

CITY OF GARDEN CITY

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BEFORE THE CITY COUNCIL OF THE CITY OF GARDEN CITY

December 13, 2021, Reconsideration Hearing

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

RECONSIDERATION PURSUANT TO THE **IDAHO STATUTE SECTION 67-6535**

RECONSIDERATION OF APPEAL DECISION RESULTING IN THE DENIAL AMENDMENTS TO A PREVIOUSLY APPROVED NEW CONSTRUCTION, FILE, DSRFY2019-25, LOCATED AT 510 E. 41st STREET, GARDEN CITY, IDAHO, 83714.

Decision to deny the application is reversed, and the application is approved as modified.

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

Wendy Carver-Herbert for appellant.

Presided over by: John G. Evans, Mayor

Attorney JoAnn Butler, with Butler Spink LLP representing Vida Properties requests reconsideration of the City Council decision to grant an appeal of a design review application approval of 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 41st Street, Ada County Parcel: R2734520933, Garden City, Idaho 83714. For the reasons set forth below, the City Council reverses the appeal decision denying the appeal, and affirms the Design Review Committee approval of the application as modified.

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. The applicant is Chad Weltzin of Erstad Architects.
3. The property owner of record is Vida Properties.
4. 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.
5. No changes are being proposed to the Boardwalk Apartments or 406 Place as part of this modification.
6. The scope of this decision is to 510 E 41st Street, Garden City, Idaho 83714; Ada County Assessor parcel number R2734520933.
7. The properties are legal lots of record.
8. The subject property is 1.24 acres.
9. The project is located in the C-2 General Commercial zoning district.
10. The project is not located in a zoning overlay.
11. The project is located in the Activity Node: Neighborhood Destination; Green Boulevard Corridor; and Mixed Use Residential.
12. The project is not located in the Special Flood Hazard Area (SFHA) according to the 2003 Flood Insurance Rate Map (FIRM).
13. The project is in the AE flood hazard category/floodway according to the 2017 FIS.
14. 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

15. 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

16. 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

17. 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
18. 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
19. 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

20. 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
21. 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	July 22, 2021	July 22, 2021
Letter of Acceptance	August 22, 2021	July 23, 2021
Radius Notice	August 1, 2021	July 27, 2021
Interested Parties	August 1, 2021	July 27, 2021
Legal Notice	July 28, 2021	July 27, 2021
Agency Notice	August 1, 2021	July 27, 2021
Property Posting Sign	August 6, 2021	August 4, 2021
Affidavit of Property Posting and Photos	August 9, 2021	August 8, 2021

22. 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.
23. 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 40th 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 precedent 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 41st, 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 Veterans 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.
- l. Committee member Hurd seconded.
- m. The motion passed on a 2/1 vote. With Committee Member Gresham dissenting.

24. The decision was signed on August 16, 2021.
25. 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.
26. 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.
27. On September 24, 2021, JoAnn Butler with Butler Spink LLP, the legal counsel for the applicant submitted a response.
28. The September 27, 2021, City Council meeting was canceled due to lack of quorum. The appeal was rescheduled for October 11, 2021.
29. On October 8, 2021, Wendy Carver-Herbert submitted additional materials.
30. 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 Talbott, 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.
31. On October 25, 2021, the city council formalized the appeal decision.
 32. On November 8, 2021, a timely reconsideration request was received by the city.
 33. During the November 29, 2021, City Council meeting, the City Council moved to reconsider the appeal.
 34. On December 13, 2021:
 - a. Mayor Evans introduced the reconsideration.
 - b. Prior to commencing the reconsideration 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 asked the applicant and appellant if there were any concerns with the record materials.
 1. JoAnn Butler noted concerns that new information that was not factually correct had been presented. She further noted no issue with providing the appellant additional due process.
 2. No concerns with the record were acknowledged by Wendy Carver-Herbert;
 - iii. Mayor Evans identified potential deficiencies in the record:
 1. The ordinance and standards used in evaluating the application;
 2. The reasons for approval or denial; and

