

Mike Castellucci
Chair

Steve Anselmo
Vice Chair



Lisa Bailey
Secretary

Yvonne Lujan-Slak

Georgia Way

ZBA-24-14

TO: City of Pueblo Zoning Board of Appeals
FROM: Bart Mikitowicz
THROUGH: Scott Hobson, Land Use Administrative Official
LOCATION: 519 Beaumont Ave, Pueblo, CO 81001
APPLICANT: Keith Henderson
PROPERTY OWNER: Henderson Brothers 2 LLC
YEAR BUILT: 1941
LEGAL DESCRIPTION: S 1/2 LOTS 13 TO 16 BLK 8 EASTWOOD RE-SUB
ZONE DISTRICT: Single Family Residential (R-2) Zone District
PARCEL ID: 428326007
LOT SIZE: 1200
CONCURENT REQUEST: Z-24-04

REQUEST: A Special Exception to allow for Contractor's Yard in a Single Family Residential (R-2) Zone District.
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BACKGROUND

519 Beaumont Ave. is a 1,200 sq ft commercial garage, built in 1941, on a 7,000 sq ft lot in the Eastside Neighborhood north of E. 4th Street. In the 1950's the property was used for Rowley's Garage and Auto Repair. The subject property is located approximately 330-feet north of the commercial and industrial E. 4th Street Corridor. Records that that this property was used for automotive services until 2010, in 2011 a Special Exception was granted by the Zoning Board of Appeals to allow a tow service (ZBA-06-2011). The property was annexed into the City in 1966 and was likely zoned R-2 at that time. Historically this commercial property is considered a legal non-conforming use. According to Sec. 17-3-5 (3) "If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use, provided that the Zoning Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accordance with the provisions of this Title."

In 2011, 519 Beaumont Ave. successfully appealed an administrative determination through ZBA which allowed for the automotive repair use, to be converted into a towing service use. A towing service is generally considered a more intense use compared to an auto repair garage due to the tow yards operating after hours and on weekends. The hearing results included approval of the Special Exception including conditions to protect nearby residence from the more intense use and traffic.

In 2019, the applicant purchased the property, discontinuing the towing service use and instituting a contractor's yard for their interior/exterior painting services; however, the business was not licensed to the address at that time. Currently, the owner is trying to bring the business into compliance with the sales tax code. This requires a business license, which in turn, requires that the business be legally operating in an appropriate zone district. To maintain the subject property's ability to continue operating under the legal nonconforming use guidelines the applicant is required to get a special exception through the Zoning Board of Appeals before obtaining a business license.

ANALYSIS OF REQUEST

The subject property has served as a commercial property since it was originally built. The principal structure is a garage and not a single-family residence. The applicant is using the property as a contractor’s yard, and the intensity of this use is much lower than the previous use, especially the towing service. Ingress and egress are taken directly off Beaumont Ave. The site provides plenty of off-street parking and does not deal with consumer traffic. The refuse is stored on-site in a dump trailer and emptied directly by the owners. The site is completely secured with opaque fencing. There are no signs, and the applicant has not indicated the desire to install any. The property meets landscape and open space requirements. While the site is zoned R-2 the majority of residential uses are located north of the subject property; properties located to the south, east, and west of the subject site are a mix of commercial and government uses that are reasonably compatible with the contractor's yard. Staff does not anticipate negative externalities greater than those that were associated with the previous tow yard business.

ZONING DISTRICT AND LAND USE

Zone:		Developed with:
North	Single-Family Residential (R-2) Zone District	Single-family homes
East	Single-Family Residential (R-2) Zone District	Gallegos Stucco
South	Government Use (S-1) Zone District	Pueblo County DHHS Food Distribution Center
West	Single-Family Residential (R-2) Zone District	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	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 USE PERMIT

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. Ingress and egress are taken from the Beaumont Ave.

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. The property is gated and there is ample off street parking for employees.

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

Comments: Neutral finding. The refuse is stored on-site in a dump trailer and emptied directly by the owners. However this does not considered a conventional trash service.

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

Comments: Affirmative finding. The applicant attests that utilities are already being serviced to the property.

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

Comments: Affirmative finding. The property has established landscaping compliant with the zone district.

