

BEFORE THE DESIGN REVIEW COMMITTEE
GARDEN CITY, ADA COUNTY, IDAHO

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

In the Matter of:)	DSRFY2022-0023
)	
Design Review)	FINDINGS OF FACT,
306 E. 46 th St)	CONCLUSIONS OF LAW
Garden City, Ada County, Idaho)	AND DECISION
_____)	

THIS MATTER, came before the Garden City Design Review Committee for consideration on December 5, 2022, January 3, 2023, and February 6, 2023. The Design Review Committee reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the Design Review Committee makes the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

1. The application is for a design review for new construction of a multi-family development consisting of multiple structures.
2. There has been no denial of any Design Review application on this property within one year of this application.
3. The applicant is Jorre Delgado.
4. The property owner of record is Batta Philipp.
5. The location of the project is 306 E 46th St; Ada County Assessor parcel number R2734523571.
6. The property is a legal lot of record.
7. The application is for a design review for the use of multi-family dwelling units. The scope of the design review is limited to the entire property.
8. The subject property is 0.680 acres.
9. The project is located in the R-3 Medium Density Residential zoning district.
10. The project is located in the Mixed Use Commercial Area of the Garden City Comprehensive Plan Land Use Designation.
11. The project is not located in the SFHA according to the 2003 FIRM.
12. The project is partially in the floodway according to the 2017 FIS.
13. The following standards apply to this proposal:

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- a. Garden City Code 8-1A-4 Applicability
 - b. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - c. Garden City Code 8-4B-3 Single Family and Two-Family Attached and Detached Dwelling
 - d. Garden City Code 8-4B-4 Multi-family Residential Dwelling Units
 - e. Garden City Code 8-4C Design Provisions for Nonresidential Structures
 - f. Garden City Code 8-4D Parking and Off-Street Loading Provisions
 - g. Garden City Code 8-4E Transportation and Connectivity Provisions
 - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
 - i. Garden City Code 8-4L Open Space Provisions
 - j. Garden City Code 8-6A-3 General Application Process
 - k. Garden City Code 8-6A-4 Required Application Information
 - l. Garden City Code 8-6A-5 Administrative Process with Notice
14. The following plans and policies apply to this proposal:
- a. Garden City Comprehensive Plan
 - b. Garden City Sidewalk Policy
 - c. Garden City Street Light Policy
15. The applicant provided the following application information:

Materials Provided Per GCC Table 8-6A-2 Required Application Information			
Provided			
Yes	No	Waived pursuant to GCC 8-6A-4	
X			Compliance Statement
X			Neighborhood Map
X			Site Plan
X			Landscape Plan
X			Schematic Drawings
	X		Lighting Plan
X			Topographic Survey
X			Grading Plan
	X		Will Serve
	X		Approved Address

16. Additional application materials submitted include:
- a. Application;
 - b. Affidavit of Legal Interest;
 - c. Statement of Intent;
 - d. Sustainability Checklist;
 - e. Floor Plans;
 - f. Waiver request.
17. Agency Comments were received from:
- a. Republic Services, dated October 19, 2022
 - b. Garden City Engineer, dated November 6, 2022

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- c. Boise Fire, dated November 7, 2022
 - d. Ada County Highway District.
18. Written public comments were received from:
- a. Kathy Foster, received on November 27, 2022 and December 1, 2022.
19. The following noticing was completed in accordance with GCC 8-6A and GCC 8-6B-3:

Noticing Requirement	Required Date	Completion Date
Receipt of application		7/21/2022
Letter of Acceptance	8/20/2022	10/18/2022
Radius Notice	11/20/2022	11/15/2022
Interested Parties		NA
Legal Notice	11/16/2022	11/16/2022
Agency Notice	11/20/2022	10/19/2022
Property Posting Sign	11/25/2022	11/23/2022
Affidavit of Property Posting and Photos	11/28/2022	11/26/2022

20. On September 29, 2022, in accordance with GCC 8-6B-3, a pre-application conference was held with the Design Committee. The Committee provided the following comments and requests:
- a. Jorre Delgado presented the application.
 - i. Planning to pipe all the irrigation canals on the property.
 - ii. Front door is on the garage side.
 - iii. Garden beds are provided as private open space.
 - b. Discussion with the Committee included:
 - i. Flip the locations of the duplexes with the street front parking so that the parking is hidden behind the structures and the residences address the street.
 - ii. Additional glazing, pedestrian level-design, and architectural features is needed.
 - iii. Garage doors need glazing within them.
 - iv. Common open space vs. private open space map and calculations required.
 - v. Front doors of each unit need a pathway to the public sidewalk through the site. This pathway needs to be noticeable and separated from vehicular uses.
 - vi. Terminal view from 46th Street requires improvement.
 - 1. Most extreme case would be elimination of the residential unit and replacement of landscaping.
 - vii. Rear facades of all units need to be submitted. Specifically, the rear facades of the units toward the back of the property. These are necessary considering they interact with the adjacent property and acts as its terminal view as well.
 - viii. Multi-family amenities need to be provided per code.
21. On December 5, 2022, a public hearing before the Design Review Committee was held. A summary of the hearing is as follows:

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- a. Jorre Delgado presented the application.
 - b. Staff, Hanna Veal, presented the staff report.
 - c. Public testimony was heard from:
 - i. Peter Eric Shiverick, in opposition. Concerns regarding the environmental and neighborhood impacts the development will bring.
 - d. The applicant did not wish to provide a rebuttal.
 - e. Staff member, Jenah Thornborrow, clarified that the application process and information regarding other agencies comments.
 - f. Public testimony was closed.
 - g. Discussion included:
 - i. The buildings lack a presence on the street.
 - ii. Pedestrian access and circulation from 46th Street through the development is lacking.
 - iii. Common open space calculations of concern.
 - iv. Terminal view is not adequately addressed by adding façade art.
 - v. Parking deficiency of 2 is not justified through alternatives to on site parking.
 - vi. Detached sidewalk is required.
 - h. Committee member Labrie moved to continue the application to the date certain of January 3rd, 2023.
 - i. Committee member Hurd seconded the motion.
 - j. The motion passed unanimously.
22. On January 3, 2023, a public hearing before the Design Review Committee was held:
- a. Jorre Delgado presented the application.
 - b. Staff Hanna Veal presented the staff report.
 - c. There was no public testimony.
 - d. Jorre Delgado provided rebuttal:
 - i. The two proposed duplexes at rear of property are to be connected by a roofline to not have building separation issues.
 - e. Public testimony was closed.
 - f. Discussion included:
 - i. Street scape presence is lacking. Structures set back further than necessary.
 - 1. Sidewalk to entryway of living space is required.
 - 2. Living space shall face the street as opposed to the garages and stairwells.
 - 3. Pull structures forward, and rotate the building.
 - ii. Terminus view has been improved with landscape and architectural elements.
 - 1. Whether it is a duplex or a four-plex, it does not matter so long as terminal view meets code and Committee's comments.
 - iii. There is a gap in sidewalk connectivity towards the back of the property.
 - g. Committee Member Labrie moved to continue to a date certain of February 6th, 2023.
 - h. Committee Member Hurd seconded the motion.
 - i. The motion carried unanimously.
23. On February 6, 2023, a public hearing before the Design Review Committee was held:
- a. The summary of the hearing will be filled in here.

24. The record contains:
- a. Application Documents
 - b. Noticing Documents
 - c. Agency Comments
 - d. Written Public Comments
 - e. Staff report
 - f. September 29, 2022 Design Review Committee Pre-application Minutes & Audio (Special Meeting)
 - g. December 5, 2022 Design Review Committee Hearing Minutes & Audio
 - h. January 3, 2023 Design Review Committee Hearing Minutes & Audio
 - i. February 6, 2023 Design Review Committee Hearing Minutes & Audio
 - j. Design Review Committee Signed Findings of Fact, Conclusions of Law, and Decision
25. Required Findings: In order to approve a design review application after a recommendation by the design review consultant(s), the decision maker shall make a determination with written reasoned statements on the following findings:

The draft findings are written both in approval and in denial. The Design Review Committee will select the corresponding conclusions and explanations during their decision. Potential explanations have been provided.			
GCC 8-6B-3 DESIGN REVIEW: REQUIRED FINDINGS			
Conclusion			
Compliant	Not Applicable to this Application	Not Compliant	Standard
X		X	<p>Finding 1. The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.</p> <p>Explanation:</p> <p>In Approval:</p> <p>As proposed and conditioned, the application meets this finding. The application is in conformance with the dimensional regulations of the R-3 zoning district. The proposed multi-family dwelling units are a permitted use within the zoning district.</p> <p>In Denial:</p> <p>The application is in not conformance with the reviewed sections of code noted in this decision including 8-4D-5, 8-4I-7, and 8-4L-5.</p>
X		X	<p>Finding 2. The proposed design adheres to standards for the protection of health, safety, and general welfare.</p>

