

BEFORE THE CITY COUNCIL
GARDEN CITY, ADA COUNTY, IDAHO

THIS IS NOT A PREDETERMINED DECISION. ALL EVIDENCE WILL BE CONSIDERED. THE DRAFT CONCLUSIONS OF LAW ARE BASED ON THE DESIGN REVIEW COMMITTEE'S DECISION TO APPROVE. A DIFFERENT DECISION MAY RESULT IN AN UPDATE OF THE CONCLUSIONS OF LAW

In the Matter of:)	DSRFY2019-25
)	
Mixed Use Development)	FINDINGS OF FACT,
Multiple Properties)	CONCLUSIONS OF LAW
Garden City, Ada County, Idaho)	AND DECISION
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THIS MATTER, came before the Garden City, City Council for consideration on March 23, 2020. The City Council reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the City Council makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The applicant is Chad Weltzin of Erstad Architects.
2. The property owner is Vida Properties.
3. The location of the project is 406 E. 40th St., 507 E. 41st St., and 410 E. 41st St., Garden City, ID 83714; Ada County Parcel # R2734520760, R2734520765, R2734520787, R2734520933, R2734520806, and R2734520808.
4. The application is a Design Review for new construction of three structures and site design associated with a mixed-use development.
5. The project is located in the R-3 Medium Density Residential and the C-2 General Commercial Zoning Districts.
6. The project is not located in the floodplain according to the 2003 FIRM.
7. The project is located in the floodplain according to the 2017 FIS.
8. The applicant met with the Design Review Committee on October 7, 2019 for a pre-application consultation.
9. The application was received October 9, 2019. The application was scheduled for a meeting on November 4, 2019.
10. A copy of the application was transmitted to affected public agencies on October 15, 2019 and written comments were received from:
 - a. Garden City Engineer;
 - b. North Ada County Fire and Rescue;
 - c. Central District Health Department.
11. The applicant provided verification that the property was posted on October 22, 2019, ten or more days prior to the meeting.
12. The applicant requested a continuance of the matter to a date certain of December 2, 2019. The continuance was granted at the November 4, 2019 hearing.

13. The applicant met with the Design Review Committee on December 2, 2019:
- a. Applicants Chad Weltzin, Doug Russell and Mike Talbott were present to represent the request.
 - b. Staff Chris Samples presented the staff report.
 - c. Public testimony was received from:
 - i. Matthew Henderson in opposition. Mr. Henderson did not wish to testify but written comments were read into the record.
 - ii. Kara Tabor in opposition. Ms. Tabor did not wish to testify but written comments were read into the record.
 - iii. Christopher Herbert in opposition, testifying:
 1. 406 E. 40th St. building would negatively impact privacy; as his property is directly adjacent
 2. Parking garage not appropriate at this location
 3. Development does not meet 8-4A-1 as development does not meet intended character of area
 4. Development does not meet standards of 8-4C-1, as there is no relationship of the proposed buildings to the street and the pedestrian
 5. Development will set precedence for what will unfold
 6. The City should take concerns and well being of its existing residents into account vs. the prospect of future tax revenue
 - iv. Martin Evans in opposition, testifying:
 1. Infrastructure, especially along VMT, is not equipped to handle the increased traffic
 2. Concerned with future of displaced residents
 3. Concerned with placement of 406 E. 40th St. building, referenced distance from dais in council chambers to the end of the room as the distance from the building to his home
 4. Parking structure is too large
 5. Right to enjoy property is being diminished to allow the developer benefit; should not suffer so that the developer benefits
 6. Potential for crime and other issues due to population increase and hotel patrons
 - v. James Herbert in opposition, testifying:
 1. Questioned how many parking spaces are being put in structure and whether the 38 residential units in 406 E. 40th Street is the intended parking user;
 2. 406 E. 40th Street is directly adjacent to his property
 3. Proposed design is excessively large and invasive
 4. Proposed design will offer unsolicited views into his property
 5. 406 E. 40th Street building is a block away from the proposed amenities
 6. Garage can be relocated in a place that makes sense

