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## ZBA-21-02

**To:** City of Pueblo Zoning Board of Appeals  
**From:** Bart Mikitowicz, Planner  
**Through:** Scott Hobson, Land Use Administrative Official  
**Date:** 4/27/2021  
**Request:** **A Variance to allow for a zero (0') foot rear and side setbacks in a Single Family Residential (R-2) Zone District.**  
**Site Location:** **612 Van Buren St, Pueblo, CO 81004**  
**Legal Description:** LOTS 7 + 8 BLK 91 COLORADO COAL + IRON COMPANYS ADDITION NO  
**Year Built:** 1924  
**Applicant:** Todd Mihelich  
**Property Owner:** Todd Mihelich  
**Zone District:** Single Family Residential (R-2) Zone District.

### BACKGROUND

The subject property 1,776 sqft was built in 1924. It is a single-family residence in the Quincy & Colorado Ave, PCC subdivision, east of Pueblo Community College. In accordance with Section 17-4-51 (3)(c) (3.1) of the Pueblo Municipal Code (PMC), The applicant, Todd Mihelich, is required to obtain a Variance to allow for a zero (0') foot rear setback in a Single Family Residential (R-2) Zone District.

The applicant has constructed a 8' x 16' shed that is in the side (south) and rear (east) property setbacks. The applicant has already negotiated an easement with his neighbor to the south, to allow for maintenance should the Board approve the Variance for the zero-foot side and rear setbacks, rather than removing the structure.

Some accessory structures on adjacent properties also exhibit a nonconforming setback pattern.

### ZONING DISTRICT AND LAND USE

Zone:		Developed with:
North	Single Family Residential (R-2) Zone District	Single Family Residential
East	Single Family Residential (R-2) Zone District	Single Family Residential
South	Single Family Residential (R-2) Zone District	Single Family Residential
West	Single Family Residential (R-2) Zone District	Single Family Residential

### PUBLIC NOTICE

The property was publicly noticed in accordance with Title 17 Section 17-5-33(2) of the City of Pueblo Municipal Code. Specifically, the hearing was published in the Pueblo Chieftain, surrounding property owners within 100 feet of the property were notified by mail, and a sign was placed on the site (See Attachment E). These notices occurred at least 10 days prior to the hearing.

**OTHER AGENCIES**

Pueblo City/County Health	No comment
City Transportation	No comment
Pueblo Regional Building Department	No comment
Fire Department	No comment
City Public Works Department	No comment
City Stormwater Department	No comment
City Code Enforcement	No comment
Pueblo Board of Water Works	No comment
City Wastewater Department	No comment
City Parks and Recreation Department	No comment

**CONDITIONS REQUIRED FOR VARIANCE**

1. The variance will not: reduce the required light and air to adjacent properties; constitute a nuisance to the properties within one hundred (100) feet of the property for which the variance is requested; or substantially reduce the monetary value of properties within one hundred (100) feet of the property for which the variance is requested.

**Comments:** Affirmative Finding. The construction of a third accessory structure will not reduce light and air to adjacent properties.

2. The variance will not affect general planning of the City with respect to land use and the location of streets and highways will not be jeopardized.

**Comments:** Affirmative finding. This variance will not negatively affect land use planning or the location of streets and highways.

3. Strict adherence to this Title would not secure appropriate development of the property for which the variance is requested.

**Comments:** Negative finding. The subject property already has detached accessory structures that could be expanded to incorporate additional interior space, rather than the construction of a new non-conforming structure.

4. The property for which the variance is requested suffers a unique or singular disadvantage, not common to other property in the district, through the operation of this Title.

**Comments:** Negative finding. This is a self-imposed hardship. The property does not suffer a unique or singular disadvantage.

**PLANNING AND COMMUNITY DEVELOPMENT STAFF RECOMMENDATION**

If the Board Chooses to Approve this application, Staff recommends the following conditions.

1. The new accessory structure must be architecturally similar to the existing structures.
2. The easement agreement is approved “as to form” by the City of Pueblo Attorneys’ Office.