3. The actions, if any that the applicant could take to obtain approval.
 - iv. The reconsideration raised the following claims:
 1. The City Council conclusion, the proposed design is not compliant with the standard that it be in conformance with the purpose of the zoning district and all dimensional regulation of that district, is not supported by the factual record or the Garden City Code and is, itself, in error.
 2. The City Council conclusions, that the proposed design is not compliant with the standard that the proposed design adheres to standards for the protection of health safety, and general welfare, is not supported by the factual record or the Garden City Code and is, itself, in error.
 - v. Mayor Evans identified actions that could be taken and the grounds for those actions;
 - vi. Mayor Evans noted that the items raised in the reconsideration request, design, and parking, were the only items to be reviewed.
 - vii. Mayor Evans noted that the burden of proof is on the applicant, the requestor of the reconsideration.
35. Michael Talbott and JoAnn Butler on behalf of Vida Properties presented the reconsideration request, including a proposed modification to the application.
 - a. City attorney, Charles Wadams, provided a point of order that the hand-outs provided were already in the record materials.
36. Wendy Carver-Herbert the appellant provided response.
37. Michael Talbott and JoAnn Butler provided rebuttal.
38. During discussion:
 - a. Mayor Evans noted support for the project as amended.
 - b. Council Member Jorgensen noted that the city attorney memorandum discussion on HB 480 was helpful.
 - c. Council Member Page noted that he had misinterpreted the parking agreement requirements. Understanding the true intent mitigated his concerns related to health and safety. He further noted that the modification proposal to add the bar and or restaurant and retail will create a sense of place and excitement at this location.
 - d. Council Member Souza noted respect for the Design Review Committee and that there could be potential code amendments.
 - e. Standards 1 and 2 were reversed on a roll call vote.
39. 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
- p. October 11, 2021 Council Hearing minutes and transcript
- q. October 25, 2021 City Council Findings of Fact, Conclusions of Law and Decision
- r. November 29, 2021 City Council hearing minutes and transcript
- s. Reconsideration request
- t. Reconsideration legal memorandum
- u. Reconsideration supplements by the applicant and appellant

40. 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>Standard 1: The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district.</p> <p>Discussion related to this standard included:</p> <ul style="list-style-type: none"> a. The proposed modifications are permitted uses in the C-2 zoning district; b. The design is compliant with standards.

			<p>Council Member Page moved to reverse the previous finding and find this standard as compliant.</p> <p>Council Member Jorgensen seconded the motion.</p> <p>Council Member Page, Jorgensen, and Souza concur.</p>
X			<p>Standard 2: 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"> a. The proposed parking was previously misunderstood. A correct understanding of the proposal eliminates concerns with the adverse effects of the project on the health, safety, and welfare of the community. b. The proposed modification will bring a sense of place to the neighborhood. <p>Council Member Page moved to reverse the previous finding and find this standard as compliant.</p> <p>Council Member Jorgensen seconded the motion.</p> <p>Council Member Page, Jorgensen concur.</p> <p>Council Member Souza dissents.</p>
X			<p>Standard 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>The application meets this finding. The application is in conformance with the surrounding mixed use residential zoning</p>

			<p>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. The proposed landscaping helps to enhance the sense of place not only along the Greenbelt, but along 41st Street the Veterans Memorial Parkway by providing shade and beauty through the improved streetscape.</p>
X			<p>Standard 4: 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>Standard 5: 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>Standard 6: The proposed design supports a compact development pattern that</p>

			enables intensification of development and changes over time.
			The proposed design, as conditioned in this decision, meets this finding by supporting a 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			Standard 7: The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and encourages pedestrian activity.
			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.

CONCLUSIONS REGARDING ISSUES RAISED ON RECONSIDERATION

Per I.C. 67-6535, the City Council is tasked with determining whether or not their decision contained deficiencies in accordance with I.C. 67-65 Local Land Use Planning Act. The reconsideration raised the following claims:

1. The City Council conclusion, the proposed design is not compliant with the standard that it be in conformance with the purpose of the zoning district and all dimensional regulation of that district, is not supported by the factual record or the Garden City Code and is, itself, in error.

2. The City Council conclusions, that the proposed design is not compliant with the standard that the proposed design adheres to standards for the protection of health safety, and general welfare, is not supported by the factual record or the Garden City Code and is, itself, in error.

Council Member Page moved to reverse and modify the Council's decision on the appeal:

1. Modifying the findings of GCC 8-6B-3 standards 1 and 2;
2. Incorporate the modifications as proposed by the applicant; and
3. Reinstate the conditions as identified by the Design Review Committee.

Council Member Jorgensen seconded the motion.

As indicted above, the City Council agrees with the applicant that the Design Review Committee was correct 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 REVERSES the appeal decision, and MODIFIES the Design Review Committee decision. As such, the City Council APPROVES the application AS MODIFIED.

CONDITIONS OF APPROVAL

Site Specific Requirements:

Scope:

1. The approval includes the modifications as proposed by the applicant during the reconsideration request, including:
 - a. A change in the number of residential units to accommodate the increase in retail and addition of a bar and/or restaurant noted in b. and c. below;
 - b. Increase of retail on the ground floor; and
 - c. The addition of a bar and or restaurant use on the top floor.
2. 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.
3. RECOMMENDATION: As of the date of this writing, the Federal Emergency Management Agency has issued Draft Digital Federal Insurance Rate Maps (DFIRM) which proposes to delineate the subject properties to be within the 100-year Floodplain. The applicant should consider that any new structures must have the top of the lowest floor at or above BFE (as defined by adopted FIRM) pursuant to current Garden City Code. Stricter standards may be required in the future for building permit approval.
 4. There shall be no reduction in unrestricted public parking. Public parking may be slightly relocated provided that there is no reduction in the number of unrestricted available spaces, and those spaces are no further from the Greenbelt access than situated prior to the relocation of the subject spaces.
 5. 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.
 6. The decision is valid for five (5) years from the date of decision signature.

