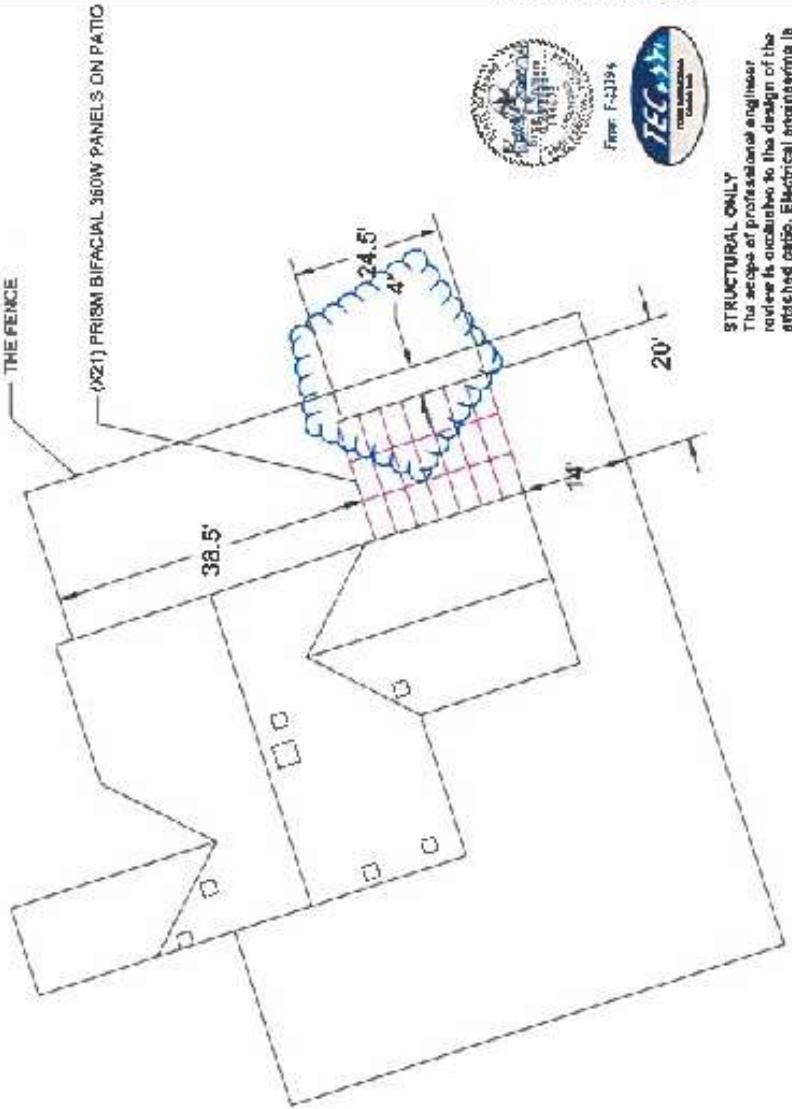


### Attachment III—Street View and Aerial View

Street View on Sunnyside Ln



## Attachment IV—Project Information

<b>PATIO DESIGN</b> Location: 1000 N. Main Street, Suite 100, Salt Lake City, UT Project Name: New Deck & Fence Project Type: Residential Project Status: Pending Project Manager: John Doe Project Lead: Emily Johnson Project Number: P-12345 Project Date: 05/15/2023 Project Duration: 4 weeks Project Cost: \$15,000.00	
 <p>The drawing shows a rectangular patio area with a diagonal walkway. The patio is 20' wide and 38.5' long. A fence runs along the top edge of the patio. A callout box labeled '(X2) PRISM BIFACIAL 360W PANELS ON PATIO' points to the fence line. A circular stamp in the top right corner reads 'TEC' and 'STRUCTURAL ONLY'.</p>	
<b>PROJECT INFORMATION</b> Project ID: P-12345 Project Name: New Deck & Fence Project Type: Residential Project Status: Pending Project Manager: John Doe Project Lead: Emily Johnson Project Number: P-12345 Project Date: 05/15/2023 Project Duration: 4 weeks Project Cost: \$15,000.00	
<b>STRUCTURAL ONLY</b> This scope of project is a linear review. No the design of the attached panel, Electrical engineering is out of the scope of this review.	

## Attachment V—Building Inspections



### ZBA VARIANCE REQUEST ROUTING SLIP

**Applicant:** David Akins

**Phone No.:** 817-694-9048

**Variance Request:** Petition to allow a carport to encroach 3 feet into the required 7-foot side yard building setback in a Single Family ("R1") District, located at 15754 Sunnyside Lane, bearing a legal description of Lot 4, Hunter Countryside Estates. Applicant: David Akins.

**Location:** 15754 Sunnyside Lane

**Department:** Building Inspections

**Approval:**  YES       NO

**Comments:** Plans submitted for review are code compliant, and they were designed and inspected by an actively licensed professional.

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A handwritten signature in black ink, appearing to read "David Akins". To the right of the signature is a small, empty oval space for a stamp or official mark.

**Signature**

9/29/21

**Date**

Attachment V— Fire Prevention Bureau



**ZBA Variance Request Routing Slip**

**Applicant:** David Akins

**Phone No.:** (817) 694-9048

**Location:** 15754 Sunnyside Lane

**Project Description:** Petition to allow a carport to encroach 3 feet into the required 7-foot side yard building setback in a Single Family ("R1") District, located at 15754 Sunnyside Lane, bearing a legal description of Lot 4, Hunter Countryside Estates. **Applicant:** David Akins.

**Department:** Fire Prevention Bureau

**Approval:**   X   YES    NO

**Comments:** Applicant will have to meet any codes, regulations, ordinances, and standards required for the project.

**Fire Marshal Juan Saucedo Jr.**

Juan Saucedo Jr.

**Date:** September 28, 2021

## **Attachment V— Engineering**



**ZBA VARIANCE REQUEST ROUTING SLIP**

**Applicant:** David Akins

**Phone No.:** 817-694-9048

**Variance Request:** Petition to allow a carport to encroach 3 feet into the required 7-foot side yard building setback in a Single Family ("R1") District, located at 15754 Sunnyside Lane, bearing a legal description of Lot 4, Hunter Countryside Estates. Applicant: David Akins.

**Location:** 15754 Sunnyside Lane

**Department:** Engineering

**Approval:** \_\_\_\_\_ YES  NO

**Comments:**

- 1) Please provide WPI-8 certificate or windstorm engineering report for review.

2) Please provide a clean digital copy or hard copy of the site plans and elevations for review (attached plan is not scalable). Include dimensions from the property line to the overhang. Provide photos of the structure.

**Signature**

Date