

Weston Burrer  
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**  
City of Pueblo, Colorado  
Tuesday, February 22, 2011-7:00 p.m.  
Pueblo Municipal Justice Center-Police Community Room-200 S. Main Street

### Minutes

*Tape recorder malfunctions. Minutes for this meeting are created using notes from Jeff Bailey, P.E., Assistant City Manager for Development Services, and Carrie Muchow, Planner. Official notes taken by Ramona Weed, Court Reporter.*

### 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 and Mike Castellucci

**Board Members Absent:** Rod Johnson

**Staff Members Present:** Jeff Bailey, P.E., Assistant City Manager for Development Services; Carrie Muchow, Planner; Wade Broadhead, 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 January 25, 2011 meeting by Scaplo, second by Martinez.

**Motion passed 4-0.**

### APPROVAL OF AGENDA

Motion to move ZBA Case #009-2011 from the consent agenda to the regular agenda by Scaplo, second by Castellucci.

**Motion passed 4-0.**

Motion to approve the consent agenda for the February 22, 2011 meeting by Castellucci, second by Martinez.

**Motion passed 4-0.**

## **PUBLIC HEARINGS AND ACTION**

### **CONSENT AGENDA**

#### **Special Use Permit**

1. **008-2011 11 Alta Loma Dr. (Leslie Neldner) R-2**  
A **Special Use Permit** to allow private music lessons.

### **BACKGROUND**

Staff Report by Carrie Muchow.

#### **Synopsis**

The subject property is located in the El Camino/La Vista 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 conduct private music lessons in her home.

#### **Analysis**

The applicant would have up to five students throughout the day, during the week. Each student would stay half an hour to an hour. The property has a three-car driveway which is ample space for private music lessons, even if the appointments were back to back, since there would only be one car involved per appointment.

Allowing private music lessons is a necessary service for neighborhoods and the applicant will be filling that need for this neighborhood. The traffic created from the lessons would be minimal and no more than a typical neighborhood can handle.

### **RECOMMENDED MOTION**

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

1. Standard permit conditions 1-13.

### **COMMISSION ACTION**

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

1. Standard permit conditions 1-13.

**Motion passed 4-0.**

### **REGULAR AGENDA**

#### **Variances**

2. **009-2011 4516 Cedarweed Blvd. (Darrell Jordan) R-2**

A **Variance** to allow a new sun room addition to encroach into the front yard setback and a new garage and house addition to encroach into the front yard setback.

## **BACKGROUND**

Staff Report by Carrie Muchow.

### **Synopsis**

The subject property is located in the University Neighborhood near the intersection of Jerry Murphy and Hwy 47. The applicant is requesting a variance from Section 17-4-2 of the Pueblo Municipal Code (PMC), to allow a new sunroom and garage/house addition to encroach into the front yard setback. The proposed sunroom would encroach into the front yard setback by eight feet (8'). It would come forward from the front of the house by sixteen feet (16') and be thirty two feet (32') long. This addition would be one (1) story.

The proposed garage and house addition would encroach into the front yard setback by one foot, five inches (1'5"). It would come off the west side of the house, in front of the garage and is twenty feet (20') by twenty nine feet, seven inches (29'7") and two stories tall.

In addition to these two additions the applicant plans to replace his front driveway.

### **Analysis**

The applicant's front property line curves with the street and because this line is not straight, the front yard setback is determined by drawing a line across the yard from the end of one side property line to the other and from this straight line the setback is established. See the below image.



The applicant and architect did not know this when plans were drawn up so the additions were designed to meet setback requirements based on the curve of the front property line. Redrawing the plans to shrink the footprint at this point would be a large expense so they require a variance.

The applicant plans to begin construction this summer on the new driveway, sunroom foundation, garage foundation, and garage stem wall. In the fall he will complete the sunroom and then next spring he will finish the garage and upper floor addition.

The applicant tried to meet the setback requirements and Staff believes he met the intent and that the additions should not adversely affect the neighborhood.

