

**APPEAL HEARING**

**Q=Mayor John Evans**

**Q1=Jeff Souza**

**Q2=Teresa Jorgensen**

**Q3=James Page**

**Q4=Clerk Lisa Leiby**

**Q5=City Att. Charles Wadams**

**Q6=Development Services Director Jenah Thornborrow**

**A=Wendy Carver-Herbert**

**A1=Mike Talbot**

**A2=Andy Erstad**

**A3=Jo-Ann Butler**

**A4=Chad Weltzin**

Q: Now we'll move, uh, to our amended item, uh, G2. This is, uh, DSRFY201-25. This is an appeal, uh, for an approval of a Design Review application, uh, for a property located at 501 East 41st Street in Garden City. Uh, the nature of this item, uh, requires me to go through a few things. So I'll ask you for your patience as I go through, uh, the required protocol on appeal. Um, before we enter into this item I need to ask the City Council Members if any of them needed to clear a conflict on this issue.

Q1: No.

Q2: No.

Q3: No.

Q: 'Kay. Let the record reflect no conflicts have been declared. Um, next, uh, beginning of the hearing I need to identify for the record, uh, what's being appealed. And the i- the specific items I have are, uh, two items. One is failure to meet design standards. The second is failure to meet parking standards. Uh, next item, um, I have the Appellant, Wendy ~~Carver~~ Carver-Herbert. I see you here. And, uh, ~~La Vita Vida~~ Properties is represented by Mr. Talbot, okay? Uh, I need to ask each of you at that point if you have any issues with the content of the record. That would be the record of the Design Review hearing. 'Kay. ~~Vitda~~ says no. 'Kay.

46 ManQ5: Mr. Mayor, for the record both - both the Appellant the Respondent indicated  
47 no. Is that...  
48

49 Q: That's good.  
50

51 ManQ5: Okay. Just for the record, thank you...  
52

53 Q: Okay.  
54

55 ManQ5: ...Mr. Mayor.  
56

57 Q: Okay. Um, the evidence and information considered unless the City Council  
58 directs otherwise the appeal will be on the record of the Design Review  
59 Committee including any audio recording or transcript, if one exists, of the  
60 hearing in front of the Design Review Committee. Uh, and such new evidence  
61 as may be presented. Again, this is at the, uh, direction of the City Council.  
62 The parties should be prepared to present the City Council with citations to  
63 the record and/or transcript if one exists by page number which supports the  
64 party's respective arguments. Asking questions of the parties the City Council  
65 should be prepared to reference citations to the record and/or transcript if one  
66 exists by page number. The standard of review, the City Council's role is to  
67 review the decision of the Design Review Committee. When reviewing a  
68 decision of the Design Review Committee the City Council shall review the  
69 record of the Committee with due regard for the Committee's decision. The  
70 standard of review of an appeal from a Design Review, uh, decision for the  
71 City Council shall - shall not be de novo. But the record may be supplemented  
72 by such new evidence as may be presented. The standard of review shall be  
73 governed by the following. Uh, there's one item. Deference - due deference  
74 shall be given to the actions of the Design Review Committee. Burden of  
75 proof in all appeals pursuant to Title A-8 of the Garden City Code, uh, shall be  
76 on the Appellant. The order of the hearing we will hear from the Appellant  
77 first. Uh, who will state their argument. Second, the Respondent will present,  
78 uh, their argument. Third, the Appellant shall present any rebuttal argument.  
79 The City Council's action, uh, deliberations and the oral opinion of each item  
80 appealed must be concluded prior to adjourning of the hearing. The decision  
81 for each item being appealed must be determined through a separate motion  
82 and voted on through a role call vote. So each member of the City Council  
83 may make his or her vote individually. After hearing on the appeal the City  
84 Council shall make its written, uh, decision and adopt findings of fact and  
85 conclusions by its next regularly-scheduled meeting. City Council decisions  
86 may include, uh, affirm, may include in part or the entirety of an action to  
87 affirm, vacate, remand or reverse. Affirm means to agree with and confirm the  
88 Design Review Committee's decision. Vacate would mean to cancel or render  
89 the Design Review's decision null and void. Remand would mean to send  
90 back to the Design Review Committee for further action. Um, reverse would

91 be to change the Design Review Committee's decision so that the decision of  
92 the, uh, Design Review Committee is overturned. Then Council, uh, there are  
93 various grounds for affirming a decision by the Design Review Committee.  
94 Um, they include, uh - uh, if it's for affirming it would be if the - if the Design  
95 Review Committee inferences, conclusions or decisions are not in violation of  
96 constitutional or statutory provisions. If the Committee's findings, inferences,  
97 conclusions or decisions are not in excess of the statutory authority that they  
98 have, uh, are not made upon unlawful procedure, or not supported by  
99 substantial evidence on the record as a whole, and are not arbitrary, capricious  
100 or an abusive discretion. Grounds for vacating, remanding or reversing a  
101 decision would be if the true intent of Title 8 of Garden City Code or the  
102 codes adopted there under have been incorrectly interpreted. Uh, if they do not  
103 apply or an equally good or better form of construction should have been  
104 applied, or are not supported by the weight of the evidence, or a significant  
105 error in the application that's been identified, or a significant violation of  
106 notice provisions, uh, have been, uh, enumerated. Or there is a significant  
107 error identified or, uh, and significant error in the application of approved City  
108 policies that is identified. Okay. Thank you for your indulgence. So we went  
109 through that. Um, we will now, uh, proceed. Hey, Ms. Carver-Herbert? Uh,  
110 welcome. I will have you stand over here. And proceed at your pleasure.  
111

112 A: Thank you, Mr. Mayor and City Council. I'm Wendy Carver-Herbert. I live at  
113 8515 West Atwater Drive. Um, Mr. Mayor, since I've provided written  
114 testimony ahead of time, um, I don't feel compelled to the need to actually  
115 read it word-for-word, um, in to the record unless it would be the request of  
116 the Council to do that.  
117

118 Q: Uh, is there any request by the Council to read her written testimony that was  
119 in the packet into the record? It's in the record because you've submitted it in  
120 the...