**ATTACHMENTS**

- A. Standard Permit Conditions
- B. Location Map
- C. Site Map
- D. Zoning Map
- E. Comprehensive Plan Map
- F. Public Notice Photo
- G. Site Photographs
- H. Application
- I. Supporting documentation

**Exhibit A. Standard Permit Conditions**

<b>Standard Permit Conditions</b> Date of Issuance of Permit: <b>4/27/2021</b>	
1.	<b>Time Limits</b> Zoning permit shall become invalid unless work or action authorized by permit is fully executed by <b>4/27/2022</b>
2.	<b>Required Revisions</b> Any revisions or additions to plans required as a result of approval must be submitted and stamped “approved” prior to the sign-off of the building permit routing slip or business license.
3.	<b>Changes</b> The project shall be completed as shown on the plans, which have been stamped “approved” and dated by the Department of Planning and Community Development. The project shall not deviate from the approved plans without prior written approval from the Department of Planning and Community Development.
4.	<b>Property Inspection</b> By acceptance of this permit, Permit holder authorizes City Officials and/or their authorized representatives, access to the subject property for purpose of observing work in progress, inspecting and/or measuring the property or improvements as long as the use authorized by this permit remains in effect.
5.	<b>Certificate of Occupancy</b> A certificate of occupancy must be issued by Regional Building <u>PRIOR</u> to use and/or occupancy of the subject premises. Prior to issuance, the Department of Planning and Community Development must certify that work has been completed in accordance with approved plans and that applicable conditions have been met. The Permit holder may be required to provide a Letter of Credit to obtain a Certificate of Occupancy prior to completion of all required improvements.
6.	<b>Completion and Maintenance of Improvements and Landscaping</b> Permit holder or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Permit holder agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7.	<b>Building Permit; Other Permits</b> Permit holder is solely responsible for obtaining <u>BUILDING PERMIT</u> and all other applicable local, state and federal permits.
8.	<b>Off-Site Drainage</b> Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties.
9.	<b>Appeals</b> of a decision of the Land Use Administrator can occur up to thirty (30) days following such decision. Appeals of Zoning Board of Appeals decisions can occur up to thirty (30) days following final decision. Any work done in connection with this permit prior to the expiration of all applicable appeal periods is done <u>SOLELY</u> at the risk of the Permit holder.
10.	<b>Errors</b> Permit holder is solely responsible for the accuracy of all information contained in the Zoning Permit form and in accompanying documentation. Any errors contained therein may invalidate the Zoning Permit and may result in issuance of a code violation citation and prosecution.
11.	<b>Transfer of Ownership</b> In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become Permit holder and subject to compliance with the terms and conditions of this permit.
12.	<b>Violations/Penalties</b> A violation of any of the conditions of this permit or of any provision of the Pueblo Municipal Code may result in a penalty of up to three hundred dollars (\$300) per day.
13.	<b>Incorporation and Reference of All Plans Presented to the Zoning Board of Appeals.</b> This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant at Zoning Board of Appeals meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions or regulations.

