

## CITY OF GARDEN CITY

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### BEFORE THE CITY COUNCIL OF THE CITY OF GARDEN CITY

October 11, 2021, Hearing

#### **DECISION ON DSRFY2019-25** **FINDINGS OF FACT AND CONCLUSIONS**

#### **APPEAL PURSUANT TO THE** **GARDEN CITY CODE SECTION 8-6A-9**

APPEAL OF WENDY CARVER-HERBERT; RE: APPROVAL, BY DESIGN REVIEW COMMITTEE APPROVAL OF AMENDMENTS TO A PREVIOUSLY APPROVED NEW CONSTRUCTION, FILE, DSRFY2019-25, LOCATED AT 510 E. 41<sup>ST</sup> STREET, GARDEN CITY, IDAHO, 83714.

Decision to approve the application is vacated, the appeal is granted, and the application is denied.

Wendy Carver-Herbert for appellant.

Attorney JoAnn Butler, with Butler Spink LLP representing respondent Vida Properties.

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Presided over by: John G. Evans, Mayor

Wendy Carver-Herbert appeals the decision of the Garden City Design Review Committee approving modifications to application DSRFY2019-25, a design review application for a new construction of an 18-story multi-family mixed-use structure located at 510 E 41<sup>st</sup> Street, Ada County Parcel: R2734520933, Garden City, Idaho 83714. For the reasons set forth below, the City Council vacates the Design Review Committee decision, grants the appeal, and denies the application.

## **FINDINGS OF FACT AND PROCEDURAL HISTORY**

1. The application is for a design review for the construction of a new 18-story multi-family mixed-use structure.
2. There has been no denial of any Design Review application on this property within one year of this application.
3. The applicant is Chad Weltzin of Erstad Architects.
4. The property owner of record is Vida Properties.
5. The application number of DSRFY2019-25 was previously approved on January 21, 2020. The approval included the 406 Apartments, the Boardwalk Apartments, and the Boardwalk Hotel. The application was required to go back to Design Review for an additional approval for the site modifications to the Boardwalk Hotel. This decision document and the associated staff report are a result of those modifications.
6. No changes are being proposed to the Boardwalk Apartments or 406 Place as part of this modification.
7. The scope of this decision is to 510 E 41<sup>st</sup> Street, Garden City, Idaho 83714; Ada County Assessor parcel number R2734520933.
8. The properties are legal lots of record.
9. The subject property is 1.24 acres.
10. The project is located in the C-2 General Commercial zoning district.
11. The project is not located in a zoning overlay.
12. The project is located in the Activity Node: Neighborhood Destination; Green Boulevard Corridor; Mixed Use Residential.
13. The project is not located in the Special Flood Hazard Area (SFHA) according to the 2003 Flood Insurance Rate Map (FIRM).
14. The project is in the AE flood hazard category/floodway according to the 2017 FIS.
15. The following standards apply to this proposal:
  - a. Garden City Code 8-1A-4 Applicability
  - b. Garden City Code 8-1B Existing Nonconforming Properties, Structures, and Uses

- c. Garden City Code 8-1C Property Maintenance Standards
- d. Garden City Code 8-2B Base Zoning District Regulations
- e. Garden City Code 8-2C-15 Multi-Family
- f. Garden City Code 8-4A Design and Development Regulations-General Provisions
- g. Garden City Code 8-4B-4 Multi-family Residential Dwelling Units
- h. Garden City Code 8-4C Design Provisions for Nonresidential Structures, Special Provisions, Prohibitions
- i. Garden City Code 8-4D Parking and Off-Street Loading Provisions
- j. Garden City Code 8-4E Transportation and Connectivity Provisions
- k. Garden City Code 8-4F Sign Provisions
- l. Garden City Code 8-4G Sustainable Development Provisions
- m. Garden City Code 8-4H Flood Hazard
- n. Garden City Code 8-4I Landscaping and Tree Protection Provisions
- o. Garden City Code 8-4L Open Space Provisions
- p. Garden City Code 8-6A-3 General Application Process
- q. Garden City Code 8-6A-4 Required Application Information
- r. Garden City Code 8-6A-5 Administrative Process with Notice

16. 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

17. The applicant provided the following application information:

<b>Materials Provided Per GCC Table 8-6A-2 Required Application Information</b>			
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

