

CITY OF GARDEN CITY

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BEFORE THE CITY COUNCIL OF THE CITY OF GARDEN CITY

October 12, 2020 Appeal Hearing

DECISION ON DSRFY2020-18 FINDINGS OF FACT AND CONCLUSIONS

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

APPEAL OF **Earl Sullivan**; RE: DENIAL, BY THE DESIGN REVIEW COMMITTEE OF THE CITY OF GARDEN CITY, OF APPLICATION DSRFY2020-18, FOR AN EIGHT FOOT FENCE LOCATED AT 240 E. 32nd STREET, GARDEN CITY, IDAHO, 83714.

Decision to deny the application is reversed and the application is approved.

Earl Sullivan for appellant.

Jenah Thornborrow for respondent.

Presided over by: John G. Evans, Mayor

Earl Sullivan appeals the decision of the Garden City Design Review Committee application DSRFY2020-18, a design review application for an eight foot (8') fence located at 240 E. 32nd St. Garden City, Idaho 83714; Ada County Assessor parcel number(s) R2734541570. For the reasons set forth below, the City Council reverses the Design Review Committee's decision and approves the application.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. The application is for a design review for new construction of an eight-foot wood fencing at the side lot line and interior parking area.
2. The applicant is Tamara Thompson.
3. The property owner of record is Earl Sullivan.
4. The location of the project is 240 E. 32nd St.; Ada County Assessor parcel number(s) R2734541570.
5. The property is a legal lot of record.
6. The subject property is 0.859 acres.
7. The project is located in the C-2 General Commercial Industrial zoning district.
8. The project is located in the Surel Mitchel Live-Work-Create zoning overlay.
9. The project is in the not located in the SFHA according to the 2003 FIRM.
10. The project is in the AE flood hazard category according to the 2017 FIS.
11. 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 8-4A Design and Development Regulations- General Provisions
 - d. Garden City Code 8-4E Transportation and Connectivity Provisions
 - e. Garden City Code 8-4I Landscaping and Tree Protection Provisions
 - f. Garden City Code 8-6A-4 Required Application Information
12. The following plans and policies apply to this proposal:
 - a. Garden City Comprehensive Plan
13. The applicant provided the following application information:

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

14. Additional application materials submitted include:

- a. 300' Neighborhood List;
- b. Affidavit of Legal Interest;
- c. Application;
- d. Fence Narrative
- e. Return Receipts
- f. Letter to neighbors about fence.

15. No Agency Comments were received.

16. No public comments were received.

17. 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		08/04/2020
Letter of Acceptance	09/04/2020	08/27/2020 08/28/2020 – updated date error from September 7 th to September 8 th .
Radius Notice	08/24/2020	08/05/2020 Requested 08/11/2020 Mailed
Interested Parties		N/a
Legal Notice	08/20/2020	08/11/2020 published 08/13/2020
Agency Notice	08/24/2020	08/11/2020
Property Posting Sign	08/29/2020	08/29/2020
Affidavit of Property Posting and Photos	09/01/2020	09/01/2020

18. On June 15, 2020, in accordance with GCC 8-6B-3, a pre-application conference was held with the Design Committee. The Committee provided the following comments and requests:
 - a. Tamara Thompson presented the application.
 - b. Jenah Thornborrow presented the staff report.
 - c. Discussions included:
 - i. Internal fence needs to tie into architecture of building so that it acts as a building screen wall rather than fence if the screening is greater than 6' in height. The internal fence may be 6' as a staff level approval.
 - ii. A staff level approval would be appropriate of the side lot line fence proposal if:
 1. The side fence will be on the 0' lot line.
 2. A notarized agreement from the adjacent residential lots in agreement with the fence
 3. No dual fence- remove chain link

19. On September 8, 2020, a public hearing before the Design Review Committee was held:
 - a. Tamara Thompson presented the application in person.
 - b. Staff, Hanna Veal, presented the staff report.
 - c. No one wished to provide public testimony.
 - d. Committee Member Labrie moved to deny the application based on the premise that the applicant did not address any of the concerns the committee had previously expressed.
 - e. Committee Member Gresham seconded the motion.
 - f. The motion passed unanimously.

20. The record contains:
 - a. Application Documents
 - b. Noticing Documents
 - c. Agency Comments: none provided
 - d. Written Public Comments: none provided
 - e. Staff report
 - f. June 15, 2020 Design Review Committee Pre-application Minutes
 - g. June 15, 2020 Design Review Committee Pre-application Audio
 - h. September 8, 2020 Design Review Committee Hearing Minutes
 - i. September 8, 2020 Design Review Committee Hearing Audio
 - j. Design Review Committee Signed Findings of Fact, Conclusions of Law and Decision

On September 21, 2020, a timely appeal, requesting that the decision of the Design Review Committee be vacated, was filed by Earl Sullivan.

On September 30, 2020, the applicant and appellant/property owner were notified that the appeal would be held on October 12, 2020, in accordance with Section 8-6A-9

of the Garden City Code. The respondent is the City, and there were no interested parties to notice.

