

Mike Castellucci
Chair

Brian Lucas
Vice Chair



Allison Ernst
Secretary

Steve Anselmo

Yvonne Lujan-Slak

Minutes for ZBA Hearing, April 26, 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: Steve Anselmo, Mike Castellucci, Brian Lucas, and Yvonne Lujan-Slak

Board Member Absent: Allison Ernst

Staff Members Present: Steven Meier, Director Community Planning Parks and Recreation; Todd Zeiller, Senior Planner; Alan Lamberg, Planner; and Paul Willumstad, Board Attorney.

APPROVAL OF MINUTES

Motion to approve the corrected minutes from the meeting March 22, 2016, by Lucas, second by Lujan-Slak.

Motion passed 4 - 0

APPROVAL OF AGENDA

Motion to approve the agenda for April 26, 2016, by Lucas, 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-16-14 (41 Montebello Road)

Special Use Permit to allow a restaurant (café bistro) in a medical office campus in a multiple-residential and office (R-5 zone) district.

Applicant Robert Keplinger, Chief Operations Officer (for Spanish Peaks Asset Management) attended

Keplinger discussed the development of the bistro and hours of operation. No public comments.

Commission Action:

Motion to grant by Lucas, second by Ernst.

Motion passed 4 - 0 with standard permit conditions.

ZBA-16-15 (1525 Alexander Circle)

Variance to allow an existing carport to encroach into the side yard setback.

Applicant Ryan Waletzko attended

Waletzko stated that he met with the Planning & Community Development Department about raising the height of the carport when they informed him of the encroachment. No public comments.

Commission Action:

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

Motion passed 4 - 0 with standard permit conditions and recommended staff conditions.

ZBA-16-16 (2825 2nd Avenue)

Variance to allow a new carport to encroach into the side yard setback.

Applicant Timothy Vinci attended

Vinci understood requirements of setbacks and willing to place carport even with the front of the house (not the porch) so that it complies with front yard setback. Noted that front porch, which extends five feet into front yard setback, is a legal, non-conforming structure built before the zoning code went into effect. No public comments.

Commission Action:

Motion to grant, including allowing existing front porch to encroach into front yard setback, by Lucas, second by Anselmo.

Motion passed 4 - 0 with standard permit conditions and recommended staff conditions.

ZBA-16-17 (2509 California Street)

Variance to allow a new garage be taller than the house and larger than permitted.

Applicant Raymond Medina attended

No public comments.

Commission Action:

Motion to grant by Anselmo, second by Lucas.

Motion passed 4 – 0 with standard permit conditions and recommended staff conditions.

ZBA-16-18 (1212 Egan Avenue)

Variance to allow a new garage be larger than permitted.

Applicant Fred Martinez attended

Lujan-Slak asked how soon the house at 1212 Egan Avenue will be remodeled to match the house across the street at 1211 Egan Avenue. Martinez stated he can apply for building permits within a year, before the ZBA permit expires. Discussing architectural compatibility. Martinez stated his intention to construct a metal building. Meier stated that the planners can work with him to mitigate architectural compatibility of materials, e.g. cladding a metal building so that the material and color is compatible with the houses. No public comments.

Commission Action:

Motion to grant by Anselmo, second by Lucas.

Motion passed 4 – 0 with standard permit conditions and recommended staff conditions.

ZBA-16-19 (1829 East 4th Street)

Variance to allow a new addition to a nonconforming structure that exceeds the 30% addition permitted.

Applicant Erika Arreola attended

Castellucci asked if the Board should address house's encroachment on a side yard setback. Lamberg and Willumstad clarified that the house is a legal, non-conforming structure because it was built before the zoning code took effect. No public comments.

Commission Action:

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

Motion passed 4 – 0 with standard permit conditions and recommended staff conditions.

ZBA-16-20 (2930 North Elizabeth Street)

Special Use Permit to allow a thrift store in a central business (B-4 zone) district.

Applicant James A. Miller (for New Horizons Ministries) attended

Castellucci clarified the exact location for the thrift store because there are two addressed buildings attached and overlapping a lot line. Miller stated new information, that New Horizons will demolish the south portion of the building and retain the north portion of the building because it is more feasible for their plans. Public comment by Jean Latka.

