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Chair

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Vice Chair



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## ZBA-22-02

Hearing Date: March 22, 2022

<b>TO:</b>	City of Pueblo Zoning Board of Appeals
<b>FROM:</b>	Danielle Baxter, Planner
<b>THROUGH:</b>	Scott Hobson, Land Use Administrative Official
<b>LOCATION:</b>	<b>2014 E 5th Street, Pueblo, CO 81001</b>
<b>APPLICANT:</b>	<b>Ernesto Burgos</b>
<b>PROPERTY OWNER:</b>	Ernesto Burgos
<b>YEAR BUILT:</b>	1998
<b>LEGAL DESCRIPTION:</b>	LOT 1 BLK 1 FRANKENBERGS 2ND FILING FORMERLY #04321-10-003
<b>ZONE DISTRICT:</b>	Single Family Residential (R-2 Zone) District
<b>PARCEL ID:</b>	432144001
<b>LOT SIZE:</b>	<b>5,700 sqft</b>
<b>REQUEST:</b>	Variance to reduce the required side yard setback from 5 feet to 9 inches in a Single Family Residential (R-2 Zone) District.

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### SYNOPSIS OF REQUEST

The applicant is requesting a variance to reduce the side yard setback in a Single Family Residential (R-2) Zone District. The residence is located in the Frankenberg's Subdivision, which is located west of the US Highway 50 Bypass & State Highway 47 intersection. The applicant is requesting a variance to allow for a nine-inch (9") side yard setback instead of the required five-foot (5') side yard setback to allow an existing enclosed carport on the property. In accordance with 17-4-23(a)(3) of the Pueblo Municipal Code (PMC), the applicant is required to obtain a variance because the accessory structure was built in the required side yard setback.

### ANALYSIS OF REQUEST

In 1985 the lot in question was subdivided from a 0.264-acre parcel to create two new lots in the Frankenberg's 2<sup>nd</sup> filing (Block 1, Lots 1 & 2). The subject property is a 5,700 square foot residential lot with a 916 square foot single family residence constructed on the property in 1998. Based on GIS images of the property, the carport in question was constructed between August 2018 and July 2019, however no building permit was ever obtained for the accessory structure. The applicant states that he converted the attached 650 square foot, single vehicle, carport about four years ago to create the current, fully enclosed garage to deter theft of his belongings. However, the carport was constructed within the required five-foot side yard setback for the R-2 zone district without any building permits.

The garage is attached to the primary structure and measures approximately 15 feet wide along East 5<sup>th</sup> Street and extends the full length of the house at 42 feet long. A garage door, stone façade, and sconces were installed on the north side of the garage to enhance the appearance of the structure from East 5<sup>th</sup> street. It is important to note that this half of the block along E 5<sup>th</sup> St does not have rear alley access to the property, which is common to all other properties in this area. Without the rear alley access this front facing access is the only viable option for a garage on this property.

Pueblo Regional Building Department has no building permit on file for the original construction of the attached carport or the garage conversion. On October 26, 2021, Regional Building received a complaint regarding the garage. Three days later Regional Building conducted an on-site inspection of the property but since there was no

active construction work on the property there was no further action taken by their department. Also on October 26, 2021, the City of Pueblo Code Enforcement Department was notified of the garage. On January 18, 2022, a Code Enforcement Officer conducted an on-site inspection and notified the resident of the zoning violation. The Code Enforcement department is giving Mr. Burgos until March 6, 2022, to rectify the situation with the Zoning Board of Appeals and Pueblo Regional Building.

