

**BOARD OF ADJUSTMENTS AND APPEALS
MEETING MINUTES
NOVEMBER 7, 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 [3:00:27 PM](#).

ITEM 2. ROLL CALL

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

Present: Board Member Scott Hastie
 Board Member Nelson McNulty
 Board Member Stephan Jalovec
 Board Member Al Schuppert
 Board Member Nathan Stark – Arrived at 3:04 PM.

Absent: None

Also Present: City Attorney Carmen Beery
 City Planner Patty McCartney
 City Engineer John Enochs
 Community Services Director Dan Maples

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 Schuppert, to approve the current agenda. The motion **PASSED** on the following vote: **AYES:** Board Member Hastie, Board Member McNulty, Board Member Jalovec and Board Member Schuppert. **NAYS:** None. **ABSENT:** Board Member Stark. **ABSTAIN:** None.

ITEM 5. CONSENT AGENDA – MINUTES OF OCTOBER 15, 2014

Board Member Hastie moved, seconded by Board Member Jalovec, to approve the consent agenda as presented. The motion **PASSED** on the following vote: **AYES:**

Board Member McNulty, Board Member Jalovec and Board Member Schuppert. **NAYS:** None. **ABSENT:** Board Member Stark. **ABSTAIN:** Board Member Hastie.
Board Member Nathan Stark arrived at 3:04 PM.

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 03-14, A
RESOLUTION (APPROVING, CONDITIONALLY APPROVING
OR DENYING) AN APPLICATION FOR A CONDITIONAL USE
PERMIT FOR A SINGLE FAMILY RESIDENTIAL USE IN A
FLOOD HAZARD AREA AT 2474 EATON STREET,
EDGEWATER, COLORADO**

Clerk Hedberg reviewed the procedures for the public hearing. Chair McNulty opened the public hearing at [3:06:12 PM](#). City Staff McCartney reviewed here staff report which is attached hereto and made a part hereof by reference as Exhibit "A". Chair McNulty noted, for the record, what the Board Members had received:

- Staff Report dated November 4, 2014;
- Conditional Use Permit Application;
- Applicant Letter of Intent;
- Supplemental Drainage Information;
- Conditional Use Permit Plan;
- Floodplain Exhibit; and
- Email from Loren McConnell dated November 4, 2014.

City Engineer John Enochs said that an engineering analysis had been completed which showed that the base flood plain elevation would be raised base nearly three (3) inches if the home was constructed. The base flood plain elevation would affect the adjacent properties to the north and south. City Engineer Enochs said that he had met with Urban Drainage and spoke with a representative who was intimately familiar with the area. He had been advised that, since flood plain elevations had not been established within the area, to allow any increase in the base flood plain would be a mistake for the City. City Engineer Enochs said he had been told, "Urban Drainage and the City of Edgewater should express an abundance of concern for the public safety and welfare of the residents. If the anticipated rise in the flood level were to remain on the lot in question, then be advised that it would affect the neighbors on either side. There should be no rise in the floodplain." During his conversation with Urban Drainage, City Engineer Enochs had discussed an option of grading the lot to create a swale on either side of the home which would mitigate any rise in the floodplain. Existing storm drainage was addressed.

Clerk Hedberg swore in Michael Butler, the Applicant. Mr. Butler said that he had received the floodplain drawing the previous day. It seemed that the engineering firm had missed the plans for flood vents to be installed into the foundation. Mr. Butler testified that he believed the rise in the floodplain would be minimized with the addition of the flood vents. He said that he could go back to his engineer with the flood vent information and have it included in a revised drawing. He would also include the swales that would be graded on either side of the home. Mr. Butler inquired as to whether or not City staff would follow up on obtaining more information with respect to the existing storm drainage. Mr. Butler said that the building would meet the FEMA flood requirements. He was willing to take whatever measures that were needed to remove any adverse affects to the adjacent homes. Mr. Butler noted that the property had an existing retaining wall. He proposed increasing the height of the retaining wall so that water flowed adjacent to the property rather than on to it.

Removing existing trees on the property was considered.

