

**BOARD OF ADJUSTMENTS AND APPEALS
MEETING MINUTES
NOVEMBER 10, 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 PM.

ITEM 2. ROLL CALL

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

Present: Board Member Al Schuppert, Board Member Karen Hing, Board Member Nathan Stark and Chair Nelson McNulty.

Absent: Board Member Stephen Jalovec.

Also Present: City Attorney Carmen Beery and 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

Moved by Board Member Nathan Stark, **seconded by** Board Member Karen Hing to approve the agenda as presented. **Vote:** Motion carried by unanimous vote (**summary:** aye = 4). **Aye:** Board Member Al Schuppert, Board Member Karen Hing, Board Member Nathan Stark and Chair Nelson McNulty.

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

Moved by Board Member Nathan Stark, **Seconded by** Board Member Al Schuppert to approve the consent agenda as presented. **Vote:** Motion carried by unanimous vote (**summary:** aye = 3). **Aye:** Board Member Al Schuppert, Board Member Nathan Stark, Chair Nelson McNulty. **Abstain:** Board Member Karen Hing abstained as she had not been present at the meeting of October 15, 2014.

ITEM 6. PUBLIC COMMENTS (NON-AGENDA ITEMS)

There were no public comments.

ITEM 7. ELECTION OF OFFICERS

a. Election of Chair

Chair Nelson McNulty nominated Board Member Karen Hing for Chair. There being no further nominations, Chair Nelson McNulty closed the nominations for Chair. **Moved by** Board Member Nathan Stark, **seconded by** Chair Nelson McNulty to approve the nomination of Karen Hing for Chair. **Vote:** Motion carried by unanimous vote (**summary:** aye = 4). **Aye:** Board Member Al Schuppert, Board Member Karen Hing, Board Member Nathan Stark and Chair Nelson McNulty.

b. Election of Vice Chair

Chair Karen Hing nominated Commissioner Nelson McNulty for Vice-Chair. There being no further nominations, Chair Karen Hing closed the nominations for Vice Chair. **Moved by** Board Member Al Schuppert, **seconded by** Chair Karen Hing to approve the nomination of Commissioner Nelson McNulty for Vice-Chair. **Vote:** Motion carried by unanimous vote (**summary:** aye = 4). **Aye:** Board Member Al Schuppert, Chair Karen Hing, Board Member Nathan Stark and Board Member Nelson McNulty.

ITEM 8. GENERAL BUSINESS

a. Public Hearing and Discussion and Possible Action on Resolution 2015-03, A Resolution (Approving, Conditionally Approving, or Denying) An Application for a Variance from the Requirements of Code Section 16-6-70 (Lot Coverage in R-2 Zone District) to Allow Lot Coverage of 41% at 2438 Ames Street, Edgewater, Colorado

Chair Karen Hing reviewed the procedure for the conduct of the public hearing. Chair Karen Hing opened the public hearing at 3:10 PM. City Planner Patty McCartney reviewed her staff report which is attached hereto and made a part hereof by reference as Exhibit "A".

Clerk Beth A. Hedberg swore in Applicant Kieran Kealey. Mr. Kealey said that purpose for the variance was to provide adequate off-street parking for the future residents of the duplex. He had recently observed on several occasions that parking was tight on Ames Street. Mr. Kealey said he would be closing up the existing curb cut on Ames Street that would allow for more on-street parking. It was possible that four (4) to six (6) cars could be added with the addition of the new duplex. Another duplex was being built right next to the subject property and it would increase the need for parking. Mr. Kealey said that he believed that the garage would complement the building design and he wanted whomever purchased the homes to be happy. Part of being happy was coming home and being able to park in a garage. Mr. Kealey said that if he was limited to single car garages, he would only have one additional parking space in the driveways.

Chair Karen Hing opened the floor for public testimony. Clerk Beth A. Hedberg swore in Bill Moore. Mr. Moore testified that he was in favor of the variance. He spoke about increasing parking problems in the City and said that he believed that the application met many of the variance criteria. Mr. Moore noted that the amount of lot coverage was the same for the R-1 and the R-2 Zone Districts. He believed that the zone districts should have different lot coverage criteria. Mr. Moore said that he believed that since the zoning was R-2 for the subject property, that the small increase in the lot coverage should be allowed especially since it was for garages that would be located in the back alley. It was a real boon to have new homes constructed in the City. Mr. Moore said that he was in favor of the variance and he believed that the lot coverage for R-2 Zone Districts should be expanded by five to six percent (5% – 6%).

Clerk Hedberg swore in Pete Giannini. Mr. Giannini said that he was a renter and an immediate neighbor to the subject property. He believed the home that had been constructed at 2438 Ames was a monstrosity. It was not in keeping in with the character of the neighborhood. Mr. Giannini expressed concern over sunshine being blocked and losing passive solar energy. He said that he did agree that there was a parking problem on Ames Street. He did not believe that a variance should be granted after the fact of the duplex being constructed. There was no guarantee that the garages would be used for parking vehicles but might be used for storage. Mr. Giannini said that his quality of life would go down and his heating bills would go up. He thought it was a classic example of greed.

