

Mike Castellucci
Chair

Steve Anselmo
Vice Chair



Lisa Bailey
Secretary

Yvonne Lujan-Slak

Georgia Way

ZBA-21-40

Hearing Date: January 25, 2022

TO: City of Pueblo Zoning Board of Appeals
FROM: Wade Broadhead, Planner
THROUGH: Scott Hobson, Land Use Administrative Official
LOCATION: 1528 Wabash Ave, Pueblo CO 81004
APPLICANT: Heriberto Lopez
PROPERTY OWNER: Heriberto Lopez
YEAR BUILT: 1915 and 2021
LEGAL DESCRIPTION: Lot 15, Block 11, Lake Avenue Addition
ZONE DISTRICT: R-2
PARCEL ID: 1512211009
LOT SIZE: 2,850 sq ft

REQUEST:	A Variance to allow a single family home addition to encroach into both five foot required side yard setbacks.
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SYNOPSIS OF REQUEST

The applicant is requesting a variance of a one-foot encroachment into the north side yard and a three-foot eight-inch encroachment into the southern side yard for an already constructed single family building addition. The applicant added onto a smaller preexisting house sometime in 2020/21 without proper building permits. The Pueblo Regional Building Department issued building permits as an 'interior remodel', but no permits were pulled initially for the addition. The original house, built in 1915, was already in the setbacks prior to the addition. When the applicant tried to sell the house the due diligence process revealed the issue and staff directed the applicant to apply for a variance to allow a clean sale of the property and address the side yard encroachments.

ANALYSIS OF REQUEST

Records from the assessor show that the applicant purchased the property in November of 2020, and a Google street view shows the original smaller house in place in March of 2020. The applicant purchased the home in November 2020 and later street views and aerial imagery from the city show the home in its current configuration. The addition was made sometime between November 2020 and September 2021. The subject property is a nine hundred and fifty-two (952 sq ft) square feet increased the original 19 x 22 (418 sq ft) home. It appears the applicant extended the home to the west toward the street along the same setback lines as the original home. Since the lot is only 25 feet wide the home was already encroaching into both side yard setbacks, so any extension would require an action from the Zoning Board of Appeals to be lawful.

It appears the applicant constructed the addition then requested building permits. An interior remodel does not require zoning approval. In conversations about this case with the Regional Building Department staff would not have asked for a new site plan if they visited the site and the existing wall structure was already intact, they assumed the new arrangement was the original footprint.

Staff met with the applicant and immediately requested an Improvement Location Certificate (ILC). The ILC shows that the house is now one foot from the northern property line and sits one foot four inches from the

southern property line. While tenant finishes of existing building in the setback do not trigger sections of the building code; expansions of structures already in the required setback do trigger compliance with existing building codes and zoning approval. Had the correct information been given to the applicant he would have had to add fire reduction measures to the exterior walls and new windows for a new addition and seek a setback variance before construction. Mike Colucci from the Regional Building Department responded to this variance notice with the following comment:

“Once the property line is set and the fence located in the right place, we can actually review it for code. I’ve never seen the actual city aerial photos; we’re just going off Google maps. So, I would say that we need to get the first two items resolved first. He will have to provide us with an engineer’s stamped report regarding the foundation the “additions” sit on. It will then be up to the building inspector and the Chief Building Official to determine the requirements that may be needed. As of now, the fire rating of the two buildings is in question due to the proximity to each other. It seems that both 1528 & 1530 are not in compliance with either yours or our standards”. Email dated January 19, 2022 from Mike Colucci.

ZONING DISTRICT AND LAND USE

Zone:		Developed with:
North	R-2	Single Family Homes
East	R-2 and R-3	Single Family Homes
South	R-2	Single Family Homes
West	R-2	Single Family Homes

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	See attached email dated January 19, 2022 cited above
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: Negative Finding. The reduced rear yard setback will reduce light and air to adjacent properties as this lot. The only way to mitigate this impact is a shared maintenance access agreement with the property to the south so that future owners will be able to maintain that side of the home going forward.