On October 12, 2020, prior to commencing the appeal hearing:

1. Mayor Evans asked each Council Member if they had any conflicts of interest related to the appeal. Each Council Member and Mayor Evans disclosed that they had no conflicts of interest.
2. Mayor Evans identified that the decision in its entirety was being appealed.
3. Mayor Evans identified that the appeal was not *de novo* and based on the Design Review Committee's record materials as supplemented with the appeal, respondent's response, and appellant's rebuttal to the respondent's response.
4. Mayor Evans asked the appellant and respondent if there were any concerns with the record materials. No concerns with the record were acknowledged by the appellant and respondent.
5. 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.
6. Mayor Evans noted that the burden of proof is on the appellant.
7. Mayor Evans noted the order of the hearing was the appellant first, the applicant/respondent second, and the appellant third for rebuttal.
8. Mayor Evans identified that the Council decision would be to affirm, vacate, remand, and/or reverse the Design Review Committee's decision.
9. Mayor Evans noted grounds for affirming, remanding, or reversing the decision.

CONCLUSIONS REGARDING ISSUES RAISED ON APPEAL

Per Garden City Code 8-6A-9, City Council shall determine whether the application 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 and

supplemental evidence provided by the appellant and respondent. The City Council reviewed the findings for design review applications found in Garden City Code § 8-6B-3:

1. The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.

Council Member Souza noted that he felt that the Design Review Committee's determination that the application did not meet this standard was in error. He indicated that the code is silent on whether a fence can be 8' in height on a commercial property. He further noted that the fence would make the business less disruptive to the neighborhood. Council Member Beaumont noted agreement.

Council Member Beaumont moved to reject and reverse the Design Review Committee's finding that the proposal did not meet this standard.

Council Member Page seconded the motion.

The City Council found that the Design Review Committee erred on this issue with a 3/1 vote with Council Member Jorgensen voting to affirm the finding.

2. The proposed design adheres to standards for the protection of health, safety, and general welfare.

Council Member Page noted that he was persuaded by the appellant's reason that the fence protects against vandalism and safety for staff.

Council Member Souza noted that the City has received noise concerns from neighbors and the fence demonstrates that Mr. Sullivan is attempting to be a good neighbor by constructing the requested fence.

Council Member Page moved to reject and reverse the Design Review Committee's finding that the proposal did not meet this standard.

Council Member Souza seconded the motion.

The City Council found that the Design Review Committee erred on this issue on this issue with a 4/0 vote.

3. The proposed design creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods within the city.

Council Member Beaumont noted that with the proximity to the Boise River, that the fence is appropriate.

Council Member Souza noted that the building is roughly three times the height of the fence and therefore the fence as proposed is more conforming with the sense of place.

Council Member Page moved to reject and reverse the Design Review Committee's finding that the proposal did not meet this standard.

Council Member Beaumont seconded the motion.

The City Council found that the Design Review Committee erred on this issue on this issue with a 4/0 vote.

4. The proposed design improves the accessibility of development to non-motorized and public modes of transportation.

The City Council did not wish to amend the Design Review Committee's finding. No action was taken.

5. The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors.

The City Council did not wish to amend the Design Review Committee's finding. No action was taken.

6. The proposed design supports a compact development pattern that enables intensification of development and changes over time.

The City Council did not wish to amend the Design Review Committee's finding. No action was taken.

7. The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity.

The City Council did not wish to amend the Design Review Committee's finding. No action was taken.

The members of the City Council further interpreted Garden City Code § 8-4A-3.C ("Fences and Walls"), which states:

C. Maximum Height Requirements:

1. Fences and walls located along a street frontage within the front yard setback: Three and one-half feet (3.5').
2. Fences and walls located within rear and interior side setbacks not adjacent to public rights-of-way: Six feet (6').
3. Fences and walls on residential property with rear and interior side yards located adjacent to commercial uses: Eight feet (8').

4. The height of fences and walls shall be measured from the existing grade.

This code is silent on the maximum height requirement on rear or side yard fences on non-residential property adjacent to residential uses. Because the code is silent on this scenario, the City Council interpreted that the maximum height requirement for rear and side yard fences, on non-residential property that is adjacent to residential uses, is eight (8') feet. The City Council determined that this interpretation is consistent with the intent behind G.C.C. § 8-4A-3.C

Accordingly, on October 12, 2020, Council Member Souza moved to reverse the Design Review Committee's Findings of Fact, Conclusions of Law, and Decision. Council Member Beaumont seconded the motion. The Motion passed on a 4/0 vote. The Garden City Council has reviewed the appeal and concludes the application does meet the required findings under G.C.C. § 8-6B-3.


DECISION

WHEREFORE, based upon the foregoing opinion, the City Council reverses the Design Review Committee's decision. As such, the City Council approves the design review application for an eight-foot (8') fence located at 240 E. 32nd St. Garden City, Idaho 83714; Ada County Assessor parcel number(s) R2734541570.

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.

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

Dated this 26th day of October 2020



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