

CITY OF GARDEN CITY

6015 Glenwood Street • Garden City, Idaho 83714
Phone 208/472-2900 • Fax 208/472-2996

BEFORE THE CITY COUNCIL OF THE CITY OF GARDEN CITY

May 10, 2021 Appeal Hearing

DECISION ON DSRFY2021-0011
FINDINGS OF FACT AND CONCLUSIONS

APPEAL PURSUANT TO THE
GARDEN CITY CODE SECTION 8-6A-9

APPEAL OF **LOUIS LANDRY AND ROBERTA RENE**; RE: APPROVAL, BY THE DESIGN REVIEW COMMITTEE OF THE CITY OF GARDEN CITY, OF APPLICATION DSRFY2021-0011, FOR A SEVEN UNIT LIVE-WORK-CREATE APPLICATION LOCATED AT 208 E. 33rd Street, GARDEN CITY, IDAHO, 83714.

The appeal is denied.

Louis Landry and Roberta Rene for appellants.

Jason Jones for respondent.

Presided over by: John G. Evans, Mayor

Louis Landry and Roberta Rene appeal the decision of the Garden City Design Review Committee to approve application DSRFY2021-0011, a design review application for a seven unit live-work-create development located at 208 E. 33rd St. Garden City, Idaho 83714; Lots 05 and 06, Block 34, Fairview Acres Sub No 5; Ada County Assessor parcel number R2734541364. For the reasons set forth below, the City Council affirms the Design Review Committee's decision and denies the appeal.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. The application is for a design review for new construction of a Work-Live-Create development. Work-Live-Create is defined by Garden City Code 8-7A-2 as “The use of a structure and/or site that combines a commercial or manufacturing activity allowed in the overlay district with a residential living space. The spaces may be combined within one (1) space, attached to one another, or separated but located on the same property.”
2. The application is for the design review for new construction of a structure.
3. On November 25, 2019, the City Council denied application DSRFY2019-4 which was for a project at 208 East 33rd Street. The written denial was dated December 10, 2019.
4. On August 20, 2020, a second application for the same address was submitted, it was filed as DSRFY2020-25.
5. On September 21, 2020, the Design Review Committee approved DSRFY2020-25.
6. On October 5, 2020 there was an appeal to vacate the approval of the Design Review Committee.
7. At the November 9, 2020 Council Meeting, the City Council found that the application was premature and not ripe for review. The Appeal Opinion is dated November 23, 2020. On December 7, 2020, the applicant, Jason Jones, submitted, in part, a Request for Reconsideration with the City.
8. On March 11, 2021, a third application for the same address was submitted, it has been filed as DSRFY2021-0011.
9. The applicant is Jason Jones.
10. The property owner of record is Wee Boise INC.
11. The location of the project is 208 E. 33rd Street; Ada County Assessor parcel number(s) R2734541364.
12. The properties are legal lots of record.
13. The application is for a design review for the use of Work-Live-Create development. The scope of the design review is for the entire property.
14. The subject property is 0.344 acres.

15. The project is located in the M Mixed Use zoning district.
16. The project is located in the Surel Mitchel Live-Work-Create zoning overlay. The provisions of the overlay were utilized in the review of this proposal.
17. The project is located in the Surel Mitchel Live-Work-Create designation of the Garden City Comprehensive Plan Land Use Designation.
18. The project is in the not located in the SFHA according to the 2003 FIRM.
19. The project is in the AE flood hazard category according to the 2017 FIS.
20. The site plan supersedes the landscape plan where there is conflict.
21. The Design Review Committee finds that the multiple on-street parallel parking spaces are equivalent to the code allowance for angled on-street parking.
22. The following standards apply to this proposal:
 - a. Garden City Code 8-1A-4 Applicability
 - b. Garden City Code 8-1B Existing Nonconforming Properties, Structures, and Uses
 - c. Garden City Code 8-3C Surel Mitchell Live-Work-Create
 - d. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - e. Garden City Code 8-4B-4 Multi-family Residential Dwelling Units
 - f. Garden City Code 8-4C Design Provisions for Nonresidential Structures
 - g. Garden City Code 8-4D Parking and Off-Street Loading Provisions
 - h. Garden City Code 8-4E Transportation and Connectivity Provisions
 - i. Garden City Code 8-4F Sign Provisions
 - j. Garden City Code 8-4H Flood Hazard
 - k. Garden City Code 8-4L Open Space Provisions
 - l. Garden City Code 8-6A-3 General Application Process
 - m. Garden City Code 8-6A-4 Required Application Information
 - n. Garden City Code 8-6A-5 Administrative Process with Notice
23. The following plans and policies apply to this proposal:
 - a. Garden City Comprehensive Plan
 - b. Garden City Sidewalk Policy
 - c. Garden City Street Light Policy

24. The applicant provided the following application information:

Materials Provided Per GCC Table 8-6A-2 Required Application Information	Application Information
Provided	