Commission Action:

Motion to grant by Lucas, second by Anselmo.

Motion passed 4 – 0 with standard permit conditions.

ZBA-16-22 (501 Quincy Street)

Special Use Permit to allow an adult day service center in a multiple-residential and office (R-5 zone) district.
Applicants Elissa Ball, Robin Hill, and Bill Martinez (for Friendly Harbor) attended

Applicant presentation:

- Ball and Hill described background about Friendly Harbor and stated reasons for relocation as an opportunity to own and occupy instead of rent, and to expand area to service current and new clients with a larger space. Hill emphasized the benefits of Friendly Harbor are support groups for people living with mental illness.
- Stated that staff report misrepresented and did not explain the full scope of Friendly Harbor.
- Disappointed that the proposed use did not change from “adult day service center” to “charitable organization.”

Questions from the Board to the Applicants:

- Anselmo: Why relocate? Amber [last name unknown] stated the 12th street location is small compared to Quincy location, and the opportunity to expand services to regulars and new clients.
- Lujan-Slak: Will applicant be able to comply with staff conditions in the report? Ball: Not for an adult day center, which requires licensing according to Colorado medical board regulations.
- Castellucci: Operating income? Ball: Donor based, grant from Mental Health America.
- Anselmo: How many people at facility and activities? Ball: Currently, not more than 20 total, including staff, but plan to expand the number. Activities are low intensity, many don't have cars and use the bus. There are 9 parking spaces at Quincy.
- Bill Martinez:
 - Friendly Harbor members receive social security benefits for disability.
 - Concern that staff classification of “adult day service center” was arbitrary and capricious, based on feeling instead of evidence. [Note: Staff responded to facts in the application to the best of their ability. As the staff report was being written, it became apparent that activities of Friendly Harbor did not exactly fit any definition in the municipal code. An effort was made to address this and seek new information from the applicant to be addressed during the hearing.]
 - Police dispatch calls in 2016 were mostly community policing checks, one accidental burglar alarm by staff, one call from staff to alert vagrancy. Ball stated that Friendly Harbor does not work with homeless people engaged in vagrancy; a membership system keeps everyone accountable.
 - Stated that the zoning is the same (R-5) for 12th Street location and the Quincy location, and asserted that the makeup of the neighborhood is similar, and that the staff report's assertion about neighborhood compatibility has no rational nexus and purpose. [Note: staff report reflected the comprehensive plan and provided reference to page number.]
 - Asserted that if the city makes no reasonable accommodation for people with disabilities, then it may be in violation of the Americans with Disabilities Act (ADA).

Five minute recess.

Public comments in support:

- John R. DeQuardo: Psychiatrist, treats some of the people who are members of Friendly Harbor. Emphasized importance of Pueblo's 150 year history as a regional center for mental health.
- Anne C. Courtright: Knows Friendly Harbor co-founder Hill for decades. Worked at State Hospital since 1959. Described history of a precursor to Friendly Harbor. Emphasized importance of peer support meetings outside of commercial establishments. Impressed by Friendly Harbor peers able to self-police their membership if someone deviates from a safe environment.
- Received an exhibit of 5 nearby property owners indicating their support.

Public comments in opposition:

- Jeff Zindrick: A typical drop in center has no set times for treatment. Previous tenants of Quincy conduct appointments and then leave. Concerned about large congregations at Quincy with an unknown schedule of activities.
- Harold DeHerrera: No bus line in neighborhood. Worried about increase of crime.
- Amy Scoby: Realtor who restores homes. Quincy location might not be large enough for their purpose (2,900 square feet), and built in 1978 it may have lead based paint, asbestos, old wiring, so it would be costly to bring it up to code. Are there other homes for sale that might be safer and more practical for Friendly Harbor?
- Jean Latka: Acknowledged Hill for his service. Will this use destabilize the neighborhood? Area is saturated by persons living in vagrancy who gravitate to Posada and the Rawlings Library.
- Joanie S: Her brother was diagnosed with mental illness. She supports peer groups, but not in this neighborhood. Bought her home 30 years ago, emphasized history of neighborhood, would prefer use of Quincy that is consistent with historical development. Castellucci asked if it would be sufficient if hours were set and limited. Joanie stated she would prefer a medical office, e.g. psychiatrist; Friendly Harbor seems to have no medical professionals present.
- Patricia and Rick Gonzales: Asserted that, if approved, then this use would affect the value of housing, landscaping will not solve concerns. Entire block is residential, the clinical office across the street appears vacant. Concerned about safety of children. Concerned that expanded number of clients is vague. Admires Friendly Harbor's mission, but not compatible with this neighborhood. Concurred with Latka's concerns about vagrancy. Safety is a grave concern because she had personal experience with an individual who suffered from schizophrenia. Concerned that the organization cannot control who comes and goes.
- Marty Brens: Current tenant as art studio in the Quincy location, and lives nearby. Concerned about increase in crime, property theft.
- Dave Francis: Ensured concerns from Jeff Chostner and Dale K. are received. Concerned that no medical licensing means no regulation of activities. He is a pharmacist over 40 years and seen violence by people who are mental ill. Concerned what happens if someone is turned away by Friendly Harbor and becomes angry. Concerned that Central High School is three blocks nearby. Stated that quarterly reports of activities submitted to city would not help.
- John: Concerned about qualifications of Friendly Harbor staff, and how to mitigate incidents of violence. Why not locate closer to the medical campuses?
- Eric Bernauer: In his opinion, the 12th Street building is not in good shape, and concerned about maintenance of Quincy building.

Rebuttal by applicant:

- Ball lives in a historic neighborhood and acknowledges that change happens. Friendly Harbor mitigates concerns about violence. Health Solutions can help if necessary. Staff are trained peer specialists according to criteria set by the state.
- Environmental concerns are not an issue because Quincy passed home inspection.
- Emphasized the members are private citizens, not just out of control mentally ill. Friendly Harbor enforces rules for membership.
- Intends to expand hours based on staff availability
- The size of 12th Street is 1,200 square feet, while Quincy is 2,900 square feet.

Board follow up questions:

- Anselmo asked if it would be appropriate to change the use to charitable institution. Castellucci stated that both in this zone are a use by review. Anselmo asked if Board may proceed because it might be a charitable organization and not an adult day service. Acknowledged that neighborhood is not 100% historic, and considers Friendly Harbor a community service-oriented organization like churches nearby.
- Martinez asserted that the Board should approve the application in order to avoid attaching mental illness as a stigma, akin to segregation.
- Castellucci requested any further information from staff. Received an exhibit of 3 nearby property owners indicating their opposition.

No questions for staff.

Hearing closed. Having heard all the evidence and testimony, the Board considered findings of fact that would support a special use permit. The board was divided about providing screening and buffering with reference to type, dimensions and character. One board member dissented that the application provides for required yards and other open space. All board members stated that the application does not provide for general compatibility with adjacent properties and other property in the district.

A motion was made by board member Lujan-Slak to grant a special use permit with standard permit conditions and staff conditions. Board member Lucas seconded the motion. Castellucci stated that he cannot support the motion without a specific limitation on hours. Lujan-Slak updated the motion to require a statement of hours of operation.

Each member proceeded to discuss their decision:

- Lucas: Nay, because he concurred with staff report recommendation. [“The use will not conform to the zone district because a drop in center with the activities specified by Friendly Harbor are not generally compatible with the residences and medical offices in the neighborhood.”]
- Anselmo: Nay, because the application is not clear about the proposed use.
- Lujan-Slak: Nay, because she concurred with staff report recommendation, and considered the evidence and testimony.
- Castellucci: Nay, because the request is not congruent with the area [neighborhood], and while the applicant’s testimony was able to show that licensing is not required for Friendly Harbor’s activities, in Castellucci’s opinion there is no way to control unintended consequences alike to the organization, activities, persons associated with Posada in this neighborhood; Friendly Harbor doesn’t fit in this location because of lack of compatibility and the concerns raised in testimony about not being able to regulate drop-in times and activities.

Commission Action:

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

Motion failed 0 – 4.

OLD BUSINESS

Regular Agenda

None.

ADJOURNMENT

Motion to adjourn at 10:35 p.m. by Castellucci, second by Lucas.

Motion passed 4 – 0

Minutes respectfully submitted by Lamberg.