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. The addition will not negatively affect the general planning of the city if approved with staff conditions. The impacts are only felt to one property to the south, while there is encroachment into the north it is only minor. As conditioned the impacted will be mitigated to the extent possible.

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

Comments: Affirmative Finding. The home is on a very small lot, even by local neighborhood standards and a variance would have been needed to significantly improve the home which was already in the setbacks. The City would have preferred to review before construction to ensure compliance with all applicable building codes and zoning codes. Despite the shortcomings following the process, the property would not have been redeveloped without action from the zoning board of appeals.

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: Affirmative Finding. With a 25' front and less than 3000 sq ft the lot is small even for Bessemer standards, making it eligible for variances to assist in the redevelopment of what appears to have been a deteriorating property.

PLANNING AND COMMUNITY DEVELOPMENT STAFF RECOMMENDATION

If the Board chooses to approve this Variance staff only recommends Standard Permit Conditions 1 through 13 as well as Staff conditions A-D below:

- A. Obtain an easement with the property to the south for continual maintenance of the property at 1528 Wabash Avenue and provide a copy of the easement to Pueblo Department in prior to variance being issued.**
- B. Move the fence line to the property line. The correct property line needs to be established with an official survey.**
- C. Comply with all fire mitigation and building codes required by the Pueblo Regional building Department, provide proof to the Pueblo Planning Department in Twelve months.**
- D. Obtain permits from the Pueblo Public Works Department for the curb cut or repair and replace.**

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: 1/25/2022	
1.	Time Limits Zoning permit shall become invalid unless work or action authorized by permit is fully executed by 1/25/2023
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

