

Weston Burrer  
Chair

Rudy Martinez  
Vice Chair

# PUEBLO

## Zoning Board of Appeals

Ralph Scaplo  
Secretary

Mike Castellucci

Allison Ernst

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**Zoning Board of Appeals**  
City of Pueblo, Colorado  
Tuesday, August 23, 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 and Allison Ernst

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

#### APPROVAL OF MINUTES

Motion to approve the minutes from the July 26, 2011 meeting by Scaplo, second by Martinez.

**Motion passed 5-0.**

#### APPROVAL OF AGENDA

Motion to approve the agenda for the August 23, 2011 meeting by Scaplo, second by Castellucci.

**Motion passed 5-0.**

#### PUBLIC HEARINGS AND ACTION

#### CONSENT AGENDA

#### Variances

1. **039-2011 1221 Pine Street (Frances Vigil) R-4**

A **Variance** to allow an existing addition to encroach into both side yard setbacks.

#### BACKGROUND

Staff Report by Carrie Muchow.

### **Synopsis**

The subject property is located in the Bessemer Neighborhood near the intersection of Pine St. and Northern Ave. The applicant is requesting a variance from Section 17-4-2 of the Pueblo Municipal Code (PMC), to allow an existing addition to encroach into both side yard setbacks by a foot and a half (1.5') on each side making the setback three and a half feet (3.5'). The addition is a standard one (1) story, living space addition.

The applicant inherited the property, including the addition, from her late, ex-husband. Her ex-husband apparently never pulled a permit for the addition and she is now seeking the variance so that the Regional Building Department will clear the violation off the property and the electric company will reinstall her electric meter. The outer walls of the addition have been in place for many years and the only reason the applicant needs this Variance now is because of problems with the electric company from former tenants messing with the electric box and causing problems.

### **Analysis**

This particular lot is significantly narrower than most on this and surrounding blocks making it impossible to add on anywhere except in the back. Also due to the narrowness of the lot, if an addition were to stay out of all setbacks, it would be extremely narrow and would cut down on the usefulness of the addition.

Since the applicant's late, ex-husband began the addition without the applicant's knowledge, or the City's, it is hard to determine exactly how long it has been there but according to GIS imagery, the addition has been there since at least 2004 with no complaint from neighbors (the 2001, 1991, and 1987 imagery has a tree that hides this area of the property so it's impossible to tell if the addition is there or not).

This type of addition in the rear of the home is very standard for this neighborhood and therefore does not look out of place. Houses and later additions all through the neighborhood are closer than five feet (5') to at least one side property line and many houses are close to both.

While the encroachment is on both sides of the property, it is only a foot and a half (1.5') on each side and leaves plenty of room for access and maintenance. The encroachment for the addition is identical to the encroachment for the existing house and only extends the non-conformity by ten feet (10') leaving plenty of room in the rear yard for a useable space. To tear down the addition would be a great expense to ensure it did not harm the original house and an expense it would be hard for her to pay since the house has not been rentable for some time and is not until all the is settled.

### **RECOMMENDED MOTION**

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

1. Standard permit conditions 1-13.
2. Any future additions must meet all setbacks.
3. The addition must meet all applicable building and fire codes.

### **COMMISSION ACTION**

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

1. Standard permit conditions 1-13.

2. Any future additions must meet all setbacks.
3. The addition must meet all applicable building and fire codes.

**Motion passed 5-0.**

**REGULAR AGENDA**

**Special Use Permit**

**2. 040-2011 101-103 S. Main Street (Waterfront on the Riverwalk, Inc.) HB**  
A **Special Use Permit** to allow a banquet hall.

*Chairperson Weston Burrer recuses himself; Mike Castellucci assumes the gavel as Acting Chairperson.*

**BACKGROUND**

Staff Report by Carrie Muchow.

**Synopsis**

The subject property is located in Downtown adjacent to the Historic Arkansas Riverwalk. 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 banquet hall on the top story of the building.

**Analysis**

Placing a banquet hall in Downtown will potentially bring a significant number of people into the area exposing them to the shops, restaurants, and other establishments in the vicinity. The exposure will help all business owners in the area whether people stay around after an event or come back another day after seeing what's in the area.

The specific building location is also in a good location for a banquet hall. Being along the Riverwalk places the building in an active and attractive environment and will help the hall draw events.