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. There are no signs, and the applicant has not indicated the desire to install any.

7. Required yards and other open space.

Comments: Neutral Finding. The property meets landscape and open space requirements, however landscaping maintenance is need.

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

Comments: Affirmative finding. While the site is zoned R-2, the majority of residential uses are found to the north of the subject property; properties located south, east, and west of the subject site are a mix of commercial and government uses that are reasonably compatible with the contractor's yard

PLANNING AND COMMUNITY DEVELOPMENT STAFF RECOMMENDATION

If the Board chooses to approve this Special Use Permit staff recommends Standard Permit Conditions 1 through 13 and the following staff recommended conditions:

1. The hours of operation for the contractor's yard business will be limited to 8:00 a.m. to 6:00 p.m.
2. Repair or provide landscaping improvements to the front facing landscaped area seen in "Exhibit F"

ATTACHMENTS

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

Exhibit A. Standard Permit Conditions

Standard Permit Conditions Date of Issuance of Permit: 3/26/2024	
1.	Time Limits Zoning permit shall become invalid unless work or action authorized by permit is fully executed by 3/26/2025
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 C. Aerial Map



Exhibit D. Zoning Map

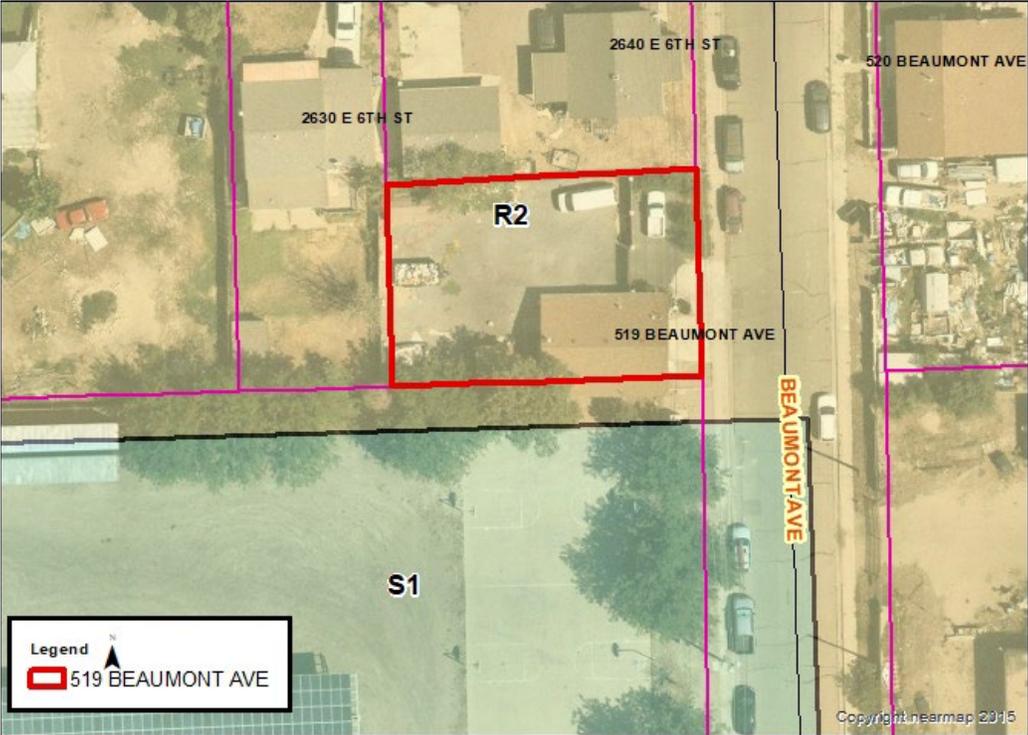


Exhibit E. Comprehensive Plan Map

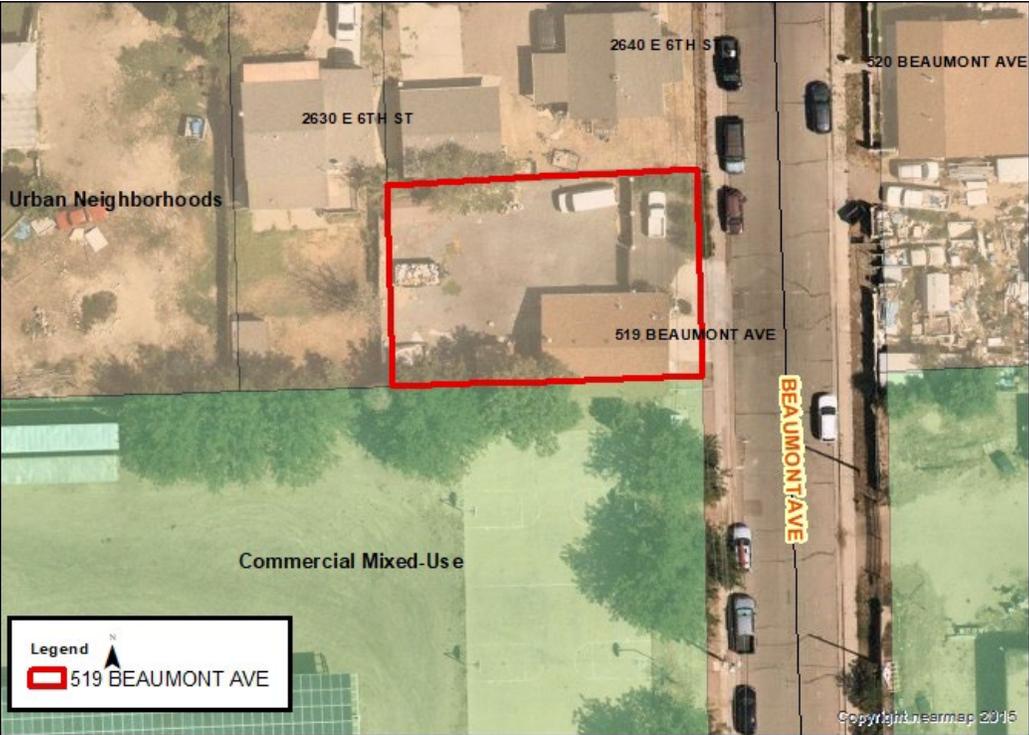


Exhibit F. Public Notice



Exhibit G. Site Photos



H. Application

2/28/24, 10:58 AM

24-41



City of Pueblo PLACE

2/28/2024

24-41
Zoning Board of Appeals -
Special Use Permit &
Variances
Status: Active
Submitted On: 2/28/2024

Primary Location
519 BEAUMONT AVE
PUEBLO, CO 81001
Owner
