

**BOARD OF ADJUSTMENTS AND APPEALS  
MEETING MINUTES  
AUGUST 18, 2014**

A meeting of the Board of Adjustments and Appeals was held in the City Council Chambers.

**ITEM 1.     CALL TO ORDER**

Chair Nelson McNulty called the meeting to order at [3:01:48 PM](#).

**ITEM 2.     ROLL CALL**

City Clerk and Clerk to the Board Beth A. Hedberg called the roll.

**Present:**                     Chair Nelson McNulty  
                                      Board Member Scott Hastie  
                                      Board Member Stephan Jalovec  
                                      Board Member Nathan Stark

**Absent:**                        Board Member Al Schuppert

**Also Present:**                City Attorney Carmen Beery  
                                      City Planner Patty McCartney  
                                      City Engineer John Enochs

Full and timely notice of the meeting had been given and a quorum was present.

**ITEM 3.     PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**ITEM 4.     APPROVAL OF AGENDA**

Board Member Hastie moved, seconded by Board Member Jalovec, to approve the agenda as presented. The motion **PASSED** on the following vote: **AYES:** Board Member Hastie, Chair McNulty, Board Member Stark and Board Member Jalovec. **NAYS:** None. **ABSENT:** Board Member Schuppert. **ABSTAIN:** None.

**ITEM 5.     CONSENT AGENDA – MINUTES OF FEBRUARY 5, 2014**

Board Member Hastie moved, seconded by Board Member Stark, to approve the consent agenda as presented. The motion **PASSED** on the following vote: **AYES:** Board Member Hastie, Chair McNulty, Board Member Stark and Board Member Jalovec. **NAYS:** None. **ABSENT:** Board Member Schuppert. **ABSTAIN:** None.

**ITEM 6. PUBLIC COMMENTS (NON-AGENDA ITEMS)**

There were no public comments.

**ITEM 7. GENERAL BUSINESS - PUBLIC HEARING AND DISCUSSION AND POSSIBLE ACTION ON RESOLUTION 02-14, A RESOLUTION (APPROVING, CONDITIONALLY APPROVING OR DENYING) A CONDITIONAL USE PERMIT FROM THE FLOOD HAZARD AREA REGULATIONS TO CONSTRUCT A SINGLE FAMILY RESIDENCE IN FLOOD ZONE A LOCATED AT 2594 HARLAN STREET, EDGEWATER, CO**

Chair McNulty reviewed the process for the conduct of the public hearing. Chair McNulty opened the public hearing at [3:07:21 PM](#). City Planner McCartney reviewed her staff report which is attached hereto and made a part hereof by reference as Exhibit "A". Chair McNulty noted for the record that the Board Members had received:

- Staff report dated August 12, 2014;
- Conditional Use Application; and
- Site Plan.

Discussion was held regarding: the importance of the proposed use to the community; fencing; compliance with Urban Drainage; and how much the flood plain would be effected by the construction of a home and garage.

Clerk Hedberg swore in Applicant Britt Demitt. Mr. Demitt spoke about the proposed project. He testified that the elevation of the lowest floor of the structure would be built above the flood plain elevation. The proposed roof pitch on the garage and the flow lines were addressed.

Attorney Beery reviewed the three (3) resolutions that had been provided to the Board for consideration.

No further testimony was offered. Chair McNulty closed the public hearing at [3:32:02 PM](#).

The Board began their deliberations. It was noted that, if the conditional use permit was approved, the applicable building standards would apply. The Board would be approving use only in the flood hazard area. Board Member Hastie said that he did not believe any conditions should be set with respect to the secure anchoring of accessory buildings and outdoor property storage as the adjoining properties did not have those requirements. Board Member Jalovec said that he had considered all of the evidence presented and believed that it was an appropriate use.

Board Member Hastie moved, seconded by Board Member Jalovec, to approve Resolution 02-14, a resolution approving an application for a conditional use permit for a

single-family residential use in a flood hazard area at 2594 Harlan Street, Edgewater, Colorado as presented. The motion **PASSED** on the following vote: **AYES**: Board Member Hastie, Chair McNulty, Board Member Jalovec and Board Member Stark. **NAYS**: None. **ABSENT**: Board Member Schuppert. **ABSTAIN**: None.

