

Mike Castellucci  
*Chair*

Brian Lucas  
*Vice Chair*



Allison Ernst  
*Secretary*

Steve Anselmo

Yvonne Lujan-Slak

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## **Minutes for December 20, 2016**

City Council Chambers, 1 City Hall Place

### **MEETING CALLED TO ORDER**

The meeting was called to order at 7:00 p.m. with Chairman Castellucci presiding.

***Board Members Present:*** Mike Castellucci, Steve Anselmo, and Yvonne Lujan-Slak.

***Board Member Absent:*** Brian Lucas.

***Staff Members Present:*** Steven Meier, Director of Planning & Community Development and Parks and Recreation; Scott Hobson, Assistant City Manager for Community Investment; Paul Willumstad, Board Attorney, Alan Lamberg, Planner; and Valerie A. Sherman, Planner.

### **APPROVAL OF MINUTES**

Motion to approve the corrected minutes from the meeting November 11, 2016, by Anselmo, second by Lujan-Slak.

**Motion passed 4 - 0**

### **APPROVAL OF AGENDA**

Motion to approve the agenda for December 20, 2016, by Anselmo, second by Lujan-Slak.

**Motion passed 4 - 0**

### **REGULAR BUSINESS**

#### **Consent Agenda**

No items.

#### **Regular Agenda**

Each case the follows proceeded in a uniform process as directed by Chair Castellucci. Beginning with a staff report presented by Planner Alan Lamberg, then questions, if any, from the Board to staff members. Next, the applicant is sworn in by Board Attorney Paul Willumstad, then the applicant states his or her name and address. The Board questions the applicant and confirms understanding of staff report and conditions for approval. Applicant may add further information, followed by further questions, if any, from the Board. Then the Board asks if anyone present in the audience will state support for the applicant, followed by those who state opposition. Then the Board closes the public hearing and reviews findings of fact. Then the Board may motion to approve or deny the application for permit. In some cases, permits may be conditionally approved.

**ZBA-16-55 (320 West 14<sup>th</sup> Street)**

A Variance to construct a new medical outpatient facility while reducing the following standards:

1. *Medium-scale development performance standards:*
  - a. Allow three instances of uninterrupted horizontal length of any façade greater than twenty-five (25) feet;
  - b. Allow flat roof treatments to be understated modern design in lieu of 3-dimensional articulated cornice.
2. *Off-street parking standards:*
  - a. Parking calculation acceptable for campus in lieu of local parcels;
  - b. Shuttle parking on Santa Fe Avenue approximately 1,200 feet distance in lieu of all parking within 300 feet;
3. *Require compliance landscape performance standards, except:*
  - a. A reduced setback to the east residences fronting 14<sup>th</sup> Street with no shrubs but three (3) or four (4) trees to enhance the existing six (6) foot fence screen, and not requiring trees in stormwater detention area;
  - b. A six (6) foot setback to the east residence fronting 13<sup>th</sup> Street with no shrubs because it includes trees and accommodates room for parking;
  - c. A portion of the setback from the driveway to the south with zero shrubs;
  - d. Zero (0) in lieu of four (4) parking lot islands; two on the north side of the lot to save two parking spaces, and two on each side of the driveway;
  - e. In the southwest parking lot fronting 13<sup>th</sup> Street and Grand Avenue, the current landscape configuration to remain the same because it fulfills intent; four (4) in lieu of six (6) parking lot islands, one (1) tree in lieu of (6); six (6) shrubs in lieu of twenty-four (24).
4. *Setbacks:*
  - a. A canopy fronting 14<sup>th</sup> Street in the front yard setback eleven and a half (11 ½) feet in lieu of the required twenty-five (25) feet;
  - b. Two exterior service stairways fronting Grand Avenue in the second front yard setback eight and a half feet (8 ½) in lieu of the required twelve and a half (12½) feet;
  - c. Exterior service stairway in the alley to be constructed in the side yard setback zero (0) feet in lieu of the required five (5) feet.

*Applicants present: Vince Velasquez, Parkview Medical Center, Director of Facilities Management & Construction; Roger Quelch, Project Manager, Treanor HL*

Castellucci and Lamberg clarified location of entrances, purpose of south parking lot for patients and visitors. Background of recent zoning actions for subdivision and vacation of alley.

Quelch requested reduction of four (4) trees on northeast corner to accommodate stormwater detention pond. Meier and Lamberg confirmed the planning department can work with the applicant to reduce the trees if necessary.

No public comments.

