

## CITY OF GARDEN CITY

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**File Number: CUPFY2020-16**

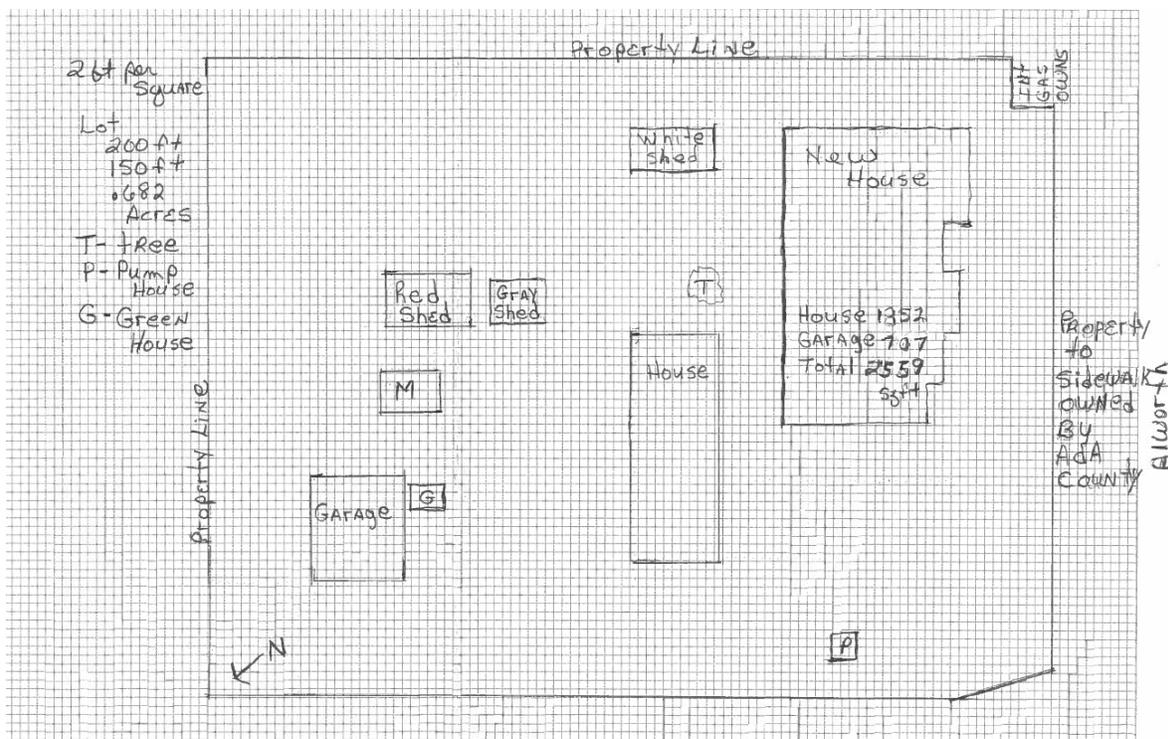
**Requested: A density reduction waiver for the addition of a single-family detached dwelling.**

**Location: 401 E. 52<sup>nd</sup> St.**

**Applicant: Regina Phipps and Will Calhoun,**

**Planning and Zoning Commission Hearing Date: September 16, 2020, 6:30 p.m.**

**Garden City Hall, 6015 Glenwood, Garden City, Idaho**



**STAFF REPORT**  
 Prepared by Hanna Veal

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## Table of Contents

<b>Project Information</b> .....	<b>3</b>
<b>Discussion</b> .....	<b>5</b>
<b>Decision Process</b> .....	<b>7</b>
<b>Agency Comment</b> .....	<b>8</b>
<b>Public Comment</b> .....	<b>8</b>
<b>Code/Policy Analysis</b> .....	<b>9</b>

## A. Project Information

### Proposed Scope of Work:

Request	Review Process
Conditional Use Permit	<a href="#">GCC 8-6B-2</a>

A conditional use may be found to be appropriate or inappropriate at a given property. In some situations, conditions of approval may be required to assist the proposed use in being appropriate to a location and in conformance with code. In other situations where the use cannot be conditioned to be appropriate to the location or code, it should not be permitted.