**ZONING DISTRICT AND LAND USE**

Zone:		Developed with:
North	Single-family Residential (R-2) Zone District	E 5 <sup>th</sup> St; Single-family Residential
East	Single-family Residential (R-2) Zone District	Single-family Residential
South	Central Business (B-4) Zone District	Single-family Residential; Tire Shop
West	Single-family Residential (R-2) Zone District	Single-family Residential

**COMPREHENSIVE PLAN**

The comprehensive plan depicts Urban Residential for this parcel. Urban Residential neighborhoods are found predominantly within the city limits of Pueblo and the urbanizing areas in the City’s immediate periphery. They are generally located on a grid roadway network that interconnects a large portion of the urban area. The existing mixture of housing types that range from single family detached housing to duplexes and multi-family housing will be continued with emphasis on maintaining the existing housing stock and in-fill development. Where appropriate, community scale commercial services will be created to provide the necessary day-to-day needs of residents within walking distance. Development in these Urban Neighborhoods is typically at densities of 4 to 7 units per acre and often reflects the traditional urban residential layout used in the early development of Pueblo. As the City of Pueblo expands to the north, south and southwest, a continuation of these Urban Residential Areas should be continued. Interconnected neighborhoods, sanitary sewer and neighborhood parks should be an integral part of the development.

**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	Per email from Roger Anderson, dated February 14, 2022, “Pueblo Regional Building will require permits for the garage addition. To comply with the building code, we will require details showing fire rated construction for both the wall and roof 9” from the property line and for wall adjoining the house.”
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: Neutral finding. The garage may reduce light to a portion of the adjacent property to the east. The garage has been built within 9 inches of the east property line, which resulted in the wood plank fence separating the two properties being removed. However, the parcel to the east has a metal carport constructed along the shared property line within the front and side-yard setbacks. The two parking structures sit parallel to each other along the shared property line.**

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: Neutral finding. The property does not have rear alley access, which is common to only seven other parcels on the south side, of the eastern portion of the 2000 Block of E. 5<sup>th</sup> Street. Most of the surrounding neighborhood was subdivided based on the traditional grid layout, providing alley and street access to most single-family residences. Because of the location of the house, there is not adequate width along the eastern property line to accommodate off-street parking for two vehicles. However, the garage could have been constructed to 10 feet in width instead of 15 feet and not encroached on the side yard setback.**

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. The parcel is 50 feet wide, which meets R-2 minimum lot width requirements. However, this half of the block does not have a rear alley access, which is not common for all other parcels in this area.**

**PLANNING AND COMMUNITY DEVELOPMENT STAFF RECOMMENDATION**

If the Board chooses to approve this Variance staff recommends Standard Permit Conditions 1 through 13 and the following staff condition.

1. It appears that there is a gutter on the east side of the garage but there is no downspout redirecting the runoff onto the applicant's property. A downspout needs to be installed so all stormwater remains on the applicant's property.

**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

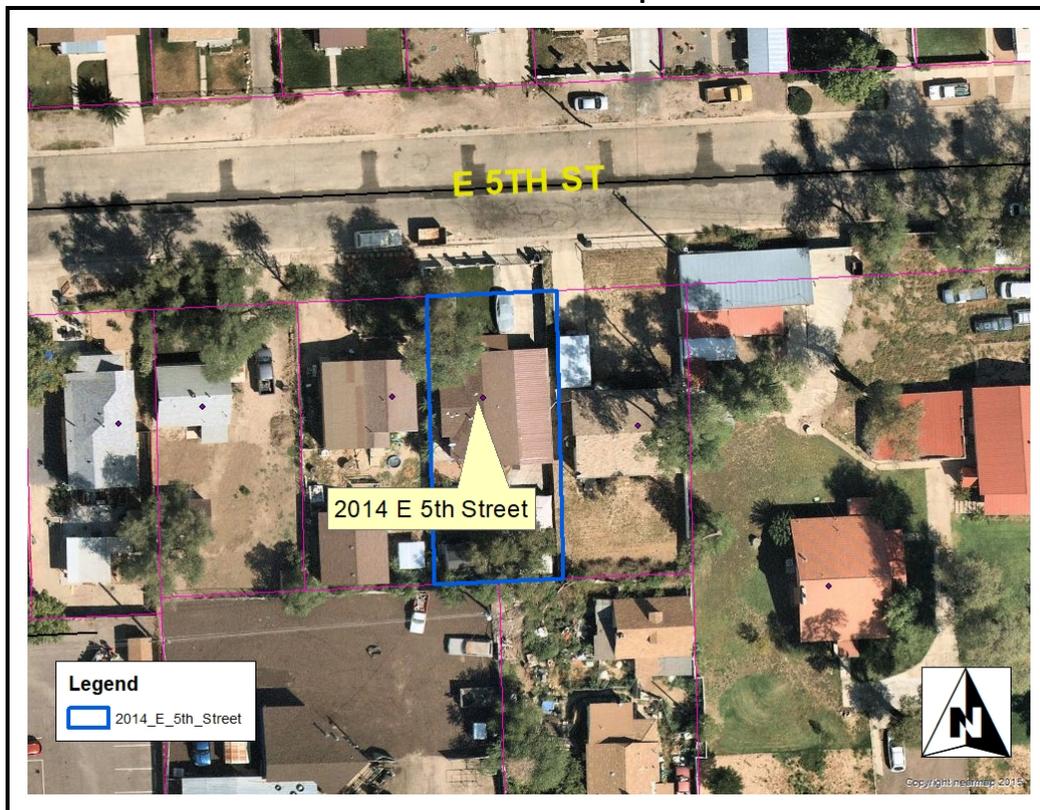
**Exhibit A. Standard Permit Conditions**

