

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

**THIS IS NOT A PREDETERMINED DECISION. ALL EVIDENCE WILL BE CONSIDERED. A DIFFERENT DECISION MAY RESULT IN AN UPDATE OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, OR CONDITIONS.**

In the Matter of:	)	DSRFY2020 - 20
Appeal of Planning Official Determination	)	FINDINGS OF FACT,
106 E. 36 <sup>th</sup> Street	)	CONCLUSIONS OF LAW
Garden City, Ada County, Idaho	)	AND DECISION
_____	)	

THIS MATTER came before the Garden City Planning and Zoning Commission for consideration on appeal on February 21, 2024. The Planning and Zoning Commission reviewed the appeal and materials submitted. Based on the evidence presented, pursuant to Garden City Code, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law, and Decision:

**FINDINGS OF FACT**

1. The appeal is regarding a Planning Official determination regarding an approved design review application, DSRFY2020-0020.
2. The appellant is Chad Slichter, with representation from Danielle T. Parè with Parè Law PLLC;
3. The property owner of record is BTB Idaho LLC.
4. The location of the project is 106 E. 36<sup>th</sup> Street, Garden City, ID 83714; Ada County Assessor parcel number(s) R27345200006.
5. This application was heard and approved by the Design Review Committee<sup>1</sup> on August 17, 2020.
6. On August 29, 2023, Chad Slichter, the architect of record, noted that some items were changed during construction that needed to be addressed with Garden City, including the “service entry gate”. Derek Flynn, with ESI Construction forwarded the email Betty Gumm, Garden City Assistant Planner.
7. On August 31, 2023, Ms. Gumm replied to Mr. Flynn indicating that he should supply the design review consultants with an email of the changes to determine

<sup>1</sup> At the time of review and approval, the Design Review Committee was designated by city code as the body who was responsible for final action on certain design matters.

whether the gate was in conformity with the approved Design Review plans, DSRFY2020-0020.

8. On September 5, 2023, Mr. Flynn responded with an explanation that “The drawings showed a sketch/rendering (see below) of a gate without specification or details and this gate does not exist. The owner has secured an ornamental gate and modified its decorations to be consistent with the winery. Please consider acceptance of the obtained gate.”
9. On September 6, 2023, the request was sent to the Design Review Consultants. The same day, Design Review Consultant, Derek Hurd indicated that the gate should be placed beyond the stair element.
10. On November 16, 2023, Elizabeth Baggerly and Mr. Flynn requested that the gate be permitted as installed.
11. On November 28, 2023, Associate Planner Hanna Veal, and Chad Slichter consulted with the Design Review Consultants<sup>2</sup> for input on whether the subject gate is in conformance with the initial approvals, or for a recommendation on a plan modification. The Design Review Consultants did not determine that the gate was in conformance with the approval, nor did they recommend approval of the requested change.
12. On December 1, 2023, Ms. Veal provided an official determination that the proposed gate is not in conformance with the initial approval and denied the plan modification request citing Garden City Code, which prohibits fences greater than three and a half feet (3.5') in height.
13. On December 15, 2023, Chad Slichter filed a timely appeal of the Planning Official determination, providing a letter from Danielle T. Parè with Parè Law PLLC.
14. On January 8, 2024, the property owner, applicant, appellant, and interested parties were notified of the appeal.
15. On February 21, 2024, the Planning and Zoning Commission held an appeal:
  - a. TBD based on the proceedings of the appeal.
  - b. Chairman Montoya introduced the appeal.
  - c. Disclosure of conflict
  - d. Recusal
  - e. Appellant
  - f. Respondent
  - g. Rebuttal
  - h. Deliberations

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<sup>2</sup> Per code 8-7A-2 the design review consultants shall act as consultants to staff on design applications and serve as an expert on matters of design that come before the city.