### Project Details:

- 1) Applicant: Regina Phipps and Will Calhoun
- 2) Owner: George and Nadine Nesbit
- 3) Request: Addition of a single family home on a property with an already existing single family home.
- 4) Title 8 Use: It has been determined that the Garden City defined use that best describes the use is: Dwelling Unit, Single Family Detached
- 5) Definition of Use: Garden City Code 8-7A-1 defines this use as: A structure consisting of one (1) or two (2) dwelling units and separated from other dwelling units by open space
- 6) No sidewalk is proposed.

### Site Conditions:

- 1) Existing Use: Residential
- 2) Street Address: 401 E. 52<sup>nd</sup> St.
- 3) Parcel Number(s): R7334160670
- 4) Property Description: PAR #0670 POR NW2 LOTS 1 & 2 BLK 5 RANDALL ACRES #5 R/S 3814 #0682S
- 5) Legal Lot of Record: Yes
- 6) Property Size: 0.682 acres
- 7) Zoning District: R-3
- 8) Zoning Overlay(s):
  - a) Neighborhood Commercial Node
- 9) Comprehensive Plan Land Use Map Designation:
  - a) Activity Node: Neighborhood Destination
  - b) Main Street Corridor
  - c) Mixed Use Residential
- 10) Floodplain Designation:
  - a) 2003 FIRM: 100 Year
  - b) 2017 Draft FIRM: Most of the property is in the 100 year floodplain.
- 11) Surrounding Uses:
  - a) Single Family Dwelling Units
  - b) Manufactured Home Park
  - c) Service Provider
  - d) Ada County Fairgrounds

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12) Adjacent Zoning:

a) C-2

13) Adjacent Comprehensive Plan Designations:

a) Light Industrial

b) Special Opportunity Area

14) Easements on site:

a) Not on site, but next to site on 52<sup>nd</sup> and Alworth there is an ACHD: **Unplatted 7984 – Unplatted Adams and Alworth Street.**

15) Site Access: List street(s) that the development will be accessed from

a) Front: 52<sup>nd</sup> St.

b) Side: Applicant has stated that access to the new building will be from a driveway already existing on Alworth St.

16) Sidewalks:

a) Attached sidewalks are installed and are in good repair along Alworth Street.

b) No existing sidewalks along E. 52<sup>nd</sup> Street.

17) Wetlands on site: None identified

## C. Discussion

Regina Phipps and Will Calhoun are requesting Conditional Use Permit approval for an additional Single-Family detached dwelling unit at 401 E. 52nd Street. The request is for three separate issues. Their requests are as follows:

1. Request for a detached dwelling unit that which exceeds the allowed 600 square feet permitted by code.
2. A waiver of allowable maximum square footage of an accessory structures.
3. A waiver of the required minimum density of 14 units/acre. Change slide

Code allows for the approval of a conditional use permit to authorize the waiver of maximum square footage dedicated to accessory structures and minimum density required. However, there is not a provision to allow for a conditional use permit to permit a secondary detached single-family structure or an accessory dwelling greater than 600 square feet.

### **Accessory Structure exceedance of 600 square feet**

According to [Garden City Code 8-4B-3](#), accessory structures and all portions of the principal structure, such as an attached garage, that are utilized for residential accessory uses over a combined one thousand (1,000) square feet may not exceed the combined square footage of the principal dwelling unit without a design review committee approval and approval of a conditional use permit. There are pre-existing accessory structures on the site that which when combined, equal about 1,205sqft. The existing home is about 1,215 square feet. The addition of an accessory structure, such as the proposed garage, would exceed the combined 1,000sqft required by code and triggers a design review in addition to this CUP application. Change Slide

