

**City of Garden City
Staff Report**

A. Project Overview

Project Description: Mark Butler of Land Consultants, Inc. is requesting a design review to approve sheet metal as a fencing material and variance to the fence height and setback requirements of Garden City Code 8-4A-3 for a new 12-foot-high privacy fence at 520 E. 47th Street, Ada County Parcel R2734522991. The fence would be placed on the front property line and along a portion of the southwest side of the 2.33-acre site.

Proposed Scope of Work

Request	Code Standard	Notes
Design Review Committee approval of sheet metal as a fence material	8-4A-3E: Sheet metal prohibited unless Design Review Committee approval granted	None
Variance to allow a 12' fence height in front setback along E. 48 th Street and to allow 12' fence height within side setback	8-4A-3C-1: 3.5' maximum fence/wall height in front setback 8-1C-3: Up to an 8' fence height allowed for screening	None
Variance to allow a 0' setback for fences exceeding 3.5' in height	8-4A-3D-1: 10' minimum setback for fences/walls exceeding 3.5'	None

Required Decisions

The following decision processes are required for the project:

Decision	Recommendation Authority	Decision Authority	Hearing Date
Design Review	N/A	Design Committee	August 19, 2019
Variance	N/A	Planning and Zoning Commission	August 21, 2019

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Standards for Review: Standards for review of this application are:

Design Standards – Fence Material	
Standard	Staff Comments
8-4A-3E-1 Fences and Walls – Prohibited Fencing Materials	Potential noncompliance with findings 1 and 2

Variance Standards – Fence Height and Setback	
Standard	Staff Comments
8-6B-9 Variance	Potential noncompliance with all required findings

Policies and Studies: No policies or studies were reviewed for this request.

Agency Comments:

Agency	Comment Summary
ACHD	Fence must be located outside of right of way
ITD	No objection

Public Comments: None received.

Exhibits: [Link](#)

1. Application Materials
2. Combined Design Review and Variance Staff Report
3. Draft Design Review Legal Findings
4. Draft Variance Legal Findings
5. City Council Hearing Minutes dated November 12, 1986
6. Letter from Robert Unger, Public Works Director dated November 14, 1986
7. Undated letter from Trusty Auto Parts in response to November 14, 1986 Robert Unger Letter
8. Garden City Code 8-7-5 in effect on November 14, 1986 (Ordinance 443)
9. Zoning Certificate 95-08-10 – Letter of Intent dated August 18, 1995
10. Garden City Code 8-7-5 in effect on August 18, 1995 (1988 Code)
11. Agency Comments

B. Design Review

1. Decision Maker: Design Committee
2. Standards for review:

DESIGN STANDARDS	
City Code	City Standards/Staff Comments

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<u>GCC 8-4A-3E-1 Fences and Walls – Prohibited Fencing Materials</u>	Sheet metal fencing or other like unsightly materials are prohibited by this section unless the Design Committee determines the material meets the findings of this section. The findings are analyzed below.
Finding 1	<p>Finding: Implement the vision as set forth in the Comprehensive Plan</p> <p>Analysis: The application was submitted prior to the July 22, 2019 adoption of the Comprehensive Plan Update and has vested rights to the previous Comprehensive Plan. The previous plan will be reviewed for this analysis.</p> <p>The applicant’s letter of intent cites Objective 2.4 (Improve the appearance of street corridors) and Action Step 2.4.1 (Developing new street standards for adjacent land uses) as justification for compliance with this finding. The applicant further indicates that the fence “would create a softer transition by creating a visual separation...” and “We are only raising the privacy screening, and providing a far more durable materials, to protect the transition sightline”.</p> <p>The applicant’s letter of intent also cites Objective 10.6 (Continue to support commercial and industrial land uses) and Action Step 10.6.1 (Creation of a Bradley Technology District around 50th and Bradley Streets) to justify compliance with this section. The applicant indicates that the site is located near the proposed district and that “the comprehensive plan clearly encourages this area’s industrial and commercial land use and should not limit them as they seek to be good neighbors”.</p> <p>However, the proposed material appears to conflict with the following provisions of the Comprehensive Plan:</p> <p style="padding-left: 40px;"><i>a. Objective 1.4: Create a premier destination place to live, work and recreate.</i></p> <p>The proposed material depicted in the applicant’s materials does not appear to be intended to support this objective. The proposed sheet metal does not appear to differ than any other commonly available sheet metal material, which in turn detracts from this</p>