18. Additional application materials submitted include:
- a. Cover Sheet
  - b. Parcel Map
  - c. Fire Access
  - d. Basement Plan
  - e. Floor Plans
  - f. Elevations
  - g. Section Through Parking Garage and East Wing
  - h. Perspectives
  - i. Application
19. Agency Comments were received from:
- a. Fairview Acres Irrigation, dated July 30, 2021
  - b. Garden City Engineer, dated August 2, 2021
  - c. Ada County Fire and Rescue, dated October 29, 2019 received August 5, 2021
  - d. Department of Environmental Quality, dated August 6, 2021
  - e. ACHD, dated August 9, 2021
20. Written public comments were received from:
- a. In Favor
    - i. Todd Weltner, August 6, 2021
    - ii. Betty Weitz, August 13, 2021
    - iii. Erika Eckermann, August 16, 2021
    - iv. Greg Schatzel, August 13, 2021
    - v. Jeramie Thornton, August 12, 2021
    - vi. Kristin Harney, August 12, 2021
    - vii. Larry Grossman, August 12, 2021
    - viii. Michael F. Whitehead, August 13, 2021
    - ix. Octavian Jurj, August 12, 2021
    - x. Richard Langston, August 14, 2021
    - xi. Tom Szulga, August 12, 2021
  - b. In Opposition
    - i. Claudia Celestial, July 29, 2021
    - ii. Eric Oden, July 29, 2021
    - iii. Lyn Pulliam, July 28, 2021
    - iv. Belinda Isley, August 8, 2021
    - v. Don May, August 5, 2021

- vi. Aud Nachilo, August 9, 2021
- vii. Kira Tabor, August 16, 2021

21. Public Testimony was heard from:
- a. Christopher Herbert; in opposition
  - b. Cymry Reed; neutral
  - c. James Herbert; in opposition
  - d. Kira Tabor; in opposition
  - e. Wendy Carver Herbert; in opposition
  - f. Martin Evans; in opposition

22. The following noticing was completed in accordance with GCC 8-6A and GCC 8-6B-3:

Receipt of application	July 22, 2021	July 22, 2021
Letter of Acceptance (30 days after receipt of application)	August 22, 2021	July 23, 2021
Radius Notice (15 days prior to hearing)	August 1, 2021	July 27, 2021
Interested Parties	August 1, 2021	July 27, 2021
Legal Notice (19 days)	July 28, 2021	July 27, 2021
Agency Notice (15 days)	August 1, 2021	July 27, 2021
Property Posting Sign (10 days)	August 6, 2021	August 4, 2021
Affidavit of Property Posting and Photos (7 days)	August 9, 2021	August 8, 2021

23. On July 6, 2021, 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. Chad Weltzin and Mike Talbott presented the application.
    - i. The automated parking structure is to have creative artwork representing Garden City.
    - ii. Calculated vehicle trips are about 45% less than originally approved hotel.
    - iii. New proposal includes 198 enclosed parking spaces within the parking structure. All 198 are for the condominium residences. 21 surface parking spots are dedicated to residential guests and commercial customers
    - iv. Privacy – concerns given that it is a tall building, but it is in an ideal location for privacy due to the surrounding uses and natural features:
      - 1. North is the Boise River;
      - 2. West is Veterans Memorial Parkway;
      - 3. South is mostly all commercial;
      - 4. Surrounding residential is associated with the development.

- v. Fences – no proposed fencing, prefer no privacy screen along south or west. Uses landscaping to block visual appearance from the south commercial and west Veterans Memorial Parkway.
  - vi. Trash rooms inside on ground floor. Republic services already contacted.
  - vii. Technical error – Pg. 14, garage is not 195 ft tall, it is 95 ft.
  - viii. Single Family residential unit produces less trips than a hotel use does.
  - ix. Previously approved parking analysis:
    - 1. 1 guest parking for every 8 parking – demand for 14 shared parking agreement;
    - 2. 1 space for 300 sqft of commercial space;
    - 3. These calculations would require 21 surface parking spaces which is provided.
  - x. Every unit will have an underground storage locker and one bike parking space in the enclosed bike storage area.
  - xi. Not requesting any variance for landscaping standards.
  - xii. Private open space – Every unit has its own balcony, with the addition of the 9th floor lounge.
  - xiii. The Boardwalk Apartments exceeds its common open area requirements – Mitigation of the common open space requirements because the development all acts as one and the common open area flows from one structure to the next.
    - 1. 104,238 square feet common open space
- b. Comments from the Committee included:
- i. As part of the original approvals the shared parking agreement is still required.
  - ii. 1 space for every 8 units to apply for multi-family.
  - iii. Increased visual interest along the northern façade where the bike racks. Pedestrian oriented features along the Greenbelt.
  - iv. Committee member Gresham is curious as to what the public will have to say about the proposed height.
  - v. Brett Labrie does not have an issue with the height.
  - vi. Most appropriate place along the Greenbelt in Garden City.
  - vii. Aggressive, bold, but well done. Shadows, decks, architectural features interesting.
  - viii. Terminal vistas – building creates one, a beautiful one, but different than what Garden City has seen.