7. No current demand for large amount of parking exists; demand will increase if project is approved;
 8. City needs a plan to help transition of low income residents
 9. Requested to know if studies had been done concerning water table displacement, drainage, and wildlife
 10. Excessive increase in greenbelt and vehicular traffic
 11. Excessive increase in noise
 12. Lack of infrastructure to support development;
 13. City needs to have accurate cost assessment of infrastructure and assessment to impact of community
 14. Dangerous precedent set by approving the project
- d. Rebuttal testimony was heard from Chad Weltzin and Doug Russell.
- i. Chad Weltzin:
 1. 184 spaces in garage of 406 building; used satisfy parking needs of 406 building, south part of boardwalk building, and guests
 2. Infrastructure will be provided
 3. We hear the concerns, but unfortunately community wishes for scale of development not economically feasible and would not fulfill comprehensive plan
 - ii. Doug Russell:
 1. Multi-Family is an allowed use; densities are allowed
 2. In compliance with ordinances
 3. Public parking structure: We made an error that we would allow the public park to use green belt; primary use to serve residents and guests;
 4. Staff brought up concerns about how 40th Street was being shortening up; idea was create to entry plaza; concerned that on street parking would be taken away; concerns that by taking that away from GB users
 5. Idea is that this is not a parking structure for the public; this is specifically for the uses proposed in the site plan
 6. Water table: Geotechnical testing in progress, not concerned with water table; grading and drainage plans;
 7. Ground water is there, but not unusual to build underground structures with ground water levels; impacts to neighbors is negligible
 8. Setbacks have been exceeded of the Garden City Ordinance
 9. Buffer zones and landscaping have been added
 10. Met with staff re: sewer and water infrastructure; infrastructure would benefit fire flows and upgrades in area would benefit the community and the project
 11. Under review at ACHD; providing them with a traffic study; traffic engineer was not able to complete study by hearing; once study is complete, comment will be provided to the City
 12. ACHD did not have concerns with the project

- 13. 2017 FIRM maps are not be considered in any way shape or form per IDWR; project is in seclusion zone of Boise River; before any FIRM maps are adopted, new studies would need to be conducted;
- 14. Building elevations take into account 2017 FIRM maps; but the 2017 FIRM map are irrelevant;
- e. The Committee raised the following issues:
 - i. The screening along the east property line needs to be addressed with additional screening such as additional vegetation.
 - ii. For the 406 E. 46th St. building, the building needs to address the privacy and visual concerns through building placement, architecture, landscape buffering, and other solutions.
 - iii. The applicant should address the length of time needed to complete the project, whether a cross parking agreement is amenable, whether the project is being addressed in individual components by zone or is a mixed-use project, and whether surface parking is being dedicated to the public and greenbelt users.
 - iv. Detached sidewalks are required by code and either need to be shown in revised plans or a sidewalk waiver request must be submitted.
- f. The Committee did not close public testimony. The Committee continued the application to a date certain of January 21, 2020 to allow the applicant to return with revisions.
- 14. The applicant met with the Design Review Committee again on January 21, 2020.
 - a. Applicant Mike Talbott was present to represent the request.
 - b. Staff Chris Samples presented the staff report.
 - c. Public testimony was received from:
 - 1. Jason Jones, in neutral testifying:
 - a. Like the idea of the hotel;
 - b. Concerned with the loss of affordable housing;
 - c. Cited section 6.3 of the Comprehensive Plan regarding affordable housing;
 - d. Hoped that there would be an allocation for those individuals displaced by the project;
 - e. Cited GCC 8-4C-5 (prohibitions) regarding how the project will redefine the look of the area;
 - 2. James Herbert, in opposition and acting as spokesperson on behalf of Jody Bennett, Kira Tabor, and Matthew Henderson, testifying
 - a. Thanked developer for some of the changes;
 - b. Concerned that development is not a responsible development;
 - c. Concerned that current demographics are being overlooked to cater to new residents;

- d. Concerned that grey areas in code are being exploited to allow development and set precedence for future development;
- e. Concerning 406 Place, is thankful for proposed changes, but would like to see a parapet wall to limit views of the development to his property; Cited his public comment with photo showing an example
- f. Parking allocation in 406 place, as it appears the parking inside the building is in excess of what is needed for a residential development and thus for a public parking garage; Suggested options to rezone property or reallocate parking adjacent to other commercial uses;
- g. Concerned with parking reduction for commercial uses; supports reduction provided there is not significant overlap in operating hours for uses sharing the parking;
- h. Cited need for affordable housing and the impact of gentrification of the area on existing residents;
- 3. Pryce Robinson in support but did not wish to publicly testify.
- 4. Piercy Robinson, in support but did not wish to publicly testify
- 5. Jan Joseph, in opposition but did not wish to publicly testify
- d. Mike Talbott provided rebuttal testimony.
 - i. No roof deck on 406.
 - ii. View of balcony on 406 does not protrude from the building.
 - iii. No parking reduction request. Over parked for request.
 - iv. Restaurant and retail overlap. Time will have some overlap. Have accommodated for it.
 - v. Huge emphasis on bringing less cars to property with ride share and bikes.
 - vi. CUP for hotel at later date.
 - vii. Phasing, 4 – 5-year phasing plan
- e. Chad Weltzin provided rebuttal testimony:
 - i. 406 building shifted an additional 10 ft from property line
 - ii. Use of 406 building and R-3 zone: intent to vacate all property lines. Don't intend to use as means to spill C-2 zone into R-3 zone.
 - iii. City code parking structure as primary use of site. Apartment building with parking for use.
 - iv. South side architecture: no roof deck. Public patio on 3rd floor (courtyard level). Set 13 feet from edge, can't look down into neighboring properties
 - v. Balconies are inset further. No sight line you can look down.
 - vi. View impact diagram shows building pushed back far enough to minimize impact to be similar to 2 story home

