

Pikes Peak Regional Building Department

2880 International Circle
Colorado Springs, Colorado 80910

BOARD OF REVIEW MINUTES

July 17, 2019

10:30 a.m.

MEMBERS PRESENT: Chairman Jim Nakai, Architect
Darin Tiffany, Engineer
Jeffrey Finn, Citizen-At-Large
Edward Pine, Building A, B or C Contractor
Vince Colarelli, Building A or B Contractor

MEMBERS ABSENT:

RBD STAFF PRESENT: Roger Lovell, Regional Building Official
Jay Eenhuis, Deputy Building Official – Plans
John Welton, Deputy Building Official – Inspections
Virginia V. Koulchitzka, Regional Building Attorney
Linda Gardner, Executive Administrative Assistant

PROCEEDINGS:

Chairman Jim Nakai called the meeting to order at 10:33 a.m.

1. **CONSIDERATION OF THE JUNE 19, 2019 BOARD OF REVIEW MINUTES**

A motion was made by Vince Colarelli to **APPROVE** the June 19, 2019 Board of Review Minutes as written, seconded by Edward Pine; the motion carried unanimously.

2. **CONSIDERATION OF TECHNICAL AND LICENSING COMMITTEES MINUTES**

a) Technical Committee Minutes of July 3, 2019.

A motion was made by Vince Colarelli to **APPROVE** the July 3, 2019 Technical Committee Minutes as written, seconded by Jeffrey (“Jeff”) Finn; the motion carried unanimously.

b) Licensing Committee Minutes of July 10, 2019.

A motion was made by Darin Tiffany to **APPROVE** the July 10, 2019 Licensing Committee Minutes as written, seconded by Edward Pine; the motion carried unanimously.

3. DECISION APPEALS

- a) Dangerous Building at 1326 West Kiowa Street – Appeal by Douglas Bruce of the decision of the Department on May 16, 2019, not to issue a permit for the contemplated enclosure of the structure to include roofing, siding, and porch only without having required plans

Douglas Bruce appeared. Virginia V. (“Jina”) Koulchitzka stated this is an appeal with regard to a building that has been declared and found to be dangerous in accordance with Section 112 of the Pikes Peak Regional Building Code (“Code”), located at 1326 West Kiowa Street. She stated this is an appeal by Douglas Bruce of the decision of the Department on May 16, 2019, not to issue a permit for the contemplated enclosure of the structure to include roofing, siding and a porch only, without having required plans. She stated the Code requires that appeals are heard first by an advisory committee to the BOR, and secondly by the Board of Review should the appellant not be satisfied with the outcome of the hearing before the advisory committee (“BOR”). Ms. Koulchitzka stated the Appellant requested that this appeal be heard by the BOR; notwithstanding, unless the appellant waived his right of the appeal to be first heard by an advisory committee to the BOR, this board could not hear the appeal. Douglas Bruce, being interested in an expeditious decision and wanting the appeal heard today by the BOR, waived the subject right. Ms. Koulchitzka stated the BOR shall conduct a public hearing of the appeal, and make a decision of whether the decision of the Building Official should be overturned, modified, or stand; a decision will be made by the BOR at the conclusion of the appeal; the decision of the BOR shall be considered final agency action for all purposes under Colorado law. She confirmed on the record what the Record of Appeal consisted of. All parties testifying were sworn in.

Mr. Bruce stated he filed with the Department a sufficient written appeal to the BOR. Jim Nakai pointed out that Mr. Bruce did not apply for the permit in a timely fashion. Mr. Bruce stated he tried to obtain a permit, but his first contractor decided not to do the work, and he had to find another contractor to do the work. He stated he tried to obtain the permit, but was unable to do so because RBD would not issue a permit without an approved set of plans. He stated he now has the plans for the scope of work. Mr. Bruce stated he offers an engineering report, prepared by McCafferty Engineers and dated July 2, 2019, as Exhibit A, and presented plans to the BOR as Exhibit B. Ms. Koulchitzka stated RBD stipulates to the admission of Appellant’s Exhibit A on the record. Ms. Koulchitzka further stated RBD objects to the admission of Appellant’s Exhibit B, the proposed plans, as a copy has not been provided to RBD and RBD has not reviewed said plans. Jim Nakai stated the drawings do not show the proposed improvements to the property.

Mr. Bruce stated he attempted to obtain a permit, but he was informed by RBD staff the Building Official would not issue a permit on the subject property.

John Welton stated RBD offered Mr. Bruce, in writing, both an extension of time not to exceed 30 days (i.e., *June 19th*) and a pre-submittal meeting, but Mr. Bruce failed to request such, resulting in *May 20th* being the deadline to obtain a permit and begin repair work. Mr. Bruce stated he submitted his engineer's report to RBD plan review staff earlier this week. He stated RBD staff informed him that the property was a commercial property because it was a 4-plex. He stated he was willing to call the structure a 2-unit building in an effort to expedite the permit process so he could remedy the dangerous conditions. Jeff Finn stated Mr. Bruce's Exhibits A and B are helpful, i.e. the engineer's report and the proposed plans respectively. Mr. Bruce stated his contractor has attempted to obtain a permit on three different occasions but was declined by RBD staff. He stated RBD staff gave his contractor additional forms to be completed to obtain the permit, which Mr. Bruce referenced as the Code Study Form.

