



**BOARD OF ADJUSTMENT**

**Minutes of Meeting**

**June 26, 2014**

**1. CALL MEETING TO ORDER**

The meeting was called to order by Vice Chair GRIEGO at 7:01 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**2. ROLL CALL**

Board Members Present: Janet Bell  
Paul Hovland  
David Kuntz  
Betty Jo Page  
Lily Griego  
Thomas Abbott

Alternates Present: Rocky Germano  
Dan Bradford

Board Members Absent: Paul Griffith  
Sally Banghart

Staff Members Present: Lauren Mikulak, Sr. Planner  
Ken Johnstone, Community Development Director  
Mary McKenna, Community Services Supervisor  
Kim Waggoner, Recording Secretary

**3. PUBLIC FORUM**

No one wished to speak at this time.

**4. PUBLIC HEARING**

**A. Case No. WA-14-09:** An application filed by Mandy Black for an appeal of an administrative zoning determination related to wild animal rehabilitation in residential zone districts. The applicant is request an interpretation that would allow wild animal rehabilitation at 11781 W. 46<sup>th</sup> Avenue based on it being a similar use to the keeping of household pets and small animals and poultry as defined in Sections 26-123 and 26-606 of the Wheat Ridge Code of Laws.

The case was presented by Lauren Mikulak. She introduced Ken Johnstone, Community Development Director and Mary McKenna, Supervisor of Community Services. She entered the contents of the case file, the zoning ordinance and the digital presentation into the record along with a letter of comment from the Colorado Department of Parks and Wildlife that was received after the staff report was published. She stated all appropriate notification and posting requirements have been met and advised the Board there was jurisdiction to hear the case. She stated the City code grants the Board of Adjustment the authority to decide on two different types of zoning code interpretations. The first is the definition or intent of certain words or phrases. The second type is interpretation of a similar use which is the subject of this case.

She stated earlier this year staff issued a determination to the applicant that a home based wildlife animal rehab is not similar to anything else that would be otherwise permitted in a residential zone district and is therefore not permitted. The applicant is appealing that determination to the Board of Adjustment. The board will be asked to vote to uphold or overturn staff's decision. She stated board interpretations are not specific to a single property. An interpretation to the zoning code made by the board applies to the entire city. She reviewed the staff report and digital presentation. She stated a yes vote would be to approve the applicants request and a no vote would be to deny the request and uphold the determination that has been made by staff.

Board Member PAGE asked why a variance cannot be considered as opposed to making this applicable city wide. Ms. Mikulak stated the City does not have a provision in the Code of Laws for use variances. A new permitted use category requires a code amendment approved by City Council.

Board Member PAGE inquired about kennels and clinics as special uses on agriculturally zoned land. Ms. Mikulak stated a special use is a use that is already listed in the zoning code. Special uses may or may not be approved depending on compatibility of the impacts and surrounding area. Adding a special use to the zoning code would have to be approved by City Council.

Board Member PAGE inquired about the letter from the Colorado Department of Parks and Wildlife that mentions the keeping of bobcats which was not mentioned in the staff report. Ms. Mikulak stated that bobcats were not included in the application and were first mentioned in the letter from the state. Board member PAGE inquired about small and medium sized animals. Ms. Mikulak stated there is no definition for that in the City's zoning code.

Board Member PAGE asked who would regulate the rehabilitation facility if it is approved. Ms. Mikulak stated there is no provision in the code so it is unclear how it would be regulated by the City. If approved, a code amendment may be required to make sure regulations are in place for residential zone districts.

Board member PAGE asked if staff reviewed state and other agency documentation to see what size facilities are used for different animals. Ms. Mikulak stated that type of research would be done for a code amendment.

Vice Chair GRIEGO stated this would impact the entire city. If this came through a city wide review process, neighbors would have the opportunity to testify in favor of or opposition to this type of facility being allowed in all residential zone districts. The implications of an approval by the board will impact how the city addresses this as a whole. Ms. Mikulak stated a code amendment rather than an interpretation is a more appropriate process through which to consider allowing a new land use because it includes collaboration with various entities including the state, local boards, city staff, the public, Planning Commission and City Council.

Board member BELL spoke about enforcement, monitoring and managing this type of use in a residential area. The City's purview would be zoning violations, adjacent property owners, and other people. Any violation detrimental to the animal would be under the Department of Wildlife. She stated each jurisdiction would define their boundaries. Ms. Mikulak concurred. She said that is part of the reason that staff feels wildlife animal rehab is not similar to household pets as there are more players involved and more considerations and licensing.