- vii. Parking ratio: 109 spaces, 38 units, 28 units of boardwalk building that overlap into R-3 zone. Parking to address boardwalk building
 - f. Mike Talbott additional rebuttal:
 - i. 406 is part of the entire development. South building is going to use some of the parking in the 406 building. Look at units as whole.
 - g. Public testimony was closed.
 - h. Committee member Labrie moved to approve the application with the following site-specific conditions:
 - i. Detached sidewalks are required in accordance with Garden City Code and The Garden City Sidewalk Policy.
 - ii. To continue future access to the Greenbelt, a public access easement is required for the right of way at E. 41st Street proposed to be vacated. The easement shall be recorded upon vacation of the right of way.
 - iii. The fourteen parking spaces not provided within the development shall be provided through other means authorized by Garden City Code. A public parking agreement or easement shall be provided for parking spaces not located onsite.
 - iv. The Greenbelt pathway improvements may be of an asphalt or concrete material.
 - v. The vacation of property lines within the development is required.
 - vi. The decision is valid for five (5) years from the date of decision signature.
 - vii. Implementation of the car share program shall be demonstrated through the submission of a signed contract or by other means.
 - i. Committee member Hurd seconded the motion.
 - j. The Committee discussed the motion:
 - i. Committee member Gresham indicated she agreed with many of the public comments received, including concerning the diversity of housing in the City. Gresham encouraged the City to investigate both affordable and workforce housing.
 - ii. Committee member Hurd requested clarification from Committee member Labrie that the motion included a condition that detached sidewalks were required.
 - iii. Committee member Labrie clarified that the motion included this condition.
 - k. The motion carried unanimously.
15. The decision document was approved by the Design Review Committee on the Consent Agenda on February 3, 2020.
 16. Objection was received by the City on February 12, 2020 within 10 days of the decision being formalized.
 17. On February 19th the applicant was notified of the hearing.
 18. The City Council hearing was noticed in the Idaho Statesman on February 24, 2020 and an interested party notice was sent February 24, 2020.

19. (To Be Completed to reflect actual occurrences during Meeting) A Public Hearing was held with City Council on March 23, 2020:
- Applicants XXXX were present to represent the request.
 - Public testimony was received from:
 - Council Member XXXX moved to APPROVE OR DENY as submitted.
 - Council member XXXXX seconded the motion.
 - The motion carried XXX.
20. The record contains:
- Application Materials including all revisions.
 - Staff Report;
 - Agency Comments;
 - Public Comments;
 - Noticing Documents;
 - Design Committee Public Hearing Sign-In Sheets for December 2, 2019 and January 21, 2020 hearings;
 - Design Review Committee Hearing Minutes of November 4, 2019, December 2, 2019 and January 21, 2020;
 - Design Review Committee Hearing Audio of November 4, 2019, December 2, 2019 and January 21, 2020;
 - Design Review Findings of Fact, Conclusions of Law and Decision;
 - City Council Sign-In Sheets, minutes, and audio for the March 23, 2020 hearing;
 - City Council Findings of Fact, Conclusions of Law and Decision.
21. The following standards apply to this proposal:
- Title 8, Chapter 2, Article B: "Base Zoning District Provisions;"
 - Title 8-Chapter 2, Article C, Section 15: "Land Use Provisions, Dwelling Unit – Multi-Family;"
 - Title 8-Chapter 4, Article A: "General Provisions;"
 - Title 8-Chapter 4, Article B: "Design Provisions for Residential Structures;"
 - Title 8-Chapter 4, Article C: "Design Provisions for Nonresidential Structures;"
 - Title 8-Chapter 4, Article D: "Parking and Off Street Loading Provisions;"
 - Title 8-Chapter 4 Article E: "Transportation and Connectivity Provisions;"
 - Title 8-Chapter 4, Article I: "Landscaping and Tree Protection Provisions;"
 - Title 8-Chapter 4, Article L: "Open Space Provisions;"
 - Title 8-Chapter 6, Article B, Section 3: "Design Review Committee;"