### **Detached Single-Family Structure greater than 600 square feet**

A single family and two-family dwelling is permitted in the R-3 zoning district, defined by [Garden City Code 8-7A](#) as, **a structure** consisting of one (1) or two (2) dwelling units and separated from other dwelling units by open space. However, the request is for an additional principle single family detached structure, which would result in more than one structure. Change Slide

The addition of an accessory dwelling unit, as defined by [Garden City Code 8-7A](#), is a dwelling unit either within the principal structure or in a detached structure that is incidental and subordinate to the principal structure and is located upon the same property is also permitted in the R-3 zoning district. However, [Garden City Code 8-2C-14](#) states that no accessory dwelling units may be any greater in size than 600 square feet.

The applicant has proposed an accessory dwelling unit that is 1,952sqft with an attached garage that is 707sqft, for a total of 2,559sqft. This is not code compliant, as it does not meet the 600sqft maximum and there is not a provision to allow for a Conditional Use Permit to permit a larger home. Change Slide. Staff does not believe that a CUP is the correct mechanism to achieve the desired outcome. Staff has provided the applicant numerous mechanisms that which might help achieve the applicants desired outcome. Solutions include:

- a. Submit for a Planned Unit Development (PUD), and do not subdivide, but ask for a waiver to the accessory dwelling limitation.

- b. Subdivide, and have the proposed home on its own lot.
- c. Build a 600sqft accessory dwelling unit, then go through the subdivision process, then add onto the initial accessory dwelling unit.
- d. Apply to change code.
- e. Build a 600sqft accessory dwelling unit.

If the application is changed to a proposal for a duplex, and if it meets all Planning, IRC, Fire, etc. codes, it could be permitted. Staff has noted that even if permitted, the proposal is subject to a Design Review Committee Hearing.

### **Waiver of minimum density**

This property is located in the Mixed-Use Residential land use designation of the Comprehensive Plan, which is located north of Alworth Street. This designation allows for residential and commercial uses in a form and scale that is residential in character and design. A mix of residential; small scale office and retail; and public and semi-public uses are appropriate in this district. Regulations for this area should focus on form more than use, with a maximum height of two stories.

It is also located in the TOD designations of the Comprehensive Plan. The transit-oriented development (TOD) nodes are identified within one quarter mile of locations where a transit station has been planned or could be located. It is not intended that all nodes could be developed within the twenty-year period of the plan. A mix of uses including higher density residential, retail, office, research and public uses are included in the TOD area designation. A development to be considered for the TOD designation should include 50,000 square feet of non-residential uses and 60 – 80 dwelling units. The form of the development should be multi-story (three or more stories) along the boulevard corridor with lower height moving away from the street. Site design characteristics should include walkability, public spaces, and transit station design. Lower parking standards should be allowed.

The applicant is proposing a detached single-family dwelling with an attached garage to be constructed. The applicant's proposed density is below the required 14 units per acre within a TOD node located in the R-3 zoning district. The proposed attached garage square footage is less than the proposed square footage of the dwelling unit.

The applicant has proposed a single dwelling unit on 0.682 acres, which is below the 14 unit threshold required when located within a TOD node Comprehensive Plan designation. The minimum number of units required on a .682 acre property to meet the 14 unit threshold is 10.

### **Analysis of required conditional use permit findings:**

An analysis of the proposal against the required conditional use permit findings will follow below.

#### Analysis of Finding 1

The nature of the proposed waiver does not appear to affect the appropriateness of the use or its compatibility with other uses in the R-3 zoning district. The waiver itself affects the size, design, and density of the structure rather than impact specific uses or the ability of property

owners to utilize their property. Developing the property would not impact this finding, provided all applicable Garden City Code and agency requirements were met.

#### Analysis of Finding 2

There does not appear to be evidence on the record or comments from agencies that indicated the waiver is not able to be supported by public facilities or services. Agency comments did not reflect objection to the proposal in that no agency comments were received for this application. The applicant would be required to meet all applicable Garden City Code and agency requirements, including any required permits and additional reviews.