**Commission Action:**

Motion to grant by Anselmo, second by Lujan-Slak.

**Motion passed 3 – 0 with staff conditions and standard permit conditions.**

**ZBA-16-56 (4054 North Peakview Drive)**

Variance to build an attached patio cover and allow it to be setback from the front property line twenty-three (23) feet in lieu of the required twenty-five (25) feet.

*Applicant Wanda Broome present*

Broome reiterated that he family friend is 6’4” and has to avoid walking into the eave.

No public comments.

**Commission Action:**

Motion to grant by Anselmo, second by Lujan-Slak.

**Motion passed 3 – 0 with staff conditions and standard permit conditions.**

**ZBA-16-57 (507 West 12<sup>th</sup> Street)**

Variance for a residential sub-ground attached garage addition to be set back from the side property line three and a half (3½) feet in lieu of the required five (5) feet. The garage face will be setback the required twenty-five (25) feet from the front yard lot line but the stair step retaining walls on each side of the driveway will be constructed in the twenty-five (25) foot front yard setback from the garage face to the front sidewalk. The sub-grade driveway requires a retaining wall where the highest point is setback ten (10) feet, and stepped-down until it is below 30” adjacent to the sidewalk.

*Applicant Bill Light present*

Castellucci clarified with Light that it is an investment property, not owner-occupied. Light will work with planning staff on complying with architectural compatibility, materials such as sandstone or masonry are acceptable. Light submitted (Exhibit A) examples of other sub-ground garages, one with a step-down wall.

No public comments.

**Commission Action:**

Motion to grant waiver from architectural compatibility by Lujan-Slak, second by Anselmo.

Motion to grant waiver from five (5) foot rear yard setback by Anselmo, second by Ernst.

**Motion passed 3 – 0 with staff conditions and standard permit conditions.**

**ZBA-16-58 (2000 Acero Avenue)**

Variance to operate a retail marijuana cultivation facility per a distance buffer standard that allows 1,000 feet from its building to the property line of a school in lieu of 984 feet from the facility’s property corner.

*Applicants Barbara & Robert Kastle present*

## Zoning Board of Appeals, Minutes for December 20, 2016

Lamberg during the staff presentation clarified that the zoning exhibit had a map error; a portion of R-2 was actually I-2, according to a previously approved rezone exhibit from case Z-15-11.

Mr. Kastle stated their aim to improve the neighborhood aesthetic with the building improvements, and that marijuana cultivation facility is designed to not emit odors. Castellucci clarified that Parcel A, the location of the proposed development, is north of the existing house. Mrs. Kastle stated that the architecture will be like the existing house. She acknowledged concerns and clarified that a cultivation facility does not have issues that a retail storefront might have. Castellucci asked Willumstand and Meier to clarify if the Board can require the same style of architecture as the house. Meier stated not necessarily, but marijuana development standards have architectural performance standards that are flexible enough to allow various styles.

No public testimony in support.

Public testimony in opposition: Castellucci reminded the audience to limit the scope of testimony to facts on how this variance is detrimental to the neighborhood, not whether it is good or bad in moral principle.

- James Bowen, 2208 Acero Avenue. Why is a cultivation facility allowed in a residential neighborhood with homes and businesses? What if a drug cartel operates it? There are drug dealers from Florida, Cuba, and Mexico in the neighborhood and no one does anything about it.
- Gregory Anzlovar, 5130 Lynn Meadows. Project manager for A-Var Electric, his father operated the business for 30 years in Pueblo, 25 of those years on Acero. What if the paint and body shop down the street, or the building at the corner of Lakeview (which operates a church) will become a marijuana facility? County Zoning requires 250 feet from residential for cultivation. This is more than liquor stores. He is concerned about the future development of Pueblo.
- Brian Mater, Board Member of Pueblo Arts & Sciences School. Clarified with Lamberg that the measurement is from the corner of the planned marijuana building in lieu of the property line. He is concerned there is a church operating adjacent to the north, and there is a bus stop on Lakeview, and a school near Corwin. While it's nice to improve the area, he prefers a duplex instead of marijuana facility. He believes if this variance is approved, then future marijuana developers will ask for more variances from distance buffers.
- Brian Repola, 2415 Jones Avenue, Director of Pueblo Arts & Sciences School, which is the third largest charter school in the State of Colorado. He can see the property on 2000 Acero from the school campus. Allowing a marijuana facility within a buffer will set a dangerous precedent. Students walk or ride by Acero. If a retail shop is built there, safety and welfare is a concern.
- George Rivera, 5 Colt Court. Served in Colorado Senate. Clarified the measurement with Lamberg; 1,000 feet confirmed along triangulated diagonal from school property line to marijuana building. Rivera asserted that the Board should protect children from a message that marijuana is acceptable.
- Natalie Allen, 1277 North Sandstone Lane, Pueblo West. Teacher at the school. Allen stated that since legalization of marijuana, there's been an increase of drug use and break-ins. Also, the corner of Jones & Acero is a busy street.
- Aubrey Adams. Asked if members of the audience can record proceedings. Willumstad stated there is no prohibition against it. Adams stated that her child, age 16, developed a marijuana addiction and required mental health support. Another child, age 13, attends the Arts & Science School. Adams stated that parents are asking for 16 feet (to deny the variance).