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	<p>objective and does not implement the vision of the Comprehensive Plan.</p> <p><i>b. Objective 2.4: Improve the appearance of street corridors</i></p> <p>The intent of including sheet metal as a prohibited material without Design Committee approval was to improve the appearance of properties and especially along street corridors. The proposed material does not appear unique in comparison with other common sheet metal materials and detracts from this objective.</p>
<p>Finding 2</p>	<p>Finding: Demonstrate that the fence provides significant creativity and uniqueness, and the intent is not to merely evade the provisions set forth in this section, or can demonstrate that the fence is an established icon that enhances the community's assets more than a fence complying with the requirements set forth in this section</p> <hr/> <p>Analysis: The proposed sheet metal material does not appear to comply with either provision of this finding.</p> <p>The proposed material does not appear to provide significant creativity and uniqueness and it appears the intent is to merely evade the provisions set forth in this section. The proposed material does not appear to demonstrate the fence is an established icon that enhances the community's assets as noted in the finding. Garden City Code does not define the terms "creativity", "uniqueness" and "icon". Pursuant to GCC 8-1A-5 (Interpretation), the Merriam Webster Dictionary definitions shall be utilized.</p> <p><i>a. Creativity: the quality of being creative</i></p> <p><i>b. Creative: having the quality of something created rather than imitated</i></p> <p><i>c. Icon: Emblem, symbol</i></p> <p>The term "uniqueness" does not have a definition in the Merriam Webster dictionary. The closest term is "unique"</p> <p><i>d. Unique: being without a like or equal,</i></p>

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	<p><i>distinctively characteristic</i></p> <p>The proposed material does not appear to have the quality of something created but is instead a common sheet metal. The proposed material does not appear to be not unique among sheet metal materials. Absent creativity and uniqueness, the proposal could be intended to evade the provisions of this section. The proposed material does not appear to be an established icon that enhances the community's assets more than a complying fence material.</p>
Finding 3	<p>Finding: Demonstrate that is constructed of professional and durable materials, and are not intended to be of temporary nature</p> <p>Analysis: The proposed material appears to be a professional and durable material and does not appear to be temporary in nature.</p>

- c. The Design Committee may take one of the following actions:
- Approve the application as presented;
 - Approve the application with conditions;
 - Request the applicant return with revised materials for additional review;
 - Deny the application.

C. Variance

- Decision Maker: Planning and Zoning Commission
- Standards for review:

VARIANCE STANDARDS	
City Code	City Standards/Staff Comments
<u>GCC 8-6B-9 Variance</u>	To approve a variance request, the Commission must determine the request meets the findings of this section.
Finding 1	<p>Finding: The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property (a finding of undue hardship Implement the vision as set forth in the Comprehensive Plan;</p> <p>Analysis: The applicant has requested the variances</p>

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	<p>to screen the stacking of cars 12' in height and to address alleged code enforcement violations. The applicant's letter of intent argues the variances meet this standard because of ongoing Code Enforcement actions from alleged complaints and the City is enforcing GCC 8-1C-3 (Property Maintenance Standards). The applicant contends the enforcement of this standard creates an undue hardship since the standard's adoption on 5/14/2012 was well after the alleged 50+ year establishment of the use. The applicant does not list a specific and unique size, shape, topography or location of the subject property to support the variance.</p> <p>The application does not indicate the justification for the 0' setback variance.</p>
<p>Finding 2</p>	<p>Finding: The need for the variance is not the result of actions of the applicant or property owner;</p> <p>Analysis: The applicant's letter of intent argues that "the need for the variance is not the result of actions of the applicant or property owner, but is a result of Garden City attempting to appease a neighbor (or neighbors) by implementing a code adopted decades after the establishment of the use. However, the record does not appear to support out this claim.</p> <p>a) 1986 Rezone and CUP</p> <p>A zoning map amendment and conditional use permit was approved on November 12, 1986 to expand the existing wrecking yard use to include lots 4 and 5, Block 22, Fairview Acres Sub No. 3. According to the November 12, 1986 City Council Minutes, the conditional use permit was approved with the condition that the use comply with GCC 8-7-5 (noted as article 11, section 16 of Ordinance 443 in the minutes). GCC 8-7-5 in effect at this time required a 6' fence to screen wrecking yards.</p> <p>A letter to the property owner at that time from Robert Unger, Garden City Public Works Director dated November 14, 1986 informed the owner of the approval and stated "This office is prepared to allow a variance on the</p>