**ITEM 8.      PUBLIC COMMENTS**

There were no public comments.

**ITEM 9.      BOARD MEMBER COMMENTS**

Board Member Hastie said he was glad he'd had the opportunity to review the application. He said that he would like to see plats of properties moving forward. Board Member Hastie said that it had been nice to see the building plans, but that they had been irrelevant to the Board's decision.

Board Member Jalovec had no comments.

Board Member Stark had no comments.

Chair McNulty had no comments.

**ITEM 10.     ADJOURNMENT**

There being no further business, Chair McNulty adjourned the meeting at [3:40:57 PM](#).

Submitted by:

*/s/ Beth A. Hedberg, MMC*  
City Clerk and Clerk to the Board

**EXHIBIT "A"**

To: Edgewater Board of Adjustments  
Report Date: August 12, 2013  
Public Hearing Date/Time: August 18, 2013, 3:00 p.m.  
Hearing Location: Council Chambers  
2401 Sheridan Blvd.  
Edgewater, CO 80214  
From: Patty McCartney, Edgewater City Planner  
Cc: Dan Maples, Community Services Director  
Beth Hedberg, Edgewater City Clerk  
Carmen Beery, Edgewater City Attorney  
Subject Property: 2594 Harlan Street  
Applicant: Britt Demitt  
6004 Meadowbrook Drive  
Morrison, CO 80465  
Property Owner: Britt Demitt and David Pfeifer  
6004 Meadowbrook Drive  
Morrison, CO 80465  
Action Requested: Approval of a Conditional Use Permit for a single family residential use located in Flood Zone A.

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**CONDITIONAL USE PERMIT REQUEST OVERVIEW:**

The applicant, Britt Demitt, is requesting approval of a Conditional Use Permit (CUP) for a single family residential use to construct a single family residence in Flood Zone A for the property located at 2594 Harlan Street. The property is located in a low hazard flood area and is zoned R-1. This property is currently vacant.

Pursuant to Section 16-23-100(3)(a) of the Edgewater Municipal Code ("Code"), a dwelling that provides the lowest floor elevation located at or above the regulatory flood protection elevation and is located in a low hazard area is a permitted use with the approval of a CUP.

Pursuant to Code Section 16-23-160, the Zoning Administrator may issue a flood hazard area CUP only upon approval of the permit by the Board of Adjustment. The applicant for a CUP bears the burden of proving all facts and conditions precedent to the issuance of a permit (Code Sec. 16-23-160(b)).

A separate Site Development Plan (SDP) approval shall also be required for the proposed construction of a single family residence if the



conditional use permit is granted. The applicant has submitted a SDP application for the proposed project that is eligible for Administrative Review and approval.

**PUBLIC NOTICING:** Hearing on the proposed CUP was publicly noticed in accordance with the public notification requirements outlined in the Code.

**PUBLIC COMMENT:** To date, no public comments have been received regarding the proposed Conditional Use Permit request.

**CONDITIONAL USE PERMIT REVIEW:** Conditional Use Permit for a use in a Flood Hazard area may be granted by the Board of Adjustment. As mentioned above, a dwelling is a use that is eligible to apply for a CUP if the lowest floor of the dwelling is located at or above the regulatory flood protection elevation.

**Staff Comment:**

Pursuant to Code Section 16-23-170, the Board of Adjustment shall not approve any CUP relating to the use of specific property in a flood hazard area unless it has taken evidence of and considered the following factors:

1. The probability that materials would be swept onto other properties to the injury of persons or property in time of flood.

**Staff Comment:** The single family residential dwelling and accessory structures for the proposed use shall be constructed to meet flood plain construction standards and properly anchored. The proposed use and structures shall also require a Flood Elevation Certification prior to the issuance of the City's building permit Certificate of Occupancy. The Flood Elevation Certificate shall be prepared by a State registered land surveyor or engineer to certify to the Zoning Administrator that the elevation of the lowest floor of the structure and/or elevation of other flood proofing shall be located above the flood elevation of the subject site.

The probability of exterior materials swept onto other properties in time of flood may occur with on-site exterior elements such as playground equipment or outside storage. However, this may be mitigated with a condition that all accessory buildings, exterior site improvements and outside storage shall be anchored and secured.