## **RECOMMENDED MOTION**

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

1. Standard permit conditions 1-13.

## **HEARING**

**Darrell Jordan, 4516 Cedarweed Blvd., Pueblo, CO appeared** and testified in favor of the application.

## **COMMISSION ACTION**

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

1. The sunroom addition may not exceed the 16' width noted on the plans provided by the applicant.
2. The sunroom addition may not extend any farther into the front setback than the approved 8' and the garage and house addition may not extend any farther into the front setback than the approved 1.5'.
3. Standard permit conditions 1-13.

**Motion passed 4-0.**

### **3. 010-2011 1610 W. 20<sup>th</sup> St. (Betty Garcia) R-2**

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

## **BACKGROUND**

Staff Report by Carrie Muchow.

### **Synopsis**

The subject property is located in the Sky View Neighborhood near the intersection of Hooper Ave and 18<sup>th</sup> St. The applicant is requesting a variance from Section 17-4-2 of the Pueblo Municipal Code (PMC), to allow an existing deck to encroach into the side yard setback. The deck was constructed in October, 2010, is fifteen feet (15') by sixteen feet (16') and is two and a half feet (2.5') from the east property line.

In November, 2010 Staff received a complaint about the placement of the deck and when Staff investigated it was discovered that the deck was too close to the property line and no building permit was obtained so a Notice of Violation and Order to Correct was issued.

### **Analysis**

Staff has recommended both cutting the deck back two and a half feet (2.5') and removing the roof so that it would be under thirty inches (30") tall and not considered a structure to solve its non-conformance but the applicant has been unsuccessful in reaching the original contractor so that he can fix the issue and is unable to pay a second one to fix it.

The deck could have been built in the rear of the home from a space stand point but the purpose of constructing the deck was to get the applicant's disabled husband outside more and the best access for this was on the side of the house.

The style of the deck is very open and will have no more effect on surrounding properties than a carport would and carports are regularly approved at this distance from side property lines. The deck also does not look inappropriate from the street since its color and how far back it's set from the front of the house help it blend in to the background.

### **RECOMMENDED MOTION**

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

1. The structure must pass a final building inspection.
2. All storm water run-off must be directed away from all neighboring properties.
3. The deck may never be enclosed.
4. Standard permit conditions 1-13.

### **HEARING**

**Betty Garcia, 1610 W. 20<sup>th</sup> Street, Pueblo, CO** appeared and testified in favor of the application.

**Hilary Elbert, 1608 W. 20<sup>th</sup> Street, Pueblo, CO** appeared and testified in opposition of the application.

Mr. Elbert submits two exhibits into the record. They are marked Exhibit A and Exhibit B.

### **COMMISSION ACTION**

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

1. The structure must pass a final building inspection.
2. All storm water run-off must be directed away from all neighboring properties.
3. The deck may never be enclosed.
4. Standard permit conditions 1-13.

**Motion failed 2-2 (Scaplo and Castellucci dissenting).**

### **APPEALS**

**4. 006-2011 519 Beaumont (Gradisar, Trechter, Ripperger & Roth) R-2**

A **Variance** to allow a new shed to encroach into the side and rear yard setbacks.

### **COMMISSION ACTION**

Motion to continue ZBA Case #006-2011 to the March 22, 2011 Hearing by Scaplo, second by Martinez

**Motion passed 4-0.**

**5. 069-2010 3036 N. Elizabeth (Lustigman and Wolfson, LLC) B-4**

An **Appeal** to the determination that recreational vehicles cannot be housed in a Mobile Home Park.

## **BACKGROUND**

Staff Report by Wade Broadhead.

### **Synopsis**

The applicant is filing an appeal to the determination that recreational vehicles are not allowed in Tony's Mobile Home Park. The City's position is that although the applicant has a legal nonconforming use certificate for 59 mobile homes, there is no evidence that recreational vehicles were ever lawfully permitted on the property. Furthermore, recreational vehicles are permitted as a use by review in an R-7 and not allowed in a B-4 Zone District. The applicant has failed to provide the City evidence that the Park housed RVs before the current Zoning Ordinance was adopted in February of 1968, and maintained a perpetual use since.

The applicant contends that recreational vehicles should be allowed for the following four reasons:

- 1) The use of the B-4 property by recreational vehicles is a use by right, as transient residence.
- 2) The property was used as an RV park prior to February 1, 1968 as evidenced by the number of spaces since 1968.
- 3) There is evidence that the RV space rentals was permitted and accepted use of the property from at least 1968.
- 4) Elimination of the rv space rental on the property will cause Carmel a substantial hardship.