Staff discussed the proposed use with the Transportation Division and they have no concerns about parking for the event since, as the applicant mentions in their application paperwork, they are across the street from the parking garage which allows public parking on the lower level all the time and public parking throughout the structure after 5pm. The applicant has also worked out an agreement with the Transportation Division that if they are expecting more people than the public area would hold during the day, they reserve and rent spaces from other areas in the garage.

Having the hall on the top floor will allow for events to be held on the terrace without concerns about noise levels reaching people or events on the Riverwalk.

**RECOMMENDED MOTION**

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

1. Standard permit conditions 1-13.

2. All events requiring parking must continue to work out parking with the Transportation Division and rent spaces in the garage as necessary as they are doing now for events relating to the Center for American Values.

## **HEARING**

**Adolph Padula, 101 S. Main Street, Pueblo, CO appeared** and testified in favor of the application.

## **COMMISSION ACTION**

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

1. Standard permit conditions 1-13.
2. All events requiring parking must continue to work out parking with the Transportation Division and rent spaces in the garage as necessary as they are doing now for events relating to the Center for American Values.

**Motion passed 4-0. (Burrer abstained)**

*Chairperson Weston Burrer returns to the meeting.*

3. **041-2011 1318 Horseshoe Drive (Haven House) R-1**  
A **Special Use Permit** to allow a foster care home.

## **BACKGROUND**

Staff Report by Carrie Muchow.

### **Synopsis**

The subject property is located in the Belmont 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 foster home.

The applicant applied for and was granted a Special Use Permit in June 2010 for the home at 39 MacAlester Rd. and is now proposing to move the foster home to 1318 Horseshoe Dr.

### **Analysis**

The location of this property is a very convenient location, close to schools, parks, businesses, and major access roads linking the City. The previous address was just a little farther North in the Belmont neighborhood, had the same zoning, and similar neighborhood environment. Safe, well managed foster homes are necessary and placing them in a stable neighborhood with a stable foster provider makes the potential for problems very slim. At the previous address, the foster home had no reported incidents with Code Enforcement showing that the applicant is capable of running a successful and impact free foster home.

Foster homes are necessary for children who's parents can no longer care for the child, either short term or permanently. Foster homes allow for these children to grow up in a family environment with a much smaller

adult to child ratio than a group home or orphanage can offer. Foster homes are the encouraged environment because they do offer the children a family environment until they can be placed back with their parent(s) or into a permanent adoptive home. A foster home has similar impacts to any home with children with the exception that a State official may stop by to do an inspection or speak with the children.

The State of Colorado requires 75-square feet of open play space per child between twelve (12) months and five (5) years for foster homes. With the potential for four (4) children, the minimum area needed is 300 square feet. The applicant's yard allows for more than 300 square feet as part of their designated play area.

Staff did not locate any sex offenders within one block of the proposed use. Staff has received one objection to this use from a neighbor.

Staff defers to the State Department of Human Services; Division of Child Care to further inspect and license the operation.

### **RECOMMENDED MOTION**

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

1. Standard permit conditions 1-13.
2. Per the definition of Foster Home in the PMC, no more than four (4) minors are allowed to reside in the home at one time.

### **HEARING**

**James L. Young, Jr., 39 MacAlester Rd, Pueblo, CO appeared** and testified in favor of the application.

Mr. Young testified that he has been a foster parent for 18 years. Mr. Young states that the four boys he has in his home are good kids and good students. Mr. Young has had some foster children from 2 years to 8 years.

**Dave Williams, Program Director-Kids Crossing, Pueblo, CO appeared** and testified in favor of the application.

**Barbara Denny, 1312 Horseshoe, Pueblo, CO appeared** and testified in opposition of the application.

Ms. Denny states that she and those that signed the petition are not in favor of Haven House. Ms. Denny states there are two cars on the property at all times. Ms. Denny also states that she contacted a local realtor. The local realtor told Ms. Denny that by having several foster homes in one area, the property values on the nearby homes is affected.

**Clifford Martinez, 1322 Horseshoe, Pueblo, CO appeared** and testified in opposition of the application.

Mr. Martinez states his opposition to the case is not because of the foster care home. His opposition comes from the need to protect the neighborhood and he would have hoped the applicant would have contacted him prior to his request for a Special Use Permit.