Clerk Hedberg swore in Pauline York. Mrs. York said that the duplex was already constructed. If parking became too difficult, it would affect the success of the businesses on West 25th Avenue. She said that anything the City could do to encourage off-street parking the better. Mrs. York said that she could understand where Mr. Giannini was coming from but he should have addressed the sunshine issue prior to the construction of the duplex. Mrs. York believed that residents would use the garage for parking vehicles. She approved of the variance.

Mr. Giannini said that he concurred with City Planner Patty McCartney's staff report and her opinion on the criteria not being met.

Parking regulations were addressed.

Mr. Kieran said it was not greed. He wanted to give the future residents adequate off-street parking.

It was noted that the original site development plan that had been administratively approved contained one car garages. Uncovered parking surfaces did not affect lot coverage.

There being no further testimony offered, Chair Karen Hing closed the public hearing at 4:44 PM.

Discussion was held regarding: the benefits of off-street parking; parking problems on Ames Street; what type of garages were the norm; how many cars the typical family had; if the garages would improve the appearance of the alley; density; whether or not the eight (8) variance criteria had been met; to what purpose the garages would be used; alternative forms of transportation; and whether or not the development would be viable without the variance being granted.

Moved by Chair Karen Hing to approve Resolution 2015-03, a resolution denying an application for a variance from the requirements of Code Section 16-6-70 (lot coverage in R-2 Zone District) to allow lot coverage of 41% at 2438 Ames Street, Edgewater, Colorado as presented as she did not believe all of the variance criteria had been met. The **motion failed** due to a lack of a **second**.

Moved by Board Member Al Schuppert, **Seconded by** Board Member Nelson McNulty to approve Resolution 2015-03, a resolution approving an application for a variance from the requirements of Code Section 16-6-70 (lot coverage in R-2 Zone District) to allow lot coverage of 41% at 2438 Ames Street, Edgewater, Colorado as presented. **Vote:** Motion passed (**summary:** aye = 3, nay = 1). **Aye:** Board Member Al Schuppert, Board Member Nathan Stark and Board Member Nelson McNulty. **Nay:** Chair Karen Hing.

b. Discussion and Possible Action on Bylaws

The Bylaws were reviewed and changes were proposed to the following sections: appointments to the Board; vacancy; resignation; absence; assistants; and minutes. The Board requested City Attorney Carmen Beery to amend the Bylaws per their discussion and present them to the Board for their approval at their next business meeting.

Current Board terms were considered. It was noted the Board Member Nelson McNulty's term was due to expire on December 1, 2015 and that he had submitted an application for reappointment. The appointment process was discussed.

ITEM 9. PUBLIC COMMENTS

There were no public comments.

ITEM 10. BOARD MEMBER COMMENTS

Board Member Nathan Stark had no comments.

Board Member Al Schuppert said that lot coverage had been overstepped a few times in the past. The City was growing and you could not stop progress. Determining the type of usage for garage spaces was out of the Board's hands. The proposed two (2)

car garages should have been included in the original site development plan (“SDP”). Adding them on after the SDP approval put the Board in a bad place.

Board Member Nelson McNulty welcomed Chair Karen Hing aboard.

Chair Karen Hing agreed with Board Member Al Schuppert’s comment that the Board had been put in a hard spot. She said that she personally wanted the four (4) car garage. It was important for her to have a garage and important for others to have garages. Chair Karen Hing said that her concerns were over the process. There were regulations contained in the Edgewater Municipal Code (“EMC”) that stated all of the variance criteria must be met. If the Board could not live by the existing rules, they needed to ask Council to reconsider them.

City Attorney Carmen Beery advised lot coverage would need to be looked at by the Planning and Zoning Commission for its appropriateness. Staff had thought that lot coverage was low in terms of Metro Denver standards.

Chair Karen Hing said that the City should look to ways to incentivize off-street parking such as waiving permit fees for flat work.

Discussion was held regarding: variance criteria with respect to unique physical conditions that existed in the City; and what role the Board could take to recommend changes to the EMC.

ITEM 11. DISCUSSION OF UPCOMING AGENDAS

The next meeting was scheduled for December 9, 2015 beginning at 7:00 pm to interview Board applicants, to consider lot coverage in the R-2 Zone District, to review the revisions to the Bylaws and to consider how the Board could communicate with City Council. Board Member Al Schuppert said that it was possible he would not be available on December 9th but he would not know until December 8th.

City Attorney Carmen Beery thanked Chair Karen Hing for how she conducted the public hearing with respect to the testimony offered.