#### Analysis of Finding 3

There does not appear to be evidence on the record that the proposed waiver would negatively impact the health, safety and welfare of the community. The waivers are structural in nature rather than generated from a use. The construction of the proposal would require a building permit and have to adhere to applicable Garden City Code and agency requirements. A Design Review of the structure is also required by GCC 8-4B-3 when a waiver is requested, adding a further level of review. These additional reviews would ultimately end up triggering the requirement of sidewalks if the commission decides to not make it a condition of approval for this particular CUP. The applicant has expressed to staff that a waiver to sidewalk standards is desired, though a formal submittal of the waiver has not been received.

#### Analysis of Finding 4

By choosing not to build to the residential density standards, staff noted that the proposed project is going against the Comprehensive Plan goal. In and of itself, a Comprehensive Plan is not legally binding. However, a required Conclusion of Law for conditional use permits in Garden City is that the use is in compliance with the Comprehensive Plan. In this way the Garden City Zoning Code ensures that proposed uses are not only required to be compatible with existing neighborhoods but are also progressing the vision that the community has for those neighborhoods.

#### **8-4E Transportation and Connectivity Provisions**

At times there is overlap between design and use. Code requires that whenever a new use commences at a site, that the property be compliant with transportation and connectivity provisions. There is no sidewalk along or adjacent to the property.

***Garden City Sidewalk Policy*** notes that sidewalk or pathway shall be detached as required by Garden City Code 8-4E-6 E and provide for a 6' with root barrier/ 8' without root barrier landscape buffer prescribed by ACHD's policy for Class II or III trees. Although the use is permitted rather than conditional, a sidewalk is triggered due to the new building being proposed. Enforcement of the sidewalk provisions and policy are usually handled administratively when the use is permitted. The scope of the conditional use permit request is not for the use, but waivers to standards. While a condition of approval requiring the sidewalk can be added to the permit by the Commission, it is not required. If a condition of approval for the installation of sidewalks is made, it should only be for the sidewalk along 52<sup>nd</sup> street.

## D. Decision

The Planning and Zoning Commission has been provided a draft document that includes findings of fact, conclusions of law, and a decision in the affirmative and in denial. This is done to provide potential options based on the staff's review of the project. This is not intended to be a predetermined decision. All evidence will be considered, and the document may be updated based on the Planning and Zoning Commission's review of the application.

### **Required Decisions:**

Pursuant to Garden City Code [Table 8-6A-1 Authorities and Processes](#), Planning and Zoning Commission is the final decision maker for a Conditional Use Permit. There is no recommending authority to the Planning and Zoning Commission. Pursuant to [GCC 8-6A-2A](#), The City Council shall have the authority to review any action taken by the Planning and Zoning Commission regarding Conditional Use Permits, which would be final unless appealed.

### **Required Findings:**

To approve a conditional use permit, the Planning and Zoning Commission must find the application meets the following findings found in [GCC 8-6B-2](#):

1. The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;
2. The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;
3. The use will not unreasonably diminish either the health, safety or welfare of the community; and
4. The use is not in conflict with the comprehensive plan or other adopted plans, policies, or ordinances of the city.

### **Decision:**

After hearing the evidence and considering the application, the decision maker shall make their decision. The decision maker shall report the facts upon which it based its conclusion, the ordinance and standards used in evaluating the application, the actions, if any, that the applicant could take to obtain a permit, and whether a permit is :

4. Granted,
5. Granted with conditions, or
6. Denied.

The decision maker may find that there is inadequate information to render a decision and may also continue the hearing for additional materials to be supplied. It is recommended that they continue the hearing to a date certain for noticing purposes.

The decision maker shall make its findings and decision no later than by the next regular scheduled meeting.