22. The applicant provided the following application information:

Materials Provided Per GCC Table 8-6A-2 Required Application Information			
Provided			
Yes	No	NA	
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			Verification that address is an Ada County Approved Address

23. In order to approve a design review application and based on the standards set forth in chapter 4, article C of this title, the City Council shall make the following findings:

GCC 8-6B-3 DESIGN REVIEW COMMITTEE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Compliant	Not Applicable to this Application	
X			<p>Standard: The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.</p> <p>Explanation: The proposed design, as conditioned in this decision, meets this finding by complying with the following sections of Garden City Code Title 8:</p> <ul style="list-style-type: none"> • GCC 8-2B-1 Purpose • GCC 8-2B-3 Form Standards
X			<p>The proposed design adheres to standards for the protection of health, safety, and general welfare.</p> <p>Explanation: The proposed design, as conditioned in this decision, meets this finding by complying with the following sections of Garden City Code Title 8:</p> <ul style="list-style-type: none"> • GCC 8-2B-1 Purpose • GCC 8-2B-3 Form standards • GCC 8-2C-15 Land Use Provisions, Dwelling Unit Multi-Family • GCC 8-4A General Provisions • GCC 8-4B Design Provisions for

			<p>Residential Structures</p> <ul style="list-style-type: none"> • GCC 8-4C Design Provision for Nonresidential Structures • GCC 8-4E Transportation and Connectivity Provisions • GCC 8-4I Landscaping and Tree Protection Provisions • GCC 8-4L Open Space Provisions
X			<p>The proposed design creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods within the city.</p> <p>Explanation: The proposed design, as conditioned in this decision, meets this finding by complying with the following sections of Garden City Code Title 8:</p> <ul style="list-style-type: none"> • GCC 8-2C-15 Land Use Provisions, Dwelling Unit Multi-Family • GCC 8-4B Design Provisions for Residential Structures • GCC 8-4C Design Provision for Nonresidential Structures • GCC 8-4E Transportation and Connectivity Provisions • GCC 8-4I Landscaping and Tree Protection Provisions • GCC 8-4L Open Space Provisions
X			<p>The proposed design improves the accessibility of development to non-motorized and public modes of transportation.</p> <p>Explanation: The proposed design, as conditioned in this decision, meets this finding by complying with the following sections of Garden City Code Title 8:</p> <ul style="list-style-type: none"> • GCC 8-2C-15 Land Use Provisions, Dwelling Unit Multi-Family • GCC 8-4B Design Provisions for

			<p>Residential Structures</p> <ul style="list-style-type: none"> • GCC 8-4C Design Provision for Nonresidential Structures • GCC 8-4E Transportation and Connectivity Provisions • GCC 8-4I Landscaping and Tree Protection Provisions
X			<p>The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors.</p> <p>Explanation: This application is conducive to development in a node pattern as envisioned in the Garden City Comprehensive Plan.</p>
X			<p>The proposed design supports a compact development pattern that enables intensification of development and changes over time.</p> <p>Explanation: The proposed design, as conditioned in this decision, meets this finding by complying with the following sections of Garden City Code Title 8:</p> <ul style="list-style-type: none"> • GCC 8-4B Design Provisions for Residential Structures • GCC 8-4C Design Provision for Nonresidential Structures • GCC 8-4E Transportation and Connectivity Provisions • GCC 8-4I Landscaping and Tree Protection Provisions
X			<p>The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity.</p> <p>Explanation: The proposed design meets this finding by complying with the following sections of Garden City Code Title 8:</p> <ul style="list-style-type: none"> • GCC 8-4E Transportation and Connectivity Provisions • GCC 8-4I Landscaping and Tree

			Preservation Provisions <ul style="list-style-type: none"> • GCC 8-4L Open Space Provisions
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CONCLUSIONS OF LAW

The City Council reviewed the application with regard to Garden City Code, Title 8, Chapter 4, and based on the conditions required herein, concludes the application **meets/ does not meet** the standards of approval under GCC 8-4C and the required findings under 8-6B-3D.

