

Weston Burrer
Chair

Rudy Martinez
Vice Chair

PUEBLO

Zoning Board of Appeals

Ralph Scaplo
Secretary

Mike Castellucci

Allison Ernst

Zoning Board of Appeals
City of Pueblo, Colorado
Tuesday, June 28, 2011-7:00 p.m.
Interim City Council Chambers-301 W. "B" Street

Minutes

MEETING CALLED TO ORDER

The meeting was called to order at 7:00 p.m. with Chairperson Weston Burrer presiding.

Board Members Present: Ralph Scaplo, Rudy Martinez, Mike Castellucci

Visitors: Allison Ernst

Staff Members Present: Jeff Bailey, P.E., Assistant City Manager for Development Services; Carrie Muchow, Planner; Karen Willson, Zoning Enforcement Officer; Ramona Baca, Court Reporter; and Paul Willumstad, Board Attorney.

APPROVAL OF MINUTES

Motion to approve the minutes from the May 24, 2011 meeting by Scaplo, second by Martinez.

Motion passed 4-0.

APPROVAL OF AGENDA

Motion to approve the agenda for the June 28, 2011 meeting and continuing ZBA Case #030-2011 to July 26th, 2011 by Castellucci, second by Scaplo

Motion passed 4-0.

Motion to approve the consent agenda for the June 28, 2011 meeting by Castellucci, second by Scaplo.

Motion passed 4-0.

PUBLIC HEARINGS AND ACTION

CONSENT AGENDA

Special Use Permit

1. **027-2011 1201 E. 7th Street (Robert Tschida) CCN**
A **Special Use Permit** to allow an existing church.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the Eastside neighborhood. According to Section 17-4-51 (6) (c) (3.1) of the Pueblo Municipal Code (PMC), the applicant is requesting a Special Use Permit as a Use by Review to operate a church for approximately 213 people. The property was originally built as a church and has existed as a church since then. The Special Use Permit is required due to a pending zoning change from R-2 to CCN.

Analysis

The purpose of the zone change is to allow a combination of a church and health clinic (the clinic will be discussed in the Staff Report for Case 028-2011) on this property. The current zone, R-2, will not allow the health clinic so the applicant has opted to change the zone and get a Special Use Permit for the church. Nothing is proposed to change with the church use or the amount of the building used for the church.

As mentioned above, a church has existed in this same location since 1903, this particular building has existed since 1920, and there have not been any complaints in this time. The purpose of the CCN zone is to create neighborhood oriented commercial uses. A church serving the neighborhood fits this goal.

The congregation was originally organized by the neighbors in this area to serve the Methodist population on the East side and the church was then paid for and built by the congregation. The church was active in this location until just recently when renovations became so necessary the property was vacated. Once renovations are complete, the property can be used by a neighborhood congregation again. Staff also feels that the church fits well with the neighborhood and its development pattern.

RECOMMENDED MOTION

Staff recommends **APPROVAL** with the following conditions:

1. Standard permit conditions 1-13.
2. All parking, both the parking lot and any on-street parking, used by the property, must be restriped.

COMMISSION ACTION

Motion to approve by Castellucci, second by Scaplo with the following conditions:

1. Standard permit conditions 1-13.
2. All parking, both the parking lot and any on-street parking, used by the property, must be restriped.

Motion passed 4-0.

2. **034-2011 26 Barclay Dr. (Stephanie Mizer) R-2**
A **Special Use Permit** to allow a home daycare.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the Sunnyheights neighborhood. According to Section 17-4-51 (6)(c)(3.1) of the Pueblo Municipal Code (PMC), the applicant is requesting a Special Use Permit as a Use by Review to operate a home daycare for a maximum of eight children under 12 years of age.

Analysis

The State of Colorado requires 75-square feet per child of open play space for child care homes. With eight children, the minimum area needed is 600 square feet. The applicant's yard allows for more than 600 square feet as part of their designated play area. City Staff defers to the State Child Department of Human Services; Divisions of Child Care to further inspect and license the operation. Staff did not locate any sex offenders within one block of the proposed use.

RECOMMENDED MOTION

Staff recommends **APPROVAL** with the following conditions:

1. Standard permit conditions 1-13.
2. The applicant must provide proof of State licensure within 90 days of this approval.

COMMISSION ACTION

Motion to approve by Castellucci, second by Scaplo with the following condition(s):

1. Standard permit conditions 1-13.
2. The applicant must provide proof of State licensure within 90 days of this approval.