Yes	No	Waived pursuant to GCC 8-6A-4	
X			Compliance Statement
X			Neighborhood Map
X			Site Plan
X			Landscape Plan
X			Schematic Drawings
		X	Lighting Plan
		X	Topographic Survey
		X	Grading Plan
X			Will Serve
		X	Approved Address

25. Additional application materials submitted include:

- a. Affidavit of Legal Interest
- b. Application
- c. Sustainability Checklist
- d. Statement of Intent

26. Agency comments were received from:

- i. Fairview Acres, dated March 25, 2021
- ii. North Ada Fire and Rescue, dated March 26, 2021
- iii. City Engineer, dated March 27, 2021

27. The following noticing was completed in accordance with GCC 8-6A and GCC 8-6B-3:

Noticing Requirement	Required Date	Completion Date
Receipt of application here	03/11/2021	03/11/2021
Letter of Acceptance	04/11/2021	03/15/2021
Radius Notice	03/21/2021	03/18/2021
Legal Notice	03/17/2021	03/17/2021
Agency Notice	03/21/2021	03/17/2021
Property Posting Sign	03/26/2021	03/24/2021
Affidavit of Property Posting and Photos	03/29/2021	03/24/2021

28. On April 5, 2021, in accordance with GCC 8-6B-3, a pre-application conference was held in conjunction with the public hearing before the Design Committee.

- i. Committee Member Derek Hurd recused himself for DSRFY2021-0011 only.
- ii. Jason Jones and Derek Hurd presented the application.
- iii. Staff Hanna Veal presented the staff report.

- iv. Late public testimony submitted on April 4, 2021 by Roberta Rene in opposition was read into the record.
- v. Public testimony was heard from:
 1. Lou Landry: Opposition- cannot have two applications associate with the same property at the same time; how do the live units correlate with the work units; private drive versus alley concerns; ADA parking and facilities not provided.
 2. Julie (unable to hear exact spelling of last name in Zoom Audio): Neutral- management policies with how the tenants will be screened; parking on the street is a common issue;
 3. Don May: Approval- No parking minimums should be imposed.
 4. Hannah Ball: Neutral- the alleyway is a private drive according to ACHD's description of an alley.
- vi. Jason Jones provided rebuttal:
 1. Background checks for all tenants.
 2. Parking should be left up to developers, not the city.
 3. DSRFY2020-25 denied and no longer active.
 4. There is a one-to-one ratio of live and work units.
 5. The application provides enough vehicular parking space, with seven spots being provided.
 6. One ADA living space is provided.
 7. Seven individual garbage cans can be the alternative to the trash enclosure. They can be stored in the "storage" unit.
 8. Do not have 29 bike spaces, but site plans show that it could be a possibility.
- vii. Public testimony was closed.
- viii. Charlie Wadams Point of Order.
 1. There is pending litigation on the DSRFY2019-4 application. However, the City does not comment on pending litigations.
 2. Requested clarification from staff if ACHD had made any comments on this application.
 3. Unaware of any code that prevents two applications for the same property from being active at the same time.
- ix. Discussion included:
 1. It is not a hardship to accommodate the seven parking spots on site.
 2. Four-foot setback would not apply off private drive.

- 3. If the trash dumpster is not a structure, and does not propose an enclosure, garbage screening can be achieved via a fence.
 - 4. Some work units are physically separated from their associated live units.
- x. Committee member Gresham moved to approve the application as drafted in the draft decision in the affirmative with draft conditions of approval with the following modifications to the conditions of approval:
 - 1. All Ada County Highway District review comments shall be met.
 - 2. Potential conditions 8 and 9 are to be stricken.
 - 3. An additional condition requiring that the dumpster be screened via a code compliant fence be added.
 - xi. Commissioner Labrie seconded the motion.
 - xii. The motion carried unanimously.

29. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Agency Comments
- d. Written Public Comments
- e. Staff report
- f. April 5, 2021 Design Review Committee Minutes and Audio
- g. Design Review Committee Signed Findings of Fact, Conclusions of Law and Decision

30. In order to approve a design review application, the Design Committee made the following findings:

GCC 8-6B-3 DESIGN REVIEW COMMITTEE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<p>Standard: The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.</p> <p>Explanation: The proposed design is in conformance with the purpose and regulations of Garden City Code 8-3C Surel Mitchell Work-Live-Create Overlay District.</p>