**Appeal of Decision:**

Pursuant to [8-6A-9 Appeals](#), there is a 15-day appeal period to appeal the decision to the City Council. This period starts from the signed decision date and runs concurrently with the 15-day objection period noted above. An appeal is \$210 and must be filed on the appeal application form provided by the City. Appeals received after the 15-day appeal period will not be accepted.

**E. Agency Comments**

The following agency comments were provided:

Agency	Comment Date	Summary
Ada County Highway District	None received to date	
Boise School District	None received to date	
Central District Health COMPASS	None received to date	
Garden City Engineer	None received to date	
Idaho Transportation Department	None received to date	
Irrigation: Fairview Acres	None received to date	
North Ada County Fire and Rescue	None received to date	
Meridian School District	None received to date	
Idaho Department of Environmental Quality	08/24/2020	While DEQ does not review projects on a project-specific basis, they provided the general comments in regard to air quality, wastewater and recycled water, drinking water, surface water, hazardous waste and ground water contamination, water quality standards, ground water contamination, and storage tanks (UST & AST).

**F. Public Comment**

The following public comments were provided: None provided as of the drafting of this document.

Committer	Comment Date	Summary
Non received to date		

**G. Code/Policy Review**

The below serves as an analysis of applicable provisions Garden City Code, Title 8, Development Code and identified applicable policies, plans, and previous approvals.

<b>Garden City Title 8 Code Sections</b>			
<b>Code Section</b>	<b>Review Authority</b>	<b>Compliance Issues</b>	<b>Analysis/ Discussion</b>
<b>Title 7 Building Regulations</b>			
<a href="#">7-2-1 Building Code</a>	N/A	No compliance issues as conditioned.	A building permit will be required to be completed prior to occupancy of the structure.
<b>Title 8, Chapter 1: General Regulations</b>			
<a href="#">8-1A-4 Applicability</a>			The regulations of Garden City Code, Title 8 Development Code of the City, shall apply and govern development and use of all properties within the corporate limits of the city.
<a href="#">8-1B-2 Nonconforming Structures</a>		Not Compliant	The Conditional Use Permit can alleviate the accessory structure square footage requirement and the density reduction for the R-3 zoning district. It cannot be used to waive the requirement of the 600sqft maximum for accessory dwelling structures.
<b>Title 8, Chapter 2: Base Zoning District Regulations</b>			
8-2B-1 Purpose		No compliance issues noted	The purpose of the four (4) residential districts is to provide a full range of housing products within the city in areas that are exclusively for residential uses. The four (4) districts are contrasted by the density and housing products that are allowed within each district
<a href="#">8-2B-2 Allowed Uses</a>	PZ		Garden City Code Table 8-2B-1 states that the use of Dwelling Unit, single and to family, detached is a permitted use. However, the CUP is required as the applicant is requesting to build to a lesser density than what is required by code based on the TOD designation of the Comprehensive Plan.
<b>Title 8, Chapter 3: Overlay Zoning District Regulations</b>			
<a href="#">8-4B-3 Single-Family and Two Family Attached and Detached Residential Dwelling Units</a>	DR		<p>Accessory structures and all portions of the principal structure, such as an attached garage, that are utilized for residential accessory uses over a combined one thousand (1,000) square feet may not exceed the combined square footage of the principal dwelling unit without a design review committee approval and approval of a conditional use permit.</p> <p>There are already 5 existing accessory structures; 1 detached garage and 4 sheds. These accessory structures add up to about 1,205sqft. The existing single family home on the property is about 1,215sqft. The proposed additional single family home dedicates about 707sqft to the garage and 1,952sqft to the home.</p>
<a href="#">8-4H Flood Hazard-</a>	Planning Official	No compliance issues noted	The City highly encourages that the applicant build to the best available data identified in the FIS study due to the potential cost of flood insurance and safety concerns for the property. Should the applicant choose not to build above the base flood elevations identified in the FIS, the City will request