Motion passed 4-0.

REGULAR AGENDA

Special Use Permit

3. **028-2011 1201 E. 7th Street (Robert Tschida) CCN**
A **Special Use Permit** to allow an urgent care clinic and offices.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the Eastside neighborhood. According to Section 17-4-51 (6)(c)(3.1) of the Pueblo Municipal Code (PMC), the applicant is requesting a Special Use Permit as a Use by Review to operate an urgent care clinic serving the Eastside Neighborhood. The property was originally built as a church and was later added on to, to include a three (3) story office building serving the church. The applicant is proposing using the first floor as the actual clinic, the middle floor would be office space to support the clinic, and the top floor would be used for IT and storage. The clinic would operate Mon-Fri 8am-7pm with a patient capacity of six (6) to ten (10).

Analysis

Currently there is no urgent care type clinic in the Eastside so residents must get to one of the hospitals or one of the urgent care clinics West of I-25. The applicant has stated in his narrative that the clinic will be run by a non-profit organization serving uninsured and underinsured residents. The intent is that the clinic will see patients on an appointment basis and that patients will be able to either walk to the clinic or park in the nine (9) street spaces in front of the building. The seven (7) to eleven (11) employees will park in the alley-loaded parking lot in the rear of the building.

It is Staff's opinion that the proposed location and building fit the applicant's proposed use. The building has been underutilized for the last few years and the applicant has definitely identified a hole in services for Eastside residents. This type of use is exactly what was intended when the Commercial Charter Neighborhood District was designed – a neighborhood oriented business serving the needs of residents in the immediate area.

RECOMMENDED MOTION

Staff recommends **APPROVAL** with the following conditions:

1. Standard permit conditions 1-13.
2. All parking, both the parking lot and any on-street parking, used by the property, must be restriped.
3. The Special Use Permit is contingent upon the Planning and Zoning Commission approving the zone change from R-2 to CCN.

HEARING

Robert Tschida, 1201 E. 7th Street, Pueblo, CO appeared and testified in favor of the application.

Eva E. Montoya, 1901 E. 14th Street, Pueblo, CO appeared and testified in favor of the application.

Mrs. Montoya stated that this urgent care will help the residents of the Eastside as there are a lot of senior citizens, unemployed, and under employed individuals on the Eastside. The Eastside Neighborhood Association is in support of the urgent care facility.

Councilman Larry Atencio, Pueblo, CO appeared and testified in favor of the application.

Mr. Atencio states that he is attending the meeting today as a citizen and that the facility will serve those that are underinsured and will serve a need in the community. This non-profit is fully supported by the community.

Anthony Carbajal, 1817 E. 18th Street, Pueblo, CO appeared and testified in favor of the application.

Mr. Carbajal states that it is a necessity to have this urgent care facility to help our community. This service is badly needed.

COMMISSION ACTION

Motion to approve by Castellucci, second by Scaplo with the following condition(s):

1. Standard permit conditions 1-13.
2. All parking, both the parking lot and any on-street parking, used by the property, must be restriped.
3. The Special Use Permit is contingent upon the Planning and Zoning Commission approving the zone change from R-2 to CCN.

Motion passed 4-0.

Variances

4. 022-2011 2928 7th Avenue (James and Jacquelynn Sharp) R-1

A **Variance** to allow a new garage to encroach into the side yard setback.

(Withdrawn)

5. 026-2011 1201 E. 7th Street (Robert Tschida) CCN

A **Variance** to allow a parking space and parking lot island reduction for an existing building.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the Eastside Neighborhood near the intersection of 7th St. and Kingston Ave. The applicant is requesting a Variance from Section 17-4-7 (b) (3) b. of the Pueblo Municipal Code (PMC), to allow a reduction in parking and parking lot islands. The total parking required for the proposed church, clinic, and offices is 58 spaces and only nine (9) are available on the property. The property was developed in its current formation in 1920, well before modern parking regulations. The property is being proposed as a church, clinic, and supporting offices. This Variance is required due to a pending zoning change from R-2 to CCN.

Analysis

The purpose of the zone change is to allow a combination of a church and health clinic (the church and clinic will be discussed in the Staff Reports for Cases 027-2011 and 028-2011) on this property. The

current zone, R-2, will not allow the clinic and the applicant feels this is a very necessary and lacking service in the Eastside. In order to fill the need for a neighborhood clinic and comply with the proposed rezoning, the property must receive a parking Variance.