Vice Chair GRIEGO asked if there are any other options for the applicant if the vote is not in favor of the applicant. Ms. Mikulak stated there are a couple options. City Council could direct staff to initiate a code amendment which is a multi-month process. The alternative is that staff has already established that wildlife animal rehabilitation is similar to vet clinics and kennels which are special uses in agricultural zone districts.

Board member PAGE requested clarification about what a yes vote means. Ms. Mikulak stated a yes vote would indicate that wildlife animal rehabilitation is similar to some other use that is permitted in a residential zone district. The board would need to identify what existing use category it is similar to because it cannot be created as a new category in the zoning code by the Board. A yes vote would allow wildlife animal rehabilitation in every residential zone district.

Board Member PAGE asked if this was approved where the interpretation would be memorialized. Ms. Mikulak stated that staff keeps a record of all Board interpretations, but it would not appear in the municipal code unless a zoning code amendment is completed. This is not the best way to allow a new use in the City.

Board Member ABBOTT reiterated wildlife rehabilitation could occur in the same zone district as a vet clinic. Ms. Mikulak concurred.

Board Member BRADFORD asked if the board voted in favor or opposition of the request would the applicant be allowed to continue providing wildlife rehab while going through the code amendment process. Ms. Mikulak stated she should not be doing any

rehabilitation because it is not allowed. The state terminated her licensure process because it is not allowed in the zone district.

**Mandy Black**

11781 W. 46<sup>th</sup> Ave.

The applicant explained the function of the proposed wildlife rehabilitation facility. She stated that wildlife is often orphaned or injured because of people and they become reliant on people until released. The wildlife rehab license begins as provisional license with a learning plan that is issued and overseen by Colorado Department of Parks and Wildlife. This request is strictly for rehab and release and not for keeping animals on a long term basis. Any medium sized animals like bobcats or foxes typically go to larger facilities. She stated bobcats would strictly be a 24-hour hold then transferred to another facility.

Board Member KUNTZ asked the applicant why she didn't seek a code amendment. The applicant stated she was told an interpretation was the quickest way to appeal the decision. She stated she wanted the City to amend the code to like other communities have done such as Arvada, Broomfield, Lyons, Longmont, Boulder and Denver.

Board Member BELL asked the applicant why she is seeking to do this in Wheat Ridge instead of another city that allows the use. The applicant stated she bought the house a few years ago without the intent of starting wildlife rehabilitation. She started the process with Colorado Department of Parks and Wildlife and later found out that Wheat Ridge does not allow the use in residential zone districts.

Vice Chair GRIEGO asked the applicant several questions: if she knew the state required local approval, how she plans to conduct rehabilitation at her home, if she has discussed the use with her neighbors, and if denied what steps will she take. The applicant stated all wildlife animals are kept in separate locked cages at all times. Once they get larger they go into an outdoor locked cage. At the time of release a cage is set up away from any residential areas and a soft release is performed. Once the animals venture out and do not return to the cage, the cage is then removed. If the use is not approved the applicant stated she intends to request a code amendment. Wildlife rehabbers must be licensed with the Department Colorado Parks and Wildlife. She stated she canvassed the neighborhood and sent out FAQ's to the neighbors and most were supportive of her.

Board Member PAGE inquired about facility size and animal size specifically medium sized. The applicant stated she cannot define it on behalf of the Department of Parks and Wildlife. She thinks mediums means bobcats and bigger/older raccoons. The facilities have to be approved by the Department of Parks and Wildlife. A state representative reviews the facility.

Vice Chair Griego opened the public hearing.

**Carol Monaco**

15200 Clinton St., Brighton, CO

Ms. Monaco stated she has done wildlife rehabilitation for 5 years. Calls for bobcats are rare. The Department of Parks and Wildlife has a very rigorous licensing process. An applicant must have a sponsor that has been licensed for 3 years. An applicant must go through a learning plan and a division person will inspect the facility. This is only for rehab. The State of Colorado has very few wildlife rehabbers.

**John Clark**

4665 Swadley St.

Mr. Clark stated he was in favor of the request. He has no problem with the applicants' request. He wondered why the entire city wasn't notified of the case if approval would impact the entire city. The Department of Wildlife has regulations and not just anybody can do it. He encouraged the board to vote yes.

**Jules Reid**

4531 Boardwalk Dr., Y-7, Fort Collins, CO

Ms. Reid stated Wheat Ridge is greatly in need of the services the applicant is providing. She stated the training and regulatory process involved in obtaining a license with Colorado Parks and Wildlife is extremely rigorous.