24. On August 16, 2021, a public hearing before the Design Review Committee was held:
- a. Mike Talbott, and Chad Weltzin presented the application.
  - b. Staff, Hanna Veal, presented the staff report.
  - c. There was public testimony from:
    - i. Christopher Herbert; In Opposition – did not receive radius notice, property posting not along 40<sup>th</sup> street, limited street space,

- congestion will increase, not in harmony with the Comprehensive Plan.
- ii. James Herbert; In Opposition – request the neighborhood be notified and the hearing be postponed, Veterans Memorial Parkway services a large number of pedestrians. Application is under-parked. Is Boise Fire equipped to handle this large of a building?
- iii. Kira Tabor; In opposition – reading of her public comment email.
- iv. Wendy Carver Herbert; in opposition – previous approval was more appropriate to the area; mid-town boutique hotel meets the Comprehensive Plan land use designations. Concerned about the presidents that an approval will set, more high-rise building will come.
- v. Cymry Reed; In opposition – Read into the record “18 stories are inappropriate in this neighborhood, are these condos affordable?”
- d. Chad Weltzin and Mike Talbott provided rebuttal:
  - i. Lot line adjustment has been approved by the city, but not officially recorded with the County.
  - ii. Boise Fire has confirmed that they do have adequate equipment.
  - iii. Parking – previously approved.
  - iv. 2,000 sqft of commercial space on 20,000 sqft lot.
  - v. Most appropriate area in all of Garden City for this type of development considering the adjacent uses and amenities.
  - vi. Development is within an activity node that has five other projects with entitlements or are already in construction.
  - vii. Garden City needs infrastructure and housing, this provides both.
  - viii. The project focuses on the public access to the river.
  - ix. Construction of housing at a higher price point can cause a shift in availability in lower price point dwelling units just based of market options.
- e. The public hearing was postponed at 5:00 p.m. until 6:00 p.m., due to interested parties noticing errors.
  - i. The noticing document state the hearing would commence at 6:00 p.m. to allow for those who were misinformed an opportunity to provide testimony.
- f. The public hearing was re-opened at 6:00 p.m.
- g. Public Testimony was heard from:
  - i. Martin Evans; In opposition.
- h. There was no additional rebuttal.
- i. Public testimony was closed.
- j. Discussion included:
  - i. Committee Member Gresham:
    - 1. Has concerns with the mural - it does not have enough interaction with Veterans Memorial Parkway.
    - 2. Height is concerning. Height of hotel proposal is more compatible with the neighborhood. Shadow on Greenbelt from the 18-stories.

3. Entrance to the apartments should not be from inside the parking lot, it should be from 41<sup>st</sup>, focus on the street and/or Greenbelt.
  4. Adequate parking if transportation strategies are utilized such as ridesharing.
- ii. Committee Member Labrie:
    1. Doesn't have issue with the height.
    2. Relationship with Veterans Memorial Parkway is required. Mural needs to have relief or texture, 3D to the parking garage façade is encouraged.
    3. The hotel proposal had a more dynamic relationship with the Greenbelt. New proposal needs to encourage that relationship again.
    4. Access is not a concern.
    5. Linear exposure along Greenbelt should be elements that activate the public space.
  - iii. Committee Member Hurd:
    1. Requires that the mural to go through planning staff and city council. Mural needs a 3D component to it. Make it unique.
    2. C-2 does not have height maximum, the 18 stories is compliant. Adding a maximum number to height or stories would be arbitrary.
    3. Architecture reads in pleasant way.
    4. Apartment entrance and pedestrian features needs to be more obvious through architectural features.
    5. There is less of a ratio of commercial to residential than previously proposed.
    6. Public open space needs to engage the public, the proposed site plan does not fully utilize the northwest corner Greenbelt and connection to Veterans Memorial Parkway.
    7. Condition to require the re-design of the primary apartment entrance, the mural design, commercial redesign, Greenbelt interaction.
- k. Committee Member Labrie moved to approve the application as drafted in the affirmative in the August 16, 2021, findings of fact, conclusion of law with the following additional conditions:
    - i. Prior to building permit: The application shall return to the Design Review Committee to present the following required changes:
      1. The development shall provide for enhanced public and, or commercial engagement along the Greenbelt to compliment and activate the space.
      2. Augmented and apparent pedestrian features shall be provided to foster pedestrian use.
      3. A ride-hailing or ride share parking space shall be provided for.



