

EDGEWATER BOARD OF ADJUSTMENT  
RESOLUTION NO. BOA 2015 – 02

A RESOLUTION CONDITIONALLY APPROVING AN APPLICATION FOR A VARIANCE FROM THE MAXIMUM REAR YARD FENCE HEIGHT OF SIX FEET (6'), IMPOSED BY EDGEWATER MUNICIPAL CODE SECTION 16-20-50, TO CONSTRUCT A TEN FOOT (10') FENCE IN THE C-1 ZONE DISTRICT AT 2501 SHERIDAN BOULEVARD, EDGEWATER, COLORADO

WHEREAS, the Edgewater Board of Adjustment (the "Board") has received a variance application and related documents (collectively, the "Application") from GDB Holdings LLC, dba Joyride Brewing Company (the "Applicant"), with the consent of property owner Atlas Real Estate Group, for the property located at 2501 Sheridan Boulevard, Edgewater, Colorado (the "Property");

WHEREAS, the Property is located in the Commercial 1 (C-1) zone district;

WHEREAS, the Applicant currently uses the Property in conformance with a previously-approved site development plan (SDP); and

WHEREAS, the Applicant has filed an application to amend its current SDP to permit, among other things, the construction of a fence in the rear yard and the relocation of certain parking and loading spaces; and

WHEREAS, said SDP amendment application proposes a ten foot (10') fence in the rear yard, in excess of the six foot (6') maximum rear yard fence height permitted Edgewater Municipal Code ("Code") Section 16-20-50; and

WHEREAS, after due and proper notice, the Board conducted a public hearing on the Application on March 18, 2015, at which time the Applicant and all other interested parties were given the opportunity to be heard and to present evidence, as reflected in the record of those proceedings;

WHEREAS, Code Section 16-24-60(b) sets forth variance approval criteria; and

WHEREAS, based upon all of the testimony and evidence received at the March 18, 2015 public hearing, the Board finds that the Application meets each of the variance approval criteria set forth in Code Section 16-24-60(b) upon the imposition of certain conditions, as further described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE CITY OF EDGEWATER, COLORADO, THAT:

**Section 1.** Findings: The Board makes the following findings concerning the application filed by GDB Holdings LLC, dba Joyride Brewing Company, with the consent of property owner Atlas Real Estate Group, for the property located at 2501 Sheridan Boulevard,

Edgewater, Colorado, for a variance from the requirements of Code Section 16-20-50, to permit the construction of a ten foot (10') fence in the rear yard of said property, in relation to the variance criteria set forth in Code Section 16-24-60(b):

**Code Section 16-24-60(b):**

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district.

**Finding:** The Property has the extraordinary physical conditions of being bounded on 2 sides by major commercial thoroughfares (25<sup>th</sup> Avenue and Sheridan Boulevard) and on 1 other side by residential properties; and housing its commercial activity in a previously-existing rehabilitated building. This Property therefore has a unique set of considerations in regards to compatibility with surrounding land uses and available indoor and outdoor space to put to use.

2. The extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone district in the absence of relief.

**Finding:** The extraordinary physical condition of the Property does not allow reasonable use of the Property in the C-1 zone district, for commercial purposes, in the absence of relief from the strict application of the Code in this instance. The Property has limited available area to locate any outdoor activities; due to site configuration and the location of the existing building, those activities cannot be located adjacent to other commercial uses. Reasonable use of the Property may include some outdoor use, given the Property's limited options to locate varying uses. The granting of a variance, in this instance, may be the only way to allow outdoor use of the Property in a manner that adequately protects the area residential uses and the neighborhood as a whole.

3. The granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood or the community as a whole.

**Finding:** If the SDP amendment is approved in a manner that permits the location of a rear yard patio area where patrons can gather on the Property, the ten foot fence will mitigate the potential adverse impacts (sight and sound) that such a patio may have on surrounding residential properties. Public testimony from a neighboring residential property owner indicated that a fence previously located on the Property without City approval, since removed, offered effective noise and sight mitigation. Written comment, via email, from another neighboring residential property owner was in favor of the variance, indicating a lack of adverse impacts on surrounding properties.

If the SDP amendment is *not* approved in a manner that permits the location of a rear yard patio area, the benefit that the fence provides to surrounding properties is no longer present and the ten foot fence may simply present a visual obstruction and anomaly that is inconsistent with the community as a whole.