HENDERSON BROTHERS 2
LLC
519 BEAUMONT AVE PUEBLO
.CO 81001-2328

Applicant
 Keith Henderson
 719-251-0712
 hbpaint2016@gmail.com
 519 Beaumont Ave.
Pueblo, Colorado 81001

Internal

ZBA Case Number

ZBA-24-14

Planner Assigned

-

Address Validation by GIS?

ZBA

Hearing Date

03/26/2024

Hearing Results

-

Board Conditions

Appeal Term End Date

-

Permit Completion Date

-

Specially Requested Hearing

Public Notice

Number of Posters

-

Number of Postcards Sent

-

THE ZONING BOARD OF APPEALS, CITY OF PUEBLO, STATE OF COLORADO

IN RE:

AN APPEAL TO THE DETERMINATION THAT A TOWING BUSINESS AND STORAGE OF VEHICLES IS NOT ALLOWED IN AN R-2 ZONE DISTRICT

FINDINGS, CONCLUSIONS AND ORDER
OF THE ZONING BOARD OF APPEALS

This appeal was filed by Michael M. Stine and Tamara J. Stine (the Appellants) concerning the property located at 519 Beaumont Avenue, Pueblo, Colorado 81001 (the Property). After hearing all the testimony and reviewing all the evidence, the Board makes the followings of fact, conclusions of law and order:

INTRODUCTION

1. The Appellants appealed the City's Determination and Notice of Violation that a towing business could not be conducted in an R-2 single-family zone district
2. In November 2010 the Appellants were sent a Notice of Violation and Order to Correct from a Planning Department Zoning Enforcement Officer. The Notice stated the Appellants had violated Section 17-4-51 of the Pueblo Municipal Code, concerning the permitted use of land and buildings in an R-2 zone district, and Section 11-1-405(b)(5) dealing with nuisances, barbed wire and corrugated metal fences in an R-2 zone district.
3. The Property was being used as a towing company, which the City contended was not a permitted use, either by right or by review, in an R-2 zone district and that the type of fencing around the Property was also not allowed in an R-2 zone district.

