

**BOARD OF ADJUSTMENTS AND APPEALS  
MEETING MINUTES  
MARCH 18, 2015**

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 [3:00:41 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  
                                      Board Member Al Schuppert

**Absent:**                       None.

**Also Present:**               City Attorney Carmen Beery  
                                      City Planner Patty McCartney

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 Jalovec and Board Member Stark. **NAYS:** None. **ABSENT:** Board Member Schuppert. **ABSTAIN:** None.

**ITEM 5.     CONSENT AGENDA – MINUTES OF NOVEMBER 7, 2014**

Minor editorial changes were made to the Minutes of November 7, 2014. Board Member Hastie moved, seconded by Board Member Jalovec, to approve the consent agenda as amended. 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 6. PUBLIC COMMENTS (NON-AGENDA ITEMS)**

There were no public comments.

**ITEM 7. GENERAL BUSINESS**

**a. Discussion and Possible Action on Resolution 2015-01, A Resolution Designating Public Places for the Posting of Notice of Meetings of the Edgewater Board of Adjustment and Appeals**

Board Member Schuppert moved, seconded by Board Member Hastie, to approve Resolution 2015-01, a resolution designating public places for the posting of notice of meetings of the Edgewater Board of Adjustment and Appeals. The motion **PASSED** on the following vote: **AYES:** Board Member Hastie, Chair McNulty, Board Member Jalovec, Board Member Schuppert and Board Member Stark. **NAYS:** None. **ABSENT:** None. **ABSTAIN:** None.

**b. Discussion and Possible Action on Resolution 2015-02, A Resolution (Approving, Conditionally Approving, or Denying) 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**

Procedures for the conduct of the public hearing were reviewed.

Chair McNulty opened the public hearing at [3:07:39 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, the documents the Board had received:

- Staff Report
- Development Application
- Applicant Project Description
- Applicant Letter of Intent
- Noise Study for Rooftop Deck Expansion
- Building Department Referral Comments
- Fire Department Referral Comments
- Variance Plan Set
- Site Photos
- Email Dated March 16, 2015 from Katie Hunt

Clerk Hedberg swore in Grant Babb, a representative of the Applicant. Chair McNulty asked Mr. Babb to address the variance approval criteria as the staff report indicated

that he had not met any of the necessary criteria.

1. *The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district.* Mr. Babb testified that the subject property was on a different elevation than that of the neighboring homes. The ten foot (10') fence would block the sight of patrons while in their back area. A six foot fence would not block the view of the patrons from the neighbors.
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.* Mr. Babb testified that, because of the expectation of a rooftop deck and back patio, it brought about concern over noise that could be projected onto the neighbors. If a tall patron were on the back patio, they could look over the six foot (6') fence. The noise would be audible. The additional height of the fence would provide a barrier to noise.
3. *The granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood or the community as a whole.* Mr. Babb testified that he was trying to prevent adverse effects with respect to audio and visual impacts on surrounding neighbors. Granting the variance would help prevent audible disturbances. He had spoken with some of the neighbors and one was present at the hearing. His neighbor would testify that having the fence was very beneficial in preventing audio and visual impacts upon the sanctity of their own backyard.
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.* Mr. Babb testified that he agreed granting the variance would not be detrimental to public health and safety. He referenced the visual and audio impacts of having a rooftop deck and back patio. A ten foot (10') fence would help alleviate the impacts to the neighbors. Joy Ride was a community supporter. He believed the ten foot (10') fence would support the sanctity of the community. The fence materials would be comprised of Trex which was a composite that provided a beautiful, unique, low-maintenance alternative to wood and vinyl. Trex fencing absorbed more noise than typical fence materials.
5. *The granting of the variance shall not be substantially inconsistent with any plans adopted by the City.* Mr. Babb testified that he believed the fence would be consistent with the plans adopted by the City outside of the additional four feet (4') extension. He had requested the variance to help alleviate the impacts upon their neighbors.
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.* Mr. Babb testified that he did not feel it would weaken the zoning regulations of the City. If the variance was granted it would increase the welfare of the neighbors by not impacting their lifestyle from day to day.
7. *The variance, if granted, shall only be to the extent necessary to afford a*

*reasonable use of the property.* Mr. Babb testified that, if the future site development plan was approved and they were allowed to use the back patio area, the fence would help the appearance and provide protection for the neighborhood so that they would not have to stare into the back patio and the patrons would not be staring into the alley or private property. He believed being allowed a ten foot (10') fence would satisfy all parties involved.

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.* Mr. Babb testified that the property currently did not have unique conditions but, if the site development plan were approved, conditions would exist that would have a higher visual and audio impact. The purpose of the extension of the fence was to help alleviate those impacts.