			<p>Explanation:</p> <p>In Approval: As conditioned, this proposal will not unreasonably diminish the health, safety, or welfare of the community. The proposed pedestrian pathway connection to the adjacent property on 47th Street will enhance the overall connectivity of the neighborhood by providing a cross access within a long subdivision block.</p> <p>In Denial: The proposal will be detrimental to and unreasonably diminish the health, safety, or welfare of the community by not providing adequate common open spaces for residents to utilize.</p> <p>Lack of adherence to Garden City landscape standards impacts the community's general welfare. The lack of required Class II or III trees further contributes to the negative effects of heat island impacts.</p>
X		X	<p>Finding 3. 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:</p> <p>In Approval: The application is in conformance with the vision set forth in the Comprehensive Plan's Mixed Use Commercial Future Land Use Designation.</p> <p>In Denial: The application is not in conformance with the vision set forth in the Comprehensive Plan's Mixed Use Commercial Future Land Use Designation.</p> <p>LIST REASONS.</p>
X		X	<p>Finding 4. The proposed design improves the accessibility of development to non-motorized and public modes of transportation.</p>

			<p>Explanation: In Approval: The proposed design improves the accessibility of development to non-motorized transportation and provides a framework for future public transportation. The application proposes a new pedestrian pathway, providing a new through connection within a long subdivision block.</p> <p>In Denial: The proposed design does not improve the accessibility of development to non-motorized or public modes of transportation. LIST REASONS.</p>
X		X	<p>Finding 5. The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors.</p> <p>Explanation: In Approval: This application is conducive to development in a node pattern as envisioned in the Garden City Comprehensive Plan.</p> <p>In Denial: The proposed design does not create an adverse impact on the surrounding neighborhood because LIST REASONS.</p>
X		X	<p>Finding 6. The proposed design supports a compact development pattern that enables intensification of development and changes over time.</p> <p>Explanation: In Approval: The proposed design, as conditioned in this decision, meets this finding by developing a currently low-density residential lot while maximizing pedestrian circulation and developing in a manner that which is cohesive with surrounding development.</p> <p>In Denial: The proposed design does not support a compact development pattern that enables intensification of development and changes over time because LIST REASONS.</p>
X		X	<p>Finding 7. The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions</p>

			and encourages pedestrian activity.
			<p>Explanation:</p> <p>In Approval: As conditioned, the proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity. The landscape plans meet the requirements of 8-4I and pedestrian connectivity meets the requirements of 8-4E.</p> <p>In Denial: By not being compliant with the code required landscape provisions for trees, the proposed landscaping is inadequate for the climate.</p>

26. The record was reviewed by the Design Committee to render the decision.

CONCLUSIONS OF LAW

The Design Review Committee 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 8-6B-3 Design Review Committee**.

DECISION

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

POTENTIAL CONDITIONS FOR APPROVAL DECISION

Site Specific Requirements:

Scope:

1. The building permits must be in conformance with the approved plans. Staff may approve minor changes to the approvals so if they are compliant with Garden City Code including:
 - a. Substitutions of plant species, if there is no reduction in landscaping and the species are comparable in height and width. Substitutions of trees must be of the same or larger tree classification and be comparable or larger in tree canopy and height.
 - b. Less than 5% of rearrangement of elevations or building façade materials if there is no reduction in building modulation, fenestration, or glazing.
 - c. Less than 5% of rearrangement of site.

2. **The site has incorporated alternatives to vehicular transportation per Garden City Code 8-4D-6 and is permitted to be deficient by 8 parking spaces.**

3. The site is permitted to tile the Davis Drain and Thurman Mill Drain as proposed on-site.

Prior to Construction:

1. A minimum of 5,150 square feet of common open space.
 - a. Common open space calculations may incorporate the common open space of the adjacent parcel being developed to the west.
2. A revised landscaping plan shall be provided showing:
 - a. A minimum of 11 trees.
 - b. A 5' detached sidewalk, detached sufficiently to meet ACHD's requirements to allow for the required Class II or III street trees within the landscaped buffer.
 - c. The applicant shall work with the Development Service's staff to determine appropriate street trees.
3. A corrected affidavit of legal interest shall be submitted.
4. A public pedestrian and bicycle access easement shall be provided from E. 46th Street along the entire northern property boundary to the western property following the pathway.
 - a. The easement shall be at minimum 5' wide.
5. The public access pathway shall be constructed to a minimum of 5' in width.
6. The pedestrian pathway that which connects to the adjacent property to the west shall be installed so that the hardscape transition between the two properties is even.
 - a. The circular pavement design as part of the terminal view shall be wide enough so that when connection is made to the adjacent property to the west, the pathway maintains a width of at least 5'.
7. Should a future master sign plan be proposed in conjunction with this application, it shall be submitted prior to the issuance of a building permit. This provision does not preclude a future master sign plan, however if not completed prior to building permits it will be processed as a separate application.
8. A building permit shall be applied for and approved by Garden City Development Services Department.
9. The buildings interior to the development shall be 10' apart from one another.
10. A full tree mitigation plan and certified arborist report shall be submitted and approved by staff prior to the issuance of a building permit.
11. The structure shall be built with the lowest floor and all mechanical equipment to be at least at or above the base flood elevation as identified in the most recent FEMA flood model of the Lower Boise River or a floodplain acknowledgement shall be recorded with Ada County Records.
12. All existing and future fencing shall be found in conformance with Garden City Code 8-4A-3.
 - a. If an existing fence is to remain that which is not code complaint, and not owned by the property owner, the property owner must submit:

- i. A certified letter to the owner of record of the adjacent property noting the intent to remove the fence unless the owner of the fence provides notarized documentation acknowledging full ownership of the fence.
 - ii. A notarized document to the city relinquishing all interest to the fence.
13. Any existing chain-link fence, chain-link with slats fence, barbed wire fence, or any other prohibited fencing materials according to GCC 8-4A-3 shall be removed and replaced with code compliant materials. All proposed fencing shall be compliant with GCC 8-4A-3 Fences and Walls.
14. The will serve letter, approved addresses, lighting plan, and irrigation letter shall all be submitted with or before the submittal of building permits. Building permits will not be issued unless the documents are found to be code compliant.
15. An updated sustainability checklist shall be provided, and the application shall provide the minimum number of points as required per the checklist.
16. Each dwelling unit shall have at least 80sqft of private open space.

Prior to Occupancy:

1. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from Garden City Development Services Department.
2. A building permit shall be applied for and approved by Garden City Development Services Department.
3. A copy of recorded legally binding documents that state the maintenance and ownership responsibilities for the management of the development, including, but not limited to, structures, parking, common areas, and other development features shall be provided to the City.
4. There will be a minimum of 35 vehicular parking spaces provided; with 26 to be enclosed within a garage or carport and as approved.
5. There will be a minimum of 3 bicycle parking spaces provided.
6. Contrasting hardscape material shall be installed at the drive aisles to better identify the pedestrian crossings within the development.
7. Public art shall be installed throughout the development adjacent to public areas including but not limited to the public right of way of 46th Street. The art shall be impactful land to scale of the development.
 - a. If public art cannot be provided. Another amenity in accordance with Garden City Code 8-2C-15 shall be provided.

Site Specific Requirements for the Duration of the Use:

1. The following amenities shall be provided or replaced so as to maintain an amenity from at least two categories of amenity as identified in Garden City Code:
 - a. Quality of life amenities provided: art that is visible to the public.
 - b. Open space amenities;
 - c. Recreation amenities: Walking trail (In the form of the public pedestrian pathway)

2. All roof and wall mounted mechanical, electrical, communications, and service equipment should be screened from public view from the adjacent public streets and properties by the use of parapets, walls, fences, enclosures, or by other suitable means.
3. The required clear vision triangle shall be maintained.

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 lighting shall be compliant with GCC 8-4A-4 Outdoor Lighting.
4. 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.
5. All utilities in the right-of-way adjacent to the site and on the site, including telephone, cable television, and electrical systems shall be underground and in compliance with Garden City Code 8-4A-8.
6. 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.
7. 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.
8. 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.
9. A three-foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
10. 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.
11. 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.
12. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
13. 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.
14. 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.
15. 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.
16. The landscape installation shall stabilize all soil and slopes.

17. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
18. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
19. 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.
20. Property Maintenance Standards shall be maintained as required by Garden City Code.
21. The property owner is responsible for the maintenance of all landscaping and screening devices required.
22. All outdoor living spaces must comply with Garden City Cod 8-3C General Provisions-Living Space Requirements.
23. All outdoor service and equipment areas shall comply with Garden City Cod 8-4A-5 Outdoor Service and Equipment Areas.
24. All stormwater systems must comply with Garden City Code 8-4A-7.
25. 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.
26. 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.
27. 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.
28. Occupying the site prior to Certificate of Occupancy is a criminal offense.
29. This approval shall expire 365 days from its approval, unless otherwise extended as allowed by Garden City Code.
30. There is a 15 day right to appeal to City Council. The applicant or any interested parties may appeal the decision or a part of the decision. An appeal shall be made on the form provided by the City and filed with the City Clerk within 15 days after the action of the decision.
31. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

February 6, 2023

This signature verifies that this decision document has been reviewed and approved by the Design Review Committee

STANDARD DENIAL DECISION

1. In order for approval by Garden City, the proposal must be in compliance with all standards of 8-6B-3. This project is not in compliance with 8-6B-3 standard(s) e.g. 1,2,3

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because it is not in compliance with the Garden City Comprehensive Plan Sections X, Y, Z and Garden City code sections X, Y, Z. Compliance can be met by e.g., meeting code standards.

2. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within ten (10) days after the action of the decision.
3. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
4. Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed, or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) daytime frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.
5. Pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code, a takings analysis may be requested on final decisions.
6. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

February 6, 2023

This signature verifies that this decision document has been reviewed and approved by the Design Committee