			that the applicant record a Flood Acknowledgement on the property.
Title 8, Chapter 6, Article A: Administration			
<a href="#">8-6A-3 General Application Process</a>		No compliance issues noted	The application was reviewed and considered complete within 30 days of submittal, a notice of application acceptance was issued to the applicant, and staff started processing the application.
<a href="#">8-6A-4 Required Application Information</a>			Application waivers requested pursuant to 8-6A-4A Waiver requested for the Will Serve Letter.
<a href="#">8-6A-7 Public Hearing Process</a>		No compliance issues noted	The applicant provided a neighborhood meeting more than one month and less than three months prior to application submittal. The City provided a radius notice, notifications to agencies with jurisdiction, and ran a legal notice in the Idaho Statesman, at least 15 days prior to the first hearing. The applicant provided an affidavit of property posting more than 7 days in advance of the hearing validating that the property was posted more than 10 days prior to the hearing.

<b>Other Items Reviewed</b>	
Plan/Policy	Discussion/ Analysis
<a href="#">Idaho Code 67-6512</a> Local Land Use Planning Special Use Permits, Conditions, and Procedures	<p>Garden City Code noticing requirements are compliant with this Statute.</p> <p>The statute notes that upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:</p> <ol style="list-style-type: none"> <li>(1) Minimizing adverse impact on other development;</li> <li>(2) Controlling the sequence and timing of development;</li> <li>(3) Controlling the duration of development;</li> <li>(4) Assuring that development is maintained properly;</li> <li>(5) Designating the exact location and nature of development;</li> <li>(6) Requiring the provision for on-site or off-site public facilities or services;</li> <li>(7) Requiring more restrictive standards than those generally required in an ordinance;</li> <li>(8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.</li> </ol> <p>Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects and any aviation hazard as defined in section <a href="#">21-501(2)</a>, Idaho Code, of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.</p>
<a href="#">Garden City Comprehensive Plan</a>	This application is in future land use designations of the Comprehensive Plan:

	<ul style="list-style-type: none"> <li>b) Activity Node: Neighborhood Destination</li> <li>c) Main Street Corridor</li> <li>d) Mixed Use Residential</li> </ul> <p>The application may be supported by:</p> <p>Goal 1. Nurture the City</p> <ul style="list-style-type: none"> <li>a.) 1.4 Objective: Create a premier destination place to live, work, and recreate.</li> </ul> <p>Goal 2. Improve the City Image</p> <ul style="list-style-type: none"> <li>a.) 2.1 Objective: Encourage new and distinctive neighborhoods.</li> </ul> <p>Goal 4. Emphasize the “Garden” in Garden City</p> <ul style="list-style-type: none"> <li>a.) 4.3 Objective: Beautify streets, sidewalks and gateways with landscaping, trees, and public art. <ul style="list-style-type: none"> <li>i. <b>Action Step 4.3.1.:</b> Continue to <b>require sidewalks and landscaping in all new development</b>, and in major alterations and re-use of existing commercial sites.</li> </ul> </li> </ul> <p>Goal 6. Diversity in Housing</p> <ul style="list-style-type: none"> <li>a.) 6. 3 Objective: Maintain the diversity of housing.</li> </ul>
<p><a href="#">Garden City Sidewalk Policy</a></p>	<p>A sidewalk waiver was not submitted.</p> <p>A. Sidewalks shall be required along public rights of way intended for vehicular travel.</p> <p>B. All sidewalks shall be a minimum of five feet (5') except if detached sidewalks are provided on local streets in residential subdivisions, the minimum sidewalk width may be reduced to four feet (4')</p> <p>C. Detached sidewalks shall be required unless in conflict with a street plan adopted by the Transit Authority and/or the City or there is existing attached sidewalk on both sides adjacent to the property.</p> <p>D. Sidewalks shall be designed to flare around mail boxes, utility boxes and other impediments to pedestrian circulation to maintain a minimum five feet (5') of travel width.</p>
<p><a href="#">Garden City Street Light Policy</a></p>	<p>There are 3 streetlights installed within 400ft of the site.</p>