**David Bongiovanni**

7255 Quartz St, Arvada, CO

He reiterated that the applicant had purchased the home for financial reasons and not in consideration of wildlife rehabilitation. He stated the applicant is passionate about animal wildlife rehabilitation and the Department of Wildlife inspected the house for the safety of the animals and surrounding neighbors.

**Patti Dellinger**

4529 Foothills Dr., Berthoud, CO

Ms. Dellinger stated wildlife rehabbers work together as a group in Colorado and nationally through the National Wildlife Rehabilitation Association (NWRA). She stated the animals are kept until they are weaned and then they are released.

Ms. Mikulak addressed the board and stated the board is reviewing an interpretation, not a code amendment, and the question at hand is not whether animal wildlife *should* be allowed in the City, but whether it is similar to any existing category in the zoning code.

Board Member BELL asked Mr. Johnstone if staff could consider undertaking the process of a code amendment. Mr. Johnstone stated he did not want to set any unrealistic expectations in terms of how quickly a code amendment would occur, if at all. City Council sets policy direction and gives direction to staff in terms of whether code amendments should be pursued. Based on the current agendas, it could be several months before Council could even consider the idea of a code amendment.

Board Member ABBOTT stated this use is a need in any community and he hopes the City will pursue a code amendment.

Board Member KUNTZ stated the use is permitted in the agricultural zone district and does not need to be extended to residential zone districts.

Board Member HOVLAND stated he concurred with Board Member KUNTZ and commended the applicant on her efforts of wildlife rehabilitation.

Vice Chair GREIGO acknowledged the out of town testifiers. She stated wildlife rehabilitation is a noble endeavor. She recognized the passion of the applicant. She stated if there is a vote from the board that supports staff and therefore not approving the appeal that it is apparent that it is nothing to do with if the board likes the concept or support the endeavor. The board is guided by the municipal code, this is a land use decision and the potential impact to the city as a whole is tremendous. She stated the property zoning does not meet the needs of the request.

**The board reviewed the recommended motion that had been provided by staff:**

CASE NO: WA-14-09

APPLICANT NAME: Mandy Black

TYPE OF REQUEST: This request is an appeal of an administrative zoning determination related to wildlife animal rehabilitation in residential zone districts. The appeal is a request for an interpretation that would allow wildlife animal rehabilitation in residential zone districts based on it being a similar use to the keeping of household pets and small animals and poultry as defined in Sections 26-123 and 26-606 of the Wheat Ridge Code of Laws.

WHEREAS, the proposed land use was denied by an administrative officer; and

WHEREAS, Board of Adjustment Case No. WA-14-09 is an appeal to this Board from the zoning code interpretation of an administrative officer; and

WHEREAS, the property has been posted the fifteen days required by law; and

WHEREAS, the relief applied for may be granted without detriment to the public welfare and without substantially impairing the intent and purpose of the regulations governing the City of Wheat Ridge,

I, therefore, move to adopt a Resolution APPROVING Case No. WA-14-09

Vice Chair GRIEGO reiterated a yes vote would be in favor of the applicant's request and a no vote is to deny the applicants request and uphold the staff's determination.

The Vice Chair called for a vote on the recommendation motion and the board voted.

**The appeal was denied 0-8.**

Vice Chair GRIEGO encouraged the applicant to pursue other options.

5. **CLOSE PUBLIC HEARING**

Vice Chair GRIEGO closed the public hearing.

6. **OLD BUSINESS**

7. **NEW BUSINESS**

A. Approval of Minutes – September 26, 2013

**It was moved by Board Member BELL and seconded by Board Member PAGE to approve the minutes as written. The motion passed 4-0-4 with Board Members GRIEGO, THOMAS, GERMANO and BRADFORD abstaining.**


B. Vice Chair GRIEGO thanked Mayor Jay and the audience members for attending.

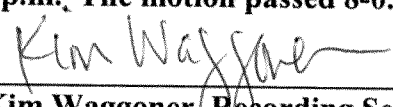
C. Board Member BELL suggested training for the new members and spoke of the South Platte Basin and urged everyone to get involved as it has an impact on the community.

D. Mayor Jay thanked the board for their work and stated it is appreciated.

8. **ADJOURNMENT**

**It was moved by Board Member ABBOTT and seconded by Board Member HOVLAND to adjourn the meeting at 8:31 p.m. The motion passed 8-0.**

  
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Lily Griego, Vice Chair

  
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Kim Waggoner, Recording Secretary