122 A: ~~I had~~ Ahead of ~~at~~ time ~~it's~~ as requested.

124 Q: ...ahead of time - yes.

126 A: Yes.

128 Q: And thank you for doing that.

130 A: Yes. But I do have actually I think probably just what I would consider more  
131 of a summation I think.

133 Q: Yes.

135 A: Okay. Um, so I think as you all know I'm not a lawyer. And, um, I don't have

136 pages and pages of case law to refer to in defending my reasons for this  
137 appeal. Um, but there are a few things that I've learned over the years in my  
138 quest to be c- to be a better community advocate. Particularly as I attended  
139 Smart Growth Idaho Citizen's Planning, um, Academy. And particularly the  
140 sessions by University of Idaho Law Professor Stephen Miller who specializes  
141 in land use law. What I learned, um, was a city has broad latitude in its land  
142 use decisions as long as its findings of fact are strongly written and supported.  
143 And it only takes one reason for denying an application or overturning a  
144 decision of a planning official. So if I were to hang my hat on anything,  
145 frankly, not too, um, exciting, but it would be the parking standard. Um,  
146 because residential parking requirements are clearly defined in Garden City  
147 Code 8-44D-5. This application does not meet the requirement period. One  
148 reason that's all it takes. But I think it's important to provide some context for  
149 any sort of a decision that you might make. While relying on the  
150 comprehensive plan and the land use map cannot solely be the grounds for  
151 denial of an application. A design standard referenced in my written testimony  
152 does provide that context. It's really important to point out that the  
153 comprehensive plan is actually codified by reference in Garden City Code 8-  
154 44B-1e1C. As it relates to development being compatible with the intended  
155 character of the neighborhood. That character should not be determined by  
156 just one property owner who is proposing a massive development that is three  
157 times taller than its own approved adjacent buildings and far exceeds the  
158 height of anything for miles. Character should rightfully be determined by the  
159 neighbors and citizens who have lived - who live in the City and provided  
160 their input through a process, republic process as they did during the 2019  
161 comprehensive plan update. The City's egregious failure to ensure height  
162 standards are in conformance with this comprehensive plan and are clearly  
163 defi- and, um, are clearly defined in a zoning code, unfortunately, only  
164 victimizes the citizens who live here. So, in summary, make it simple, is the  
165 design standards that provide the context and the motivation for overturning  
166 approval of this application. But it's the failure to meet the City's residential  
167 parking standards that is the solid findings of fact that I'm confident will hold  
168 as a legal reasoning for that decision. And I ask for you to support this appeal  
169 by review - versing the decision of the Design Review Committee. I thank you  
170 and I'll stand for any questions.

171  
172 Q: Thank you. Uh, questions?

173  
174 ManQ5: Mr. Mayor, can I ask a question as point of order?

175  
176 Q: Sure.

177  
178 ManQ5: Uh, Ms. Carver-Herbert, uh, which one of the standards do you think they got  
179 wrong specifically?  
180

181 A: On the parking?

182  
183 ManQ5: Uh, well, on either - on any of your arguments.

184  
185 A: Okay. I point out in my original testimony.

186  
187 ManQ5: Just so we're all clear (unintelligible)...

188  
189 A: Sure, thank you.

190  
191 ManQ5: Please.

192  
193 A: Um - okay. So under the parking standards that, um, it is parking standard 8-  
194 45D, or 4d-5. Um, there is a minimum parking standard for residential, um,  
195 developments. And in the staff report - as pointed out in the staff report on  
196 page 19, um, it goes through identifying the number of spaces, um, required  
197 by code. And then also how the Applicant is, um, providing those spaces. So  
198 it's - the code requires 245 off-street residential parking spaces. However, the  
199 Applicant is only providing 212 according to the staff report. Um, this project  
200 is deficient by 33 residential parking spaces. And because this has changed  
201 from a, um, commercial signif- um, predominantly a commercial use, or  
202 basically only a commercial use to a predominantly, um, residential use with  
203 only a very small portion of it as being commercial, um, City parking  
204 requirements for residential developments should apply. So, again, I refer  
205 back to my original testimony. And then, again, regarding the design  
206 standards, I base, um, basically say that, um, Garden City Development Code  
207 8-~~4b4B~~-~~1e-1C~~ is, um, the standard of which it talks - the purpose is to ensure  
208 that the design of structures in site development is compatible with the  
209 intended character of the neighborhood as set forth in the comprehensive plan.

210  
211 Q: Thank you. Uh, other questions? 'Kay. Anything further?

212  
213 A: Nope, that'll do it.

214  
215 Q: Okay. Um, we'll hear from the Respondent. And then you'll have an  
216 opportunity to, uh, have the last word.

217  
218 A: Okay, thank you.

219  
220 Q: You're welcome.

221  
222 A1: Good evening, Mayor, Council Members.

223  
224 Q: Hi. Thank you. If you would give us your name and address when you're  
225 ready, uh, proceed, or for the record. And...