- ii. Prior to Certificate of Occupancy: The mural adjacent to Veteran's Memorial Parkway shall have a 3D effect. Otherwise, Surel's Place is permitted to determine the art and locations, should they be willing and able, or the art is otherwise required to have a Garden City arts commission or City Council approval.
  - I. Committee member Hurd seconded.
  - m. The motion passed on a 2/1 vote. With Committee Member Gresham dissenting.
- 25. The decision was signed on August 16, 2021.
- 26. On August 29, 2021, a timely appeal, requesting that the decision of the Design Review Committee be vacated, was filed with the city by Wendy Carver- Herbert.
- 27. On September 8, 2021, the appellant, applicant, and property owner, were notified by certified mail and interested parties were notified by email that the appeal would be held on September 27, 2021, in accordance with Section 8-6A-9 of the Garden City Code.
- 28. On September 24, 2021, JoAnn Butler with Butler Spink LLP, the legal counsel for the applicant submitted a response.
- 29. The September 27, 2021, City Council meeting was canceled due to lack of quorum. The appeal was rescheduled for October 11, 2021.
- 30. On October 8, 2021, Wendy Carver Herbert submitted additional materials.
- 31. On October 11, 2021:
  - a. Prior to commencing the appeal hearing:
    - i. Mayor Evans asked each Council Member if they had any conflicts of interest related to the appeal. Each Council Member and Mayor Evans disclosed that they had no conflicts of interest;
    - ii. Mayor Evans identified each determination being appealed. The appellant, Wendy Carver-Herbert, affirmed that the two items noted in her revised material, design standards and parking standards were the only items being appealed;
    - iii. Mayor Evans identified that the appeal was not *de novo* and based on the record materials as supplemented with the appeal, respondent's response, and appellant's rebuttal to the respondent's response;
    - iv. Mayor Evans asked the appellant and respondent if there were any concerns with the record materials. No concerns with the record were acknowledged by the appellant and respondent;

- v. Mayor Evans noted that the Council's role was to review the decision of the Design Review Committee and that City Council should review the record with due regard for the Committee's decision;
  - vi. Mayor Evans noted that the burden of proof is on the appellant;
  - vii. Mayor Evans noted the order of the hearing was the appellant first, the respondent second, and the appellant third for rebuttal;
  - viii. Mayor Evans identified that the Council decision would be to affirm, vacate, remand, or reverse the Design Review Committee's decision;
  - ix. Mayor Evans noted grounds for affirming, remanding, or reversing the Design Review Committee's decision.
- b. Wendy Carver-Herbert presented the appeal;
  - c. Michael Talbot, Andy Erstad, JoAnn Butler, and Chad Weltzin responded on behalf of Vida Properties;
  - d. Wendy Carver-Herbert provided rebuttal;
  - e. Garden City Attorney Charles Wadams requested that Wendy Carver-Herbert clarify which standard of Garden City Code 8-6B-3 that she believes in error;
  - f. Wendy Carver-Herbert indicated that she felt that the Design Review Committee erred in finding the first two standards in compliance:
    - i. The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.
    - ii. The proposed design adheres to standards for the protection of health, safety, and general welfare.
32. The record contains:
- a. Previously approved application record documents
  - b. Application modification documents
  - c. Noticing documents
  - d. Agency comments
  - e. Public comments
  - f. Staff report
  - g. July 6, 2021, Design Review Committee hearing minutes and supplement
  - h. August 16, 2021, Design Review Committee hearing minutes and transcript
  - i. Design Review Committee Findings of Fact, Conclusions of Law and Decision
  - j. Appeal application
  - k. Appeal noticing documents
  - l. Appeal procedures
  - m. Appeal response
  - n. Appeal supplement
  - o. Appeal staff report

33. The following conclusions of law were made to approve the application:

GCC 8-6B-3 DESIGN REVIEW COMMITTEE: REQUIRED FINDINGS			
Conclusion			
Compliant	Not Applicable to this Application	Not Compliant	Standard
		X	<p><b>Standard:</b> The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.</p> <p>The purpose of the C-2 General Commercial zoning district requires that activities should be “minimally disruptive to the neighborhood.” GCC 8-2B-1.B.</p> <p>Discussion on this standard included:</p> <ul style="list-style-type: none"> <li>a. The proposed development as amended is substantially different than the initial development in that the footprint is much larger;</li> <li>b. The parking for the tower relies on a cross parking agreement for a project that is not yet built.</li> <li>c. The development is no longer commercial in nature.</li> </ul> <p>Council Member Souza moved that the Design Review Committee erred in finding that the application is compliant with this standard because the nature of the project has changed from commercial to residential and diverges from its original design.</p> <p>Council Member Page seconded the motion.</p>

