

BEFORE THE PLANNING AND ZONING COMMISSION
GARDEN CITY, ADA COUNTY, IDAHO

In the Matter of:)	DSRFY2020 - 20
Appeal of Planning Official Determination)	FINDINGS OF FACT,
106 E. 36 th Street)	CONCLUSIONS OF LAW
Garden City, Ada County, Idaho)	AND DECISION
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THIS MATTER came before the Garden City Planning and Zoning Commission for consideration on appeal on February 21, 2024. The Planning and Zoning Commission reviewed the appeal and materials submitted. Based on the evidence presented, pursuant to Garden City Code, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

1. The appeal is regarding a Planning Official determination regarding an approved design review application, DSRFY2020-0020.
2. The appellant is Chad Slichter, with representation from Danielle T. Parè with Parè Law PLLC;
3. The property owner of record is BTB Idaho LLC.
4. The location of the project is 106 E. 36th Street, Garden City, ID 83714; Ada County Assessor parcel number(s) R27345200006.
5. This application was heard and approved by the Design Review Committee¹ on August 17, 2020.
6. On August 29, 2023, Chad Slichter, the architect of record, noted that items were changed during construction that needed to be addressed with Garden City, including the “service entry gate”. Derek Flynn, with ESI Construction forwarded the email Betty Gumm, Garden City Assistant Planner.
7. On August 31, 2023, Ms. Gumm replied to Mr. Flynn indicating that he should supply the design review consultants with an email of the changes to determine whether the gate was in conformity with the approved Design Review plans, DSRFY2020-0020.

¹ At the time of review and approval, the Design Review Committee was designated by city code as the body who was responsible for final action on certain design matters.

8. On September 5, 2023, Mr. Flynn responded with an explanation that “The drawings showed a sketch/rendering (see below) of a gate without specification or details and this gate does not exist. The owner has secured an ornamental gate and modified its decorations to be consistent with the winery. Please consider acceptance of the obtained gate.”
9. On September 6, 2023, the request was sent to the Design Review Consultants. The same day, Design Review Consultant, Derek Hurd indicated that the gate should be placed beyond the stair element.
10. On November 16, 2023, Elizabeth Baggerly and Mr. Flynn requested that the gate be permitted as installed.
11. On November 28, 2023, Associate Planner Hanna Veal, and Chad Slichter consulted with the Design Review Consultants² for input on whether the subject gate is in conformance with the initial approvals, or for a recommendation on a plan modification. The Design Review Consultants did not determine that the gate was in conformance with the approval, nor did they recommend approval of the requested change.
12. On December 1, 2023, Ms. Veal provided an official determination that the proposed gate is not in conformance with the initial approval and denied the plan modification request citing Garden City Code, 8-4A-3.D.1 which requires that fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage.
13. On December 15, 2023, Chad Slichter filed a timely appeal of the Planning Official determination, providing a letter from Danielle T. Parè with Parè Law PLLC.
14. On January 8, 2024, the property owner, applicant, appellant, and interested parties were notified of the appeal.
15. On February 21, 2024, the Planning and Zoning Commission held an appeal:
 - a. Chairman Montoya introduced the appeal.
 - i. He queried each Commissioner if there were any conflicts of interest to disclose. Each Commissioner including Chairman Montoya identified that they had no conflict to disclose.
 - ii. He identified the matter being appealed.
 - iii. He asked the parties if they had any issues with the content of the record or transcripts.
 - iv. He identified the standard of review is.
 - v. He identified that the appellant has the burden of proof.

² Per code 8-7A-2 the design review consultants shall function as consultants to staff on design applications and serve as an expert on matters of design that come before the city.

- vi. He identified the order of the hearing.
- vii. He identified the required action is required.
- viii. He identified the potential decisions, and the grounds for those decisions.
- b. The Appellant's representative, Danielle T. Parè with Parè Law PLLC, presented the appeal.
- c. Jenah Thornborrow on behalf of the Respondent, Garden City, provided a response.
- d. Danielle T. Parè and Elizabeth Baggerly, representing the owner, provided a rebuttal.
- e. During deliberations it was discussed that:
 - i. The staff determination was logical in that:
 - 1. The gate is located in front of the structural building frontage.
 - 2. The gate shown on the approved plans appears to be comparable to a 3.5' gate.
 - ii. A better interpretation of code is that the patio and roof deck are the building frontage.
 - 1. In the application, the patio was utilized to address the maximum front setback.
 - 2. The intent of code limiting the height of frontage fences is to allow the interaction of the public realm with the property. Interaction between the public realm and the property is happening on site, as there is functioning space above and below the roof deck.
- f. Commissioner Brown moved to grant the appeal finding that the gate mounted flush with the roof deck is flush with the building frontage.
- g. Commissioner Wilde seconded the motion.
- h. Upon roll call, each Commissioner Brown, Shepard, Wilde, and Chairman Montoya voted in the affirmative.

16. The adopted appeal proceedings for an appeal of the Planning Official's Decision provide findings:

Findings	Determination	Reasoned Statements
<p>The following may serve as grounds for remanding, or granting all or part of a Planning Official decision:</p> <ul style="list-style-type: none"> 1. The true intent of Title 8 of the Garden City Code or the codes adopted thereunder have been incorrectly interpreted by the Planning Official. 2. The provisions of Title 8 of the Garden City Code or 	<p>Grounds to grant the appeal have been met.</p>	<p>This application meets the required findings for the following reasons:</p> <p>Garden City Code 8-4A-3.D.1 requires that fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage.</p>

<p>the codes adopted thereunder do not apply, or an equally good or better form of construction should have been applied by the Planning Official.</p> <ol style="list-style-type: none"> 3. The findings made by the Planning Official as a basis for its action are not supported by the weight of the evidence. 4. There is a significant error in the application of the provisions of Title 8 or other provisions of the City Code that are important to sustaining the action by the Planning Official. 5. There is a significant violation of the notice provisions of the codes enumerated in Title 8 of the Garden City Code. 6. Significant errors are discovered after the Planning Official decision on which its action was taken in the materials provided to the Planning Official as a basis of its decision. 7. There is a significant error in the application of approved City policies that is important to sustaining the action taken by the Planning Official. 		<p>The patio was utilized for the review of maximum front setback. Additionally, the intent of code limiting the height and setback of frontage fences is to allow the interaction of the public realm with the property. This occurs at this site as there is functioning space above and below the roof deck patio.</p> <p>Therefore, for this reason the true intent of code has been incorrectly interpreted and better form of construction of interpretation of the code provision can be applied.</p> <p>The gate is mounted flush with the roof deck and patio which is a part of the building frontage for this application. Subsequently, the modification is not in violation of Garden City Code 8-4A-3.D.1.</p>
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CONCLUSIONS OF LAW

WHEREFORE, the Planning and Zoning Commission finds that the Planning Official erred in their decision. Therefore, the Planning and Zoning Commission hereby **GRANTS** the Appeal subject to the following conditions:

1. This decision may be further appealed to City Council pursuant to GCC 8-6A-9. The decision of the Council shall be final. This decision shall be final if not further appealed.
2. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.
3. Some final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
4. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
5. A takings analysis pursuant to Idaho Code may be requested on final decisions.
6. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.



Chairman, Ryan Montoya

February 21, 2024

Date