

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

In the Matter of:)	CUPFY2020-16
)	
Conditional Use Permit)	FINDINGS OF FACT,
401. E 52 nd St.)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
_____)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on September 16, 2020. The Planning and Zoning Commission reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The request is for a.) a waiver to the minimum density requirements, b.) the addition of a secondary single-family detached dwelling unit, and c.) a waiver of maximum square feet for accessory structures.
2. The applicant is Regina Phipps and Will Calhoun.
3. The property owner of record is George and Nadine Nesbit.
4. The location of the project is 401 E 52nd St.; Ada County Assessor parcel number(s) R7334160670. PAR #0670 POR NW2 LOTS 1 & 2 BLK 5 RANDALL ACRES #5 R/S 3814 #0682S
5. The property is a legal lot of record.
6. The application is for a Conditional Use Permit for the use of Dwelling Unit, Single Family Detached and for a density reduction waiver. The scope of the Conditional Use Permit is limited to the entire property.
7. The subject property is 0.682 acres.
8. The project is located in the R-3 Medium Density Residential zone.
9. The project is located in the Main Street Corridor and Mixed Use Residential districts of the Garden City Comprehensive Plan Land Use Designation.
10. The project is located in the SFHA according to the 2003 FIRM.

11. The project is located in the SFHA according to the 2017 FIS.
12. The existing use on the site is Dwelling Unit, Single Family Detached.
13. 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 8-2B Base Zoning District Regulations
 - d. Garden City Code 8-3D Overlay Zoning District Regulations
 - e. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - f. Garden City Code 8-4C Design Provisions for Nonresidential Structures
 - g. Garden City Code 8-4F Sign Provisions
 - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
 - i. Garden City Code 8-6A Administration General Provisions
14. 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
15. The following previous approvals apply to this proposal:
 - a. BLD95
 - b. Record of Survey 3814
16. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

Conditional Use Permit			
Provided			
Yes	No	A Waiver was submitted	
X			Compliance Statement
X			Neighborhood Map
		X	Will Serve

17. Additional application materials submitted include:
 - a. Fire Flow Application
 - b. Ability to Serve Request
 - c. Conditional Use Permit Application
 - d. Statement of Intent
 - e. Site Plan

- f. 300' Neighborhood List
- g. Neighborhood Meeting letter
- h. Neighborhood Meeting Sign in sheet
- i. Affidavit of Legal Interest
- j. Waiver for Will Serve Letter
- k. Garden City CUP Review Comments

18. Agency Comments were received from:
- a. Idaho Department of Environmental Quality, 08/24/2020

19. No public comments were received.

20. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application here	08/11/2020	08/06/2020 08/25/2020 Late submittals
Letter of Acceptance	09/11/2020	08/12/2020
Radius Notice	09/01/2020	08/11/2020 Mailed
Interested Parties	None	None
Legal Notice	08/28/2020	08/11/2020 Emailed 08/14/2020 Published
Agency Notice	09/01/2020	08/11/2020
Property Posting Sign	09/06/2020	08/25/2020
Affidavit of Property Posting and Photos	09/09/2020	08/25/2020

21. On September 16, 2020, a public hearing before the Planning and Zoning Commission was held:

1. Applicant, Regina Phipps, presented the application.
2. Staff, Hanna Veal, presented the staff report
3. Public testimony was heard from:
 - a. Shawn McFadden, in opposition, concerning the traffic loads that a higher density proposal would create. In favor of the proposed single family dwelling unit plan.
 - b. George Nesbit, in opposition, the proposed house fits in with the surrounding neighborhood and believes that as the property owner, the home should be built as the applicant desires.
 - c. Dyan Bevins, in opposition, the reduction of density is not the issue. Questions regarding the TOD density requirements of the Comprehensive Plan designation. Subdivision process is a heavy burden for citizens, the proposed home is not possible even if the applicant chooses to subdivide.
4. Regina Phipps provided rebuttal testimony.
 - a. Subdivision process is an undue hardship for a property owner.

- b. The original single-family home will be demolished once it is not needed anymore.
 - c. Staffs interpretation of the proposal as an accessory dwelling unit is inaccurate. The proposal is not meant to be subordinate.
 - d. No hard definition of a duplex.
 - e. Legal lot of record was questioned. It should not be the applicant's duty to find required documents to prove that the lot was created legally.
 - f. It should not be difficult for a homeowner to build what they want on their property.
5. Public testimony was closed.
 6. Commissioner Wilde moved to approve the application as amended to include the following conditions:
 - a. The applicant shall apply for a subdivision application prior to issuances of a construction permit.
 7. Commissioner Pelton seconded the motion.
 8. The motion carried on a 3/1 vote with commissioner Pelton dissenting.

22. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Correspondence Documents
- d. Record of Survey 3814
- e. Agency Comments: Idaho Department of Environmental Quality
- f. Written Public Comments: none provided
- g. Staff report
- h. September 16, 2020 Planning and Zoning Commission Hearing Minutes
- i. September 16, 2020 Planning and Zoning Commission Hearing Audio
- j. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

23. In order to approve a conditional use permit application, the Planning and Zoning Commission shall make the following findings:

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<p>Finding: The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;</p> <p>In Approval: The use is appropriate to the location, lot, and the neighborhood and is compatible with uses within the R-3</p>

			General Zoning District. This application is in conformance with the surrounding neighborhood as the surrounding uses are single family detached dwelling units.
X			<p>Finding: The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;</p> <p>Explanation:</p> <p>In Approval: There are public services available that can accommodate the proposed development.</p>
X			<p>Finding: The use will not unreasonably diminish either the health, safety or welfare of the community;</p> <p>Explanation:</p> <p>In Approval: the application triggers a sidewalk installation which will increase the safety of those traveling along Allworth Street. The proposal of another dwelling unit on the site, and a reduction in the required density does not diminish the safety, health or the welfare of the surrounding community.</p>
X			<p>Finding: The use is no in conflict with the comprehensive plan or other adopted plans, policies or ordinances of the city.</p> <p>Explanation:</p> <p>In Approval: The application does not exclude goals within the Comprehensive Plan.</p>

18. The record was reviewed by the Planning and Zoning Commission to render the decision.

CONCLUSIONS OF LAW

The Planning and Zoning Commission reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets** the standards of approval under **GCC 8-6B-2 Conditional Use**.

