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ZBA-21-28

To: City of Pueblo Zoning Board of Appeals
From: Danielle Baxter, Planner
Through: Scott Hobson, Land Use Administrative Official
Date: 10/26/2021
Request: **A Special Exception to allow a change from a prior legal-nonconforming secondhand store to a legal-nonconforming restaurant in a Neighborhood Business (B-1) Zone District.**
Site Location: **1918 W Northern Ave, Pueblo, CO 81004**
Legal Description: LOT 1 BLK 2 COLLEGE HILL SUB 3RD
Year Built: 1969
Applicant: Irene Caperon Reyes & Wendy Barrios
Property Owner: Melody R. Gonzales
Zone District: Neighborhood Business (B-1) Zone District

BACKGROUND AND ANALYSIS

1918 W Northern Ave is a single lot of commercially developed land totaling 12,375 square feet, located in the College Hill Subdivision, east of the Mountain View Cemetery. The building located on the property is approximately 2,100 square feet and was constructed in 1969. The applicant is requesting a Special Exception to allow a change from a prior legal-nonconforming secondhand store to a restaurant in a Neighborhood Business (B-1) Zone District. Based on Sec 17-3-5(3) of the current City of Pueblo Municipal Code, a property can be granted a Special Exception if no structural alterations are being made. Also, a non-conforming use can be changed to another non-conforming use, as long as the Zoning Board of Appeals finds that the new non-conforming use is equally appropriate, or more appropriate, within the district than the prior non-conforming use. The property in question was granted Special Exceptions in the past, the most recent being in 2017. In 2017, a Special Exception was granted to change the existing commercial retail building from a legal-nonconforming retail use to a legal-nonconforming secondhand clothing store. The current applicant is requesting a Special Exception, based on the history of the building, to change the legal-nonconforming use of a secondhand store to a legal-nonconforming restaurant, which is a use by review in a B-1 zone district.

As defined in Sect 17-2-2(129) a restaurant is a commercial establishment whose primary function is providing prepared meals to customers for consumption within the structure. Accessory uses may include drive up service or outdoor commercial patio, if separately permitted in the zone district. In accordance with 17-4-51(c)(129) and Sec 17-3-5(3) of the Pueblo Municipal Code (PMC), the applicant is entitled to obtain a Special Exception in order to complete this project.

Paeteria Y Neveria Alaska is an ice cream parlor, which will serve 28 different ice cream and popsicle flavors, 12 different flavors of fresh fruit water, fruit snacks, strawberries and creme, and other unique treats native to Alaska. The ice cream shop is geared to be a family friendly environment and includes vibrant murals and menus for children to enjoy. The applicant states that Alaska has passed all inspections and is up to code on all city business requirements, Pueblo Environmental Health Department, Pueblo Regional Building Department, and Pueblo Fire Department regulations. In addition, the applicant states that Alaska is a one-of-a-kind restaurant on the south side of town and will be an asset to rejuvenate the neighborhood.

ZONING DISTRICT AND LAND USE

Zone:		Developed with:
North	Neighborhood Business (B-1) Zone District	W. Northern Ave; Bakery
East	Neighborhood Business (B-1) Zone District	Office Building with Restaurant and Accountant
South	Mixed Residential (R-4) Zone District	Single Family Residential
West	Government Use (S-1) Zone District	Beulah Ave; Mountain View Cemetery

COMPREHENSIVE PLAN

The City’s traditional downtown is identified as Urban Mixed Use. The land use consists of office, retail, higher-density residential and public uses. The Urban Mixed Use is found along Union Avenue and the HARP and northward toward the Pueblo County Courthouse and southward to include Mesa Junction. Lakeside Drive area south of the Downtown and parts of Northern Avenue area are Urban Mixed Use. Within the Urban Mixed Use, retail uses are emphasized on the first floor of all buildings to maintain a high activity level. Office and residential apartments are encouraged on the upper floors in multi-story buildings. Some higher-density, freestanding residential may also exist in this land use category. In addition, all efforts will be made to maintain the unique character of buildings throughout the area and any new development will be built in a style compatible with the surrounding area. The grid pattern street network and building setbacks created by existing buildings will be maintained. Floor area ratios, the relationship of building square footage to the size of the lot, of non-residential development will be encouraged to maintain a ratio of 1.5. Residential densities will be encouraged to reach higher densities than found in typical suburban settings (upwards of 16 units per acre). These suggested densities encourage pedestrian-oriented development patterns reflective of more historic development within the urban area. Within the Neighborhood Business (B-1) Zone District other uses by right include beauty salon/barbershop, butcher shop, car wash, laundromat, and massage establishment. The proposed use of an ice cream parlor is a suitable business within the Urban Mixed Use category because it is a pedestrian-oriented development surrounded by residential neighborhoods, which it can serve.