226  
227 A1: Mike Talbot, 1743 Bannock in Boise.  
228

229 Q: 'Kay.  
230

231 A1: And I wanna thank Ms. Herbert for her focus and her passion that we need a  
232 lot more neighbors and people in the community that pay attention. So  
233 whatever side of the fence we're on I really appreciate that there's people  
234 paying attention. That's kind of something we need to get a trend going  
235 maybe. Um, we're here today to discuss an appeal that she has filed that  
236 somewhere that the DR committee had erred in the opinion to approve our  
237 project back on August 16th. Um, little background real quick of why we even  
238 came to you folks, uh, to the City to make the change. We - we with the, uh,  
239 conditions of our country with the pandemic and the economics we feel the  
240 hotel was not as good a play, not good an idea. We need better housing  
241 instead of hotel rooms. We did a traffic study and investigated that we found  
242 45% less traffic came to the area with, uh, the residential component versus  
243 the hotel. Um, it is a huge reduction in the vehicles in the area. Um, it  
244 provided a better access for residential use for the community to the greenbelt.  
245 And so we made the decision to make the request. And I thought maybe I'd  
246 just go through where we are today. We came to the DR Committee for a  
247 modification to our existing CUP approval. It was a mixed-use, uh, project  
248 that included the Boardwalk Apartments as well as the 406 Apartments and  
249 the hotel at the time. We're requesting to modify the CUP portion of that  
250 application, um, over on the - the, uh, single lot there on the side of the  
251 greenbelt. Um, we didn't request, nor are we still requesting any variances.  
252 Uh, we're not looking for any ~~conventional~~ conditional use permits. We're  
253 actually gonna abate the one we have originally got approved. Um, we, uh -  
254 the local neighborhood originally requested - we were in the DR Committee  
255 review they were requesting less cars. They were concerned about bringing so  
256 many cars in. And in the end we came up with a parking plan through the DR,  
257 uh, and staff which helped us greatly to mitigate the concerns both to  
258 community as well as mitigate the needs for, uh, parking, uh, on this project.  
259 What I'm gonna do is ask that, uh, Andy Erstad step for a moment to just talk  
260 with about the merits of the architecture of this project 'cause it's a significant  
261 project. Uh, and then Jo Ann Butler will address the question of the  
262 compliance to the comprehensive plan which we think is fully complied with.  
263 And then Chad Weltzin with Erstad will also come up and talk about the  
264 parking matter and give you some mechanics of that. I do wanna note that,  
265 um, ~~(unintelligible)~~ Hanna's write-up in the staff report kind of didn't  
266 necessarily reflect all the facts back in the, uh, the apartment, uh, application.  
267 So in the beginning she made a conclusion. And then in the end she wrapped  
268 it all up in a bow and basically said, "But in the end we were conditioned. We  
269 have a 14, uh, cross park agreement requirement which is conditioned on the  
270 property. And we're willing to comply with that as well as if we needed to



271 park more parking we have that opportunity.” So the parking really - the  
272 deficit of the parking that’s in the staff report ultimately we get mitigated with  
273 this cross park agreement. So if I could ask that Andy step up first and then  
274 we go through it.

275  
276 A2: Mayor, Council Members, my name’s Andy Erstad, Erstad Architects, uh, 310  
277 North 5th Street, uh, Boise. Um, you know, at the end of the day, uh, we feel  
278 that the Design Review Committee did make the right decision with the  
279 findings of facts and conclusions of law. Um, we’re really excited about this  
280 project. And, um, as, uh, Mike indicated the - the change from, uh, from hotel  
281 to residential is actually a decrease in - in load on the street system and things  
282 of that nature. Also I wanted to just touch a little bit on, uh, some, uh, j- just  
283 the concept of the project and how it’s enhancing, uh, the greenbelt. It’s  
284 enhancing and creating a vibrancy. And it’s gonna bring an energy to that  
285 general area which is across both east and west of - of, uh, Veterans Memorial  
286 Parkway. We’re seeing a tremendous amount of - of positive growth and feel  
287 energy and - and vibrancy. Um, I, um, as - as Mike said, uh, Jo Ann’s gonna  
288 talk a little bit about the - the ordinance and the findings of facts based on the  
289 ordinance. And, uh, Chad Weltzin will talk about the - about the specific  
290 parking. UmAnd, I’m here to - to say we’re really excited about - about the  
291 project. And the Design Review did come to the right conclusion and made  
292 the right decision. Please uphold ~~(unintelligible)~~ their decision. Thank you.

293  
294 A3: Good evening, Mayor, Council Members. Jo Ann Butler, um, 967 East Park  
295 Center Boulevard rep- representing the Applicant. As Mike said we have  
296 appreciated the comments from the neighbors. Um, ever since the original  
297 application in 2019 these comments have assisted the City, uh, guide the  
298 project. And just one example, the neighbors in 2019 were very concerned  
299 that the Applicant was providing too much parking. And Mr. Weltzin will  
300 review this a bit further. But the comments of the neighbors in 2019 prompted  
301 a parking study to be done. And a formal determination regarding the level of  
302 parking that’s appropriate for this project. It led to a condition of approval that  
303 required a shared parking agreement prior to building permit, um, approval.  
304 So when the Design Review Committee heard this amendment to the original  
305 project it weighed the substantial design facts presented all of which  
306 supported the Committee’s conclusion of law that the application meets the  
307 required City code findings and should be granted. To explain further in our  
308 letter to the City that there was no error by the Committee and with no error  
309 the decision of the Committee should stand. An item raised by the Appellant  
310 claiming that the application does not meet the intended character of the  
311 neighborhood as guided by the comprehensive plan is just misplaced. The  
312 intended character of the neighborhood is that of an activity node. And transit-  
313 oriented development that encourages increased density. The intended  
314 character is also reflected in the zoning ordinance including height which the  
315 City has already legislatively adopted as being in accord with the

comprehensive plan. The legislative intent of the City is not to set a height limit on this zone. And that is what a majority of the Design Review Committee found when it approved the design of the application. To set a limit, to set a height limit, the Committee said would be arbitrary. Of course, we all those if the community wants to set a limit to height in this area or anywhere in the City the proper way to do that is to limit the height across the board for all developments by making a change to the zoning ordinance and not to single out a particular development in connection with a Design Review hearing. So the Design Review Committee did work diligently to review this application with the Applicant, the staff, and the neighbors. There was no error by the Committee, and none has been shown by the Appellant. So we are asking the Counsel to please respect the Committee's decision. Unless there are questions of the Council I'll turn the podium over to Mr. Weltzin.