Staff has discussed the property, the proposed uses, and the parking situation at length with the City's Transportation Division and they feel comfortable with the situation since there is street parking available adjacent to the church along both E. 7th St. and Kingston Ave., as well as along E. 7th St. to the West of the property and along Kingston Ave. across the street from the property. Because of this, Transportation feels that there is adequate parking in the neighborhood to accommodate the proposed uses without causing traffic conflicts or inconveniencing residents in the area. The one condition Transportation Staff had was that the rear alley parking lot must be redone as they have proposed prior to opening.

In addition to adequate street parking available, it is important to note that the hours of operation for the church and clinic will be different. The clinic will be open during the week where as the church will be using the building on the weekends and for the most part only on Sundays.

Planning Staff has worked closely with the applicant to ensure they have considered all potential parking use, timing, and conflict between the church and clinic and believe that the applicant has done his due diligence in looking at these items to figure out his parking plan and hours of operation for both uses.

RECOMMENDED MOTION

Staff recommends **APPROVAL** with the following conditions:

1. Standard permit conditions 1-13.
2. The alley-loaded parking lot must be redone as shown on the submitted plan prior to opening.
3. All parking, both the parking lot and any on-street parking, used by the property, must be restriped.
4. The Variance is contingent upon the Planning and Zoning Commission approving the zone change from R-2 to CCN.

HEARING

Robert Tschida, 1201 E. 7th Street, Pueblo, CO appeared and testified in favor of the application.

Eva E. Montoya, 1901 E. 14th Street, Pueblo, CO appeared and testified in favor of the application.

Mrs. Montoya states that the parking near the clinic should not be a problem because that area is not a very busy location and the Eastside needs this clinic.

COMMISSION ACTION

Motion to approve by Castellucci, second by Scaplo with the following condition(s):

1. Standard permit conditions 1-13.
2. The alley-loaded parking lot must be redone as shown on the submitted plan prior to opening.
3. All parking, both the parking lot and any on-street parking, used by the property, must be restriped.
4. The Variance is contingent upon the Planning and Zoning Commission approving the zone change from R-2 to CCN.

Motion passed 4-0.

6. 030-2011 1164 Eagleridge Blvd. (CLID, LLC) B-3

A **Variance** to allow a parking space reduction for an existing building.

(Continued to July 26, 2011 Hearing)

7. 033-2011 2948 Country Club Drive (Ben Massey) R-1

A **Variance** to allow an existing garage to encroach into the second front yard setback.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the Country Club Neighborhood near the intersection of 29th St. and Country Club Dr. The applicant is requesting a Variance from Section 17-4-2 of the Pueblo Municipal Code (PMC), to allow an existing garage to encroach into the second front yard setback by ten and a half feet (10.5'), two feet (2') from the property line.

The applicant received a Variance to build seven feet (7') into the second front yard setback in July, 2009 (Case 033-2009) but due to the applicant thinking his property line was at the back of the sidewalk as opposed to setback from the sidewalk and not having the property surveyed prior to construction, the garage was built closer to the property line than was originally approved. The error was discovered on a routine follow up of the case.

Also on the follow up, it was noticed that the existing block fence along 7th Ave. was in the right-of-way which will require a Revocable Permit.

Analysis

The garage in question is set at an angle and only one corner is as close as two feet (2') from the property line. The majority of the side of the garage along 7th Ave. (eighteen and a half feet (18.5')) meets or exceeds the original setback of seven feet (7'), only five feet, four inches (5' 4") is outside the original Variance.

While it is not normally the practice of this Board to approve Variances for what would be considered "self imposed" hardships, the lot in this case is adjacent to a relatively unused, dead-end street and does not affect any other properties. Because of this, the impact of the garage being so close to the property line is significantly lower than if the lot was next to another residential property.

RECOMMENDED MOTION

Staff recommends **APPROVAL** with the following conditions:

1. Standard permit conditions 1-13.

2. The applicant must obtain a Revocable Permit for the block fence and gate along 7th Ave. as well as any roof overhang that is over the property line.

HEARING

Benjamin Massey, 2948 Country Club Drive, Pueblo, CO appeared and testified in favor of the application.

Mr. Massey states that this situation was not intentional. I want to live up to my intent. Our other choice would have had us putting the garage in a different location but that option would have had us cutting down mature trees.

COMMISSION ACTION

Motion to approve by Castellucci, second by Martinez with the following condition(s):

1. Standard permit conditions 1-13.
2. The applicant must obtain a Revocable Permit for the block fence and gate along 7th Ave. as well as any roof overhang that is over the property line.