ITEM 12. ADJOURNMENT

There being no further business, Chair Karen Hing adjourned the meeting at 6:07 PM.

Submitted by:

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

EXHIBIT "A"

OFFICE OF THE CITY PLANNER

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: November 10, 2015, 3:00 p.m., Council Chambers
2401 Sheridan Blvd, Edgewater, Colorado

Applicant/Owner: Kieran Kealey
Emerald Green Building
10799 W. Alameda Avenue #260531
Lakewood, CO 80226

Subject: Variance Request

Location of Request: 2438 Ames Street
Edgewater, Colorado

EXECUTIVE SUMMARY:

The owner, Kieran Kealey of Emerald Green Building, is requesting a Variance to increase the maximum lot coverage to 41% to construct a two-car garage for each unit for an approved attached two dwelling unit property located at 2438 Ames Street. A Site Development Plan (SDP) was administratively approved on September 23, 2015 for the construction of an attached two unit dwelling structure and detached 413 square foot garage.

The property is located in the R-2 (Residential 2) Zone District and pursuant to Chapter 16, Article 6 of the Edgewater Municipal Code, the maximum lot coverage shall not exceed 35% of the area of the lot. The subject property is adjacent to R-1 (Residential 1) and R-2 zoned properties to the west, north and south; and adjacent to C-1 (Commercial 1) zoned property to the east.

The total lot area of the property is 6,662 square feet and the maximum lot coverage is 2,331 square feet (35%). The applicant is requesting to increase the maximum allowable lot coverage to 2,707 square feet (41%) for the construction of a detached 790 square foot accessory structure that provides a two car garage for each dwelling unit. The proposed detached accessory structure is located 18 feet from the rear property line and approximately 11 feet in height. The applicant has requested the increased lot coverage to construct an accessory structure that will provide a total of four on-site garage parking spaces due to the applicant's lot coverage error that resulted in reducing the size of the accessory garage structure of the recently approved SDP.

LOCATION:

The property is located at 2438 Ames Street, 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 residentially zoned property of typical rectangular lot configuration, standard lot size and dimension with no significant grade change. The subject property is comparable to adjacent residentially zoned properties located west, north and south of the subject site. The proposed project site has no extraordinary or exceptional physical conditions.

The applicant has stated the approved townhome development for this property may potentially require a need for parking up to six vehicles for the additional residents.

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 residentially zoned property is similar and consistent with the residential properties west, 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.

The applicant has stated that the one-car garage for each unit as approved on the SDP will provide only two parking spaces on the property. The possibility of additional cars for the townhome development will be in addition to the on-street parking demand created by future duplex development north 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 increase the maximum lot coverage 6% to allow 41% maximum lot coverage is not consistent with existing residential developments or

maximum lot coverage requirements of the surrounding residential neighborhood. The proposed lot coverage will visually impact the neighborhood and residential community character with increased building wall area and mass visible from adjacent properties and public right-of-way.

The applicant has indicated the granting of the variance will improve the street parking availability for this block of Ames Street by allowing more cars to be parking on the property rather than the street.

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: The granting of the variance will allow an additional 490 square feet of building area resulting in an increased lot coverage of 6% more than the maximum 35% lot coverage. The increased lot coverage exceeds the allowable maximum lot coverage of adjacent residential properties and is not consistent with the character of the residential neighborhood .

The applicant stated the requested two-car garage per unit will value to the surrounding properties by reducing parking congestion on Ames Street and is in keeping with the neighborhood character. The variance request will provide adequate off-street parking for new Edgewater residents.

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 goal to “Preserve and enhance the residential character of lower density neighborhoods” and objective to “...encourage compatible architectural styles, scale of structures and lower density.” The proposed increased size of an accessory structure for a four car garage in an existing developed area does not maintain the existing residential community character or compatible scale of structures.

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 increased maximum lot coverage will result in an additional 490 square feet of building area for the property. The proposed additional building area meets the required setback and accessory building height requirements. The maximum allowable lot coverage established in the Edgewater Municipal Code is 35% for both the R-1 and R-2 Zone Districts. The increased lot coverage is not in character or consistent with the existing residential zoned properties or uses in the area. Thus, the variance request is not harmonious with the maximum lot coverage standards and purpose of Chapter 16, Article 6 (R-2 Zone District) to promote development that reduces building mass and ensures light and air is consistently regulated and the regulations are 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: A SDP for an attached two unit dwelling unit and detached accessory garage with two parking spaces that meets the 35% maximum lot coverage requirement has been approved by the City. 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: As discussed in criteria's one and two, there are no unique conditions of the property. The variance request to increase the maximum lot coverage to 41% for which the variance is sought has been created by the current development of the property.

STAFF RECOMMENDATION:

Staff recommends denial of the variance request to allow the increased maximum lot coverage from 35% to 41% as it does not meet all of the approval criteria as outlined above nor result in the inability to reasonably utilize the property.