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fence requirements, to read 8 feet, instead of 6 feet, upon written request for you". An undated letter written in response to this letter requested a variance for an 8' fence, which includes the properties under the current variance request. While no record of an approved variance was found, the property owner at that time did not request a 12' height variance.

b) Zoning Permit 95-08-10

Zoning permit 95-08-10 was applied for on August 18, 1995 to construct a support building for the wrecking yard use. The zoning permit's letter of intent was drafted by the property owner's legal counsel and documents the existing conditions of the site and includes the property under the variance request. This letter notes that an 8' vertical wood fence was erected along most of the property, including the property under the current variance request, and that the fence "...complies with the Performance Standards, Supplemental Provisions, Unique Land Uses, Wrecking Yard at Garden City Code Sections 8-7-5 Wrecking Yard A, B, C and D'." GCC 8-7-5 was amended as part of a substantial code update with Ordinance 528 on August 9, 1988 to allow 8' fences for wrecking yard uses. This was in effect on August 18, 1995.

Further, to address whether additional landscaping was required, the letter states "The Applicant further contends that, to the extend the Garden City Code provides that the area be 'completely enclosed' and that no visibility of automobiles or equipment may be visible or exceed the height of the fence, and, further, to the extent that it was Garden City that initially mandated the current fence, the Applicant need not provide additional landscaping". The zoning permit's letter of intent represented that the 8' fence screened automobiles from view and no additional landscaping would be needed. The property

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	<p>owner did not identify a need to stack vehicles over the 8' fence height or request a variance to 12' in height.</p> <p>Based on the documentation noted above, the use does not appear to have historically stored wrecked vehicles in stacks over 8' in height from at least the year 1986. Approving the variance would appear to represent an expansion of an existing non-conforming use. To expand a nonconforming use, a conditional use permit is required pursuant to GCC 8-1B-3 (Nonconforming Uses).</p> <p>The application does not indicate the justification for the 0' setback variance.</p>
<p>Finding 3</p>	<p>Finding: The variance will not unreasonably diminish either the health, safety or welfare of the community neighborhood;</p> <p>Analysis: The applicant's letter of intent substantiates the height variance meets this finding, stating "City representatives have stated that they believe that screening the stacked cars is in the best interest of the community and neighborhood and the applicant is willing to do so to be a good neighbor as proposed within this application".</p> <p>However, this statement does not appear to address impacts from the variance to the health, safety, or welfare of the community neighborhood.</p> <p>The application does not indicate the justification for the 0' setback variance.</p>
<p>Finding 4</p>	<p>Finding: The variance is the only reasonable alternative to overcome the undue hardship;</p> <p>Analysis: As noted in this report and regarding the height variance, the applicant does not appear to substantiate an undue hardship (finding 1) or appear to substantiate the undue hardship was not the result of the actions of applicant or property owner (finding 2).</p> <p>The application does not indicate the justification for the 0' setback variance.</p>

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Finding 5	<p>Finding: The variance is the minimum relief necessary to allow reasonable use of the subject property</p> <p>Analysis: As documented in the analysis for finding 2, previous applications have shown the applicant has not historically stacked vehicles over the 8' fence height. It appears the property owner already enjoys reasonable use of the subject property. As noted above, an expansion of the nonconforming use can be requested through a conditional use permit.</p> <p>The application does not indicate the justification for the 0' setback variance.</p>
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- 3. The Planning and Zoning Commission may take one of the following actions:
 - a. Approve the application as presented;
 - b. Approve the application with conditions;
 - c. Request the applicant return with revised materials for additional review;
 - d. Deny the application.