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Chair

Rudy Martinez  
Vice Chair

# PUEBLO

## Zoning Board of Appeals

Ralph Scaplo  
Secretary

Mike Castellucci

Rod Johnson

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### Zoning Board of Appeals Special Hearing

City of Pueblo, Colorado

Tuesday, October 16, 2012 - 7:00 p.m.

Interim City Council Chambers - 301 West B Street (Former Municipal Court)

### Minutes

#### MEETING CALLED TO ORDER

The meeting was called to order at 7:05 p.m. with Chairperson Weston Burrer presiding.

**Board Members Present:** Allison Ernst, Yvonne Lujan-Slak, and Mike Castellucci

**Board Members Absent:** Rudy Martinez

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

#### APPROVAL OF AGENDA

Motion to approve the agenda for the October 16, 2012 meeting by Castellucci, second by Ernst.

**Motion passed 4-0.**

#### PUBLIC HEARINGS AND ACTION

##### APPEAL

##### 1. **034-2012 2124 N. Elizabeth St. (Kettelkamp, Young, & Kettelkamp) R-2**

An **Appeal** to the determination that a fabric carport is not architecturally compatible to the home and therefore not allowed.

##### BACKGROUND

Staff Report by Carrie Muchow.

##### Synopsis

The subject property is located in the Northside neighborhood. The neighborhood is a mix of old, historic single family homes and commercial uses (testimony by Carrie Muchow). According to Section 17-5-22 (a) of the Pueblo Municipal Code (PMC), the applicant is appealing the determination that a fabric carport is not architecturally compatible with the principal structure.

In May, 2012 the owner of 2124 N. Elizabeth Ave. was 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 (testimony by Karen Willson). A fabric carport is not allowed as a permanent accessory structure in any Zone District due to the architectural compatibility standard (testimony by Karen Willson). See Exhibit E for the Notice of Violation and Order to Correct letter.

The applicant is now appealing on the basis that the carport was there prior to the architectural compatibility requirement going in to affect.

### **Analysis**

The applicant states that:

1. When constructed, the subject structure complied with Section 17-4-23 and if by later amendment, the subject structure was in nonconformance with Section 17-4-23, the property owner complied with the requirements of Section 17-3-4 concerning nonconforming structures.
2. Property owner is a senior citizen now living alone on the property on a fixed income. Requiring property owner to remove the structure and replace it with another structure would result in a financial hardship to the property owner.
3. The subject structure is architecturally compatible with the principle structure's awnings.

See Exhibit H for the Applicant's application documents.

Staff's Response:

1. Unless the structure was constructed prior to 1968 and the PMC, the structure has never complied with the PMC. The original Accessory Structure Ordinance states that "...no separate accessory building shall be erected within five feet of any other building, except that one-story accessory buildings may be built to occupy not more than 30 % of the rear yard... provided further that the wall abutting upon the property line shall be of 2-hour fire-resistive construction as defined in the Uniform Building Code...". The fabric carport does not meet either of these requirements. Combined with the garage, the structures occupy more than the allowed 30% of the rear yard setback and fabric burns much faster than two hours. See Exhibit G for all Amendments.

This section of the PMC was amended in 1971 but maintained both of these requirements. It was amended again in 1985 to allow for a one hour burn time of walls within setbacks. It still maintained the 30% rule and the fabric carport still does not meet either rule. The Section was again amended in 2003 to include that "Detached accessory structures shall be architecturally compatible with the principal structure. For the purposes of this subsection, compatibility shall mean construction of a similar material..." and removed the 30% and burn time regulations. The architectural compatibility standard has been included in all subsequent versions of this Section of the PMC. See Exhibit G for all Amendments.

Even if the original fabric carport was constructed prior to 1968 and the PMC, the fabric on it is not meant to last, and does not last, so the fabric membrane must have been replaced (testimony by Karen Willson). Once work is done to a non-conforming structure, the structure must then be brought into compliance with the current Code, Section 17-3-4(2) (testimony by Jeff Bailey). The Planning and Community Development Department considers the replacement of the fabric to be similar to replacing a residential roof. Replacing a roof requires a building permit which requires sign off from

the Planning and Community Development Department. This Department would not have signed off on the permit (and there are no records indicating a sign off) and if a permit had been brought to this office Staff would have informed the owner at that time that the structure was not allowed (testimony by Jeff Bailey).

2. When administering the Municipal Code, neither this, nor any other City Department, can take into account how a legal Code affects someone financially. All Codes must be administered equally and without bias. Property owners may chose to add to their property per Code or they may chose to enjoy their property as it is, without additions (testimony by Karen Willson).

Even if the owner chose to take down the approximately twenty feet by twelve and a half foot (20'x12.5') fabric carport and build a regular, framed carport in this spot, the application would be denied. The owner already has a garage and according to 17-4-23 (c) (2), only one (1) accessory structure over 160sf is allowed. Any additional covered parking will either need to be attached to the existing garage or the existing house in order to be compliant or a Variance would need to be granted to allow more than one (1) (testimony by Jeff Bailey).