Mr. Babb provided conceptual drawings for the rooftop deck and back patio which was entered into the record as Applicant's Exhibit "A". He said that it would help the Board to understand how the fence would work in conjunction with their plans for moving forward. The fence would block the view of patrons using the outside stairwell. Sound barrier walls were planned for the rooftop deck. The ten foot fence (10') was a necessary part of an overall audio and visual control plan that was part of the whole project.

Discussion was held regarding granting the variance as a condition of the approval of a future site development plan. City Planner McCartney said she was unaware of any other ten foot (10') fences in the community. Applicant Babb spoke more about the proposed fence material and said that it absorbed more sound than wood; it was durable; and it was the highest quality material that they could find that resembled wood. It was noted that Applicant's Exhibit "A" incorrectly described the fence material as chain link. Emergency access was addressed.

City Planner McCartney said that building code requirements would need to be addressed at the time of the permitting process.

Clerk Hedberg swore in Pauline York. Mrs. York said that where the fence would be installed, it would not infringe on landscaping or alley traffic.

Clerk Hedberg swore in Jeff High. Mr. High testified that he lived across the alley from Joy Ride Brewery at 2512 Ames Street. Katie Hunt lived just to the north of them. During the last summer, there were some noise concerns during the evening hours when the patio was being utilized. They had brought their concerns to the Applicant. Shortly thereafter, Joy Ride had installed a ten foot (10') fence which had subsequently been removed. The fence had made a world of difference with respect to noise and privacy. The previous Trex fence had looked good.

There being no further testimony, Chair McNulty closed the public hearing at [3:46:35 PM](#).

The Board deliberated with respect to the variance criteria, setting a precedent for properties with similar conditions and the potential of affecting the community as a whole. Attorney Beery advised that variance requests and approvals applied to specific properties on their individual merits. If the Board approved the variance and created a pattern of approval, it would not set a precedent but might create an expectation for future variance requests. A pattern of approval would erode the Municipal Code.

Board Member Hastie said that he believed the fence to be more a part of the building due to its proposed placement.

Board Member Hastie moved, seconded by Board Member Jalovec, to approve Resolution 2015-02, a resolution conditionally approving an application for 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 as presented. Attorney Beery read the condition of the resolution into the record, "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 (10') fence." The motion **PASSED** on the following vote: **AYES:** Board Member Hastie, Chair McNulty, Board Member Jalovec, Board Member Schuppert and Board Member Stark. **NAYS:** None. **ABSENT:** None. **ABSTAIN:** None.

#### **ITEM 8. PUBLIC COMMENTS**

Pauline York said that she was glad the Board approved the variance request. She agreed that each request was a separate issue and that it would not set a precedent.

#### **ITEM 9. BOARD MEMBER COMMENTS**

Board Member Jalovec had no comments.

Board Member Hastie said that the staff report that had been submitted stated the facts. He thanked City Planner McCartney for doing a good job.

Board Member Schuppert had no comments.

Board Member Stark asked if the split rail fence that had been recently approved on 25<sup>th</sup> Avenue had gone through the proper approval process.

City Planner McCartney replied in the affirmative. She said Staff was reviewing the Code to see if provisions could be included which would address different fence designs and possibly prohibiting some.

Chair McNulty had no comments.

Board Member Hastie inquired as to the status of the conditional use permit for the property located at 2594 Harlan Street. City Planner McCartney noted that conditional use permit had been approved. The Applicant had met the condition as imposed by the Board. The Applicant's engineer had provided a letter that the construction of a single family residence would not have any effects on the flood zone. The letter had been reviewed and accepted by the City Engineer. Staff had just recently approved their site development plan.

**ITEM 10.     ADJOURNMENT**

There being no further business, Chair McNulty adjourned the meeting at [4:09:44 PM](#).

Submitted by:

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

## Exhibit "A"

### STAFF REPORT

To: Nelson McNulty, Board of Adjustment Chair and Members of the Board

From: Patty McCartney, City Planner

Cc: Carmen Beery, City Attorney  
Beth Hedberg, City Clerk  
Dan Maples, Community Services Director

Public Hearing Date and Location: March 18, 2015, 3:00 p.m., Council Chambers  
2401 Sheridan Blvd, Edgewater, Colorado

Applicant/Representative: Grant Babb  
GDB Holdings LLC dba Joyride Brewing Company  
2501 Sheridan Blvd.

Owner: Atlas Real Estate Group  
2345 7<sup>th</sup> Street  
Denver, CO 80211

Subject: Variance Request

Location of Request: 2501 Sheridan Blvd.  
Edgewater, Colorado

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#### **EXECUTIVE SUMMARY:**

The applicant, GDB Holdings LLC, is requesting a Variance to allow a four (4) foot height increase to construct a ten (10) foot high fence for the Joyride Brewery building located at 2501 Sheridan Boulevard. The property is located in the C-1 (Limited Commercial) Zone District and pursuant to Chapter 16, Article 20 of the Edgewater Municipal Code, the maximum permitted height for the fence is six (6) feet.

