



## CITY OF GARDEN CITY

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BEFORE THE CITY COUNCIL OF THE CITY OF GARDEN CITY

October 14, 2019 Hearing

**DECISION ON DSRFY2019-16**  
**FINDINGS OF FACT AND CONCLUSIONS**

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

APPEAL OF **DILLON BOISE LLC**; RE: DENIAL, BY THE DESIGN REVIEW COMMITTEE OF THE CITY OF GARDEN CITY, OF APPLICATION DSRFY2019-16 A DESIGN REVIEW REQUEST TO UTILIZE SHEET METAL AS A FENCING MATERIAL LOCATED AT 520 E. 47<sup>TH</sup> STREET, GARDEN CITY, IDAHO, 83714.

Decision to deny the Design Review application is affirmed and the appeal is denied.

Mark Butler, with Land Consultants Inc. for appellant.

Jenah Thornborrow, Garden City Development Services Director for respondent.

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Presided over by: John G. Evans, Mayor

Mark Butler appeals the decision of the Garden City Design Review Committee denying application DSRFY2019-16, a design review application for the use of sheet metal as a fence material located at 520 E 47th, Garden City, Idaho 83714 assigned to Ada County Parcel Number R2734523066, described as the W. 1/3 of Lot 32, Block 22, Fairview Acres Sub No 3. and Ada County Parcel Number R2734523062, described as Lots 29 – 31, Block 22, Fairview Acres Sub No. 3. For the reasons set forth below, the City Council affirms the Design Review Committee decision and denies the appeal.

### FINDINGS OF FACT AND PROCEDURAL HISTORY

1. The applicant is Mark Butler, Land Consultants, Inc.

2. The property owner of record is Dillon Boise, LLC
3. The subject properties are 2.26 acres in total size.
4. The project is in the Garden City C-2 General Commercial Zoning District.
5. The project is in the Transit Oriented Development Node Buffer of the 2006 Garden City Comprehensive Plan Land Use Designation.
6. The existing use on the site is: Wrecking Yard.
7. Current access to the site is from E. 48<sup>th</sup> Street.
8. The following sections of the Garden City Municipal Code apply to this proposal:
  - a. GCC 8-4A3E-1 Fences and Walls- Prohibited Fencing Materials
9. A copy of the application and plans was transmitted to interested and affected public agencies and written comments were received from:
  - a. Ada County Highway District
  - b. Idaho Transportation Department
14. Written public comment in opposition to the request was received from:
  - a. Traci Bradshaw, Mystic Cove Homeowners' Association, President
  - b. Lorie Allison
15. The application was received June 3, 2019. Notification of application acceptance and completion was sent to the applicant within 30 days of receipt of the application. The Design Committee Public Hearing was held within sixty (60) days of receipt of an application certified as complete.
16. On June 28, 2019 a letter of acceptance with hearing date was sent to the applicant.
17. A transmittal to other agencies including notice, application and other documents was sent on July 16, 2019 more than fifteen days prior to the public hearing.
18. A legal public hearing notice for the proposed variance application was published on July 19, 2019, and on July 16, 2019, notice was mailed to all property owners within a 300-foot radius of the said property in compliance with the public notice requirements of Section 8-6A-7 of the Garden City Municipal Code.
19. A sign was posted on or before August 9, 2019 in accordance with Garden City Code for the public hearing of August 19, 2019.
20. On August 19, 2019 at the Design Committee public hearing:
  - a. Mark Butler presented the application.

- b. Staff Chris Samples presented the staff report.
  - c. Public testimony was heard from Jason Jones in support of the application and Debbie Jo Pelton and Laurie Allison in opposition to the application.
  - d. Mark Butler provided rebuttal testimony.
  - e. Public testimony was closed.
  - f. Committee member Gresham moved to deny the application.
  - g. Committee member Hurd seconded the motion.
  - h. The motion carried unanimously.
21. On September 4, 2019, the Design Review Committee Decision document was signed. On September 4, 2019, a timely appeal, requesting that the decision of the Design Review Committee be reversed, was filed with the City by Dillon Boise LLC.
22. On September 20, 2019, the appellant, and interested parties were notified that the appeal would be held on October 14, 2019, in accordance with Section 8-6A-9 of the Garden City Code.
23. The record contains:
- a. Application Materials
  - b. Letter of Application Acceptance
  - c. Noticing Documents
    - i. Agency Review Transmittal
    - ii. Notice of intent
    - iii. Legal Advertisement in Idaho Statesman
    - iv. Radius Notice
    - v. Affidavit of property posting
  - d. Staff report, and referenced materials
  - e. Agency Comments
  - f. Public Comments
  - g. City Council Hearing Minutes dated November 12, 1986
  - h. Letter from Robert Unger, Garden City Public Works Director, dated November 14, 1986
  - i. Letter from property owner in response to November 14, 1986 letter, undated
  - j. Letter of intent for Zoning Permit 95-08-10 dated August 18, 1995
  - k. Garden City Code 8-7-5 in effect on November 14, 1986 (Ordinance 443)
  - l. Garden City Code 8-7-5 in effect on August 18, 1995 (1988 Code)
  - m. Design Review Committee Hearing signup sheets
    - i. Lorie Allison
  - n. Design Review Committee August 19, 2019 hearing transcript
  - o. Design Review Committee August 19, 2019 hearing minutes
  - p. Design Review Committee Findings of Fact, Conclusions of Law, and Decision

- q. Appeal application documents
- r. Appeal noticing documents
  - i. Notice of appeal to applicant/ appellant
  - ii. Notice of appeal to interested parties
- s. City Council appeal hearing audio, October 14, 2019
- t. City Council appeal hearing minutes, October 14, 2019

## 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 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. The appellant raised one issue on appeal, as follows:

1. **On behalf of my client we are submitting this appeal of the Design Review Committee denial of a design review request for a 12' high privacy fence.**

From the record, members of the City Council raise the following concerns regarding this issue: (a) sheet metal as proposed intends to evade provisions of code; (b) the material is a prohibited material, and should be unless the use of the material can make a project more attractive; (c) the proposed material is distasteful; (d) compatibility with adjacent residential uses.

Accordingly, on October 14, 2019 Council Member Beaumont moved to affirm the Design Review Committee's Findings of Fact, Conclusions of Law, and Decision. Council Member Higgins seconded the motion. The Motion passed on a 4/0 vote.

## DECISION

WHEREFORE, based upon the foregoing opinion, the City Council affirms the Design Review Committee's decision denying the use of sheet metal as a fence material located at 520 E 47th, Garden City, Idaho 83714 assigned to Ada County Parcel Number R2734523066, described as the W. 1/3 of Lot 32, Block 22, Fairview Acres Sub No 3. and Ada County Parcel Number R2734523062, described as Lots 29 – 31, Block 22, Fairview Acres Sub No. 3. As such, the City Council denies the appeal.

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.

Pam Beaumont, Jeffrey Souza, Elfreda Higgins, and James Page

**CONCUR.**

Dated this 28<sup>th</sup> day of October, 2019



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