

# **TOWN OF ERIE**

*645 Holbrook Street  
Erie, CO 80516*



## **Meeting Minutes**

**Wednesday, March 31, 2021**

**6:30 PM**

**via Virtual Meeting**

**<http://bit.ly/31MarchBOAMtg>  
via Virtual Meeting**

**Board of Adjustment**

**I. CALL MEETING TO ORDER & PLEDGE OF ALLEGIANCE TO THE FLAG**

Chairman Farr called the March 31, 2021 Board of Adjustment Meeting to order at 6:31pm.

**II. ROLL CALL**

Roll Call:

Board Member Percell - present  
Board Member Bowker - present  
Board Member Bergh - absent  
Board Member VanAucken - present  
Secretary Benore - present  
Vice Chair Horovitz - present  
Chair Farr - present

**III. APPROVAL OF THE AGENDA**

Board Member Percell moved to approve the agenda of the March 31, 2021 Board of Adjustment Meeting. The motion, seconded by Secretary Benore, carried with the following roll call vote:

Board Member Percell - aye  
Board Member Bowker - aye  
Board Member Van Aucken - aye  
Secretary Benore - aye  
Vice Chair - Horovitz - aye  
Chair Farr - aye

**IV. APPROVAL OF THE MINUTES**

[21-130](#)

Approval of the March 11, 2021 Board of Adjustment Meeting Minutes

**Attachments:** [March 11, 2021 Board of Adjustment Meeting Minutes](#)

Board Member Percell moved to approve the meeting minutes of the March 11, 2021 Board of Adjustment Meeting. The motion, seconded by Board Member Bowker, carried with the following roll call vote:

Board Member Percell - aye  
Board Member Bowker - aye  
Board Member Van Aucken - aye  
Secretary Benore - aye  
Vice Chair - Horovitz - aye  
Chair Farr - aye

**V. PUBLIC COMMENT**

No Public Comment was taken.

**VI. RESOLUTIONS**

[21-126](#)

Appeal by Precious Metal Converter, LLC

**Attachments:** [Pawn Interpretation](#)  
[PMC Business License Application](#)  
[Smith Application for Appeal to BOA](#)  
[Combined Background Documents](#)

Chair Farr opened Agenda Item 21-126 at 6:37pm and turned it over to staff for presentation.

Deborah Bachelder, Planning Manager/Deputy Director of Planning & Development, presented Agenda Item 21-126 to the Board.

Matt Smith, Esq., counsel for the applicant, provided an overview of the appeal on behalf of his client, Tyronne Fay, who was also in attendance.

Katharine Vera, Town counsel, provided an overview to the Board regarding the agenda item.

No public comment was taken regarding the matter before the Board.

Chair Farr brought it back to the Board for any questions/comments of the applicant, staff, and/or counsel.

Some questions/comments included the following:

- Is there any indication of what a variance would be in terms of consideration?
- Was there a variance discussed or requested at some point?
- How many deals does the applicant do that takes him away to Broomfield to complete the business/transaction?
- Is the applicant's intent to close the Broomfield location?
- Is this a business license renewal? Store front is new?
- 10.3.1.d of UDC - anything outside of this section is not permitted?

Classification of new and unlisted uses.

- Copy of the UDC - (December 2020 UDC online. Attorney is showing December 2019.) 10.3.1.a and 10.3.1.b is what is being found - Can we confirm section c and d of this section?

• Question directed to applicant's counsel: What do you think the intent of Mr. Starr's decision was?

• Doesn't fall under general retail, however, could fall under financial use - collateral made loan

• How is the pawn use not similar to that - where it would not fall under the financial description?

• Pawn broking and banking regulated by the state under the same statutes?

From a regulatory stand point - are they under the same regulatory compliances?

• If the director were to see another business like this come in, and decides its similar, would the director have to make the same determination because a previous one was approved?

• If you approve one business under one set of facts, would you approve another under the same?