Q: Questions, Council? Thank you.

A4: Chad Weltzin Erstad Architects, 310 North 5th Street, Boise. Um, Mayor and Council Members, uh, to get specifically at the parking issue. Um, the code that's been, uh, referenced in the Appellant's letter, um, [8-404D-5a5A](#), um, is a table of specifically for residential only uses. Um, it was clarified by the City to us on a number of occasions that our project falls under [8-404D-5b-5B](#) which is for mixed use projects. Which states that the minimum and maximum number of required off-street vehicle parking or nonresident potential uses and mixed use shall be determined by the planning official. So we further asked about that, okay, planning officials, what do you want us to provide? And what we were informed was that we should put together a - a study, a parking study and propose a parking plan as part of our application. We did that. And, um, ultimately through the hearing process and the original application, uh, our proposed ratios were approved. Um, the reason for the - the mixed use section of code, of course, is to give some consideration to the fact that parking spaces which during the day are used by retail attendants at night become available for guest parking of the residences. So, um, that - that's why that section of code specifically says that mixed uses, um, the require- the number of parking spaces required shall be determined by the planning office which, again, was deferred to us to propose a plan for parking. We did that. It was approved. And that is acknowledged in, um, in, um, Ms. (Veal)'s, um, staff report which does go through some of the calculations of if the residential table were to apply to us it summarizes that. But at the end of it it says guest parking and retail parking is consistent with the ratios already approved in the original project. Uh, one guest parking space for every eight units. And one retail parking space for every 300 square feet. So we feel we are being completely consistent with the parking ratios that were proposed, reviewed and ultimately approved. I would answer any questions.

Q: Any questions? Okay, thank you.



361  
362 ManA1: I wanted to make one point of clarification, um, as we focus on this - the  
363 service of it's mostly focused on the parking standards. And I believe she's,  
364 uh, referencing us toward a residential component within the, uh, code. But  
365 we are a mixed use. And, uh, we are gonna be in compliment with our  
366 property next door. Which is, uh, the Boardwalk Apartments that has about  
367 21,000 square feet of retail. And so in compliment with that, in concert with  
368 that, is why we planned the first floor being 2,000 square feet of retail ~~in~~ and  
369 the open plaza. And it will feed next door to the other retail spots that are on  
370 ~~(unintelligible)~~ the river already. So we still see ourselves as a mixed use and  
371 not a residential. Even though we have reduced some of our commercial space  
372 from the hotel side. Any questions?  
373

374 Q: Questions?

375  
376 ManA1: Thank you for your time.  
377

378 Q: 'Kay, you're welcome, thank you.  
379

380 Q1: Mr. Mayor, I have a point of clarification from the City Attorney or the  
381 planning official if I could. We keep, uh, comingling this specific project with  
382 the other ancillary projects that are part of the - the totality of the  
383 development. But we're not talking about -- this is my interpretation -- we're  
384 not talking about those other projects or what the use is or anything else.  
385 We're only talking about the - this project where it's been changed from, um,  
386 the previous applications. Would I be correct in that?  
387

388 Man: Council President Souza, you would be correct in that (unintelligible)...

389  
390 Q1: Thank you.  
391

392 Q5: But, Mr. Mayor, before Ms., uh, Carver-Herbert comes back up for her  
393 rebuttal I just have a legal question and I'm just the attorney. But as I review -  
394 make findings under 8-~~666B~~-3 -- and I don't know which one of those  
395 findings under 8-~~666B~~-3 that Ms. Carver-Herbert thinks they did in error. So  
396 I'm - I'm hoping maybe she could respond to that in her rebuttal. Because  
397 those are the findings. It's 8-~~666B~~-3. And there are seven specific findings  
398 that are in the decision document. And if you'll allow me, Mr. Mayor,  
399 Members of the Council, it's specifically on page 8, 9 and 10 and 11 of their  
400 decision, those are the required findings under 8-~~666B~~-3. Thank you, Mr.  
401 Mayor.  
402

403 Q: All right.  
404

405 Q2: Can you reference the -- I apologize -- can you reference the packet page

406 number by any chance?  
407  
408 Q5: If, uh, if it please the Mayor and Council, um, the packets a little confusion -  
409 confusing. It's, uh, it's a different hyperlink. So you go to Ms. Thornborrow's  
410 memo.  
411  
412 Q2: Mm-hm.  
413  
414 Q5: And then she hyperlinks the - the record documents. And so you go to those  
415 hyperlinks. And then it is the decision document from the Design Review  
416 Committee that was signed on August 16th of '21. So I wish I could, uh...  
417  
418 Q2: No. That...  
419  
420 Q5: ...(unintelligible)...  
421  
422 Q2: ...that's perfect.  
423  
424 Q5: ...but it - it's hyperlinked in the - in the record.  
425  
426 Q2: And what - which page numbers again?  
427  
428 Q5: On the decision document, uh, Council Member Jorgensen, it's page 8. 9, 10  
429 and 11.  
430  
431 Q2: Thank you.  
432  
433 Q5: Yes.  
434  
435 Q2: Hm. I'm not sure (unintelligible) because this document only has five.  
436  
437 Q5: Mr. Mayor, Members of the Council, if you, uh, would like to see that on the -  
438 - and we can do a shared screen -- it would just take me a minute to find that.  
439 Would that be helpful?  
440  
441 Q: Sure.  
442  
443 Q5: Another.  
444  
445 WomanQ6: Another point of clarification, it actually is in the packet on page 143 if that's  
446 easier to get to.  
447  
448 Q5: Okay.  
449  
450 WomanQ6: Uh, where the decision document starts.