### **Background**

The area in question is Lot 1-9 of the Unique Subdivision which was recorded in 1978. A resubdivision was drawn up in 2009 but never recorded. The lot was originally Tract 5 and 6 of the Evans subdivision which was platted in 1946 while in the County and annexed to the City of Pueblo in the fall of 1955 (Exhibit I).

In May of 2009 Carmel Investments filed, and received, a Special Use Permit (ZBA 17-2009, Exhibit J) to use the property as a mini storage facility. As part of that process they began removing mobile homes from the premises. Due to a lack of funding from the recession the owners changed their minds and wanted to continue the mobile home use until such time they could procure financing to finish the mini storage project. A 2008 aerial photograph (Exhibit K) shows approximately 3-4 RVs at the park, and staff found no more than 1-2 RVs present when conducting the inspection for the staff report in May 2009 (testimony Wade Broadhead). A later visit to the site in July of 2010 yielded no recreational vehicles (testimony of Jeff Bailey). As of January 5, 2011 there was one recreational vehicle still present (testimony of Wade Broadhead). Staff has found no evidence that recreational vehicles existed lawfully at the site.

In June of 2010, after receiving complaints, the City sent courtesy letters to all mobile home parks that RV use was prohibited (Exhibit L). On August 11, 2010 the city issued a Notice of Violation and Order to Correct, ordering the removal of RVs at Tony's Mobile Home Park (Exhibit O). In accordance with Sec. 17-5-22 (a and b) the owners filed an appeal.

### **Analysis**

The mobile home use at 3036 Elizabeth Street started as a couple of mobile homes for workers of a restaurant which occupied the small brick building that still stands on the site based on an interview with Pat Mulay whose family owned the mobile home park until the mid 1980s (Exhibit P). The City has a Certificate of Non Conforming use for 59 Mobile Homes dated to 1974 (Exhibit G and H). A mobile home

park is (and has been) an allowed use in an R-7 Zone District but not in a B-4 Zone District. Since the mobile home park operated before the restrictions adopted in 1957 and 1968 it was allowed to continue as long as the use did not go dormant for more than 30 days, in which case it will have to conform to current B-4 regulations according to PMC 17-3-3. There is no mention of the recreational vehicles in the Nonconforming Use Certificate or another Public Works inspection dated to 1974 (Exhibit G and H). The City was assiduous in mapping legal nonconforming uses when the Zoning ordinance passed in 1968 (Testimony of Jeff Bailey, Wade Broadhead, and Karen Willson). Any addition of recreational vehicles after 1968 would have been unlawful and there is no record the City ever explicitly granted permission for an expansion of the use to include recreational vehicles.

## **Applicants Arguments and Response**

### **1) Recreational Vehicles are a use by right in a B-4 because they are transient lodging.**

The applicant argues that recreational vehicle parks are a Use by Right in a B-4 because it allows ‘*transient residence*’. Although transient residence is not defined in the Pueblo Municipal Code it is clear that transient residence refers to residences that provide lodging and services to people on a short term stay (two weeks to a month) such as hotels and motels (Testimony of Jeff Bailey and Karen Willson). Recreational Vehicles at the subject property often stay for periods of many months. Transient lodging is allowed as a use by right in an R-6, Multiple Residential and Commercial District. Also, the definition of hotel states that a “Hotel means a commercial establishment offering lodging to *transients* on a day to day basis, and often having accessory uses, eating and drinking areas, public rooms, retail and businesses that are available to the general public. By definition, hotel shall also include motel, motor hotel, motor inn, motor lodge and tourist court”. (Sec. 17-2-1 (25.2)). It is clear that transient residence refers to traditional forms of day to day lodging such as motels and hotels.

Finally, if a definition and designated zone district were not established for recreational vehicles then the applicant would have grounds for an appeal, but that is not the case. A recreational vehicle is defined in the code (with no mention of transient residence) and only allowed as a *Use by Review* in an R-7, Mobile Home Residential District. It is clear the intent of the code was to allow recreational vehicle parks in an R-7 and no place else in the city. Transient lodging was intended for short term hotel, motel, and motor lodge stays.