16. The adopted appeal proceedings for an appeal of the Planning Official’s Decision provide findings:

<b>These draft findings are drafted to <u>grant</u> the appeal. The Planning and Zoning Commission may select the corresponding conclusions and explanations during their decision. Potential explanations have been provided. The Commission may choose the explanations provided in their entirety, partially, or disregard all explanations.</b>		
Findings	Determination	Reasoned Statements
<p>The following may serve as grounds for remanding, or granting all or part of a Planning Official decision:</p> <ol style="list-style-type: none"> <li>1. The true intent of Title 8 of the Garden City Code or the codes adopted thereunder have been incorrectly interpreted by the Planning Official.</li> <li>2. The provisions of Title 8 of the Garden City Code or the codes adopted thereunder do not apply, or an equally good or better form of construction should have been applied by the Planning Official.</li> <li>3. The findings made by the Planning Official as a basis for its action are not supported by the weight of the evidence.</li> <li>4. There is a significant error in the application of the provisions of Title 8 or other provisions of the City Code that are important to sustaining the action by the Planning Official.</li> <li>5. There is a significant violation of the notice provisions of the codes</li> </ol>	<p>Grounds to grant the appeal have been met.</p>	<p>This application meets the required findings for the following reasons:</p> <p>Garden City Code 8-4A-3.D.1 requires that fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage.</p> <p>The gate is mounted flush with the roof deck which is a part of the building frontage.</p> <p>Therefore, for this reason the true intent of code has been incorrectly interpreted and the determination of noncompliance is not supported by the evidence.</p>

<p>enumerated in Title 8 of the Garden City Code.</p> <p>6. Significant errors are discovered after the Planning Official decision on which its action was taken in the materials provided to the Planning Official as a basis of its decision.</p> <p>7. There is a significant error in the application of approved City policies that is important to sustaining the action taken by the Planning Official.</p>		
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**These draft findings are written in denial of the appeal. Potential explanations have been provided. The Planning and Zoning Commission may select the corresponding conclusions and explanations during their decision. The Commission may choose the explanations provided in their entirety, partially, or disregard all explanations.**

Findings	Determination	Reasoned Statements
<p>The following serve as grounds for affirming the Planning Official decision:</p> <ol style="list-style-type: none"> <li>1. The Planning Official's findings, inferences, conclusions, or decisions are not in violation of constitutional or statutory provisions.</li> <li>2. The Planning Official's findings, inferences, conclusions, or decisions are not in excess of the statutory authority of the agency.</li> <li>3. The Planning Official's findings, inferences,</li> </ol>	<p>Grounds to Affirm the Planning Official decision have been met.</p>	<p>This application meets all required findings for the following reasons:</p> <p>The gate is clearly over three and a half feet (3.5'). Garden City Code 8-4A-3.D.1 requires that fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage.</p> <p>This provision applies to the application. The previous approval and</p>

<p>conclusions, or decisions are not made upon unlawful procedure.</p> <p>4. The Planning Official's findings, inferences, conclusions, or decisions are supported by substantial evidence on the record as a whole.</p> <p>5. The Planning Official's findings, inferences, conclusions, or decisions are not arbitrary, capricious, or an abuse of discretion.</p>		<p>associated staff report became invalid when the applicant amended the structure from that which was approved.</p> <p>Therefore, for these reasons the Planning Official's decision is not in violation of constitutional or statutory provisions, is not in excess of the statutory authority of the agency, are made upon unlawful procedure; is supported by code; and is not arbitrary, capricious, or an abuse of discretion.</p>
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### CONCLUSIONS OF LAW

WHEREFORE, the Planning and Zoning Commission finds that the Planning Official **erred/ did not error** in their decision. Therefore, the Planning and Zoning Commission hereby **GRANTS/DENIES/REMANDS** the Appeal subject to the following conditions:

1. This decision shall be final I not appealed. This decision may be further appealed to City Council pursuant to GCC 8-6A-9. The decision of the Council shall be final.
2. 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.
3. Some final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
4. 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.
5. A takings analysis pursuant to Idaho Code may be requested on final decisions.
6. 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.

February 21, 2024

Chairman, Ryan Montoya

Date

DRAFT