			Council Member Page, Jorgensen, and Souza concur.
		X	<p><b>Standard:</b> The proposed design adheres to standards for the protection of health, safety, and general welfare.</p> <p>Discussion on this standard included:</p> <ul style="list-style-type: none"> <li>a. There has been a great change of scale and is no longer compatible with the neighborhood;</li> <li>b. The incompatibility of the proposal impacts the general welfare of the neighborhood.</li> </ul> <p>Council Member Souza moved that the Design Review Committee erred in finding that the application is compliant with this standard because the proposal would adversely affect the general welfare of the neighborhood.</p> <p>Council Member Jorgensen seconded the motion.</p> <p>Council Member Page, Jorgensen, and Souza concur.</p>
X			<p><b>Standard:</b> The proposed design creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods within the city.</p> <p>The application meets this finding. The application is in conformance with the surrounding mixed use residential zoning designation. It also proposes an outdoor plaza area for guests and residents to utilize. The building is designed to enhance the relationship between the Greenbelt and the adjacent proposed developments of the Boardwalk Apartments and 406 Apartments.</p>

			The proposed landscaping helps to enhance the sense of place not only along the Greenbelt, but along 41 <sup>st</sup> Street the Veterans Memorial Parkway by providing shade and beauty through the improved streetscape.
X			<p><b>Standard:</b> The proposed design improves the accessibility of development to non-motorized and public modes of transportation.</p> <p>The application meets this finding. The application proposes a fully enclosed bike parking garage for each resident while also providing additional bike parking on-site near the retail suite. The application proposes to make improvements to the Greenbelt, which will widen the travel lanes and create less conflict between bikers and pedestrians. Taking advantage of parking minimums, the development will encourage nonvehicular modes of transportation.</p>
X			<p><b>Standard:</b> The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors.</p> <p>This application is conducive to development in a node pattern as envisioned in the Garden City Comprehensive Plan.</p>
X			<p><b>Standard:</b> The proposed design supports a compact development pattern that enables intensification of development and changes over time.</p> <p>The proposed design, as conditioned in this decision, meets this finding by supporting a</p>

			compact development by providing high density while preventing urban sprawl. The development utilizes a currently vacant lot while maximizing pedestrian circulation through a system of sidewalks and plazas that which connect the development to adjacent businesses and vehicular arterials. The development, while currently a multi-family structure, could change uses as of the result of a condominium plat. Additionally, the first-floor retail commercial space could change uses as tenants move in and out.
X			<p><b>Standard:</b> The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity.</p> <p>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 8-3C and 8-4I and pedestrian connectivity meets the requirements of 8-3C and 8-4E.</p>

**CONCLUSIONS REGARDING ISSUES RAISED ON APPEAL**

Per Garden City Code 8-6A-9, City Council shall determine whether the application should be: granted, granted with conditions, remanded to the Design Review Committee for additional proceedings and findings, or be denied. In conjunction with code, the Garden City administrative rules indicate the City Council may: affirm, vacate, remand, and/or reverse the Design Review Committee's decision.

The City Council is tasked with determining whether or not the Design Review Committee made the decision in accordance with applicable laws and regulations. The Council makes its decision on the record presented in front of the Design Review Committee and supplemental evidence provided by the appellant and respondent. The appellant raised two issues on appeal:

1. Whether there is failure to meet design standards.

2. Whether there is failure to meet parking standards.

Council Member Souza moved to vacate the decision of the Design Review Committee because the Design Review Committee erred in finding the application met the first two standards of GCC 8-6B-3. Council Member Jorgensen seconded the motion. As indicted above, the City Council agrees with the appellant that the Design Review Committee erred in finding the design is in compliance with the following two standards:

1. The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.
2. The proposed design adheres to standards for the protection of health, safety, and general welfare.

### DECISION


WHEREFORE, based upon the foregoing opinion, the City Council vacates the Design Review Committee decision. As such, the City Council grants the appeal and denies the application.

The decision of the Council shall be final. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Title 67, Chapter 65 of Idaho Code. Any applicant or affected person seeking judicial review of compliance must first seek reconsideration of the final decision within fourteen (14) days. A takings analysis pursuant to Idaho Code may be requested on final decisions.

Teresa Jorgensen and Jeffrey Souza **CONCUR**.

James Page **DISSENTS** in the denial of the application, as he preferred that this matter be remanded back to the Design Review Committee.

Dated this 25<sup>th</sup> day of October, 2021

  
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John G. Evans  
Mayor, City of Garden City, Idaho