The proposed fence material is "trex" and is located approximately 45 feet from the rear property line. The location and design of the fence will enclose an existing loading and parking space area as approved on the Site Development Plan (SDP) for this property. The applicant has requested the increased fence height to screen and provide a noise barrier for a future proposed outdoor patio area on the west side of the existing building. A SDP Amendment shall be required for the approval of site modifications including the outdoor patio area and rooftop deck through a separate application and approval process.

#### **LOCATION:**

The property is located at 2501 Sheridan Boulevard, Edgewater Colorado 80214.

#### **PUBLIC NOTICING:**

The public hearing request for approval of the Variance was publicly noticed in accordance with the public notification requirement outlined in the *City of Edgewater Municipal Code* (Edgewater Municipal Code).

### **BOARD OF ADJUSTMENT REVIEW**

**Eligibility:** Per Section 16-24-60(a), a Variance request from the requirements of the Chapter 16 of the Edgewater Municipal Code shall only be granted through the Variance process by the Board of Adjustment when the circumstances and conditions of a property are exceptional or extraordinary such that they do not apply to property generally within the City and such the denial of an application for relief from the requirements of Chapter 16 would result in an inability to reasonably utilize the property.

**VARIANCE REVIEW CRITERIA:** Pursuant to Section 16-24-60(b), the Board of Adjustment shall not approve a variance unless all of the following criteria as outlined below are met:

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

**Staff Comment:** The subject property is a commercially zoned property of typical rectangular lot configuration, standard lot size and dimension with no significant grade change. The subject property is comparable to nearby commercial zoned properties located north and south of the subject site. The proposed project site has no extraordinary or exceptional physical conditions.

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

**Staff Comment:** As stated in criteria number one, the commercially zoned property is similar to the commercial properties north and south of the site and there are no extraordinary or exceptional physical conditions of the property that would not allow reasonable use of the property.

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

**Staff Comment:** The granting of the variance to allow a 10 foot high fence is not consistent with the existing adjacent commercial developments or fence design height of the surrounding area. The proposed fence design four feet higher than surrounding properties will visually impact the neighborhood and potentially the community character.

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.

**Staff Comment:** Staff has reviewed the variance request for a fence that creates an enclosed outdoor area that will increase occupant loads for the existing business. The increased occupant loads shall require additional building code and safety exit requirements for both the outdoor area and existing building at the time of issuance of a building permit.

The granting of the variance will allow a fence four feet higher than typical fence designs of adjacent commercial and residential properties. The proposed fence height is not consistent with the character of adjacent commercial properties and neighborhood.

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

**Staff Comment:** The granting of the variance is not consistent with the City of Edgewater Comprehensive Plan Community Character and Design objective for "... redevelopment with high quality urban design that will maintain and enhance the City's character and sense of place..." The proposed ten foot high fence in an existing commercial development does not maintain the existing community character or promote quality design.

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

**Staff Comment:** The variance request to allow an additional four feet of fence height will result in a 66% increase of the maximum allowable height established in the Edgewater Municipal Code. The 10 foot fence height is not in character with the existing fence designs in the area or community. Thus, the variance request is not harmonious with the height requirement and purpose of Chapter 16, Article 20 (Fences, Walls and Obstructions) of the Edgewater Municipal Code to ensure that walls and fences are attractive and in character with the community.

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

**Staff Comment:** The existing Joyride Brewery building and use has been in operation without an approved outdoor fenced patio area. Thus, a variance request is not necessary to afford a reasonable use of the property.

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.

**Staff Comment:** Staff has reviewed the variance request that will create an enclosed outdoor area increasing the business the occupant loads. The enclosed outdoor area design and increase of occupancy shall require additional building code and exiting requirements for both the outdoor area and existing building at the time of building permit. The variance request and conditions of the property has been created by the proposed development of the property.

**STAFF RECOMMENDATION:**

Staff recommends denial of the variance request to allow the increased fence height as it does not meet all of the approval criteria as outlined above nor result in the inability to reasonably utilize the property.

**BOARD OF ADJUSTMENT ACTION:**

Board of Adjustments & Appeals  
Meeting Minutes  
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After the conclusion of the public hearing, the Board of Adjustment may approve the Variance application finding it meets all the criteria listed above, or deny the application finding it does not meet the standards listed above.

The Board of Adjustment's decision must be rendered by adoption of a Resolution. Legal staff has provided resolutions appropriate for any decision available to the Board of Adjustment.