451  
452 Q: Which - I didn't understand.  
453  
454 WomanQ6: One forty-three.  
455  
456 Q5: One forty-three. I - I guess it...  
457  
458 WomanQ6: That's correct.  
459  
460 Man: At 143.  
461  
462 WomanQ6: Um, and then specifically on page, um, 152. Or, excuse me, 151.  
463  
464 Man: (Unintelligible)...  
465  
466 WomanQ6: Um, and 150. So it's item number 26 in the findings of fact starting on page  
467 150.  
468  
469 Q: Okay, thank you.  
470  
471 WomanQ6: Thank you.  
472  
473 ManQ5: (Unintelligible)..It looks like Ms. Carver-Herbert is ready.  
474  
475 Q: Okay, you bet. Thank you. Thank you.  
476  
477 WomanA: Mr. Mayor, Council, Mr. Wadams? Um, I believe that, um, the standard that  
478 design - the findings of fact the Committee did not, um, correctly interpret  
479 would be the very first standard that you would find on page 150. The  
480 proposed design is in conformance with the purpose of the Zoning District and  
481 all the dimensional, uh, regulations of that district. And, again, I know that the  
482 - the, um, this relates again, this is why the parking comes in to, um,  
483 significant, um, area of importance, um, because the parking standards for  
484 residential developments is clearly defined in, um, the zoning standards. So to,  
485 um, go ahead and try to go through, I tried to capture what I could of, um -  
486 um, the Applicant's, um, response. Um, first of all I think it's important to talk  
487 about the - the traffic study. Um, traffic studies are not required for residential  
488 developments. And, um, as Council Member Souza, you pointed out there's  
489 like a great deal of complexity, um, wrapped up into this project. Because you  
490 can take into consideration its original project with two other buildings that  
491 were brought in to consideration. Now we have only one out of those three  
492 buildings that, um, has completely, um, changed - changed, um, dramatically.  
493 And what's happened is that partic- that one building was -- to the best of my  
494 understanding -- a hundred percent commercial. It was intended to be a hotel.  
495 It was a nine-story hotel. Um, and the parking study that was done was

needed. Because as Ms. (Veal) pointed out -- and I mentioned this in my testimony -- that, um, Ms. (Veal) pointed out that there are no defined parking requirements for commercial uses. That's in line ~~for 4-~~39 of transcript number 3. So in circumstances when there are no - Garden City does not have, um, parking standards for commercial developments. And in those cases where parking needs to be determined one aspect of that that can be provided for the planning official to make a determination of whether parking is appropriate for that particular use, the Applicant can provide a parking study. In turn that appears to be what this Applicant then did, um, indeed do. Again, the point that I'm trying to put across is this is not the same development. This is essentially an entirely different use from what was originally proposed in the original application. It is now a residential development. Almost, um, I believe 293,000 square feet and less than 1% of that is now commercial. I could concede that you might be able to use the commercial standard provided in their parking study for that 2000 square feet of commercial which I believe is seven parking spaces. But west of that development 293,000 square feet is a residential development. There is no way that you could think of it as being anything different. Um, they mentioned the 45% less traffic. Um, but I would have to say that 40% - 45% less traffic does not necessarily equate to fewer needed parking spaces. Again, Garden City residential code is very clear. Now, Ms. Butler ~~pointed points~~ out that the neighbors had some concern that perhaps there was too much parking. And I believe, um -- and I'm going a little bit from memory, but -- I believe that in earlier, um, testimony the part of the concern the neighbors had about this was because, again, the complication of this project, part of this project was on R30 zone - on R30 zone property. And part of it was on C2 property. Again, the confusion. The Applicant was looking to be able to provide a portion of its parking on the R3 zone property. And so, therefore, the neighbors were very concerned about this. And it happened to be that that R3 zone property was adjacent to the neighbors. So that's what the concerns they were trying to draw from the fact that they were concerned there may be too much parking. Because a large portion of the burden was going to be falling upon the neighbors who lived on 40th Street in which parking was having to come into 40th Street in order to access parking. Um, it was mentioned that they were guided by staff to use mixed use. Um, and that's why this, um, that's why the parking study ended. This project was solely - again, this project was solely a commercial building, um, prior to its new use. The one thing that I wanna be able to - to mention is there was a great deal of confusion once again. So I can point out on, um, page 8 of the staff report, um, it talks about the under - under the comprehensive plan this development falls under three different, um, land use designations. There's mixed use residential, there's neighborhood destination, and transit-oriented development node. And there's the Green Boulevard corridor. And, um, as stated in the - in the report it says the development is located within the C2 zoning district which does not have a height or density maximum. Therefore, the 18 stories are proposed ~~or in code~~ are in code-compliant. Additionally, the

development or, um, development meets (the division) of the comprehensive plan neighborhood destination center and transit-oriented development node by providing a high density multistory residential structure and mixed use. However, the development appears to have conflicting designations. There is a conflict between the neighborhood destination node and the mixed use residential designations. In that the latter asks for lower density residential with the maximum height of two stories. So, again, there's a great deal of confusion that's created, um, with this particular project. And all I can say is it is no longer a hundred percent commercial project. It is a residential project with the very small number of very small percentage of commercial development. And, therefore, it's my position that the residential parking standard should be applied.