Motion passed 4-0.

APPEALS

8. 021-2011 1102 Claremont Avenue (William and Diana Roberts) R-3

An **Appeal** to the determination that a fabric carport is not allowed and must be removed.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the State Fair Neighborhood near the intersection of Arroyo Ave. and Claremont Ave. According to Section 17-5-22 (a) of the Pueblo Municipal Code (PMC), the Appellant is appealing the determination that a fabric carport is not allowed on a residential lot.

On March 25th, 2011 the owners of 1102 Claremont Ave. were sent a Notice of Violation and Order to Correct letter from a Planning Department Zoning Enforcement Officer stating that they were in violation of Section 17-4-23 of the PMC, Accessory buildings and structures, among other Sections not related to this appeal. The fabric carport is in violation of two (2) Sub-sections of Section 17-4-23, Sub-section (2) "Only one (1) detached accessory structure larger than one hundred sixty (160) square feet shall be permitted for each principal structure on the building site" and Sub-section (5) "Any detached accessory structure larger than seventy-five (75) square feet or higher than seven (7) feet at the highest point shall be architecturally compatible with the principal structure. For the purposes of this Section, *compatibility* shall mean construction of similar material and details and shall specifically exclude prefabricated metal structures and pole barns...". See Exhibit E for the Notice of Violation and Order to Correct letter.

Analysis

The Appellant is in violation of Section 17-4-23 (c) (2) because the property already has one accessory structure, a two (2) car garage in the rear of the home. The Appellant states in their narrative that they were denied a carport they submitted previously and not told about the Variance process. Judging by the GIS images in our system, this carport has been on the property for at least two (2) years so there is no good way to confirm or deny this statement. See Exhibit C for the aerial map in the City's GIS system. It would, however, be very irregular for this Department to not explain all of an applicant's options if they were not allowed to build what they wanted with an over-the-counter signoff (testimony by Jeff Bailey).

The Appellant is in violation of Section 17-4-23 (c) (5) because the construction materials of the carport are not considered compatible to the primary structure based on the definition in Section 17-4-23 (5), quoted above. This Department normally considers construction materials to be siding material, paint color, roofing material, and an approximately similar roof pitch. The primary structure in this case is tan stucco with a hipped roof and asphalt shingles while the carport is white fabric with a metal frame and no differentiated roof. See Exhibit D for the site photos. The other problem with compatibility is that in Section 17-4-23 (c) (5) it specifically excludes "prefabricated metal structures" from being considered architecturally compatible and as the Appellant states in their narrative letter, the carport in question has a metal frame. See Exhibit F for the Appellant's application information.

The Appellant has included letters of support with their application information stating that the Code requiring that they take it down is a "blanket code" and not site specific. The letters of support do not apply to this case since the Appellant is not asking for a Variance from the Code but Appealing the determination that the carport is breaking the Code. It is not the Board's duty to examine the rule or if they agree with it for this property or the City but to determine if the Administrative Official correctly identified the situation as a violation of the state Code.

HEARING

William Roberts, 1102 Claremont Avenue, Pueblo, CO appeared and testified in favor of the application.

Mr. Roberts states that it would be an injustice and a contradiction if they were made to tear down the carport. It would deny us the use and protection of our carport. It would deny them the privilege of contributing to the neighborhood and protecting their property value.

Diana Roberts, 1102 Claremont Avenue, Pueblo, CO appeared and testified in favor of the application.

Mrs. Roberts states that they got signatures from their neighbors for support.

Jeff Bailey, P.E., Assistant City Manager for Development Services, 211 E. "D" Street, Pueblo, CO appeared and testified in opposition of the application.

Mr. Bailey discusses why the applicant was issued a Notice of Violation from one of the Zoning Enforcement Officers from the City of Pueblo. The property is in violation of several sections of the Pueblo

Municipal Code. The applicant has two accessory structures and is only allowed one. The existing carport is not architecturally compatible with the home.

COMMISSION ACTION

Motion to uphold the decision of the Administrative Official by Castellucci, second by Scaplo.

Motion passed 4-0.

NEW/OLD BUSINESS

Motion to approve the findings of fact from ZBA Case # 006-2011 (519 Beaumont) by Castellucci, second by Scaplo.

Motion passed 4-0.

ADJOURN

There being no further business the meeting was adjourned at 8:25 p.m.