3. According to 17-4-23 (c) (5) all accessory structures over 75sf and 7ft tall must be architecturally compatible with the principal structure and be constructed of similar materials and details as the principal structure. This is not referring to using one detail on the principal structure and creating an entire accessory structure to match it and the Section has never been administered as such. This Section has consistently been administered as the accessory structure must be built of similar siding material, similar roofing material, and a similarly pitched roof. For instance if the principal structure is white siding with a brown, gabled roof then a garage would need to also be white siding with a brown gabled roof (testimony by Jeff Bailey).

In addition, the fabric carport is not even architecturally compatible with the awnings as the awnings are a stripped fabric with red, green, and light tan and the carport is a darker, medium tan. See photos in Exhibits D and G (testimony by Karen Willson).

It is also important to note that the current location of the fabric carport is within two (2) setbacks, the rear yard setback and the side yard setback. These setbacks are required under Section 17-4-1 of the PMC. The carport is approximately three and a half feet (3.5') into the side yard setback, or approximately one and a half feet (1.5') from the North property line and approximately four and a half feet (4.5') into the rear yard setback, or six inches (6'') from the East property line. These setback distances have always been set at five feet (5') from the rear and side property lines and unless a structure predates the original 1968 Code, it would be considered in violation of the PMC if the structure does not have a Variance allowing it to be within the setbacks. (testimony by Jeff Bailey)

In summary, the carport fabric has had to have been replaced in recent years making it no longer legal non-conforming, but simply non-conforming, the City can not administer the Code based on financial status, and a fabric carport has never been considered architecturally compatible with a principal structure or a detail there of, even if the carport fabric did match the awnings as stated by the applicant. Even if the structure were deemed architecturally compatible, the property has still not received any Variances to allow a second accessory structure or to allow an accessory structure to be within setbacks.

Based on all of the above mentioned reasons, Staff maintains that the fabric carport is in violation of many aspects of the PMC and must therefore be removed. Staff recommends that the Zoning Board of Appeals UPHOLD the Administrative Official's determination as such.

## **HEARING**

**C. Todd Kettelkamp, Attorney, representing Ivan Rogers, property owner.**

**Carla Sikes, Assistant City Attorney, representing the City of Pueblo.**

**Ivan Rogers, 2124 N. Elizabeth Street, Pueblo, CO, appeared** and testified that the carport was put up in 1969 during his employment at the Pueblo Tent and Awning Company but did not get a building permit because it was not considered a permanent structure due to the structure not being permanently affixed to the ground. Mr. Rogers stated this structure could be put up or taken down in a matter of 45 minutes. Recovering of the structure took place in 2001 and other than that action nothing else had been done with the structure.

**Kevin Becker, 2116 N. Elizabeth Street, Pueblo, CO appeared** and the Board dismissed his testimony.

**Karen Willson, 211 E. D Street, Pueblo, CO appeared** and testified that there was sufficient evidence after reviewing photographs attached with the Notice of Violation to issue the Notice of Violation and Order to Correct based on the ordinance due to the structure being temporary in nature and does not meet the architectural compatibility requirements. Ms. Willson stated structures of this nature are monitored for a period of time to see if they are altered or taken down and this one was not, therefore they could not be sure of the length of time this structure had been there. Ms. Willson expressed this carport does not comply with zoning regulations because it is a temporary structure.

**Jeff Bailey, 211 E. D Street, Pueblo, CO appeared** and testified that the carport structure was not in compliance at the time of putting it up, nor at anytime while the structure has been up, to include currently, due to its location relative to the property lines and its lack of architectural compatibility.

*At this point in the Special Hearing there was a discussion between the Board, Mr. Willumstad, Ms. Sikes, and Mr. Kettelkamp regarding the relevance of old violations of the carport, the appellant's defense, and the City's testimony. It was determined that because the appellant's defense is that the carport should be considered legal non-conforming and thus allowed to remain, that the City's testimony that the carport wasn't legally placed to begin with is relevant.*

**Jeff Bailey proceeded to testify** that the structure is non-conforming architecturally and there hasn't been a determination that it's legal non-conforming because it was never in compliance with Zoning Code, even when put up. There's also no determination that it hasn't violated any other Ordinances during this time. It was stated that in 1969 there were no architectural compatibility limitations within the ordinance but it did not meet the fire-resistance requirements based on its location to the property line.

## **COMMISSION ACTION**

Motion to affirm the Administrative Official's decision and determine that the carport is not architecturally compatible to the house, ZBA Case #034-2012 by Castellucci, second by Lujan-Slak.

Discussion between the Board and Mr. Willumstad on the availability of the appellant being able to file for a Variance to keep the carport even if the Board voted to uphold the Administrative Official's decision.

**Motion passed 4-0.**

**ADJOURN**

There being no further business the meeting was adjourned at 10:12pm.