Q: Any questions? Okay. Thank you. Sorry. Uh, Council, that concludes the, uh, presentations by the parties.

Q5: Mr. Mayor, point of order before you go the deliberations if I may.

Q: Certainly.

Q5: And I'm not trying to put words in anybody's mouth. Um, so if I am misinterpreting this, uh, I would like to stand corrected. But sounds like we're already having - the council only needs to look at the first standard. It looks like she's only contesting the first standard. And so the other standards - I mean, she's not appealing the other standards. It looks like she's just appealing the first standard. And regarding parking standards and design standards. But if she's only appealing the first standard then there's no reason to go into the other standards.

Q: Okay.

Q5: Would be my thought. Thank you. Have I got that wrong, Ms. Carver-Herbert?

A: (Unintelligible)...

Q: Well, yeah, we need to - I need to make sure what we're deliberating on. So...

Q5: Right.

Q: Um, let the record reflect that, uh, Ms., uh, Carver-Herbert is answering - preparing to answer the question posed by Counsel as a clarification on which standard or standards, uh, she is applying in her appeal.

Q5: Thank you, Mr. Mayor.

586  
587 Q: 'Kay, Ms. Carver-Herbert, uh, the - you can answer the question.  
588  
589 A: Okay.  
590  
591 Q: But we're not gettin' in to anything...  
592  
593 A: No, that's fine.  
594  
595 Q: Oh, okay, alright.  
596  
597 A: No, that's fine. I just - in clarification I - I do believe, um, I think with the  
598 point that the parking could create an impact on, um - by not having the  
599 parking I think that it could actually arguably violate the proposed design -  
600 that the proposed design adheres to the standards for the protection of health,  
601 safety and general welfare.  
602  
603 ManQ3: Number two.  
604  
605 A: I think that's all that I can bring to the table at this point.  
606  
607 Q: Okay, thank you. 'Kay, Council, uh, items, uh, standards one and two have  
608 been identified for the record.  
609  
610 ManQ1: Can you clarify what you mean by that?  
611  
612 Q: Okay. So...  
613  
614 ManQ1: Because we...  
615  
616 Q: ...on pa...  
617  
618 ManQ1: ...we have - we have written testimony (unintelligible). We've had testimony  
619 from those who were here that doesn't exactly - and then we have the decision  
620 from the Design Review. And so I'm trying to understand what the - where -  
621 where we've landed.  
622  
623 Q: Um, well, the initial, uh, admonition is you're gonna take the totality of  
624 what's been written and what's been...  
625  
626 ManQ1: Okay.  
627  
628 Q: ...presented here tonight. Uh, and, um, you're standard is, uh, written standard  
629 is that, uh -- just a minute -- um, the standard of review is that you, uh, give  
630 due regard, uh, to the Design Review Committee's decision. So, uh, if, uh,



what you've heard or read would indicate that they made a material error in their decision then you need to identify that. And you can change their decision. So with that, uh, the matter's now properly before the City Council for deliberation. So since two standards have been identified I'll start with the first one. Uh, the proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district. The Design Review Committee found that the application meets this finding. The application is located off Veterans Memorial Parkway in the C2 general commercial and mixed use, uh, residential future land use designation. The application is compliant with all provisions set forth in Garden City Code 8-[2e2C](#). And is in alignment with the comprehensive plan's future land use designation. So, uh, that was the decision of the Design Review Committee. So, um, if you wanna start on that deliberation that the Design Review Committee, uh - uh, error in that finding.

Q1: So, Mr. Mayor, I'll take that one first. Um, I believe the Design Review Committee did error in that, uh, decision and in that finding. And I wanna elaborate a little bit on that. What - what we have is - I'm - for - for lack of a better, uh, classification, or whatever, we - we have development A, development B, which are the other two. And we're gonna call this one development C which we're talking about tonight. And what's happened is regardless of what the reasons are we're getting this, uh, you know, the covid reason, or whatever. Um, I - it - it just seems odd to me that you would make a decision of this financial magnitude on - on something that I - I think is temporary. Um, I - it just strikes me as a little bit odd, uh, the reason on that. And so I guess the cynic in me comes back to was, you know, all through the process before going all the way back to 2019, it feels to me a little bit like there was one project that was proposed - proposed and eventually approved. And then there's something be changed now later. And it's not the same project. Um, not at all. Um, when you're looking at the total square footage of the project, uh, considering all three pieces combined, you've taken the biggest piece of the project, or probably, uh, it's certainly in excess of 40% of the square footage, well, maybe more than 50 or more, I - I don't have it in front of me what - what all the square footages are, and change the use from commercial to residential. And so, to me, we're not even talking about the same project anymore. And - and now we're lumping together the other two to justify the third what's happening. But we're - we're not talking about the other two. We're only talking about this one. And when you take this one and you change it from a large commercial use to an almost entirely residential use and you're not making changes at the margins. You're - you're not increasing it from nine stories to ten. Or you're not increasing the total footprint of the building when - when you're essentially doubling the size of that component and completely changing the use. We're not talking about the same project, um, at all. I mean, it just - it's not the same thing. So, um, what - whatever the application was for the original this component of it, um, let's

just call it part C. And so I'm looking at this now and saying is the proposed design in conformance with the purpose of (unintelligible) it's - it's not the same project. Um, and so for that reason I - I believe that the, uh, um, you know, the finding of the DRC was incorrect.

Q: 'Kay. Further deliberation?

ManQ3: Mr. Mayor?

Q: Mm-hm?