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 SPECIAL EXCEPTION

1. Ingress and egress to property and proposed structures thereon with reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

Comments: Affirmative finding. The site plan indicates ingress/egress access off Northern Blvd and Beulah Ave. The primary ingress/egress point for the building is on the north façade, there is a door on the east side of the building for employee and emergency access.

2. Off-street parking and loading areas where required, with particular attention to the economic noise, glare or odor effects of the use by review on adjoining properties and properties generally in the district.

Comments: Affirmative finding. Off-street parking is available on the property and can be accessed from Northern Ave or Beulah Ave. The applicant states there are approximately 10 parking spaces on the north side of the building for customers and employees. However, there is no stripping in the parking lot to demarcate where parking is permitted. The Planning Dept is requesting the parking lot be striped, so patrons know where they are allowed to park to not block any access points. All unloading of goods will be done off-street and not impede vehicular traffic.

3. Refuse and service areas, with reference to the items above.

Comments: Neutral finding. The dumpster on site is to be located on the east side of the building near the alley. The dumpster needs to be located outside the required setbacks and screened by an approved six-foot opaque fence due to its location adjacent to Northern Ave and residences.

4. Utilities, with reference to the location's availability and compatibility.

Comments: Affirmative finding. Sewer, electrical, and water service are available to the property.

5. Screening and buffering with reference to type, dimensions, and character.

Comments: Affirmative finding. There is a four-foot chain link fence separating the business from the single-family residence located to the south of the property. This fence will suffice for screening because there is no parking or building access points on the south side of the building so there is no need to buffer from business noise. However, as noted before, the dumpster needs to be screened by an approved six-foot opaque fence.

6. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic effect and compatibility and harmony with properties in the district.

Comments: Affirmative Finding. Any proposed signs must conform with Sec. 17-10-05 Sign Standards of the Pueblo Municipal Code, B1 Zone District Sign Regulations.

7. Required yards and other open space.

Comments: Negative finding. There are approximately ten parking spaces for customers and employees in front of the building. There is ample room for the refuse area on the east side of the building with pick-up access from the alley. However, the structure is legal-nonconforming, as the rear setback does not meet the current Pueblo City Municipal Code requirements. The rear setback in the B-1 zone district is fifteen feet (15') because of the adjacent residential zone district. The building is approximately six feet (6') from the south property line.

8. General compatibility with adjacent properties and other properties in the district.

Comments: Affirmative finding. The proposed use of a restaurant is compatible with the comprehensive plan for this location. Future land use emphasizes pedestrian-oriented development. The surrounding area along Northern Ave includes multiple restaurants to service the surrounding residential zone districts.

PLANNING AND COMMUNITY DEVELOPMENT STAFF RECOMMENDATION

If the Board chooses to approve this Special Use Permit staff only recommends Standard Permit Conditions 1 through 13 as well as:

1. The trash receptacle needs to be located outside of the required setbacks (five feet from east property line and five feet from southern property line), in addition to screening and enclosing the dumpster with an approved opaque material (not chain link with slats). Per Sect 17-4-7(b)(3)(e)(1), "Trash containers shall be completely screened from public view of adjacent nonindustrial property and public streets. Containers shall be screened by a building, an approved opaque fence or wall, or an evergreen planting creating a continuous screen at least five (5) feet in height at the time of installation. Metal or plastic chain link fence slats shall be permitted only in conjunction with evergreen planting."
2. The parking lot needs to be stripped and the required number of parking spaces need to be available based on occupancy load. The Planning Dept is recommending that the applicant work with the City of Pueblo Transportation Dept to determine the correct number of parking spaces, ADA accessible parking spaces, and bicycle parking spaces that should be available to patrons and employees.