## **COMMISSION ACTION**

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

1. Standard permit conditions 1-13.
2. Per the definition of Foster Home in the PMC, no more than four (4) minors are allowed to reside in the home at one time.

**Motion passed 5-0.**

## **Variances**

### **4. 023-2011 2932 Denver Blvd. (Allee Surveying, LLC) R-2**

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

[\(Continued from the July 26<sup>th</sup> Hearing\)](#)

## **BACKGROUND**

Staff Report by Carrie Muchow.

### **Synopsis**

The subject property is located in the Skyview Neighborhood near the intersection of 29<sup>th</sup> St. and Denver Blvd. 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 side yard setback by one foot, four inches (1'4"). The garage is forty feet (40') by thirty eight feet, two inches (38'2").

Last October the owner unsuccessfully requested a height Variance for having an attached garage taller than the house. The owner has chosen to raise the roof of the house to remedy the situation as opposed to lowering the garage. In the process of having the property surveyed as the first step to creating construction drawings, the owner discovered that the garage encroaches into the side yard setback and is therefore requesting a Variance for this encroachment. The owner stated the reason for this encroachment was that the contractor laying the garage pad had extra concrete and chose to add it to the side of the pad without the owner's consent.

Provided the owner does raise the roof of the house, attaches the garage to the house, and removes the rear shed as he has previously stated, the property meets all other height, coverage, and setback requirements.

### **Analysis**

Due to the height and size of the garage as it sits, even if the garage met setbacks it would be imposing to the neighboring properties, particularly to the Southern neighbor whose garage is close to the property line already. Encroaching on the setback makes the presence of the garage even more significant for the neighbor.

Similar to the first Variance request, this encroachment into the setback deviates from the originally approved plan making the hardship completely self imposed. The property is of normal size, with a normal sized back yard and not only could it have accommodated a typical garage, it would have accommodated the oversized garage as it was originally approved.

## **RECOMMENDED MOTION**

Staff recommends **DENIAL**.

If the Board feels it is appropriate to grant the Variance, Staff recommends the following conditions:

1. The owner or applicant must update all plans with the Pueblo Regional Building Department to ensure all Building and Fire Codes are met since the structure will be closer than five feet (5') to the property line.
2. All storm water must be directed away from neighboring properties.
3. The shed must be removed prior to construction resuming on the garage because the property will not meet the fifty percent (50%) lot coverage regulation once the house and garage are connected.
4. Final plans showing how the garage and house will be connected and how the house roof will be raised must be provided to the Planning and Community Development Department no later than September 15<sup>th</sup> and construction must be started within 6 months in order to comply with ZBA's ruling last October.
5. All plans and changes to plans must be approved by the Pueblo Regional Building Department and the Planning and Community Development Department prior to any construction taking place on the property.
6. Standard permit conditions 1-13.

## **HEARING**

**Travis Allee, Allee Surveying, 4377 Rock Creek Road, Pueblo, CO appeared** and testified in favor of the application.

Mr. Allee submits two items for the record. The exhibits are marked exhibit 1 and exhibit 2.

**Eric Keene, 2932 Denver Blvd, Pueblo, CO appeared** and testified in favor of the application.

## **COMMISSION ACTION**

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

1. The owner or applicant must update all plans with the Pueblo Regional Building Department to ensure all Building and Fire Codes are met since the structure will be closer than five feet (5') to the property line.
2. All storm water must be directed away from neighboring properties.
3. The shed must be removed prior to construction resuming on the garage because the property will not meet the fifty percent (50%) lot coverage regulation once the house and garage are connected.
4. Final plans showing how the garage and house will be connected and how the house roof will be raised must be provided to the Planning and Community Development Department no later than September 15<sup>th</sup> and construction must be started within 6 months in order to comply with ZBA's ruling last October.
5. All plans and changes to plans must be approved by the Pueblo Regional Building Department and the Planning and Community Development Department prior to any construction taking place on the property.
6. The side setback Variance only applies to the existing wall of the garage and can not be extended in any way along the Southern property line.

7. Standard permit conditions 1-13.

**Motion passed 3-2 (Martinez and Scaplo dissenting).**

**5. 030-2011 1164 Eagleridge Blvd. (CLID, LLC) B-3**

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

**(Continued to the September 27<sup>th</sup> Hearing)**

**ADJOURN**

There being no further business the meeting was adjourned at 8: 30 p.m.