ManQ3: (Unintelligible) At my core I, uh, really agree with, um, Council President Souza insofar as the project before us is not the - it really in no way the same, um, project. And I heard today in testimony our reliance on kind of a cross parking agreement or, uh, you know, a - a, uh, a project that hasn't - has yet to be filled built. And I may also be cynical. But we really don't have reliance on those other two projects when we know that the first one's been changed. This, uh, you know, and I'm not saying that it's a disingenuous change. But it's - it's not a hotel with rooftop bars and restaurants and commercial shopping. It's, uh, it's high density housing is what it is. Um, and - and it relies -- to meet okay. Well, and let me back up just a bit. This standard - we cannot ignore the zoning C2. I mean, that's - there's not dimensional standards that's - that's clear in our code. Uh, I - I think that the bigger question is - is this still - is this still as proper for - for a C2 zone? That's - that's the overarching question. I would say that the land use handbook, uh, that was, uh, published by (Gibbons Givens) (unintelligible Pursley) references for propriety of opponents to a project to reference the comprehensive plan. And for that, um, Ms. Carver-Herbert should be commended. Because the - the comprehensive plan that she references, uh, quite well in - in our materials - and I - I read every word twice, um, in this memo. Uh, there's - there's attention, however, with this approach of - of using the comprehensive plan insofar that the Supreme Court on a number of occasions has - has held that, uh, in- intention of a comprehensive plan and zoning ordinance, the zoning ordinance will control. And we have a C2 zoning ordinance here, uh, you know. I guess forecasting what we might see under (LLUPA loopa) if this were to go that way. It's clear that the zoning, uh, ordinance would control over the comprehensive plan when those two were found to be in conflict. There's no fewer than eight cases that reference that in the case law that I read. I think the question here -- and I realize that we need to narrowly focus this to standards one and two, um -- I just go back to I don't - I don't see this being C2 commercial. I don't see it really being mixed use. Might be a very small percentage of it. An eyedropper of fluid in the river of water I guess makes it - makes it somewhat mixed. But this is not the spirit of mixed use in my opinion.

721 WomanQ2:

Mr. Mayor and fellow Council Members. Um, I - I agree. Uh, and I am going to also elaborate somewhat. Um, I agree with the President of the Council, Souza, on the - there needs to be a separation. This specific development needs to be considered on its own merits. I also agree with Council Member Page that this does not pass the sniff test for mixed use. Um, and I want to applaud Ms., uh, Herbert, Wendy Carver-Herbert for her diligence and very specific, um, as she called out some of the concerns. I think it - it resonates with the community. And I appreciate that you acknowledge that. Um, and I'm gonna go a little bit further and state that, uh, where there was a tremendous amount of enthusiasm for the broad mixed use in a hotel and the vibrancy as described, um, there's a disappointment to see it be turned into high density housing. Um, I am very, very sympathetic to covid and the conditions that it is creating in - in all industries and in the economy. I recognize the fact that financing can be a real challenge. I think Ms. Carver-Herbert also posed a good question can this be slowed down? Does it need a decision right now echoing Council Member Souza's. I ~~(know)~~don't, you know, if there - it's not my money, of course. But my preference would be to take a wait and see approach. Allow this to settle if at all possible. And to, uh, retain it as a very high mixed use hotel. Something that is vibrant that brings excitement to the City. Uh, but bottom line, um, I - I concur with both Council Member Souza and Council Member Page that, um, this needs to, uh, be reversed.

744 Q:

'Kay. Any other - any other comments on item one? 'Kay. Um, so, uh, we're required to, uh, make a decision, uh, that you vote on in a roll call vote. Uh, so what I'm hearing is that the Council, uh, believes that the Design Review Committee erred. And so as item - the first item on page 50, so that needs to get articulated with, uh, some specificity into a motion by ~~(someone)~~.

750 ManQ1:

Mr. Mayor, I would, uh - (unintelligible) want this in a motion that, uh, that the - the findings of Design Review Committee were in error. Specifically that, uh, the design is in conformance with the purpose of the Zoning District. And, uh, the dimension regulations of that district.

755 ManQ3:

Second.

757 Q:

So would you repeat the motion for me? I'm sorry.

759 ManQ3:

That's okay.

761 ManQ5:

The point of order today respectfully requests of council present that he say why, because why, for staff, to write it up.

764 ManQ3:

Um, that the - basically the - the - the nature of the project has changed from a commercial mixed use project to a residential project. So the - the - it goes all

the way back to the original application (for me). To meet this this isn't a change to an existing application. This belongs as a completely new application. And so, um, this design is not in conformance with the purpose of the Zoning District and is not in conformance with what was originally applied for.

ManQ3: I'll renew my second.

Q: 'Kay, thank you. Got a motion and second. Any discussion? Clerk call the role.

Q4: Council Member Souza?

Q1: Yes.

Q4: Council Member Jorgensen?

Q2: Yes.

Q4: Council Member Page?

Q3: Yes.

ManQ1: Then the other one, Mr. Mayor, I believe that the, uh - which Ms. Herbert was the - the proposed design (unintelligible) standards for the protection of health, safety and general welfare of the City. Um, I also believe that, um, the project is not, uh, or the Design Review Committee erred in that decision as well. Mostly going back to the 8-4b4B-1e-1C that was referenced when - I - when - when you change the nature of a neighborhood like this I - somebody's gotta go first. I think the Applicant, uh, mentioned that that a change of this magnitude always is somewhat shocking. But this isn't the only change that we - we've had. And - and it's certainly not the only change that, um, this council and - and the City has already proved - approved. And, uh, for pending other projects, uh, of 34th Street, uh, among others. This - this project is just, to me it might be just so completely out of scale with everything else around it. Um, all the way from, uh, what's happened on 43rd Street, 42nd Street. Um, it's - it - it's not in any way, shape or form like the existing neighborhood. And, to me, the idea that you would have other like developments comes somewhat close to it or you have another project that would be complimentary to it, is, I don't know, I don't see that at all. Uh, because so much of what else is around there has already developed. So anyway for that reason I also believe the Design Review Committee was in error.