Accordingly, the Board finds that the variance will not have an adverse impact on the surrounding properties or community as a whole on the CONDITION that the Applicant obtains City approval of an SDP amendment that permits the location of a rear yard patio in the area proposed to be bounded by the ten foot fence.

4. The granting of the variance will not be detrimental to public health, safety, and welfare or injurious to surrounding property values and neighborhood character.

**Finding:** A fence ten feet in height will provide a sight and sound-mitigating barrier between the Property and surrounding residential properties. As such, it will not injure surrounding property values or neighborhood character. The owners of the two residential properties directly across the alley from the proposed fence offered testimony (oral and written) in favor of the variance, expressing no concern of injury to their property value or the neighborhood character.

Another member of the public testified that, because the fence is not visible unless one drives down the alleyway, the fence would not affect the general character of the neighborhood.

The fence will comply with all building and safety codes and will not be detrimental to the public health, safety or welfare.

As mentioned under # 3 above, the benefit of the fence is only provided if it shields neighboring properties from the proposed rear yard patio. Therefore, the Commission finds that this criteria is met only upon the imposition of the same CONDITION set forth under # 3 above.

5. The granting of the variance shall not be substantially inconsistent with any plans adopted by the City.

**Finding:** Aside from the issue of height, the fence will not be substantially inconsistent with any plans adopted by the City. The fence will be of approved materials and construction.

6. The granting of the variance shall not materially weaken the general purpose of this Chapter 16 or any other zoning regulations of the City.

**Finding:** A rear yard fence ten feet in height, abutting an alley, designed to mitigate the potential adverse impacts of commercial patrols on neighboring residential properties, does not weaken the general purpose of Chapter 16 of the Code: to promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the City. The fence is designed and intended to serve the convenience and welfare of present and future residents of area residential properties.

The benefit of the fence is only provided if it shields neighboring properties from the proposed rear yard patio. Therefore, the Commission finds that this criteria is met only

upon the imposition of the same CONDITION set forth under # 3 above.

7. The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property.

**Finding:** A ten foot fence is the lowest in height that would adequately and effectively screen all patrons and associated structures in the patio area.

The benefit of the fence is only provided if it shields neighboring properties from the proposed rear yard patio. Therefore, the Commission finds that this criteria is met only upon the imposition of the same CONDITION set forth under # 3 above.

8. The unique conditions of the property under which the variance is sought were not created by the owner of the property or his or her agent.

**Finding:** The Applicant did not create the proximity of the existing commercial use to neighboring residential uses, a unique condition that requires the sound and sight mitigation measures proposed by the Applicant.

**Section 2. Decision:** Based on the foregoing findings, the Application filed by GDB Holdings LLC, dba Joyride Brewing Company, with the consent of property owner Atlas Real Estate Group, for the property located at 2501 Sheridan Boulevard, Edgewater, Colorado, for a variance from the requirements of Code Section 16-20-50, to permit the construction of a ten foot (10') fence in the rear yard of said property, is HEREBY CONDITIONALLY APPROVED. The applicant has met his burden of demonstrating that each of the criteria set forth in Code Section 16-24-60(b) are met upon the imposition of the following condition:

- That the Applicant, within one hundred twenty (120) days of the date of this decision, obtain City approval of an SDP amendment that permits the location of a rear yard patio in the area proposed to be bounded by the ten foot fence.

Failure to satisfy this condition shall render the conditional approval granted hereby null and void without further formal action of the Board.

**Section 3.** Pursuant to Code Section 16-24-60(c), the variance authorized hereby is transferable and shall run with the land unless expired for lack of action pursuant to Code Section 16-24-60(d).

DONE and ORDERED by a vote of 5 to 0 on March 18, 2015.

*/s/ Nelson McNulty, Chair*

ATTEST:

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

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 19th day of March, 2015, a true and correct copy of the above and foregoing RESOLUTION NO. BOA 2015-02 was delivered to the Applicant by depositing the same in the U.S. Mail, first-class, postage pre-paid, addressed to the Applicant's current address on file:

Grant Babb  
Joy Ride Brewing Co.  
2095 Newland Street  
Edgewater, CO 80214

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