FINDINGS

1. The Appellants appeared at the hearing and were represented by attorney, Nicholas Gradisar. The City's representatives were present and were represented by Assistant City Attorney, Kurt Stiegelmeier.
2. The Appellants own the Property at 519 Beaumont, Pueblo, Colorado 81001.

3. The Appellants purchased the Property in April 2010. At that time were provided with a Certificate of Non-Conforming Use originally issued by the City in 1982.

4. The Board heard testimony from Richard Hardy, 200 S. Main Street, Pueblo, Richard Brekke, 921 Gemini, Pueblo, Ron Brekke, 621 W. 6th Street, Pueblo, and Michael Stine, one of the Appellants, and Carrie Muchow, City Planner, and Maria Valdez, 2630 E. 6th Street, Pueblo, neighbor, testified on behalf of the City.

5. The Appellants contended that the storage of vehicles on the Property is short-term use and that their use of the land was pursuant to a Certificate of Non-Conforming Use previously issued by the City.

6. The Appellants also contended that the fence on the Property was in existence since the City had issued a Certificate of Non-Conforming Use and that the use of the Property is harmonious with surrounding land uses and the neighborhood in which the Property is located.

7. The Appellants also asserted that a special exception should be made to allow their use to continue since the current use is appropriate or more appropriate than the existing Certificate of Non-Conforming Use for the Property.

8. The City contended that the Certificate of Non-Conforming Use the Owners were provided with at the time of purchase did not authorize the Appellants' use of the intended Property. The City also contended that the Certificate of Non-Conforming Use had expired in June 2009 after being vacant for more than six months before the Owners purchased the Property.

9. The City also agreed the Appellants were enlarging the use of the Property authorized by the Certificate of Non-Conforming Use contrary to City Ordinances.

CONCLUSIONS

By a vote of 4-0, the Board concluded that the Owners' appeal should be denied and the City's interpretation of the Code be upheld. The Board then found by a vote of 3-1 that the Appellants were entitled to a **Special Exception** for the Property to continue to use the Property as a towing and temporary auto storage business. This Special Exception is approved pursuant to Section 17-3-5(3) and is subject to and conditioned upon the Appellants meeting and complying with the following conditions:

1. There must be no on-street parking of vehicles that have been or in the process of being towed or tow trucks or other commercial vehicles owned or used by the Appellants on or near Beaumont Avenue.

2. The Property must be fenced with a six-foot wooden fence. All barbed wire fencing on the Property must be removed.

3. The hours of operation for the towing business will be limited to 8:00 a.m. to 6:00 p.m.

4. Lighting on the Property must be no higher than six feet and must be brought up to the current Pueblo Municipal Code.
5. There must be no more than four vehicles and one tow truck on or adjacent to the Property at any one time.
6. The window in the Appellants' building must be made to look like it is residential and not a commercial use of Property.
7. There must be no sounds emanating from the Property including beeping or other similar noises from trucks or vehicles going in reverse. There must be no public address system on the Property, including hand-held or truck radio devices turned louder than strictly necessary for hearing in immediate range.
8. There must be neither guard dogs on the Property nor any corrugated metal used as fencing or construction material on the Property.
9. The Property must have a six-foot landscaping buffer, which must conform to the current Pueblo Municipal Code.
10. There must be no flashing lights on while on or adjacent to the Property

ORDER

The Department's Notice of Violation and Order to Correct is upheld. This appeal is dismissed. The Property Owners are, however, granted a Special Exception pursuant to Section 17-3-5(3) to continue their present operation provided the above conditions are met within sixty days of the date of this Order and thereafter maintained in a proper manner.

This Order is signed on 28th Day of June, 2011.


