



## CITY OF GARDEN CITY

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

October 14, 2019 Hearing

#### DECISION ON VARFY2019-2 FINDINGS OF FACT AND CONCLUSIONS

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

APPEALS OF **DILLON BOISE LLC**; RE: LACK OF ACTION, BY THE PLANNING AND ZONING COMMISSION OF APPLICATION VARFY2019-2 A VARIANCE APPLICATION FOR A 12' METAL FENCE LOCATED AT 520 E. 47<sup>TH</sup> STREET, GARDEN CITY, IDAHO, 83714.

Failure to act on the variance application is reversed, resulting in a denial of the application, 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 Garden City Planning and Zoning Commission lack of action of application VARFY2019-2, a variance application for a 12' tall fence 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 reverses the Planning and Zoning Commission's lack of decision, considers the appeal request, and denies the application.

## 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 application is for the following variances:
  - a. Variance from the standards of GCC 8-4A-3 (Fences and Walls) and GCC 8-1C-3 (Property Maintenance Standards) to allow a 12' fence height in a front setback.
  - b. Variance from the standards of GCC 8-4A-3 (Fences and Walls) and GCC 8-1C-3 (Property Maintenance Standards) to allow a 12' fence height in a side setback.
  - c. Variance from the standards of GCC 8-4A-3 (Fences and Walls) to allow a 0' setback for fences exceeding 3.5' in height.
9. The location of the project is:
  - a. Ada County Parcel Number R2734523066, described as the W. 1/3 of Lot 32, Block 22, Fairview Acres Sub No 3.
  - b. Ada County Parcel Number R2734523062, described as Lots 29 – 31, Block 22, Fairview Acres Sub No. 3
10. The subject properties are 2.26 acres in total size.
11. The project is in the Garden City C-2 General Commercial Zoning District.
12. The project is in the Transit Oriented Development Node Buffer of the 2006 Garden City Comprehensive Plan Land Use Designation.
13. The existing use on the site is: Wrecking Yard.
14. Current access to the site is from E. 48<sup>th</sup> Street.
15. The following sections of the Garden City Municipal Code apply to this proposal:
  - a. GCC 8-4A3E FENCES AND WALLS

b. GCC 8-6B-9 VARIANCE

12. Other items reviewed include:
  - a. City Council Hearing Minutes dated November 12, 1986
  - b. Letter from Robert Unger, Garden City Public Works Director, dated November 14, 1986
  - c. Letter from property owner in response to November 14, 1986 letter, undated
  - d. Letter of intent for Zoning Permit 95-08-10 dated August 18, 1995.
  - e. Garden City Code 8-7-5 in effect on November 14, 1986 (Ordinance 443)
  - f. Garden City Code 8-7-5 in effect on August 18, 1995 (1988 Code)
14. Written public comment in opposition to the request was received from:
  - a. Traci Bradshaw, Mystic Cove Homeowners' Association, President
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
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 Commission 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 11, 2019 in accordance with Garden City Code for the public hearing of August 21, 2019.
20. On August 21, 2019, at the Planning and Zoning Commission 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 Traci Bradshaw in opposition to the application
  - d. Public testimony was closed.

- e. Commissioner Brown moved to approve the application in accordance with the draft findings of fact, conclusions of law, and decision.
  - f. A second on the motion was not received. The motion died for a lack of a second.
  - g. Commissioner Rasmussen moved to deny the application based on the application not meeting the required findings, specifically noting a lack of undue hardship (finding 1) and noting finding 4.
  - h. A second on the motion was not received. The motion died for a lack of a second.
  - i. The application was denied due to a lack of a motion.
21. On August 26, 2019, the Planning and Zoning Commission decision document was signed. On August 29, 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. Radius Notice
    - iii. Legal Advertisement in Idaho Statesman
    - iv. 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. Planning and Zoning Commission Hearing Sign Up Sheets
    - i. Jason Jones
    - ii. Traci Bradshaw
  - n. Planning and Zoning Commission August 21, 2019 hearing transcript
  - o. Planning and Zoning Commission August 21, 2019 minutes
  - p. Planning and Zoning Commission Findings of Fact, Conclusions of Law, and Decision

- q. Appeal documents
  - i. Notice of appeal to applicant/ appellant
  - ii. Notice of appeal to interested parties
- r. Appeal noticing documents
- 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 Planning and Zoning Commission 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 Planning and Zoning Commission's decision.

The City Council is tasked with determining whether or not the Planning and Zoning Commission made the decision in accordance with applicable laws and regulations. The Council makes its decision on the record presented in front of the Planning and Zoning Commission and supplemental evidence provided by the appellant and respondent. The appellant raised the following issue on appeal:

**On behalf of my client we are submitting the appeal of the Planning and Zoning Commission's deadlocked position and subsequent lack of Action for our Variance request.**

The City Council made the following findings based on Garden City Code 8-6B-9 **VARIANCE- REQUIRED FINDINGS:**

1. **Finding: The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property (a finding of undue hardship)**

On a roll call vote the City Council unanimously concluded that there was not an undue hardship that warranted a variance.

2. **Finding: The need for the variance is not the result of the actions of the applicant or property owner**

On a roll call vote the City Council unanimously concluded that the height of the car stacking is what necessitates the request for a variance, and that the car stacking is a result of the actions of the applicant.

3. **Finding: The variance will not unreasonably diminish either the health, safety or welfare of the community neighborhood**

The Council did not provide a finding on this matter.

4. **Finding: The variance is the only reasonable alternative to overcome the undue hardship**

On a roll call vote the City Council unanimously concluded that the record and the discussions identified alternatives. Examples of alternatives discussed during the determination included a different design including a setback with landscaping, and not staking the cars as high.

5. **Finding: The variance is the minimum relief necessary to allow reasonable use of the subject property**

On a roll call vote the City Council unanimously concluded that granting of a variance does not constitute the minimum relief necessary to allow reasonable use of the subject property. Rather, it was stated that the reasonable use of the subject property would be confounded by the requested variance.

#### DECISION

WHEREFORE, based upon the foregoing opinion, the City Council reverses the Planning and Zoning Commission's failure to act on application VARFY2019-2, and considers the appeal request for action on the application. The City Council denies the appeal and variance application for a 12' tall fence 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.

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