



CITY OF GARDEN CITY

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MEMORANDUM

Date: For May 22, 2023

To: City Council

From: Jenah Thornborrow, Development Service Director

RE: Appeal of Design Review Committee's approval of DSRFY2022-0022 a multifamily development located at 233 E. 47th Street and 311 E. 47th Street

Requested Action:

Tom Schappacher appeals the design of an approved application approved by the Design Review Committee on March 6, 2023, Design Review file DSRFY2022-0022 for a multi-family apartment development located 233 E. 47th Street and 311 E. 47th Street. His request is to vacate the placement of the trash enclosure and require additional parking.

Appeal Request:

The appeal submitted by Tom Schappacher notes the following issues as summarized below:

1. Relocate a trash enclosure away from northeast side of the development.
2. Increase the number of required vehicular parking spaces.

Supporting Evidence

Tom Schapperacher provides the supporting evidence to for the appeal:

1. [8-6A5.F \[Administrative Process with Notice\]](#) "Conditions of approval that are deemed necessary to protect the public health, safety, and welfare, and prevent undue adverse impacts on surrounding properties may be required."
2. [8-4D-6 Standards for Alternatives to On Site Parking](#) is subjective.

Background

On March 6, 2023, a Design Review application was approved for DSRFY2022-0022.

The application provides 142 of the 150 required parking spaces. Each of the 60 units provides the required 2 spaces and there are an additional 22 guest spaces. The Garden City Code permits one parking space to be off-site. This results in the project being deficient in 7 of the required 30 guest parking spaces. The applicant provided a parking analysis and covered bicycle parking. A reduction in parking was permitted per GCC 8-4D-6 Standards for Alternatives to On-Site Parking.

In discussions with the applicant, the Design Review Committee requested if the enclosure could be relocated from the southern perimeter of the project to a more central location. The applicant noted design constraints that resulted in the Design Review Committee requesting that there be two enclosures. The reasoning for this was:

1. The constraint of locating the enclosure in the central location available would negate the provided amenities required by Garden City Code 8-2C-15 and preclude a terminal view into the development.
2. As the distance between the trash enclosure and some units would be far, a centralized or more than one enclosure would be more usable for the tenants of the project.
3. The use of two enclosures would result in less activity at the enclosures, reducing the burden to each of the adjacent properties.

On March 18, 2023, Tom Schappacher filed a timely appeal to the Garden City Council.

On May 1, 2023, the applicant requested that the trash enclosures be consolidated into one enclosure on the south side of the development to alleviate the appellant's concern. The applicant noted that one enclosure would have adequate capacity to service the entire development. The Design Review Committee did not concur with the request. They noted that the issues related to the amount of activity at the enclosure and the need for accessible access for tenants would remain the same as the initial proposal for the enclosure on the south side of the development.

Appeal Guidelines

Only the applicant or someone who has standing, via written or oral testimony, or the Development Services Director, Chief of Police, or Public Works Director have standing to appeal. An appeal is not a public hearing and only the appellant(s) and respondent(s) or their representatives should address the Council.

Garden City Code 8-6A-9 notes that appeals are to be on the record of the decision maker, meaning that appeals are not *de novo*. A draft opinion of the appeal proceedings and decision will be presented for review at a meeting after the appeal hearing so that the appeal body can review and confirm their decision.

Deference is to be given to the decision body, and the burden of proof is on the appellant. New concerns, information, or documentation should not be considered. The appellant, and or applicant have been advised that they should be able to indicate page numbers of the packet for reference if requested. If there is new material that is determined should be reviewed, the application should be remanded to the decision body.

GCC 8-6A-9 Appeals:

The decision of an appeal is governed by 8-6A-9 E:

1. After the hearing on the appeal, the review authority shall make its decision and adopt the findings of fact and conclusions.
2. In its decision, the review authority shall determine whether the application or petition should be granted, granted with conditions, remanded to the decision maker for additional proceedings and findings, or denied.
3. The city shall transmit a copy of the decision by the review authority together with a copy of its findings and conclusions to the decision maker; and shall transmit a copy of its decision, findings, and conclusions of law to the appellant.

4. The decision on an appeal made by the commission or design review committee may be further appealed to the council.

The decision of the council shall be final.

In conjunction with code, the Garden City administrative rules indicate the appeal body may: affirm, vacate, remand, and/or reverse the deciding body's decision.

Grounds for affirming the decision, and denying the appeal, are summarized below:

1. The findings, inferences, conclusions, or decisions are not in violation of constitutional or statutory provisions.
2. The findings, inferences, conclusions, or decisions are not in excess of statutory authority.
3. The findings, inferences, conclusions, or decisions are not made upon unlawful procedure.
4. The findings, inferences, conclusions, or decisions are supported by substantial evidence on the record.
5. The findings, inferences, conclusions, or decisions are not arbitrary, capricious, or an abuse of discretion.

Grounds for vacating, remanding, or reversing (granting the appeal) the decision are summarized below:

1. The true intent of codes has not been correctly interpreted.
2. The provisions of codes do not apply, or a better form should have been applied.
3. The findings, inferences, conclusions, or decisions are not supported by the weight of evidence.
4. There is a significant error in the application of the code provisions.
5. There is a significant violation of the notice provisions.
6. If there are significant errors that were committed by the decision body or in the materials provided to the decision body.
7. There is a significant error in the application of approved policies that are important to sustaining the action taken.

Links:

- [Appeals Procedures](#)
- [Record Materials](#)
- [Appeal Documents and Noticing](#)
- Minutes
 - [January 3, 2023](#)
 - [February 6, 2023](#)
 - [March 6, 2023](#)

Attachments:

- Approved Site Plan
- Appeal application/ presentation
- Transcripts