Weston Burrer
Chair, Pueblo Zoning Board of Appeals

pc: Nicholas Gradisar, attorney for Appellants
Kurt Stiegelmeier, Assistant City Attorney

Weston Burrer
Chair

Rudy Martinez
Vice Chair



Zoning Board of Appeals

Ralph Scaplo
Secretary

Mike Castellucci

Rod Johnson

Zoning Board of Appeals Special Hearing
City of Pueblo, Colorado
Tuesday, May 10, 2011-7:00 p.m.
Interim City Council Chambers-301 West B Street (Former Municipal Court)

Minutes

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; Ramona Baca, Court Reporter; Karen Willson, Zoning Enforcement Officer; Kurt Stiegelmeier, Assistant City Attorney; and Paul Willumstad, Board Attorney.

APPROVAL OF AGENDA

Motion to approve the agenda for the May 10, 2011 meeting by Castellucci, second by Scaplo.

Motion passed 4-0.

PUBLIC HEARINGS AND ACTION

APPEAL

1. 006-2011 519 Beaumont (Gradisar, Trechter, Ripperger & Roth) R-2

An Appeal to the determination that a towing business and storage of vehicles is not allowed in an R-2 zone.

BACKGROUND

Staff Report by Carrie Muchow.

Synopsis

The subject property is located in the Eastside neighborhood. The neighborhood is composed of Mid Century single family homes (testimony by Carrie Muchow). According to Section 17-5-22 (a) of the Pueblo Municipal Code (PMC), the applicant is appealing the determination that a towing business can not be run in an R-2 zone.

In November, 2010 the owner of 519 Beaumont was sent a Notice of Violation and Order to Correct letter from a Planning Department Zoning Enforcement Officer stating that they were in violation of Section 17-4-51 of the PMC, permitted use of land and buildings in an R-2 zone and Section 11-1-405 (b) (5), nuisances; barbed wire and corrugated metal fence (testimony by Karen Willson). The property was being used as a towing company which was not an allowed use, either as a use by right or use by review, in an R-2 zone and the type of fencing around the property is also not allowed in an R-2 zone (testimony by Karen Willson). See Exhibit E for the Notice of Violation and Order to Correct letter.

The applicant is now appealing on the basis that the property has a Certificate of Non-Conforming Use.

Analysis

The applicant states that:

1. The owners were provided with a Certificate of Non-Conforming Use issued by the City in April, 2010, at the time of purchase.
2. The property has been used continuously since the issuance of the Certificate of Non-Conforming Use in 1982.
3. The storage of vehicles on the property is short-term.
4. The use of land has been pursuant to the Certificate of Non-Conforming Use.
5. The decision that the Non-Conforming use was abandoned was made by the City without notice to the owners.
6. The fence has been in existence since the issuance of the Certificate of Non-Conforming Use.
7. The use and property are in harmony with the neighborhood.
8. A Special Exception should be made to allow the use to continue since the current use is as appropriate or more appropriate than the existing Certificate of Non-Conforming Use.
9. The City has taken the use of the property by causing it to be removed from the City of Pueblo's Police Department's Tow list
10. These actions constitute an unconstitutional taking of the property by the City.

See Exhibit O for the Applicant's application documents.

Staff's Response:

1. The certificate the owners were provided at the time of purchase was not issued by the City at that time and was a copy of the original one from 1982. Had the owners talked to Staff they would have been informed that the Certificate of Non-Conforming Use had expired in June, 2009 after being vacant for six (6) months prior to purchasing the property (testimony by Karen Willson). See Exhibits F and G for documentation of cessation of use.
2. Section 17-3-3 (3) of the PMC states that "If any such nonconforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified herein for the district in which such land is located". Between the months of February and June of 2009 the property was not being used for any business. The applicant's Exhibits 1, 2, and 3, aerials of the property in 2001, 2004, and current, (included in Staff's Exhibit O) are too spread out to show that the property was being used during the months Staff recorded it was vacant. See Exhibits F and G for documentation of cessation of use.

In addition to Staff's documentation, Maria Valdez, owner of 2630 and 2640 E 6th Street and neighbor to 519 Beaumont, will also testify to the property being vacant during this time period.