Clerk Hedberg swore in Douglas Wayne Suthard. Mr. Suthard said that he had been asked by the McConnells to attend the meeting and share their concerns. He described the location and size of the existing retaining wall and the storm damage that had been done to the McConnells' foundation, garage and concrete walk and patio located at 2470 Eaton Street. Drainage on the north side of the home was the issue. The McConnells were not opposed to the project. They wanted there to be reasonable and adequate storm drainage provided. Mr. Suthard described improvements the McConnells had made to the storm drainage on their property.

Attorney Beery advised on the possible actions the Board could take: deny the application, continue the public hearing, or approve with conditions.

Board Member Schuppert expressed his concerns over adverse affects a newly constructed home could have on the flood drainage at the residence located at 2470 Eaton Street.

Mr. Butler said he understood the concerns of the residents at 2470 Eaton Street. It appeared that they currently had problems with storm drainage. Mr. Butler said he would like to see what happened to the numbers once his engineer got more information with respect to the flood vents and swales. Mr. Butler said he would like to see the City investigate the possibility of tapping into the existing storm drain.

City Engineer Enoch said that he recognized the requirements of the Board and that he believed he could make the final decision if the Board approved the application conditionally. There being no further testimony, Chair McNulty closed the public hearing at [3:48:31 PM](#).

City Attorney Beery advised that if the application was denied, the Applicant could come back to the Board in the future.

Board Member Hastie moved, seconded by Board Member Stark, to approve Resolution 03-14, a resolution conditionally approving an application for a conditional use permit for a single family residential use in a food hazard area at 2474 Eaton Street, Edgewater, Colorado with the following condition: City Staff to find that there would be a zero net effect on the base flood elevation of the adjacent properties. The Applicant had until December 8, 2014 to submit information to the City. The motion **PASSED** on the following vote: **AYES:** Board Member Hastie, Board Member McNulty, Board Member Jalovec, Board Member Schuppert and Board Member Stark. **NAYS:** None. **ABSENT:** None. **ABSTAIN:** None.

ITEM 8. PUBLIC COMMENTS

There were no public comments.

ITEM 9. BOARD MEMBER COMMENTS

There were no Board Member comments.

ITEM 10. DISCUSSION OF UPCOMING AGENDAS

It was noted that the City did not have any applications forthcoming. Clerk Hedberg was asked to provide the final information from the City Engineer to the Board regarding the application and conditional approval.

ITEM 11. ADJOURNMENT

There being no further business, Chair McNulty adjourned the meeting at [3:57:11 PM](#).

Submitted by:

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

Exhibit "A"

STAFF REPORT

To: Edgewater Board of Adjustments
Report Date: November 4, 2014
Public Hearing Date/Time: November 7, 2014, 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/Zoning: 2474 Eaton Street/R-1 (One-Family Residential) Zone District

Applicant: Michael Butler
3504 Quay Street
Wheat Ridge, CO 80033

Property Owner: BG Developments, LLC
3504 Quay Street
Wheat Ridge, CO 80033

Action Requested: Approval of a Conditional Use Permit for a single family residential use located in Flood Zone A.

CONDITIONAL USE PERMIT REQUEST OVERVIEW:

The applicant, Michael Butler, 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 2474 Eaton 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 applicant has stated the Baseline Flood Elevation (BFE) has been established in the attached supplemental information that the first floor elevation of structures shall be 3.5 feet above the BFE and the site design includes swales on the north and south of the residential structure to address this criteria. However, 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 and 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 and will be further addressed during the City's Building Permit process.

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

Staff Comment: The subject property is zoned R-1 and currently vacant. 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 and redevelopment of the vacant property 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: 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: The proposed single family residential use for this property is a permitted use in the R-1 Zone District. However, staff has requested additional drainage and floodplain information to evaluate the compatibility of the proposed use with the City's floodplain management program and Comprehensive Plan.

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 Eaton 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 has requested additional information to address this criteria not available at the time of the preparation of the report.

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. Staff is awaiting additional information from the applicant at the time this report was prepared. The applicant will present additional items at the public hearing, to which staff can respond as well.

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 not 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. The Board of Adjustment may consider the above factors to 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).”