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

Standard Permit Conditions	
Date of Issuance of Permit: 10/26/2021	
1.	Time Limits Zoning permit shall become invalid unless work or action authorized by permit is fully executed by 10/26/2022
2.	Required Revisions 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.	Changes 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.	Property Inspection 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.	Certificate of Occupancy 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.	Completion and Maintenance of Improvements and Landscaping 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.	Building Permit; Other Permits Permit holder is solely responsible for obtaining <u>BUILDING PERMIT</u> and all other applicable local, state and federal permits.
8.	Off-Site Drainage 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.	Appeals 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.	Errors 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.	Transfer of Ownership 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.	Violations/Penalties 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.	Incorporation and Reference of All Plans Presented to the Zoning Board of Appeals. 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

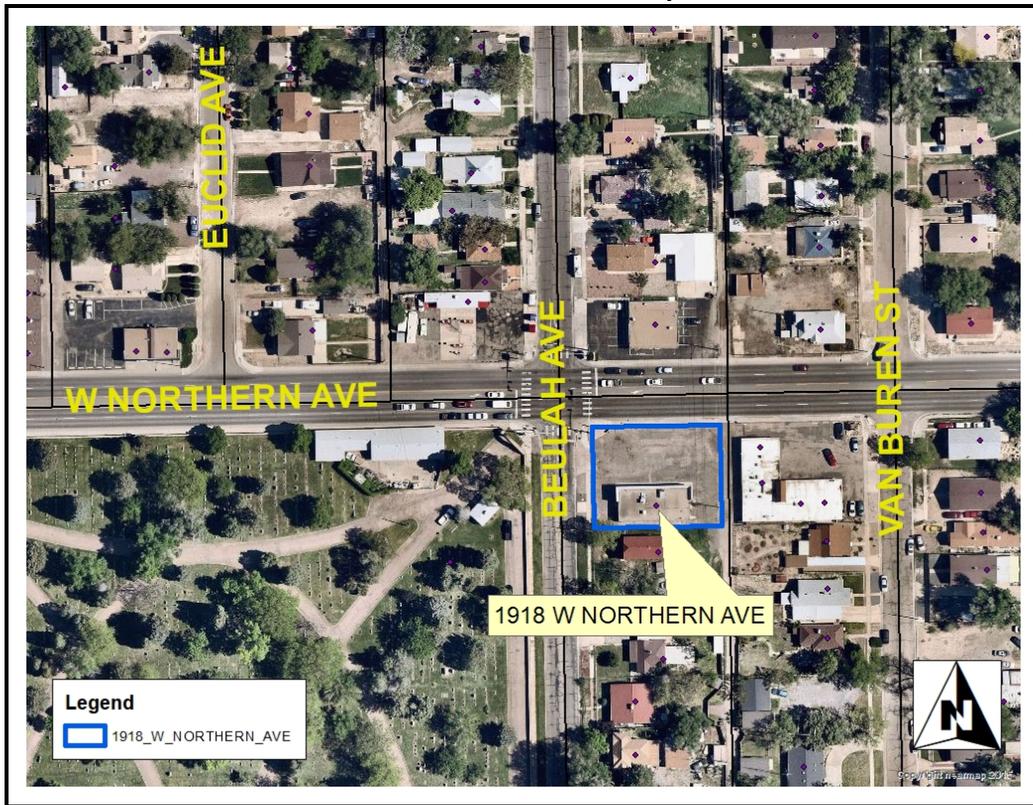


Exhibit C. Site Map



Exhibit D. Zoning Map (Zoning Map Amendments Recommended)