<b>Standard Permit Conditions</b> Date of Issuance of Permit: <b>03/22/2022</b>	
1.	<b>Time Limits</b> Zoning permit shall become invalid unless work or action authorized by permit is fully executed by <b>03/22/2023</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.

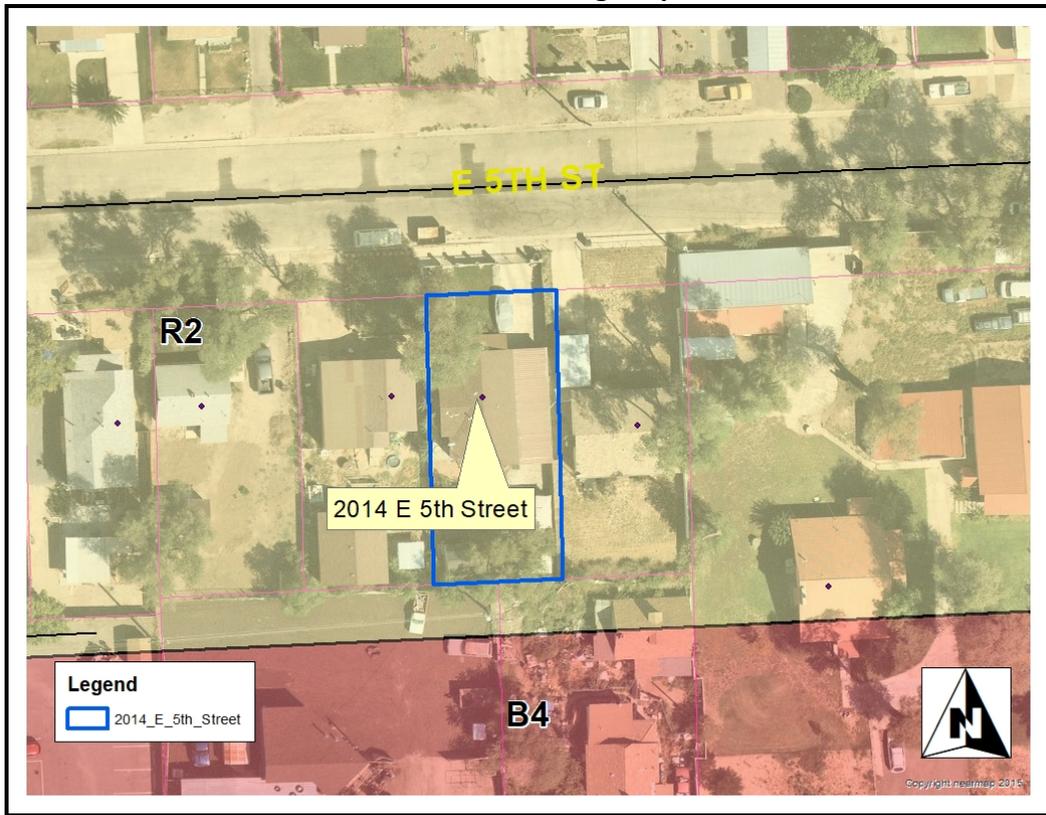