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission hereby **APPROVES** of the application subject to the following conditions:

CONDITIONS FOR APPROVAL DECISION

Application Specific Requirements:

Scope of Approval:

1. The approval permits:
 - a. The allowance of accessory structures where the allowable square footage for accessory structures has already been met, provided Design Review Committee approval.
 - b. Allowance for an accessory structure that is not designed to an "R" or "U" occupancy as defined by the adopted building code, provided Design Review Committee approval.
 - c. A waiver to the minimum density requirement of 14 dwelling units per acre to 1.36 dwelling units per acre or more.
2. This approval does not outright permit an additional single-family detached dwelling. The applicant may construct:
 - i. A duplex;
 - ii. An accessory dwelling unit 600 square feet or less;
 - iii. Subdivide then build an additional single family detached dwelling;
or
 - iv. Otherwise identify a legal means for constructing the requested single-family detached structure.

Prior to Construction:

1. A subdivision application must be submitted prior to the issuance of a building permit.

Prior to Occupancy:

1. A Design Review Hearing approval for any accessory structures must be obtained prior to any construction and occupancy.
2. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from Garden City Development Services Department.
3. A building permit shall be applied for and approved by Garden City Development Services Department.
4. A detached sidewalk shall be installed in accordance with Garden City Code 8-4E-6 and the Garden City Sidewalk Policy along 52nd St.

5. Landscaping and street trees along 52nd St. shall be installed and inspected for compliance with Garden City Code 8-4I.

Site Specific Requirements for the Duration of the Use:

Single-Family and Two-Family Attached and Detached Residential Dwelling Units:

1. All proposed development must be in compliance with Garden City Code 8-4B Design Provisions for Residential Structures and be submitted to Design Review for approval.

Accessory Structures:

1. An accessory structure, other than an accessory dwelling unit, shall not be used by a person or entity other than the resident of the dwelling unit.
2. An accessory structure, unless built and approved as an accessory dwelling, shall not be utilized as a dwelling.

General Requirements

1. Any changes in the design, construction, operation, or use shall be brought to the immediate attention of the Planning Official for determination if the changes are in substantial conformance with the City's action. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
2. This Conditional Use Permit shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to a permit, the permit shall be granted to the applicant and successors in interest to the premises for which it was approved.
3. This approval is only approval of the conditional use permit. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
4. The approval is specific to the application provided and reviewed. Final approval is based on substantial conformance. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
5. Final approval is subject to the approval of other reviewing agencies and City Departments. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail.
6. All improvements and operations shall comply with applicable local, state and federal requirements and procedures whether specifically addressed in the analysis of this application or not. This shall include but not be limited to 8-4A General Provisions of Design and Development Regulations.
7. The property owner is responsible to maintain the site to edge of roadway asphalt.

8. If there are any tree grates, they shall be widened to accommodate the growing tree trunk and prevent girdling of any trees planted in tree wells within sidewalks or other public right of way.
9. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead and diseased plant materials shall be replaced.
10. Where landscaping might impact motorist or pedestrian sight distance, shrubs shall be maintained below three feet (3') in height and trees shall be pruned so that the lowest branches will be at least seven feet (7') above the ground level.
11. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
12. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.
13. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
14. All planting areas that border driveways, parking lots, and other vehicle use areas shall be protected by curbing, wheel stops, or other approved protective devices.
15. Trees shall be planted at least three feet (3') from curbs, sidewalks, driveways and other hard surfaces to buffer from stress caused by vehicle overhang and compacted soils, or planted with sufficient space to provide for the full maturity of the particular tree species. All other plant material, except sod or ground cover, shall be set back a minimum of one foot (1') from any curb edge to protect from vehicle overhang and mechanical damage.
16. The landscape installation shall stabilize all soil and slopes.
17. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
18. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
19. This approval is for this application only. Additional permits, licenses and approvals may be necessary.
20. Property maintenance standards shall be maintained as required by Garden City Code.
21. The property owner is responsible for the maintenance of all landscaping and screening devices required.
22. Cross-Connections: All cross-connections between the domestic water lines and the irrigation water lines shall be in accord with the City's adopted standards, specifications and ordinances.
23. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the application may be remanded to the decision-making body during which time the decision shall be stayed provided that there is no immediate threat to life or safety.
24. No change in terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his or her authorized representative and an

authorized representative of the reviewing agency. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Garden City.

25. The Commission may revoke a conditional use permit for any of the following: A) Violation of Garden City Code or State or Federal Laws; B) Failure to abide by any conditions of this permit; C) Causing or allowing a nuisance as determined by Garden City Code, in connection with the use for which the permit is granted.
26. Any violation of the conditions of this application is a criminal offence.
27. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
28. All previous uses are null and void unless otherwise conditioned.
29. Should there be a change in use, there is a clear intent to cease the use, or the use is discontinued for more than one year without written documentation submitted to the City, legal noticing, and property posting indicating intent to continue the use, this approval shall become void.
30. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within 15 days after the action of the decision.
31. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
32. 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.
33. A takings analysis pursuant to Idaho Code may be requested on final decisions.
34. 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, Planning and Zoning Commission

09/28/2020

Date