• Doesn't feel the business is anything close to a financial institution

• Neighboring municipalities, list pawn broking and stipulations along with pawn broking. Does the Board have the authority to instruct the BOT to add this use to the UDC?

• Could the town code be explicit in this use?

- Need to determine if there was a legal error by the town? There seems to be disagreements re: the interpretation of 10.3.1.c and 10.3.1.d.
- 10.3.1.d, says is should look for a place but is not required to
- Interpretation of the code can vary. Trying to decipher whether or not the town erred in it's interpretation is the Board's duty tonight
- Are other business licenses rejected under the same principle?
- Under the table 3.1 of the UDC, some uses are listed but are not allowed - clarification requested
- Several prohibited uses under the table in Chapter 3 of the UDC
- Board would like to have clarification and stipulations added to the UDC regarding these types of uses

As a procedural clarification, Ms. Vera noted the Board's scope of authority, under 10.7.22 of the UDC - the Board can reverse, affirm, or modify the determination made by the Director. In this instance, the Board would be entrusted with reversing or affirming Mr. Starr's decision. A variance procedure would be a separate procedure. The Director's decision could not be modified but a "yes" or "no" vote confirming whether or not the Director erred in his interpretation is what the Board is being tasked with.

Chair Farr brought it back to the Board for a motion and a vote on the Agenda Item. The motion being whether or not the Director erred in his interpretation.

Board Member moved that the Board put it to a vote.

For clarification, Board Member Bowker noted a "yes" vote would be indicative of affirming Director Fred Starr's decision. A "no" vote would indicate that Director Starr erred in his interpretation.

Board Member Bowker moved to vote as indicated with a "yes" or "no" vote regarding the interpretation. The motion was seconded by Secretary Benore.

For clear clarification, Chair Farr reiterated that a "yes" vote would indicate that Director Starr made the correct decision and a "no" vote would indicate that he was not correct.

A roll call vote was conducted upholding the interpretation of the Director with the following 5 to 1 vote:

Board Member Percell - yes  
Board Member Bowker - yes  
Board Member VanAucken -no  
Secretary Benore - yes  
Vice Chair Horovitz - yes  
Chair Farr - yes

The decision of the Board passes with a 5 to 1 vote affirming and upholding the interpretation of the Director of Planning & Development.

Board Member Percell moved to direct Town Staff to make a request to the Board of Trustees that they consider updating and adding explicit clarification/language to the Town code in regard to pawnbroking. The motion, seconded by Board Member Bowker, carried with the following roll call vote:  
Board Member Percell - yes

Board Member Bowker - yes  
Board Member VanAucken - no  
Secretary Benore - yes  
Vice Chair Horovitz - yes  
Chair Farr - yes

Board Member Percell asked if Melinda could type up a memo to the Board, or what the proper procedure would be with regards to this motion.

Ms. Bachelder noted that an individual cannot write something without the Board reviewing and approving it. The Board has provided staff with enough information that we can forward that on to the Board of Trustees. The Town is in the midst of a UDC amendment currently and can address this issue.

## **VII. STAFF REPORTS**

No Staff Reports.

## **VIII. BOARD REPORTS AND DISCUSSION ITEMS**

On behalf of the Board, Chair Farr wanted to extend his thanks and gratitude to the members of Erie Police Department for assisting at the scene of the Boulder King Soopers shooting as well as the funeral service for Officer Talley. Chair Farr expresses his personal appreciation to our local police department.

Board Member Percell also shared in the sentiment and expressed his thanks to Chief Steward and the members of the Erie Police Department for their response.

## **IX. ADJOURNMENT**

Board Member Percell moved to adjourn the March 31, 2021 Board of Adjustment Meeting. The motion, seconded by Secretary Benore, carried with the following roll call vote:

Board Member Percell - aye  
Board Member Bowker - yes  
Board Member VanAucken - yes  
Secretary Benore - aye  
Vice Chair Horovitz - aye  
Chair Farr - aye

Chair Farr adjourned the March 31, 2021 Board of Adjustment Meeting at 8:03pm.