2. The susceptibility of the proposed use to flood damage.

**Staff Comment:** As discussed in factor #1, the requirement for the Flood Elevation Certification for the construction of the proposed use will minimize the susceptibility of flood damage. Flood damage would not likely occur and will be addressed during the City's Building Permit process.

3. The importance of the proposed use to the community.

**Staff Comment:** The subject property was platted in 2011 and is zoned R-1. The proposed single family residential use is permitted in the R-1 Zone District and is consistent with the Community Character and Housing goals of the Edgewater Comprehensive Plan. The proposed use is also compatible with the surrounding residential uses and neighborhood.

4. The availability of safer and practical alternative locations for the proposed use.

**Staff Comment:** A significant portion of the subject property is located in Flood Zone A and there are no safer or practical alternative on-site locations for the proposed use.

5. The compatibility of the proposed use with the Master Plan and any applicable floodplain management program.

**Staff Comment:** Granting the CUP would not be substantially inconsistent with any plans adopted by the City. It will allow redevelopment of the site which is consistent with the goals of the adopted Edgewater Comprehensive Plan and flood management program pursuant to Code Section 16.23.10. The proposed use is compatible with the public health, safety and welfare purpose of the City's flood management program in that the proposed use and structures shall require flood plain construction and Flood Elevation Certification to reduce flood hazards.

6. The access to the property in time of flood for ordinary and emergency vehicles.

**Staff Comment:** Vehicular access to the subject property is provided from Harlan Street located on the west side of the property and the existing alley adjacent to the east side of the property.

7. The height, velocity, duration, rate of rise and debris transport capability of the floodwaters which would occur at the site in times of flood.

**Staff Comment:** Staff's review of the CUP application has identified the following information that would occur at the site in times of flood and would not result in significant floodwater through the property at a dangerous or life-threatening rate.

Height – 1 foot

Velocity – 2 feet/second

Duration – 24 consecutive hours of rainfall to reach a state of flood

Rate of Rise – 0.5 inch/hour

Debris Transport Capability – water flow of 0.5 inch can transport small items, debris, silt, etcetera with a minimal transport capability after 1 hour of rain and increased capacity after that depending on duration.

8. The cost of providing governmental services to the property during and after a flood, including maintenance and the repair of public utilities and facilities such as sanitary sewer, gas, electrical and water utilities and streets and bridges.

**Staff Comment:** The cost of providing governmental services to the property during and after a flood is relatively the same whether the property is developed as a single family use or remains vacant.

9. Any other relevant evidence submitted by the Zoning Administrator, the person requesting a permit, any appellant or other party at interest.

**Staff Comment:** No additional evidence has been submitted by the applicant, adjacent property owners or other party at interest.

10. The determination of the Board of Adjustment shall be based on the effects of the proposed project with respect to the objectives and purpose of this Chapter (16) as stated herein.

**Staff Comment:** The stated purpose of Chapter 16 is to promote “the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the City by lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing light and air, avoiding undue congestion of population, facilitating the adequate provision of transportation, water, sewerage, schools and other public requirements, and by other means in accordance with the Comprehensive Plan.” Code Section 16-1-30.

The method of achieving the stated purpose of Chapter 16 that is most relevant to this application is “securing safety from ...other dangers.” In this regard, the application is complete in providing the information to evaluate the effects of the proposed project.

The proposed single family use is a permitted use in the R-1 Zone District and the property is located in Flood Zone A, a low hazard area. The Board of Adjustment may consider the above factors and approve the CUP for a single family residential use for property located in a Flood Hazard Area.

**BOARD OF ADJUSTMENT ACTION:**

After the conclusion of the public hearing, the Board of Adjustment may approve or conditionally approve the CUP application after considering the factors listed above and finding that, on balance, the project serves the stated purpose of Chapter 16 or deny the application finding that, on balance, it does not serve such purpose.

The Board of Adjustment’s findings and decision must be rendered by adoption of a Resolution. Legal staff has provided resolutions appropriate for any decision available to the Board of Adjustment. To act, the Board of Adjustment should “Move to approve (read the title of the appropriate Resolution).”