Jeff Finn stated the engineer's report stated "every piece of wood should be replaced". He said the report states that the structural stability and structural condition of the framing system of the building is described as "poor", while the foundation system is described as "fair". He stated, in his opinion, construction documents have three uses: (a) for the owner to determine what he/she would like to build; (b) for the contractor to determine what to build; and (c) for the Department to determine if the building is constructed according to the plans that it reviews. Mr. Finn stated the purpose of submitting plans to the Department is to affirm that the adopted codes are adhered to. Mr. Bruce stated the engineer made 11 recommendations; Mr. Finn stated those recommendations are required to be made to the plans with the engineer's stamp on said plans. He stated the plans, as submitted as Exhibit B, do not have adequate information on the plans, which is necessary to obtain a permit. Darin Tiffany stated the Code requires that Mr. Bruce bring the structure up to Code structurally, including the mechanical, electrical and plumbing systems.

Mr. Bruce stated he is trying to remedy the dangerous aspect of the building, with roofing, siding and a new porch, and he has been denied a permit for these items by the Building Official. He stated he does not intend to make the structure habitable. Mr. Bruce stated his licensed contractor, Shawn Shaffer, prepared the plans for the structure. He stated Mr. Shaffer was with him earlier this week when he attempted to obtain a permit.

Mr. Tiffany stated the Appellant has not complied with the decision of the Board of Appeals that the structure must be brought up to Code, to include the mechanical, electrical and plumbing systems.

Vince Colarelli stated the documents that Mr. Bruce has submitted to RBD to obtain a permit are inadequate and do not comply with the requirements of the Code to obtain a building permit. Mr. Nakai stated a licensed contractor should be aware of the documentation required to obtain a permit for the subject structure. John Welton stated the Code does not authorize partial permits, to include a shell permit, for a one or two-family dwelling.

Ms. Koulchitzka stated page 27 of the record of appeal notes that there are two grounds upon which the Department denied the issuance of a permit: (1) lack of sufficient plans and (2) time limitation. She said the time limitation under Section 112 Dangerous Building, requires the record owner or interested party with authority to obtain a permit and begin work no later than May 20th in this case. In the Code, RBC112.2.4 is very specific to state that a permit will be obtained and work will begin not to exceed 60 calendar days from the date of the Order, whether that is applicable to repair and/or rehabilitation and/or demolition. She stated the time limitation has passed, so the Department will not issue a permit for this structure; and the Appellant has not appealed the time limitation issue. Ms. Koulchitzka stated all time limitations were tolled during the appeal proceeding for the dangerous building declaration, and they were reinstated after the Board of Appeals' Decision issued on April 17, 2019.

She stated the Appellant has admitted that he is not the owner of the property, but he has a Power of Attorney and Full Statement of Authority from the record owner with certain authorities granted therein. She referred to the Power of Attorney and Full Statement of Authority as RBD's Exhibit 1 for admission into the record. Mr. Bruce stated Exhibit 1 has never been withdrawn, revoked, or terminated; the Power of Attorney is still active and in full force and effect.

John Welton stated along with Exhibit 1, RBD staff would like to admit on the record RBD's Exhibit 2, the Notice And Order and Notice to Vacate, as issued by the Building Official on January 25, 2019; and Exhibit 3, the Board of Appeals' Decision, as issued on April 17, 2019. He stated currently the use of the property is a 4-plex, although the Appellant stated he would like to change the structure to a duplex, which will be a change of occupancy, and the charging language for repair is RBC112.2.2 of the Code, which is minimum habitable standards per Chapter 3 of the Code. Darin Tiffany stated commercial construction does allow partial permits, which would give the Appellant the ability to obtain a partial permit for a 4-plex, and Mr. Bruce replied that he does not want to go through the process to find a commercial contractor to obtain a permit for a 4-plex.

Ms. Koulchitzka stated the Appellant has not appealed the time limitation to obtain a permit; the only issue under appeal is the lack of submittal of plans. Mr. Bruce stated since time limitation is barring him from obtaining a permit, then he appeals the determination that plans are required to obtain a permit, as well as the time limitation of 60 days to obtain a permit. Ms. Koulchitzka stated the Department's response is that a timely appeal is required to be filed in writing. An appeal was filed on May 16, 2019,

specific to the lack of submittal of plans. She stated approximately 63 days post the required time limitation have passed for purposes of the Appellant making a request to appeal the time limitation, as imposed by Code, which has expired.

A motion was made by Vince Colarelli to **DENY** the appeal by Douglas Bruce for the issuance of a permit without a satisfactory plan submittal approved by RBD staff for the work contemplated at 1326 West Kiowa Street; absent an approved and complete submittal of plans, there is no way to move forward to obtain a permit; seconded by Jeff Finn. As it relates to the issue of timing, there appears to be an issue of legal fact as to whether or not time limitation(s) has/ve passed and whether a timely appeal on the time limitation has been filed; the Committee is not prepared to address the timing issue nor has there been testimony as it relates to it. He stated the BOR will allow RBD staff and counsel to determine how time limitation(s) is/are applicable to this appeal; the motion carried unanimously.

In response to the comments regarding time limitation(s), Ms. Koulchitzka proposed the following briefing schedule, which the Appellant agreed to: 15 calendar days for RBD attorney to brief in writing BOR on the issue (with a copy to the Appellant); 7 calendar days for the Appellant to respond, should he wish to; and 5 calendar days for RBD to rebut. She stated that would conclude the briefing, and then the Board would make a decision on the time limitation(s) issue, as such has been addressed here today, and this would be a final agency decision.

4. **UNFINISHED BUSINESS**

There was no Unfinished Business.

5. **NEW BUSINESS**

There was no New Business.

The meeting adjourned at 12:42 p.m.

Respectfully submitted,



Roger N. Lovell
Regional Building Official

RNL/llg

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Accommodations for the hearing impaired can be made upon request with forty-eight (48) hours' notice. Please call (719) 327-2989.

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