**Exhibit B. Location Map**



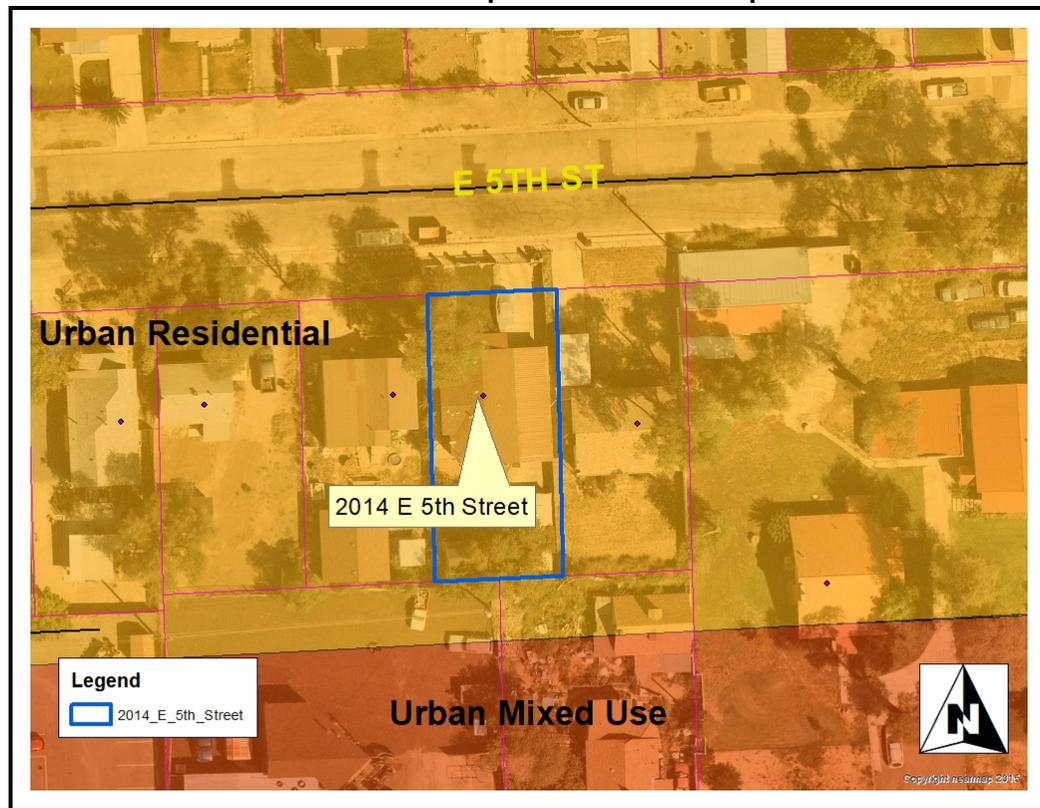
**Exhibit C. Site Map**



**Exhibit D. Zoning Map**



**Exhibit E. Comprehensive Plan Map**



**Exhibit F. Public Notice**



Taken from E 5<sup>th</sup> St facing south.

**G. Site Pictures**



Taken from E 5th facing south.



Taken from E 5th facing south.



Taken from E 5th facing southwest.