Prior to Building Permit Approval:

1. All outdoor lighting shall be compliant with Garden City Code 8-4A-4.
2. At least one additional Class II Street trees shall be provided along the frontage of 41st Street for a total of 5 trees.
3. Perimeter landscaping shall be installed along the southern property boundary line and be found in compliance with Garden City Code 8-4I-5 Perimeter Landscaping Provisions with the exception of:
 - a. The perimeter landscaping shall be at least 5 ft in width;
 - b. The perimeter landscaping border does not require a fence.
4. Contrasting hardscape material shall be installed at the drive aisles to better identify the pedestrian crossings along 41st Street.
5. Bicycle parking spaces shall be placed in such a way that when mounting and dismounting the bicycles do not reverse into the sidewalk traffic area, the Greenbelt, or 41st Street.
6. The terminus of 41st Street shall be designed as an effective and inviting entrance and exit to and from the Greenbelt.

7. Greenbelt Bicycle and Pedestrian entrance shall act as an effective and inviting entrance and exit to and from the Greenbelt.
8. The application shall return to the Design Review Committee to present the following required changes:
 - a. The development shall provide for enhanced public and, or commercial engagement along the Greenbelt to compliment and activate the space.
 - b. Augmented and apparent pedestrian features shall be provided to foster pedestrian use.
 - c. A ride-hailing or ride share parking space shall be provided for.

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. The required parking will meet existing residential parking standards and enclosed. Guest parking will be parked at 1 space per 8 residential units. Retail space will be parked at 1 space per 300 square feet. Bar/restaurant space will be parked at 1 space per 3 seats.
5. There will be a minimum of 126 bicycle parking spaces provided.
6. Wayfinding signs shall be installed at the residential entrances and around the retail space so as to direct a clear path for pedestrians.
7. All Outdoor Service and Equipment areas shall be found in conformance with Garden City Code 8-4A-5.
8. The proposed mural along the parking garage façade shall be in conformance with Garden City Code 8-4C-4:
 - a. The content of the mural is consistent with the architectural, geographical, sociocultural, and historical context of the city.
 - b. The location is on the rear, side, or alley side of the building.
 - c. The size of a mural may be limited based on the location, building and context.
 - d. The surface material is resistant to vandalism and weather.
9. The mural adjacent to Veterans 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.

Site Specific Requirements for the Duration of the Use:

1. The following amenities shall be provided or replaced with an amenity from the same category of amenity as identified in Garden City Code:
 - a. Quality of life amenities provided: Fitness facilities and Enclosed bike storage
 - b. Open space: Plaza
 - c. Recreation amenities: Fitness deck
2. A property management office must be on site, and tenants and/or owners, and outside members of the public or police must be able to get a hold of emergency services 24-hours of the day.
3. A maintenance storage area must be provided.
4. A central mailbox location is provided in accordance with this approval.
5. A directory and map of the development is located at the entrance or convenient location for those entering the development.
6. 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.
7. All bicycle parking shall be located so as to not prevent the Greenbelt or sidewalk traffic from maintaining a continuous momentum.
8. All Landscaping along the Greenbelt shall remain trimmed to a maximum of 3.5' tall and shall not encroach onto the Greenbelt.
 - a. Trees planted adjacent to the greenbelt shall remain pruned so that there is not low-hanging branch that which would conflict with Greenbelt users. The trees are permitted to be taller than 3.5.'
9. There shall be no removal of vegetation, alteration of land, or planning on the land north of the Greenbelt shall commence without an approved Riparian Permit.
10. The terminus of 41st Street shall be maintained as an effective and inviting entrance and exit to and from the Greenbelt.
11. A funding mechanism shall be identified so that any mural, public art, sculptures, or water features shall be maintained in their original state from the date of approval.
 - a. If vandalism is to occur, restoration shall commence immediately to return the art to its original state.
 - b. If the art shows signs of wear, restoration shall commence immediately to return the art to its original state.
12. If there is a request to change any of the approved art, murals, sculptures, or water features, new schematics shall go to staff for approval. Staff can differ art approval to the Design Review Committee for approval.

General Requirements:

1. This review and approval are 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.

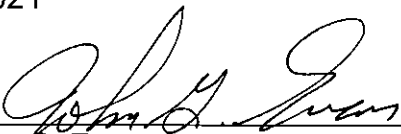
16. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
17. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
18. This 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. All outdoor living spaces must comply with Garden City Cod 8-3C General Provisions-Living Space Requirements.
22. All outdoor service and equipment areas shall comply with Garden City Cod 8-4A-5 Outdoor Service and Equipment Areas.
23. All stormwater systems must comply with Garden City Code 8-4A-7.
24. 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.
25. 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.
26. 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.
27. Occupying the site prior to Certificate of Occupancy is a criminal offense.
28. This approval shall expire five years days from its approval, unless otherwise extended as allowed by Garden City Code.
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.

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 52 of Idaho Code. A takings analysis pursuant to Idaho Code may be requested on final decisions.

Teresa Jorgensen and James Page **CONCUR**.

Jeffrey Souza **DISSENTS**.

Dated this 20th day of December 2021



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