DECISION [For Approval]

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the City Council hereby **APPROVES** the application, subject to the following conditions:

Conditions were based on the Design Review Committee’s Decision. The conditions may change based on the City Council review.

Site Specific Requirements:

1. Detached sidewalks are required in accordance with Garden City Code and The Garden City Sidewalk Policy.
2. To continue future access to the Greenbelt, a public access easement is required for the right of way at E. 41st Street proposed to be vacated. The easement shall be recorded upon vacation of the right of way.
3. The fourteen parking spaces not provided within the development shall be provided through other means authorized by Garden City Code. A public parking agreement or easement shall be provided for parking spaces not located onsite.
4. The Greenbelt pathway improvements may be of an asphalt or concrete material.
5. The vacation of property lines within the development is required.
6. The decision is valid for five (5) years from the date of decision signature.
7. Implementation of the car share program shall be demonstrated through the submission of a signed contract or by other means.

General Requirements:

1. This review and approval is specific to the design of the project. Final approval is subject to the approval of other reviewing agencies. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail. This approval shall not annul any portion of Garden City Code or other applicable regulation unless specifically noted.
2. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an

application for modification and approval of that application prior to commencing any change.

3. All improvements and operations shall comply with applicable local, state and federal requirements and procedures whether specifically addressed in the analysis of this application or not. This shall include but not be limited to 8-4A General Provisions of Design and Development Regulations; 8-4I-3 and Landscape Maintenance Provisions 8-4I-9; and Standards for Transportation and Connectivity Provisions identified in 8-4E.
4. All utilities on the site, including telephone, cable television, and electrical systems shall be underground and in compliance with Garden City Code 8-4A-8.
5. Driveway openings in curbs shall comply with the requirements of the Transportation Authority. The driveway shall be straight or provide a 28-foot inside and 48-foot outside turning radius.
6. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead plant materials shall be replaced.
7. Where landscaping might impact motorist or pedestrian sight distance, shrubs shall be maintained below three feet (3') in height and trees shall be pruned so that the lowest branches will be at least seven feet (7') above the ground level.
8. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
9. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.
10. Required landscape areas shall be at least seventy percent (70%) covered with vegetation at maturity, with mulch used under and around the plants. Use of mulch, organic or rock as the only ground cover in required planting areas is prohibited.
11. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
12. All planting areas that border driveways, parking lots, and other vehicle use areas shall be protected by curbing, wheel stops, or other approved protective devices.
13. Trees shall be planted at least three feet (3') from curbs, sidewalks, driveways and other hard surfaces to buffer from stress caused by vehicle overhang and compacted soils, or planted with sufficient space to provide for the full maturity of the particular tree species.
14. All other plant material, except sod or ground cover, shall be set back a minimum of one foot (1') from any curb edge to protect from vehicle overhang and mechanical damage.
15. The landscape installation shall stabilize all soil and slopes.
16. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
17. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.

18. This approval is for this application only. Additional permits, licenses and approvals may be necessary. All other applicable permits must be obtained prior to a Certificate of Occupancy.
19. Property Maintenance Standards shall be maintained as required by Garden City Code.
20. The property owner is responsible for the maintenance of all landscaping and screening devices required.
21. System Installation Required: Each and every lot within the subdivision shall have underground pressurized irrigation water. The pressurized irrigation system shall be constructed and installed at the same time as the domestic water lines, but shall not necessarily be in the same trenches.
22. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the application may be remanded to the decision making body during which time the decision shall be stayed provided that there is no immediate threat to life or safety.
23. Any changes in the design, construction, operation or use shall be brought to the immediate attention of the Planning Official for determination if the changes are in substantial conformance with the City's action. Any modification to approved plans shall require submittal and approval of these modifications prior to construction. Final approval is based on substantial conformance with the plans reviewed and approved.
24. Any substantial changes to the design shall be reviewed by the Design Review Committee for compliance with Garden City Code 8-4. Any other changes that are not in substantial conformance with the approval shall be remanded to the decision-making body.
25. Occupying the site prior to Certificate of Occupancy is a criminal offense.
26. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
27. 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.
28. A takings analysis pursuant to Idaho Code may be requested on final decisions.
29. 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.

Mayor, John G. Evans

Date

OR

DECISION [For Denial]

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Design Review Committee hereby **DENIES** the application, subject to the following conditions:

1. Final decisions are subject to a 28-day right to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
2. A takings analysis pursuant to Idaho Code may be requested on final decisions.
3. 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.

Mayor, John G. Evans

Date