### Exhibit H. Application

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City of Pueblo PLACE

01/21/2022

#### 22-10

Zoning Board of Appeals - Special Use Permit & Variances

**Status:** Active

**Date Created:** Jan 21, 2022

#### Applicant

Ernesto Burgos  
ernestoburgos94@gmail.com  
2014 E 5TH ST  
Pueblo, Co 81001  
7199948605

#### Location

2014 E 5TH ST  
PUEBLO, CO 81001

#### Owner:

BURGOS MONRREAL ERNESTO SANCHEZ RODRIGUEZ JASMIN ,  
2014 E 5TH ST PUEBLO , CO 81001-3838

#### Internal

**ZBA Case Number**  
ZBA-22-02

**Planner Assigned**  
--

**ZBA**

**Hearing Date**  
02/22/2022

**Hearing Results**  
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**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:**  
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#### Scope of Work

**Type of Request**

**Variance Type**

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Variance

Setback

**Provide a short description of the proposed request:**

I would like to keep the 9 inch setback between the enclosed carport and the fence

**What is the general use of the property**

Residential

**Detailed explanation of the request as listed above.**

I would like to keep the 9 inch setback that is between the enclosed carport and the fence.

**Justification of facts required for the request. Be specific.**

Existing enclosed carport for 4-5 years. None of the neighbors have complained.

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

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\\_\(Greenwich\\_Mean\\_T2020\).pdf](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_T2020).pdf))

 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\\_\(Greenwich\\_Mean\\_T2020\).pdf](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_T2020).pdf))

 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\\_\(Greenwich\\_Mean\\_T2020\).pdf](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_T2020).pdf))

**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.**

Enclosed carport does not reduce light or air and does not create a nuisance to properties within 100 feet and it does not reduce the value of properties within 100 feet.

**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.**

Enclosed carport is not near the street or highway

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

Unknown

**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.**

This property did not have a garage when purchased as other properties in the area have garages.

**Terms**

**Is the applicant and property owner the same?**

Yes

**Applicant/Property Owner Signature**

Ernesto Burgos Montreal  
01/21/2022

**Attachments**



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2014 E. 5th 00010001.pdf

Uploaded by Ernesto Burgos on Jan 21, 2022 at 10:45 am



20220121\_110239.jpg

Uploaded by Michelle Cruz on Jan 21, 2022 at 11:29 am



20220121\_110239.jpg

Uploaded by Ernesto Burgos on Jan 21, 2022 at 11:44 am

**History**

Date	Activity
Jan 21, 2022 at 10:20 am	Ernesto Burgos started a draft of Record 22-10
Jan 21, 2022 at 10:47 am	Ernesto Burgos submitted Record 22-10
Jan 21, 2022 at 10:47 am	approval step Fee Review was assigned to Planning Front Counter on Record 22-10
Jan 21, 2022 at 10:47 am	changed the deadline to Jan 23, 2022 on approval step Fee Review on Record 22-10
Jan 21, 2022 at 11:55 am	Karen Elgin changed ZBA Case Number from "" to "ZBA-22-02" on Record 22-10
Jan 21, 2022 at 11:55 am	Karen Elgin changed Hearing Date from "" to "02/22/2022" on Record 22-10
Jan 21, 2022 at 11:56 am	Karen Elgin assigned approval step Fee Review to Karen Elgin on Record 22-10
Jan 21, 2022 at 11:56 am	Karen Elgin approved approval step Fee Review on Record 22-10

**Timeline**

Label	Status	Activated	Completed	Assignee	Due Date
Fee Review	Complete	Jan 21, 2022 at 10:47 am	Jan 21, 2022 at 11:56 am	Karen Elgin	01/22/2022
Application Fee	Active	Jan 21, 2022 at 11:56 am	-	-	-
Intake Review	Inactive	-	-	-	-
Land Use Tech Review	Inactive	-	-	-	-
Case Assignment	Inactive	-	-	-	-
Planning (Zoning) Initial Review of Submittal	Inactive	-	-	-	-
Public Notice	Inactive	-	-	-	-
Public Notice Memo	Inactive	-	-	-	-
Public Notice Fee	Inactive	-	-	-	-
Staff Report and Agenda Distribution	Inactive	-	-	-	-
ZBA Hearing Outcome	Inactive	-	-	-	-
Review Permit	Inactive	-	-	-	-
Final Inspection	Inactive	-	-	-	-

Exhibit I. Supporting Documents