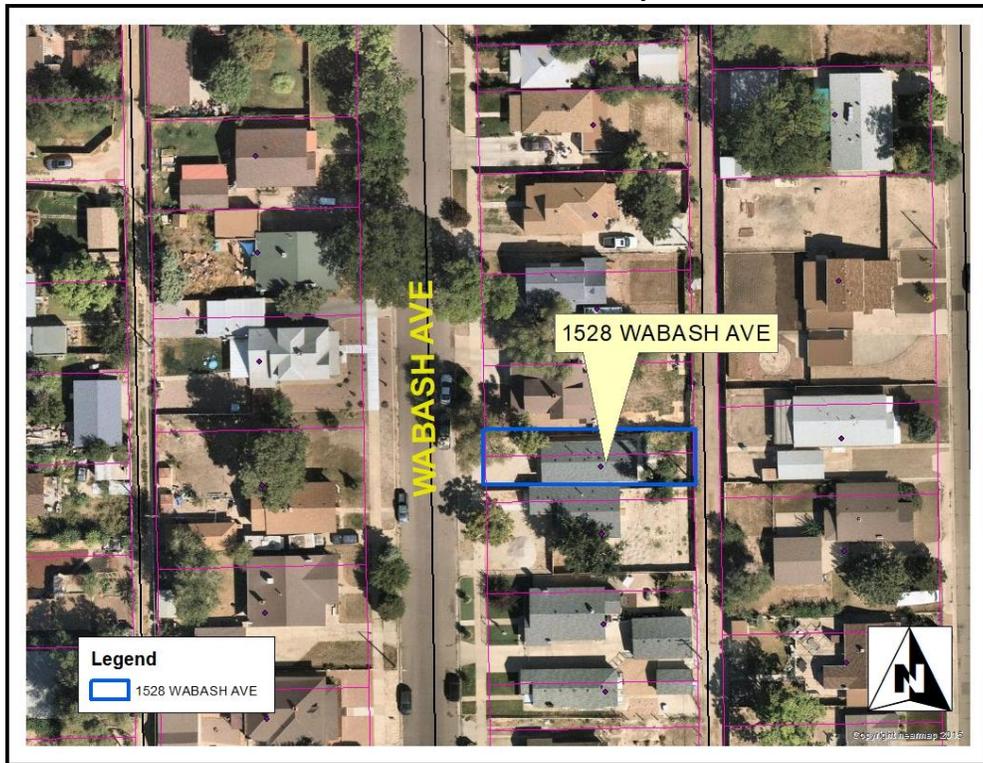


Exhibit C. Site Map

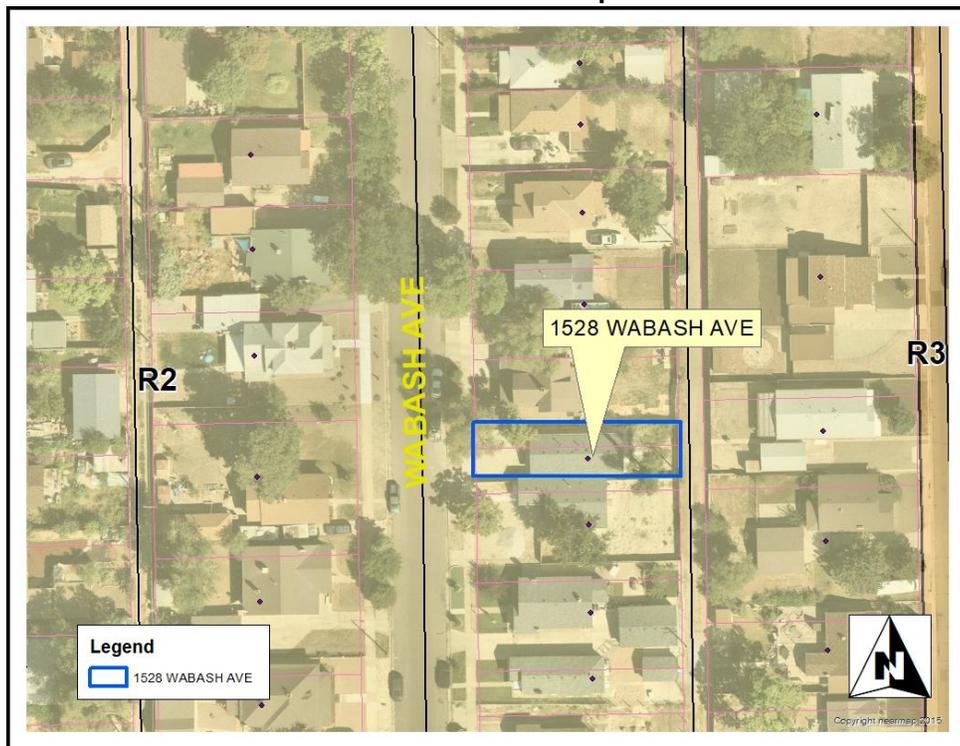


Exhibit D. Zoning Map

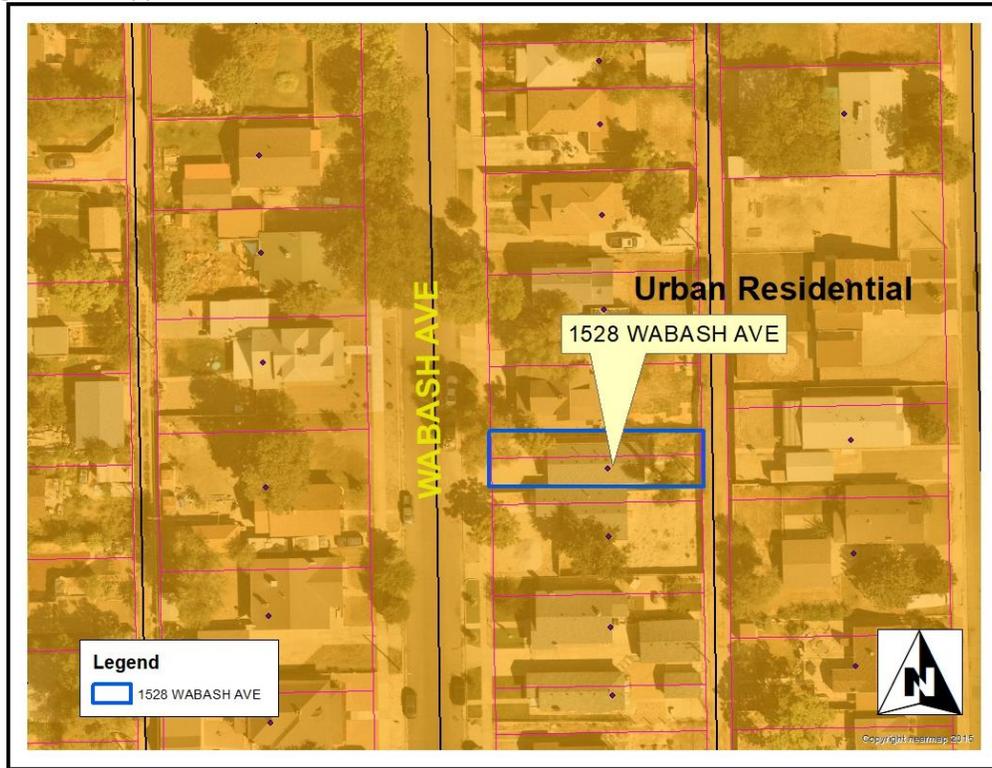


Exhibit E. Comprehensive Plan Map



Aerial before addition

Exhibit F. Public Notice



Taken from 10th St facing south.

G. Site Pictures



Taken looking east.



View of the southern property line.



Close up of the encroachment property line.



Northern setback overview.

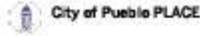


Removed curb section.

Exhibit H. Application

12/28/21, 2:10 PM

OpenGov



12/28/2021

21-84

Zoning Board of Appeals - Special Use Permit & Variances

Status: Active

Date Created: Dec 28, 2021

Applicant

Heriberto Lopez
heriberto.lopez61@yahoo.com
8238 tutt blvd
colorado springs, co 80924
719-434-0979

Location

1528 WABASH AVE
PUEBLO, CO 81004

Owner:

LOPEZ HERIBERTO
6045 COWPOKE RD PMB 149 STE 105 COLORADO SPRINGS, CO
80924-5205

Internal

ZBA Case Number

--

Planner Assigned

--

ZBA

Hearing Date

--

Hearing Results

--

Board Conditions

--

Appeal Term End Date

--

Permit Completion Date

--

Specially Requested Hearing

Public Notice

Number of Posters

--

Number of Postcards Sent

--

Cost of Newspaper Notice

--

Public Notice Costs

0

Other Fees:

--

Public Notice costs must be paid by:

--

Public notice zoning poster must be displayed BY:

--

Public Notice zoning poster must be displayed UNTIL:

--

Scope of Work

Type of Request

Variance

Variance Type

Setback