X			<p>The proposed design adheres to standards for the protection of health, safety, and general welfare.</p> <p>Explanation: The proposed design of detached sidewalks, interior courtyards, pollinator gardens, patios, and bicycle racks all adhere to applicable standards for the protection of health, safety, and general welfare.</p>
X			<p>The proposed design creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods within the city.</p> <p>Explanation: The proposed design as conditioned, creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods in the City. The design of the proposal is unique and creates a sense of place in the neighborhood.</p>
X			<p>The proposed design improves the accessibility of development to non-motorized and public modes of transportation.</p> <p>Explanation: The proposed design improves non-motorized accessibility by providing extensive bicycle parking and pedestrian pathways through and around the site. By providing ample bicycle parking and little vehicular parking, the proposal encourages users to utilize the nearby greenbelt and public transportation (bus stop).</p>
	X		<p>The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors.</p> <p>Explanation: Not applicable. The property is not located along an arterial corridor.</p>
X			<p>The proposed design supports a compact development pattern that enables intensification of development and changes over time.</p> <p>Explanation: The proposed design supports a compact development pattern by having a mixed-use development in a</p>

			small footprint. This footprint could be expanded vertically over time.
X			<p>The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity.</p> <p>Explanation: As conditioned, the proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity. The landscape plans meet the requirements of 8-3C and 8-4I and pedestrian connectivity meets the requirements of 8-3C and 8-4E.</p>

31. On April 20, 2021, two separate timely appeals, requesting that the decision of the Design Review Committee be vacated, were filed by Louis Landry and Roberta Rene.

32. On April 21, 2021, the appellants, Louis Landry, Roberta Rene, and applicant/property owner, Jason Jones with Wee Boise, Inc. were notified that the appeal would be held on May 10, 2021, in accordance with Section 8-6A-9 of the Garden City Code. Interested parties were notified by email on April 28, 2021.

33. On May 10, 2021, prior to commencing the appeal hearing:

1. Mayor Evans asked each Council Member if they had any conflicts of interest related to the appeal. Councilmember Beaumont recused herself. The remaining Council Members nor Mayor Evans identified that they have any conflicts of interest.
2. Mayor Evans asked the appellant and applicant/respondent if there were any concerns with the record materials. No concerns with the record were acknowledged by the appellant nor the applicant/respondent.
3. Mayor Evans identified that the decision in its entirety was being appealed.
4. Mayor Evans identified that the appeal was not *de novo* and based on the Design Review Committee record materials as supplemented with the appeal, respondent's response, and appellant's rebuttal to the respondent's response.
5. Mayor Evans noted that the burden of proof is on the appellant.
6. Mayor Evans noted the order of the hearing was the appellant first, the applicant/respondent second, and the appellant third for rebuttal.

7. Mayor Evans identified that the Council decision would be to affirm, vacate, remand, and/or reverse the Design Review Committee's decision. He noted for the record which each decision means.
 8. Mayor Evans noted grounds for affirming, remanding, or reversing the decision.
 9. Mayor Evans noted that the Council's role was to review the decision of the Design Review Committee and that City Council should review the record of the Committee with due regard for the Committee's decision.
34. During the Appeal Hearing on May 10, 2021:
1. Louis Landry presented his appeal. He focused his presentation on:
 - i. The procedural issue of more than one active application at a time;
 - ii. ADA compliance; and
 - iii. Parking.
 2. Roberta Rene presented her appeal. She focused her presentation on:
 - i. The procedural issue of the application of having more than one active application at a time.
 3. Jason Jones responded.
 4. Louis Landry provided rebuttal.
 5. Roberta Rene provided rebuttal.
 6. The City Council reviewed each of the 7 standards of Garden city Code 8-6B-3, Design Review Committee required findings. The Mayor called for a separate roll call vote for each of the Design Review Committee's conclusions of Garden City Code 8-6B-3. The City Council unanimously sustained each conclusion.

CONCLUSIONS REGARDING ISSUES RAISED ON APPEAL

Per Garden City Code 8-6A-9, City Council shall determine whether the petition should be: granted, granted with conditions, remanded to the Design Review Committee for additional proceedings and findings, or be denied. In conjunction with code, the Garden City administrative rules indicate the City Council may: affirm, vacate, remand, and/or reverse the Design Review Committee's decision.

The City Council is tasked with determining if the Design Review Committee made the decision in accordance with applicable laws and regulations. The Council makes its decision on the record presented in front of the Design Review Committee.

The City Council sustained each of the Design Review Committee conclusions.

Accordingly, on May 10, 2021, Council Member Page moved to affirm the Design Review Committee's Decision for application DSRFY2021-0011. Council Member Jorgensen seconded the motion. The Motion passed on a 3/0 vote.


DECISION

WHEREFORE, based upon the foregoing opinion, the City Council affirms the Design Review Committee's Decision and denies the appeal.

The decision of the Council shall be final. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Title 67, Chapter 65 of Idaho Code. Any applicant or affected person seeking judicial review of compliance must first seek reconsideration of the final decision within fourteen (14) days. A takings analysis pursuant to Idaho Code may be requested on final decisions.

Teresa Jorgensen, James Page, and Jeffrey Souza **CONCUR**.

Dated this 24th day of May 2021



John G. Evans
Mayor, City of Garden City, Idaho