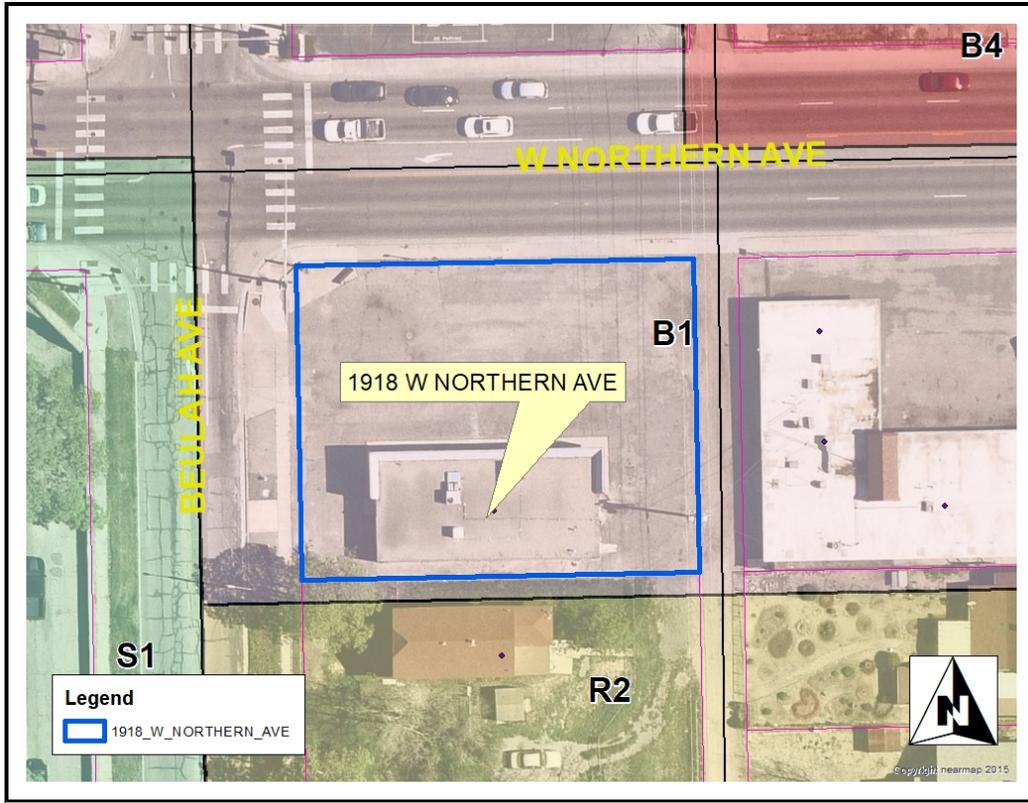


Exhibit E. Comprehensive Plan

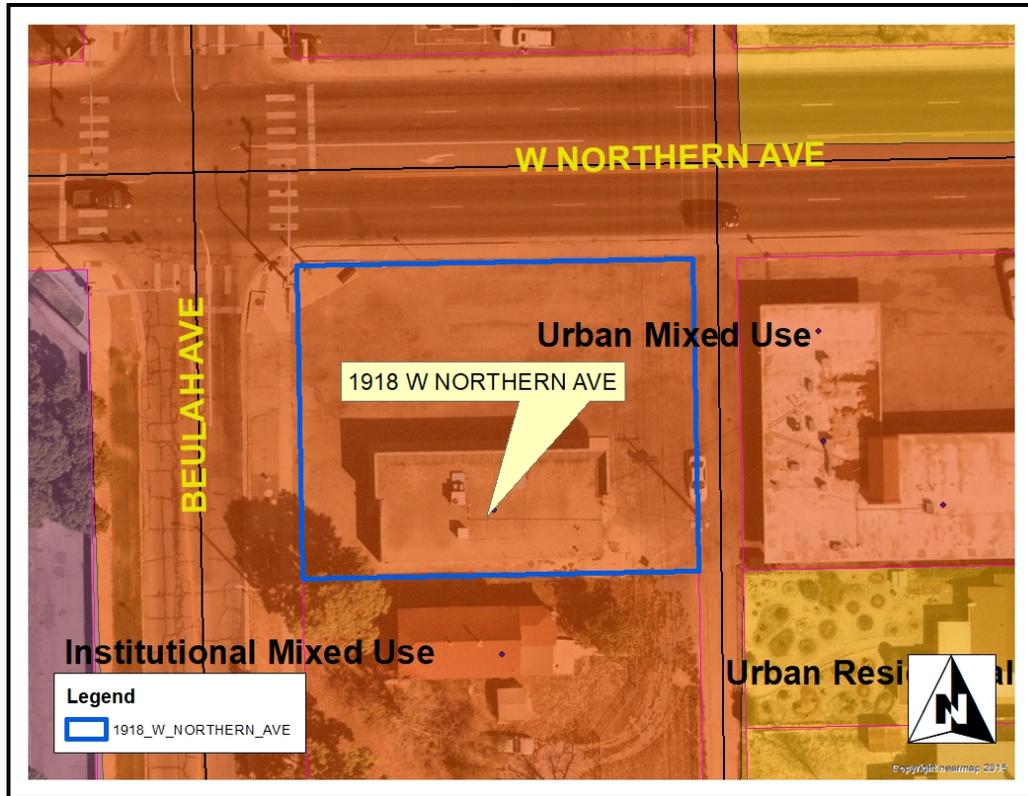


Exhibit F. Public Notice



Exhibit G. Site Pictures



Taken from Northern facing southwest



Taken from Northern & Beulah facing southeast



Taken from alley facing northwest



Taken from alley facing west

Exhibit H. 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 #:

Property Owner:		Applicant (if different from property owner):	
Contact Info	Name: <u>Melody R Gonzales</u>	Name: <u>Irene Caperon Reyes, Wendy Barrios</u>	
	Address: <u>2015 Lakeview Ave</u>	Company: <u>Pakerteria y Neweria Alaska</u>	
	City, State & Zip: <u>Pueblo CO 81004</u>	Address: <u>1918 W Northern Ave</u>	
	Phone: <u>(719) 334-1082</u>	City, State & Zip: <u>Pueblo CO 81004</u>	
	Email:	Phone: ()	Cell: <u>(970) 531-1701</u>
	Email: <u>Pynalaska@gmail.com</u>		
<i>The applicant will be the primary contact unless otherwise noted.</i>			
Property Info	Project Location: <u>1918 W Northern Ave Pueblo CO 81004</u>		
	Legal Description: <u>Ice Cream Shop/Parlor</u>		
	Parcel No:	Existing Zone:	
	Property Size:		
Project Information	General Information		
	Provide a short description of the proposed request:		
	<u>Open a Community kids friendly Ice Cream Shop/parlor for families to come together and have a good time while they enjoy a nice tasty snack/icecream</u>		
	What is the general use of the property: <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Industrial		
	<input type="checkbox"/> Multi-Family <input type="checkbox"/> Other		
Scope of work: <input checked="" 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 checked="" type="radio"/> Other: <u>Special Exception- Only PNF -KE</u>			
<input type="checkbox"/> Variance:			
<input type="radio"/> Setback <input type="radio"/> Parking <input type="radio"/> Landscape <input type="radio"/> Lighting <input type="radio"/> Height <input type="radio"/> Signs <input type="radio"/> 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: _____			

06/2020

(Continue Next Page)(Continued from Page 1)

Attachments	Attachment Checklist:	
	<p>The following list of attachments are required to accompany all applications:</p> <ul style="list-style-type: none"> <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 www.co.pueblo.co.us 	
Terms	By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:	
	<ol style="list-style-type: none"> 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. 	
Signatures	Property Owner	
	Print Name:	<i>Melody R. Gonzales</i>
	Signature:	<i>M. Gonzales</i> Date: <i>10/4/21</i>
	Applicant, if different from Property Owner	
Print Name:	<i>Irene Caperon Reyes Wendy Barrios</i>	
Signature:	<i>Irene Caperon Reyes Wendy Barrios</i> Date: <i>10/4/21</i>	

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

Exhibit I. Supporting Documents

Although Paleteria Y Neveria Alaska is a business. Alaska is planned to be a family friendly environment, where families and friends can come together for a good time. We have happily planned and created a special menu like no other in Pueblo Colorado. Alaska counts with 28 Ice cream and popsicle flavors and also 12 different flavors of fresh fruit waters all which will be home made with as many natural ingredients as possible. Alaska will also have a variety of different snacks such as fruits, fresas con crema (strawberries and creme) and many more unique treats only found in Alaska. Aside from the numerous options to enjoy Alaska is a place to be happy thanks to the help of crafty friends we have been able to hand paint a numerous amount of recognisable characters that everyone has grown up with and loves. Our colourful walls make Alaska a unique place to spend your Sunday afternoon or even a quick snack or first date. Alaska has met all required requirements for the Pueblo Environmental Health Department as well as the Regional Building, and the Pueblo Fire department. Alaska has passed all inspections and is up to all codes required by the city to be a functioning business. The Alaska building sits at a comfortable distance from the street and has a nice parking space in front completely off the road making it safe for everyone. Sitting at the corner of Northern and Beulah Alaska adds so much color to the scene and would also help bring more business to those around it, sitting to the right of Alaska neighbors Pizza King as well as other small food business vendors. Located on the Southern area of Pueblo Alaska has the uniqueness of being one of a kind as being that all major food restaurants are on the North side of the city Alaska will not only be an asset to the community because there is no other place like it, it will also help the Northern ave business to be popping again.