Q: Further discussion on number 2?

811  
812 ManQ3: Mr. Mayor, just feel like with number 2 we need to focus, um, turn a bit to the  
813 general welfare, uh, of the safety and I guess protection of health. In here, you  
814 know, I don't wanna imagine facts. But people out and about moving, uh, you  
815 know, from home to - to their cars. Uh, there's, you know, especially at night  
816 or in inclement weather, uh, you know, the closer that distance of the vehicle  
817 to - to where they are parking and transporting groceries back and forth  
818 potentials for slips dealing with night (nine), potential safety issues. Uh, I  
819 think we need to tie a nexus in this finding as - as to how this would be  
820 different. Um, were it a - as originally proposed, uh, where it was found to be  
821 compliant. Um, and, uh, (unintelligible) my colleagues as how to craft that.  
822 'Cause I do think it's important to touch on the safety and health if we're  
823 going to bring condition number 2 into the - into this as our appellant has  
824 requested. It's tough to do without imagining facts(unintelligible)...

825  
826 Q1: Well...

827  
828 WomanQ2: Yeah.

829  
830 Q1: ...it just - you know, a 8-~~4b4B-1(bB)e-C~~ - ~~4e-1C~~ says that, um, the design  
831 structures and sight development is compatible with the intended character of  
832 the neighborhood as set forth in the comprehensive plan. It's not just that it's  
833 set forth in the comprehensive plan, it's set forth with all the neighborhoods  
834 that are around it. And, um, something three times the size of everything else  
835 is - is not compatible with that neighborhood. Um, so I don't think I'm  
836 imagining, I mean, I think that's a fact. And it's, um...

837  
838 ManQ3: But I'm - I'm looking...

839  
840 EQ1: That's what - that's what I'm focusing on.

841  
842 ManQ3: ...in - in particular at number 2.

843  
844 Q1: Yes.

845  
846 ManQ3: Yes, sir.

847  
848 WomanQ2: The health, safety and general welfare.

849  
850 ManQ1: The general welfare of those other neighborhoods is - is impacted by...

851  
852 ManQ3: There we go.

853  
854 ManQ1: ...something, uh, of that magnitude and scale with - with what has been  
855 approved and what is present already. So...

856  
857 Q5: And, Mr. Mayor, just point of order, (unintelligible) and we talk so much I  
858 don't usually prefer to do this during deliberation, but I think it's important to  
859 remember that is the PUD and they were asking for parking waivers. So  
860 parking waivers were granted. That sounds like the Council - it's not - it's fine  
861 with parking waivers being granted for health and safety reasons.  
862  
863 Q: Well, we're in the deliberation. Uh, the hotel was approved as a PUD. Uh, the,  
864 uh, current project that's subject to this appeal is a permitted use in a zone. So,  
865 uh, to drill on the proposed design adheres to standards for the protection of  
866 health, safety and general welfare, uh, is the -- if I understood Council  
867 President Souza correctly, uh -- he stated at, uh, general welfare would mean  
868 it's not in the best interest - interest because of the scale or the size of the  
869 project in relation to everything else around it, am I correct?  
870  
871 Q1: KayCorrect.  
872  
873 Q: 'Kay. Further discussion?  
874  
875 ManQ3: No, sir.  
876  
877 Q: 'Kay. What's the pleasure of the Council?  
878  
879 ManQ1: Uh, Mr. Mayor, we'd move that to find, uh, the Design Review Committee  
880 decision in error. Um, because it does, uh, adversely affect the general welfare  
881 of the community.  
882  
883 Q2: Second.  
884  
885 Q: Had a motion and a second. Any further discussion? (Hearing none) will the  
886 clerk call the role.  
887  
888 Q4: Council Member Jorgensen?  
889  
890 Q2: Yes.  
891  
892 Q4: Council Member Page?  
893  
894 Q3: Yes.  
895  
896 Q4: Council Member Souza?  
897  
898 Q1: Yes.  
899  
900 Q: 'Kay, Council. Now we've made a decision on these two criteria. Now you



need to make the decision on the, uh, the appeal itself.

ManQ1: Uh, Mr. Mayor, I would move to vacate the decision of the Design Review Committee.

Q2: Second.

Q: I've got a motion and a second to vacate. I presume on the basis of the decision you made on items 1 and 2.

ManQ1: Correct, Mr. Mayor.

Q: 'Kay. Further discussion on the motion? (Hearing none) call the roll.

Q4: Council Member Page?

Second: I - I - I'm sorry.

Q: That's okay.

Q3: I - I would prefer to see a remand, um, to remand this back to the Design Review for further findings on these two issues. Um, and I realize there's a motion and second. So, uh, I just wanna state that.

Q: 'Kay. The motion on the floor is to vacate. Uh, the discussion was a preference by Council Member Page to remand as opposed to vacate. Uh, so unless I hear a withdrawal with a motion we'll vote on the original motion. 'Kay. Hearing no withdrawals would Clerk call the role?

Q4: Council Member Page?

Q3: No.

Q4: Council Member Souza?

Q1: Yes.

Q4: Council Member Jorgensen?

Q2: Yes.

Q: 'Kay. The decision has been, uh, vacated.

The transcript has been reviewed with the audio recording submitted and it is an accurate

946 transcription.  
947 Signed \_\_\_\_\_

DRAFT