



CITY OF GARDEN CITY

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

MEMORANDUM

Date: For October 11, 2021

To: City Council

From: Jenah Thornborrow, Development Service Director

RE: Appeal of Design Review Committee of approval of amendments to file DSRFY2019-25 new construction located at 510 E. 41st Street

Requested Action: Appeal Hearing

Wendy Carver-Herbert has appealed the Design Review Committee approval of amendments to a previously approved new construction, file, DSRFY2019-25.

The file number DSRFY2019-25 includes three separate structures and sites. The subject modifications are limited to the site and structure located at 510 E. 41st Street. This structure was previously referred to as the "Boardwalk Hotel" and is now being referred to as the "Tower". There have been no requested changes to the structures or sites referred to as the "Boardwalk" located at 507 E. 41st Street or "406 Place" located at 406 E. 40th Street.

Appeal Summary:

The appeal is of the approved height relative to the location to the river. The appeal submitted notes the following issues as summarized below:

1. Failure to meet design standards;
2. Failure to meet parking standards.

Background

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 subsequent to 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.

Per Garden City Code 8-6A-9, the appeal body shall determine whether the appeal should be: granted, granted with conditions, remanded to the decision body for additional proceedings and findings, or be denied. 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 weight of evidence;
4. There is significant error in the application of the code provisions;
5. There is 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 significant error in the application of approved policies that are important to sustaining the action taken.

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 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.

Links:

- [Appeals procedures](#)
- [Record Materials](#)
- Minutes
 - [October 17, 2019](#) Design Review Committee Modification Pre-Application Meeting
 - [November 4, 2019](#) Design Review Committee Hearing
 - [December 2, 2019](#) Design Review Committee Hearing
 - [January 21, 2020](#) Design Review Committee Hearing
 - [March 23, 2020](#) City Council Appeal Hearing
 - [July 6, 2021](#) Design Review Committee Modification Pre-Application Meeting
 - [August 16, 2021](#) Design Review Committee Hearing

Attachments:

- Appeal procedures
- Appeal application
- Design Review decision document
- Amended elevations
- Previously approved elevations
- Transcripts of hearings