Provide a short description of the proposed request:

purchased property that needs set back variance on south and north of home

<https://puebloco.viewpointcloud.io/#/explore/records/25241/printable?act=true&app=true&att=true&emp=true&int=true&loc=true&sec=1011981%2C10...> 1/3

12/28/21, 2:10 PM

OpenGov

What is the general use of the property

Residential

Detailed explanation of the request as listed above.

finished a house that was extended cant get finance or sale because of it

Justification of facts required for the request. Be specific.

see upload attachments

Please see the attached document for assistance with Justification of Facts:

% ZBA Use by Review Assistance
(https://viewpointcloud.blob.core.windows.net/profile-pictures/ZBA_Use_by_Review_HANDOUT_06-2020_Thu_Jul_22_2021_15:43:00_GMT+0000_(Greenwich_Mean_Time)2020_Thu_Jul_22_2021_15:43:00_GMT+0000_(Greenwich_Mean_Time)

Please see the attached document for assistance with Justification of Facts:

% ZBA Non-Residential Variance Assistance
(https://viewpointcloud.blob.core.windows.net/profile-pictures/ZBA_Non-Residential_Variance_HANDOUT_06-2020_Thu_Jul_22_2021_15:42:48_GMT+0000_(Greenwich_Mean_Time)2020_Thu_Jul_22_2021_15:42:48_GMT+0000_(Greenwich_Mean_Time)

% ZBA Residential Variance Assistance
(https://viewpointcloud.blob.core.windows.net/profile-pictures/ZBA_Residential_Variance_HANDOUT_06-2020_Thu_Jul_22_2021_15:42:55_GMT+0000_(Greenwich_Mean_Time)2020_Thu_Jul_22_2021_15:42:55_GMT+0000_(Greenwich_Mean_Time)

Are there any concurrent zoning requests?

