

CITY OF EDGEWATER

**ORDINANCE NO. 2015 - 16
SERIES OF 2015**

AN ORDINANCE AMENDING SECTION 16-24-60 OF THE EDGEWATER MUNICIPAL CODE CONCERNING VARIANCES

WHEREAS, pursuant to its home rule authority under Sec. 6 of Article XX of the Colorado Constitution and pursuant to Article 23 of Title 31, C.R.S., the City of Edgewater, Colorado ("City") possesses the authority to regulate the zoning of land within its jurisdiction, including the power to authorize changes to and variances from zoning requirements; and

WHEREAS, pursuant to this authority, the City previously adopted zoning regulations authorizing variances under certain conditions, codified as Section 16-24-60 of the Edgewater Municipal Code ("Code"); and

WHEREAS, Code Section 16-24-60 does not currently restrict the type of zoning variance that may be sought or obtained by an applicant; and

WHEREAS, the City Council finds that use variances - those that authorize a deviation from the permitted or conditional uses of property under its applicable zone district regulations – pose a threat to the integrity and efficacy of the City's zoning regulations as a means to the orderly, well-planned and harmonious development of property within the City; and

WHEREAS, the City Council therefore desires to amend Code Section 16-24-60 to explicitly prohibit the granting of use variances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EDGEWATER THAT:

Section 1. Section 16-24-60 of the Code, concerning variances, is hereby amended as follows:

Sec. 16-24-60 Variances.

(a) Subject to the requirements of this section, ~~variances~~ from the requirements of this Chapter may be granted 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 that denial of an application for relief from the requirements of this Chapter would result in an inability to reasonably utilize the property. In reviewing applications for variances under this Section, the burden shall be upon the applicant to meet the criteria set forth herein.

(b) The Board of Adjustment shall not approve a variance from the requirements of this Chapter unless all of the following criteria are met:

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

(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;

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

(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;

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

(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;

(7) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property; and

(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.

(c) No variance authorizing a change in the permitted or conditional uses of property shall be granted.

(d) Conditions may be imposed upon any variance approval in order to alleviate or mitigate potential adverse impacts. Conditions must relate to the property and may relate to specific persons or organizations which have a direct association with the use of the property as contemplated by the requested variance. Every variance authorized hereunder shall be transferable and shall run with the land unless expired pursuant to subsection (e) below.

(e) A variance granted pursuant to this Section shall expire within two (2) years from the date of final approval if action has not been

taken within said time. This time may be extended with the approval of the Board of Adjustment if the petitioner can show good cause. For purposes of this Subsection, action means obtaining a building permit or other applicable City permit/license pursuant to the granting of the variance, or if a permit or license is not required, the right that is granted pursuant to the variance is put to use.

(e f) When an application for a variance from the terms of this Chapter has been denied by the Board of Adjustment, no application for the same or substantially the same variance may be filed with the Board of Adjustment for a period of one (1) year after the date the Board of Adjustment's decision denying the previous variance application becomes final.

Section 2. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining sections or provisions of this Ordinance, it being the intent of the City Council of the City of Edgewater that such invalid or unenforceable provisions are severable.

Section 3. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Effective Date. This ordinance shall become effective in accordance with the Home Rule Charter of the City of Edgewater.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 19th day of November, 2015.

/s/ Kris Teegardin, Mayor

ATTEST:

/s/ Elizabeth A. Hedberg, MMC
City Clerk

PASSED AND ADOPTED ON SECOND READING AND ORDERED PUBLISHED this 3rd day of December, 2015.

/s/ Kris Teegardin, Mayor

ATTEST:

/s/ Elizabeth A. Hedberg, MMC
City Clerk

APPROVED AS TO FORM:

/s/ Thad Renaud, City Attorney

CERTIFICATE OF PUBLICATION

STATE OF COLORADO)
)
CITY OF EDGEWATER) SS:
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COUNTY OF JEFFERSON)

I, Beth A. Hedberg, City Clerk, in and for said City of Edgewater, in the County of Jefferson, in the State of Colorado, do hereby certify that Ordinance 2015-16 was published in full on the City website in accordance with Section 1-3-50 of the Edgewater Municipal Code on November 23, 2015. In witness whereof, I have hereunto set my hand and the seal of the City of Edgewater, this 23rd day of November, 2015.

/s/ Beth A. Hedberg, MMC
Edgewater City Clerk

CERTIFICATE OF PUBLICATION

STATE OF COLORADO)
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CITY OF EDGEWATER) SS:
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COUNTY OF JEFFERSON)

I, Beth A. Hedberg, City Clerk, in and for said City of Edgewater, in the County of Jefferson, in the State of Colorado, do hereby certify that Ordinance 2015-16 was published in full on the City website in accordance with Section 1-3-50 of the Edgewater Municipal Code on December 4, 2015. In witness whereof, I have hereunto set my hand and the seal of the City of Edgewater, this 4th day of December, 2015.

/s/ Beth A. Hedberg, MMC
Edgewater City Clerk

SUMMARIZED HISTORY FOR ORDINANCE NO. 2015-16

Action	Date
Planning & Zoning Commission Recommending Approval	October 7, 2015
First Reading	November 19, 2015
Posted	November 23, 2015
Publication	November 23, 2015
Second Reading	December 3, 2015
Sent to Codifier	December 4, 2015
Posted	December 4, 2015
Publication	December 4, 2015
Enacted	December 9, 2015