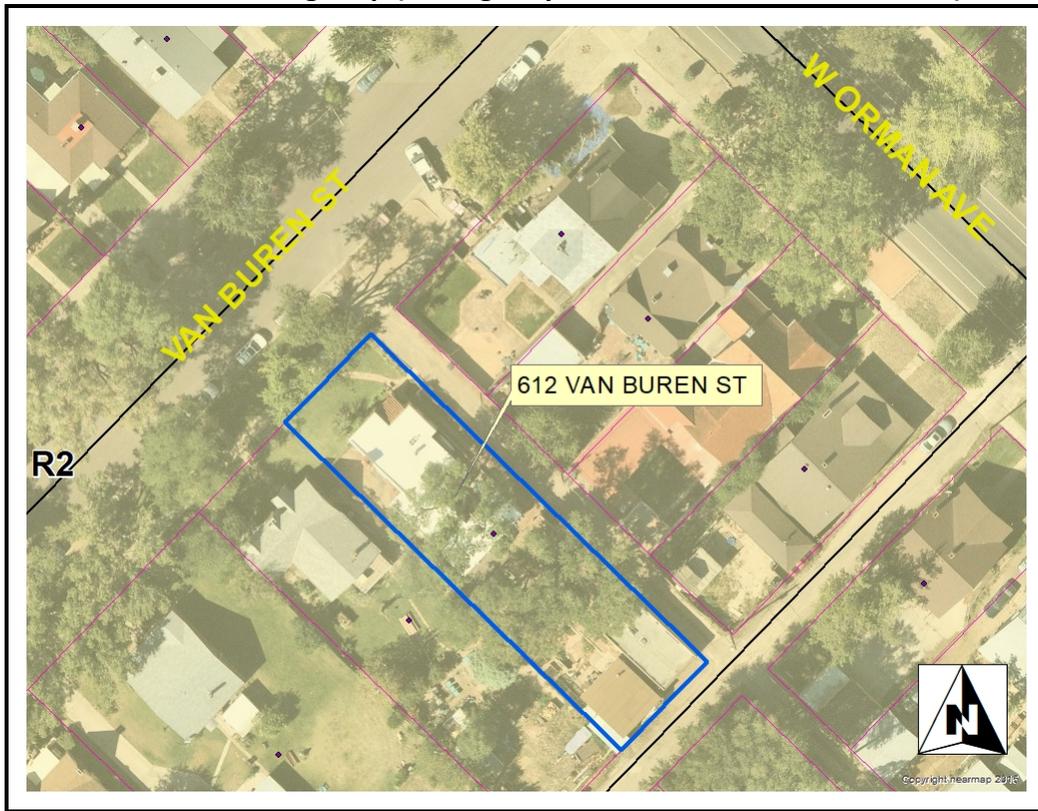
**Exhibit B. Location Map**



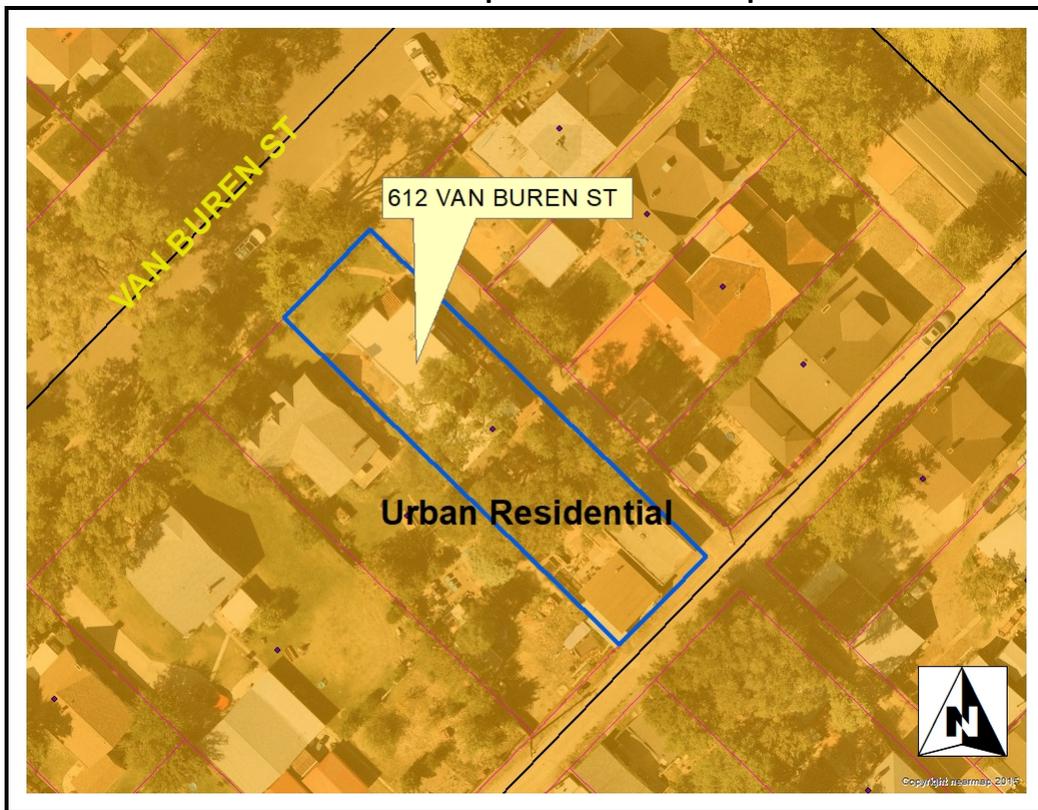
**Exhibit C. Site Map**



**Exhibit D. Zoning Map (Zoning Map Amendments Recommended)**



**Exhibit E. Comprehensive Plan Map**



**Exhibit F. Public Notice**



Taken from Van Buren facing east.

**Exhibit G. Application**



**Planning & Community Development**

211 East D Street | Pueblo, Colorado 81003 | Tel 719-553-2259 | Fax 719-553-2359 | TTY 719-553-2611 | www.pueblo.us

**Zoning Board of Appeals Application**

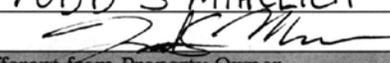
Please type or print clearly. Illegible applications will not be accepted. Case #:

<b>Contact Info</b>	<b>Property Owner:</b>		<b>Applicant (if different from property owner):</b>	
	Name: TODD MIHELICH		Name:	
	Address: 612 VAN BUREN ST		Company:	
	City, State & Zip: PUEBLO CO 81004		Address:	
	Phone: 719 406 9992		City, State & Zip:	
	Email: T.MIHELICH@CPAPUEBLO.COM		Phone: ( )	Cell: ( )
		Email:		
<i>The applicant will be the primary contact unless otherwise noted.</i>				
<b>Property Info</b>	<b>Project Location:</b> 612 VAN BUREN ST PUEBLO, CO 81004			
	Legal Description: LOTS 7+8 BLK 91 COLORADO COAL + IRON COMPANYS			
	Parcel No: 1502123008		Existing Zone: R2	
	Property Size: 9500 sq'			
<b>Project Information</b>	<b>General Information</b>			
	Provide a short description of the proposed request: (separate narrative as Attachment A also required)			
	What is the general use of the property: <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Multi-Family <input type="checkbox"/> Other			
Scope of work: <input type="checkbox"/> Special Use Permit (Limited Use Permit):				
<input type="radio"/> Use by Review <input type="radio"/> Home Daycare <input type="radio"/> Home Occupation                      (Total # of children: _____) <input type="radio"/> Other: _____				
<input checked="" type="checkbox"/> Variance: <input checked="" type="checkbox"/> Setback <input type="radio"/> Parking <input type="radio"/> Landscape <input type="checkbox"/> Lighting <input type="radio"/> Height <input type="radio"/> Signs <input type="checkbox"/> Other: _____				
<input type="checkbox"/> Appeal: <input type="radio"/> ZBA Decision (Case Number: ZBA-____-____) <input type="radio"/> Administrative Official Determination <input type="radio"/> Other: _____				
<input type="checkbox"/> Other: _____				

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<b>Attachments</b>	<b>Attachment Checklist:</b>	
	The following list of attachments are required to accompany all applications: <input type="checkbox"/> A. Detailed explanation of the request as listed above. Be specific. <input type="checkbox"/> B. Justification of facts required for the request. Be specific <input type="checkbox"/> C. Site plan, if variance. Must depict requested variance on plan. <input type="checkbox"/> D. Applicable application (i.e. business license, Home Occupation Questionnaire). <input type="checkbox"/> E. Photographs. <input type="checkbox"/> F. Additional information that you believe justifies the request. <input type="checkbox"/> G. Copy of determination letter, if appealing Administrative Official Determination. <input type="checkbox"/> H. Pueblo County Assessor's Property Information print out ( <a href="http://www.co.pueblo.co.us">www.co.pueblo.co.us</a> )	
<b>Terms</b>	By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:	
	1. Authorized personnel from the City of Pueblo, are hereby granted the right to enter the subject property for the purposes of reviewing and processing the application. 2. There are no known hazards or vicious animals present on the subject property. 3. All requisite fees have been paid to the City of Pueblo. 4. All information in this application, and all attachments, are true and accurate to the best of my knowledge. 5. The City of Pueblo is under no obligation to approve the request contained in this application. No promises of approval are conveyed with the acceptance of this application. 6. It is highly recommended that a licensed surveyor complete a property survey before any construction takes place. The property owner is responsible for any construction that takes place within the boundaries of their property. The city may require any construction built outside of the property legal boundaries or within any setbacks (by intent or error), to be removed at the owners' expense.	
<b>Signatures</b>	Property Owner	
	Print Name:	TODD S MIHELICH
	Signature:	 Date: 03/22/2021
	Applicant, if different from Property Owner	
Print Name:		
Signature:		
Date:		

<b>Office Use Only</b>	<b>Zoning Compliance (Completed by City Staff)</b>	
	Application received by:	Date:
	Application checked for completeness by:	Date:
	Case Manager:	Fee Paid:
	Hearing date:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Approved w/conditions
	Case #:	

**Exhibit I. Supporting Documents**

**EASEMENT AGREEMENT**

This Agreement is made and entered into this 11 day of March, 2021 by and between Melvin Todisco (hereinafter, the "Grantor"), and Todd Mihelich (hereinafter, the "Grantee").

Grantor and Grantee seek to create an easement appurtenant (hereinafter, the "Easement") of which is a "non ownership interest in the property of the Grantee, and that exists for the sole purpose of a required setback for a shed belonging to Grantee. Easement will be approximately 24" in width beginning at the property line adjacent to, and extending the length of the shed, or as required to secure zoning approval to leave the shed in it's current location.

For and in consideration of a payment in the amount of Approximately \$2,300.00 from Grantee to Grantor for 50% of the cost of a newly created fence between the properties of 612 Van Buren St Pueblo CO and 616 Van Buren St Pueblo, CO, Grantor grants to Grantee an Easement upon his property at 616 Van Buren St (hereinafter, the "Property")

Grantee seeks to submit an application to the City of Pueblo for a variance to allow the shed to stay in its current location with respect to the common property line, and requires the Grantees permission to allow the easement of the above type in order that the variance application be submitted, and to obtain and extension for compliance of a code enforcement complaint related to the shed.