No

Variance Justification of Facts

Describe how the granting of a 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.

see attached letter

Describe how the general planning of the City with respect to land use, density of use and the location of streets and highways will not be jeopardized.

see attached letter

Describe how strict adherence to this Title would not secure appropriate development of the property for which the variance is requested.

see attached letter

Describe how 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.

see attached letter

Terms

Is the applicant and property owner the same?

Yes

Applicant/Property Owner Signature

heriberto lopez
12/28/2021

Attachments

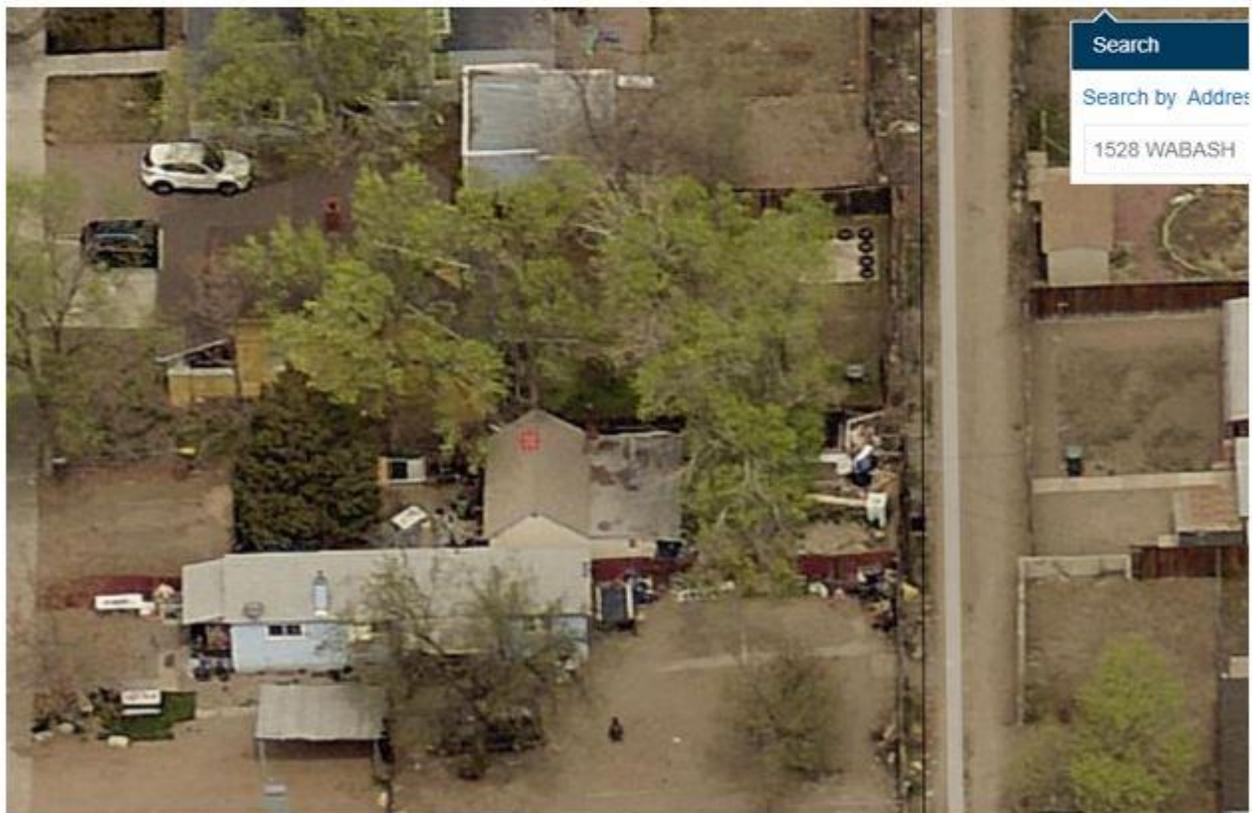
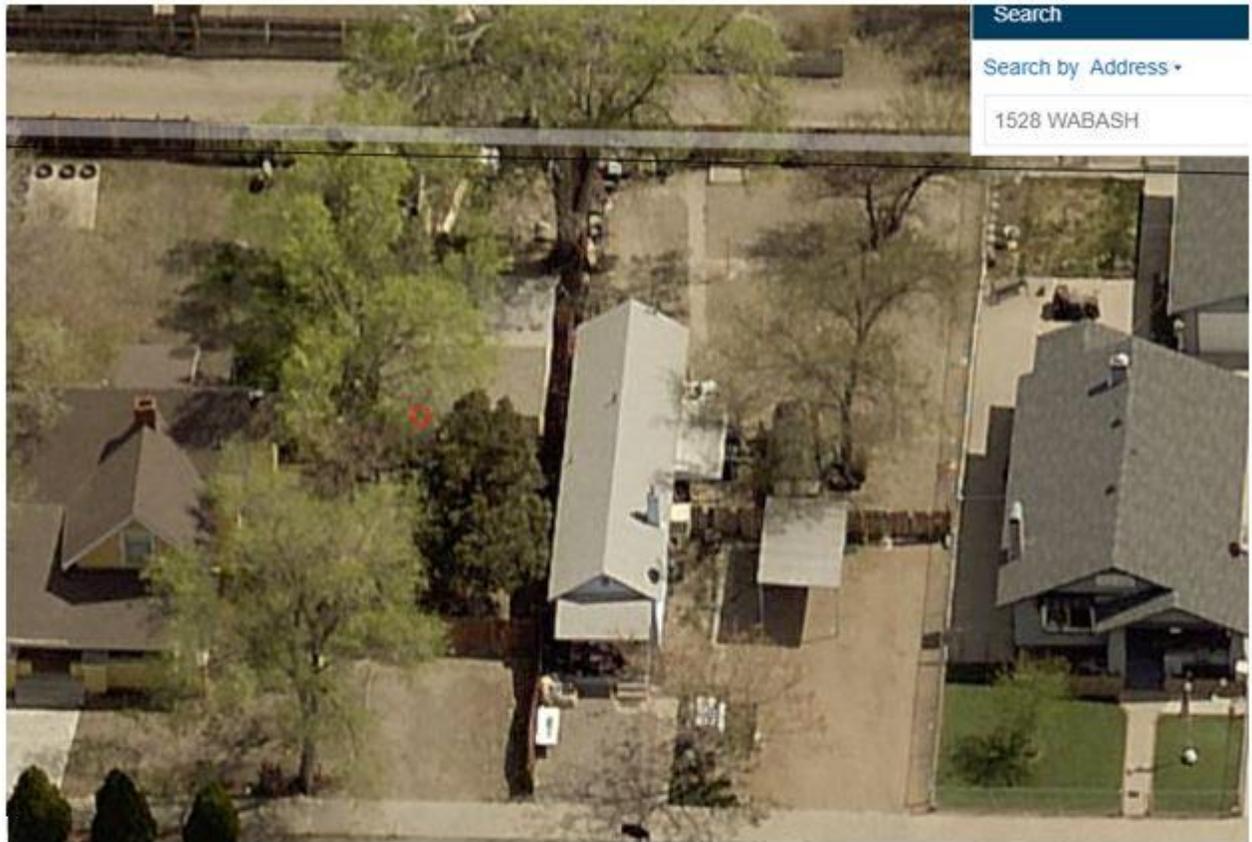
 wabash.pdf
Uploaded by Heriberto Lopez on Dec 28, 2021 at 1:16 pm

History

Date	Activity
Dec 28, 2021 at 1:05 pm	Heriberto Lopez started a draft of Record 21-84
Dec 28, 2021 at 1:17 pm	Heriberto Lopez submitted Record 21-84
Dec 28, 2021 at 1:17 pm	approval step Fee Review was assigned to Planning Front Counter on Record 21-84

https://pueblo.viewpointcloud.io/#/explore/records/25241/printable?act=true&app=true&att=true&emp=true&int=true&loc=true&sec=1011981%2C10... 2/3