### **2) The property was used as an RV park prior to February 1, 1968 as evidenced by the number of spaces since 1968.**

The applicant states that the property was conveyed to them in a configuration that would allow 48 mobile homes spaces and ten spaces for recreational vehicles. The only record the city possesses is that the mobile home park had 59 mobile home spaces in 1968. In a signed statement Pat Mulay states that when she moved to Pueblo in 1962 she never witnessed recreational vehicles in the park (Exhibit P, Testimony of Pat Mulay). In an interview Pat Mulay stated that the original mobile homes were the very small and narrow types common during the 1940s and 1950s (testimony of Pat Mulay). Any reconfiguration of the park or existing conditions after 1980 do not prove that recreational vehicles existed in the park before 1968. The applicant does not have any compliance certificate that shows they were ever a lawful or legal nonconforming use.

### **3) There is evidence that the RV space rentals was permitted and accepted use of the property from at least 1968.**

The applicant also argues that the Pueblo County Assessor's property card lists the use of the property as "Mobile Parks and KOA". The Assessors Office does not check to see if uses are allowed but manages the value of the improvements on the land. A use listed on an assessor's property card does not legitimize its existence on the site. A conversation with Pueblo County assessor, Rick Jones, on October 22, 2010 confirmed that the assessor's office assesses values by actual use, not technically allowable use. In other words, the Assessor's Office values land by what is actually on the ground and they do not check zoning regulations.

**4) Elimination of the recreational vehicle space rental on the property will cause Carmel a substantial hardship.**

The City cannot be held liable for the removal of mobile homes and unlawful recreational vehicles as part of the applicant's efforts to redevelop the property. A financial hardship is not grounds to overturn a Notice of Violation and Order to Correct. Allowing recreational vehicles would be tantamount to allowing a rezoning of the property to R-7 which the Zoning Board does not have the authority to grant. As a B-4 Zone District the applicant has access to the widest array of commercial uses allowed in Pueblo and could redevelop, or reuse, the property in numerous lawful ways.

With no documentation in the City's files or provided by the applicant that recreational vehicles existed at the park prior to February 1968 and were maintained as a continued use, it is evident that they are an unlawful use for this site which is zoned B-4. Staff recommends the Board uphold the Notice of Violation and Order to Correct and find that recreational vehicles are not allowed in this specific mobile home and must be removed.

**HEARING**

**Richard Gray, 11562 Decatur Court, appeared** and testified in favor of the application.

Mr. Gray testified that he works for the owner helping to manage the park. He testified to historic and modern sizes of both RVs and Mobile Homes as well as the historic space layout of the park stating it has always included the smaller spaces. He also testified to the wording of the Certificate of Non-Conforming Use and that since the 1990s when he started working at the park there were RVs and as far as he knew they had always been there. The appellant's attorney labeled Mr. Gray an expert on the sizing of RVs and Mobile Homes since he has worked in the industry, including the manufacturing side, for many, many years.

**Elmer Towner, 3011 N. Elizabeth, Pueblo, CO appeared** and testified in favor of the application.

Mr. Towner testified that he works for the owner of the park.

**Jeff Bailey, P.E., Assistant City Manager for Development Services-City of Pueblo, appeared** and testified in opposition of the application.

Mr. Bailey explained the definition for a transient residence, recreational vehicles, and the uses by right and review for a B-4, R-7 zone districts. Mr. Bailey addressed various other questions posed by Attorney Scott Wolfson.

**Wade Broadhead, Planner-City of Pueblo, appeared** and testified in opposition of the application.

Mr. Broadhead gave a brief synopsis of the appeal case and addresses a question regarding a legal nonconforming certificate from 1974. Mr. Broadhead testified that he had researched the legal nonconforming certificate and its authenticity.

### **COMMISSION ACTION**

Motion to approve by Castellucci and motion withdrawn by Castellucci.

Motion to deny the appeal and uphold the Administrative Officials decision on ZBA Case #069-2010 by Castellucci, second by Martinez.

**Motion passed 4-0.**

### **ADJOURN**

There being no further business the meeting was adjourned at 10:40 p.m.