Grantor agrees to assist and allow the application and approval of the above required variance and Easement, for receipt of payment of fence from Grantee.

This Easement Agreement shall not be deemed valid unless approved by the City of Pueblo for the above purpose of setback.

Grantor Melvin Todisco Date 3-19-2021

Grantee Todd Mihelich Date 3/1/21

**Figure 1: Draft**

## Proposal for Variance

03/23/2021

To City of Pueblo Planning & Zoning Dept  
RE Shed setback easement 612 Van Buren ST / Todd Mihelich

I received a notice of violation that included an 8' x 16' shed with improper setback from side and rear property lines, and materials that are not in keeping with the style of the main house.

I have have a signed agreement with the adjacent property owner along the side lot line in question. He has agreed to allow for an easement on his property adjacent to the shed to comply with setback regulations.

It is my understanding that the minimum allowable side lot setback that it likely to be allowed under a variance would be 24". I am therefore asking for an easement of 24" wide by 16' in length, or as required to allow the shed to stay in situ.

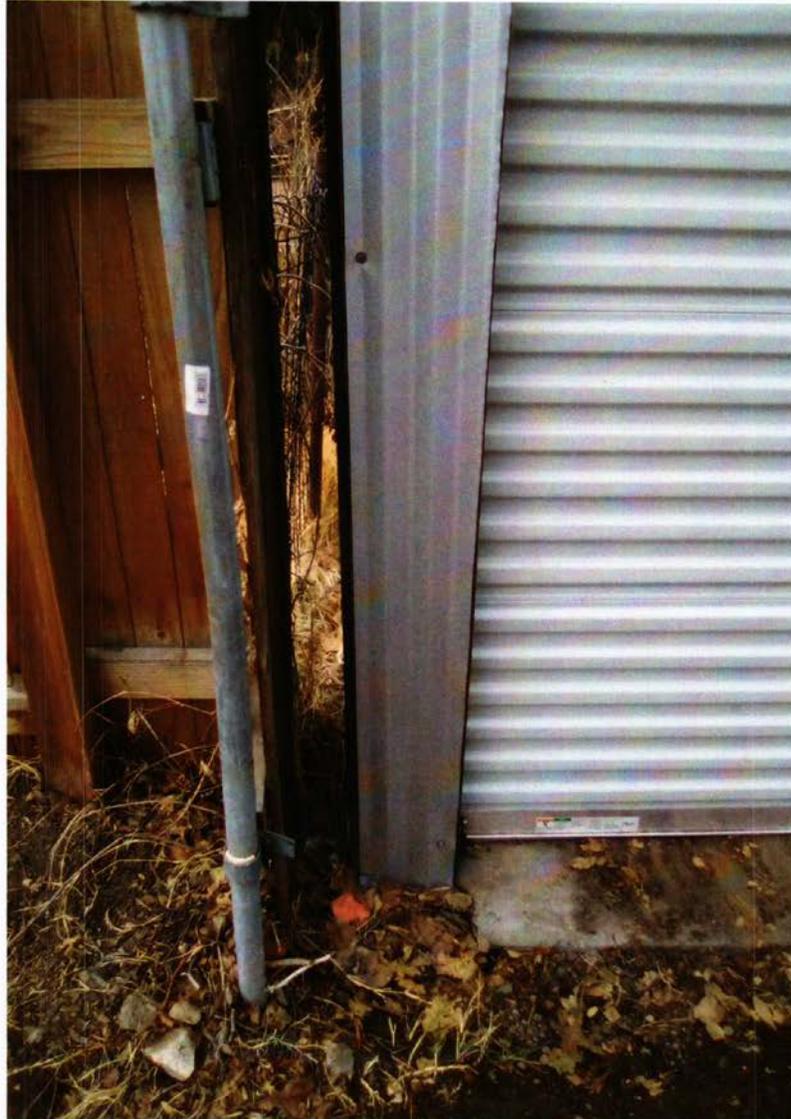
I am also seeking a variance on the alley setback which now stands at approximately 8". If I am forced to relocate the shed away from the rear property line which sits on the alley, it will cause the shed block the bedroom window of the existing guest house.

I will be removing the corrugated metal siding and roof material and replacing that with compliant material as well.

If my variance request is approved, The adjacent property and myself will be proceeding immediately afterwards to file the proper easement appurtenant as required.

Sincerely,

Todd S Mihelich



Taken from alley facing west.