## Zoning Board of Appeals, Minutes for December 20, 2016

- Terra & Ernie Felzinen. Asserts that marijuana facility air filtration does not work because they can smell the odor from facilities along Interstate 25. They are considering moving away from Pueblo. They rebut Mr. Kastle's statement that the neighborhood is an eyesore. They have children attending South High School, which is in walking distance from Acero. Children use bus stops on Lakeview & Acero, and another stop a few blocks to the south.
- Stella S, 2218 Lakeview. Stated that in one-mile radius of proposed facility there are three churches, three trailer parks, three schools and a nursing home. She operates the church next door with 16 to 30 children in attendance, including parties and banquets. Children use the church property as a short cut. Graffiti on the church is painted over frequently. She has observed adults trespass over the fence. Someone at the trailer park has trespassed on the church property to tap into its electric and water. Every Saturday there is a burning odor. She questioned who (what kind of person) will work at this facility. There are already marijuana stores on Pueblo Boulevard at Prairie Avenue. She is worried that residential property values will drop because of a marijuana facility.
- Terry Bowen. Concerned about marijuana odor, and if odor is detected, how would Code Enforcement timely respond? How will the facility be secured? Will it be fenced in? Will there be security guards?
- Donald A, 34 Lehigh. Reported on a house south of the church to Code Enforcement three weeks ago, but no response.
- David Leman asked if he could testify in support, but Willumstad clarified that the window had past.

### Rebuttal by applicant:

- Mrs. Kastle stated that there are several facts misunderstood.
- No one will know if a marijuana facility is operating because it requires odor filtration, no sign, it will be fenced, secured inside, cameras outside.
- Asserted that education of children regarding marijuana use begins at home. Even if children walk by the facility, it is not a store; children will not have access.
- It is a business with tax revenue.
- She contacted the owner of the church about installing a new fence. She considered buying the church building from the owner because it was originally an industrial building.
- The variance requests a 1,000 foot buffer from school property line to marijuana building, which is equal to the State and County regulations.
- She and Mr. Kastle have been developing this site for a year.
- Mr. Kastle stated that an expensive air scrubber unit would prevent odor.
- They are willing to work with the community and tenant next door, and asserted that their plan is not detrimental to the neighborhood.
- Mrs. Kastle invited David Leman to speak. Leman stated marijuana policy has changed in several States over twenty years.
- Code Enforcement keeps marijuana developers compliant.
- This neighborhood has been ignored or undervalued and needs business.
- This development would displace drug addicts.
- Children will walk by a secure facility.
- Marijuana policy in California, Oregon, and Colorado has seen a reduction in overall crime.
- Pueblo County has over a hundred marijuana businesses.

Zoning Board of Appeals, Minutes for December 20, 2016

Public hearing closed. Having heard all the evidence and testimony, the Board considered findings of fact that would support a variance. Castellucci clarified with Willumstad that the Board should state reasons for or against.

Each member discussed their decision:

- Anselmo: No, because of the objections. If the 1,000 feet rule erodes, then where does it stop?
- Lujan-Slak: Yes, because Boards & Commissions have granted reasonable distance variances for issues other than marijuana.
- Castellucci: No, because, while the applicants show good intent, consider who might own it in the future, and testimony shows that the marijuana facility is not compatible for this area.

**Commission Action:**

Motion to grant by Lujan-Slak, second by Anselmo.

**Motion with staff conditions and standard permit conditions failed 1 - 2.**

**COMMISSION ADMINISTRATION**

Anselmo and Lucas were appointed by the Commission to a new board member nominating committee.

**OLD BUSINESS**

**Regular agenda**

None

**ADJOURNMENT**

Meeting adjourned at 9:05 p.m.

Minutes respectfully submitted by Lamberg.