Oblique aerials of 1528 Wabash pre-addition



Overview Improvements Land Details Documents More GIS Map Zoning Septic Permits More

NAMES ARE NOT NECESSARILY LISTED AS TITLE IS HELD, SOME MAY BE SHORTENED OR ABBREVIATED.
 PLEASE CONTACT THE ASSESSOR'S OFFICE AT (719)583-6603 FOR CORRECT OWNERSHIP.

SALE DATE	AMT	RECEPTION	TYPE	GRANTEES	GRANTORS	BOOK / PAGE
11/09/2020	\$0	2200088	SUPPLEMENTAL AFFIDAVIT(SUPAFF)	- c/o:	GARCIA GENO	-
11/06/2020	\$20,000	2200089	GENERAL WARRANTY DEED(GWD)	LOPEZ HERIBERTO	GARCIA GENO	-
05/18/2017	\$0	2070802	DEATH CERTIFICATE(DC)	GARCIA (JERRI R)	GARCIA GENO + JERRI R GARCIA GENO + JERRI RENEE GARCIA J R + G/LEWIS T L GARCIA J R + G/MITCHELL W R	-
10/07/2010	\$0	331292	WARRANTY DEED(WD)	BERNARD JOE B	BERNARD JOE B	-
01/12/2006	\$31,900	1657897	WARRANTY DEED(WD)	GARCIA GENO + JERRI R	CONE BERNARD M	-
10/02/2003	\$20,000	1530345	WARRANTY DEED(WD)	CONE BERNARD M	ARCHULETTA ROBERT + RAMONA	-
04/06/1993	\$6,500	1020783	WARRANTY DEED(WD)	ARCHULETTA ROBERT + RAMONA	SAME	-
02/13/1986	\$0	794237	QUIT CLAIM DEED(QCD)	SAME	MC LAUGHLIN AMEL L	-
09/25/1984	\$2,500	755637	WARRANTY DEED(WD)	MC LAUGHLIN AMEL	PUEBLO GOODWILL INDUSTRIES INC	-

Pueblo County Assessors website Chain of title information regarding 1528 Wabash.

Permit No.	Street No.	Unit	Street	Date	Type	Workclass	Owner	Contractor	Phone
2105293	1528		WABASH AVE	2021-04-12	Electrical	003R Electrical Other Wire Remodel	HERIBERTO LOPEZ	SOUTHERN COLORADO ELECTRIC INC	719-434-0979
2105294	1528		WABASH AVE	2021-04-09	Mechanical	004 Mechanical New HVAC SYSTEM 0 GAS PIPING 0	LOPEZ	ADVANTAGE HEATING & COOLING	719-232-3264
2105218	1528		WABASH AVE	2021-04-09	Plumbing	002R Plumbing Other Plumb Remodel	HERIBERTO LOPEZ	DMR PLUMBING INC	719-434-0979
2017244	1528		WABASH AVE	2020-12-02	Building	437 Res. Int. Remodel RESIDENTIAL INTERIOR REMODEL 15000	HERIBERTO LOPEZ	HL CUSTOM HOMES LLC	719-434-0979
2017243	1528		WABASH AVE	2020-12-02	Building	702 Res. Siding SIDING 9000	HERIBERTO LOPEZ	HL CUSTOM HOMES LLC	719-434-0979
2017242	1528		WABASH AVE	2020-12-02	Building	701 Res. Reroof ROOF-CONTRACT VALUE 9800	HERIBERTO LOPEZ	HL CUSTOM HOMES LLC	719-434-0979
1501359	1528		WABASH AVE	2015-02-10	Building	701 RES. REROOF RE-ROOF DIMENSIONAL 10	GARCIA	CORNERSTONE ROOFING & GUTTERS	719-564-5470

Build permits pulled for 1528 Wabash in the last 3 years.



Pueblo County Assessors street photo of the previous house and for sale sign.