



## CITY OF GARDEN CITY

6015 Glenwood Street • Garden City, Idaho 83714  
Phone 208/472-2900 • Fax 208/472-2996

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

October 26, 2020 Appeal Hearing

#### DECISION ON CUPFY2020-16 FINDINGS OF FACT AND CONCLUSIONS

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

APPEAL OF **REGINA PHIPPS**; RE: CONDITIONS OF APPROVAL, BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF GARDEN CITY, OF APPLICATION CUPFY2020-16, REQUIRING THE CONSTRUCTION OF A SIDEWALK AND REQUIRING A SUBDIVISION OF A PROPERTY AT 401 E. 52<sup>ND</sup> STREET, GARDEN CITY, IDAHO, 83714.

Decision to affirm the conditions of approval and the appeal is denied.

Regina Phipps for appellant.

Jenah Thornborrow for respondent.

---

Presided over by: John G. Evans, Mayor

Regina Phipps appeals the decision of the Garden City Planning and Zoning Commission to require conditions of approval requiring construction of a sidewalk and requiring a subdivision for application CUPFY2020-16, a conditional use permit located at 401 E. 52<sup>nd</sup> Street Garden City, Idaho 83714; Ada County Assessor parcel number R7334160670. For the reasons set forth below, the City Council affirms the Planning and Zoning Commission's decision and denies the appeal.

#### FINDINGS OF FACT AND PROCEDURAL HISTORY

1. The conditional use application request is for a.) a waiver to the minimum density requirements, b.) the addition of a secondary single-family detached dwelling

- unit, and c.) a waiver of maximum square feet for accessory structures.
2. The applicant is Regina Phipps and Will Calhoun.
  3. The property owner of record is George and Nadine Nesbit.
  4. The location of the project is 401 E 52<sup>nd</sup> Street Ada County Assessor parcel number(s) R7334160670. Par #0670 por NW2 Lots 1 & 2 Blk 5 Randall Acres #5 R/S 3814 #0682s
  5. The property is a legal lot of record.
  6. The application is for a Conditional Use Permit for the use of a Dwelling Unit, Single Family Detached, and for a density reduction waiver. The scope of the Conditional Use Permit is limited to the entire property.
  7. The subject property is 0.682 acres.
  8. The project is in the R-3 Medium Density Residential zone.
  9. The project is located in the Main Street Corridor and Mixed-Use Residential districts of the Garden City Comprehensive Plan Land Use Designation.
  10. The project is in the SFHA according to the 2003 FIRM.
  11. The project is in the SFHA according to the 2017 FIS.
  12. The existing use on the site is Dwelling Unit, Single Family Detached.
  13. 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 8-2B Base Zoning District Regulations
    - d. Garden City Code 8-3D Overlay Zoning District Regulations
    - e. Garden City Code 8-4A Design and Development Regulations- General Provisions
    - f. Garden City Code 8-4C Design Provisions for Nonresidential Structures
    - g. Garden City Code 8-4F Sign Provisions
    - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
    - i. Garden City Code 8-6A Administration General Provisions
  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 following previous entitlements were reviewed as part of this application:
  - a. Building permit: 95-00025
  - b. 1997 Record of Survey, file 97-02-11
16. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

<b>Conditional Use Permit</b>			
Provided			
Yes	No	A Waiver was submitted	
X			Compliance Statement
X			Neighborhood Map
		X	Will Serve

17. Additional application materials submitted include:
  - a. Fire Flow Application
  - b. Ability to Serve Request
  - c. Conditional Use Permit Application
  - d. Statement of Intent
  - e. Site Plan
  - f. 300' Neighborhood List
  - g. Neighborhood Meeting letter
  - h. Neighborhood Meeting Sign-in sheet
  - i. Affidavit of Legal Interest
  - j. Waiver for Will Serve Letter
  - k. Garden City CUP Review Comments
18. Agency Comments were received from:
  - a. Idaho Department of Environmental Quality, 08/24/2020
19. No written public comments were received.

<b>The following noticing was completed in accordance with GCC 8-6A-7: Noticing Requirement</b>	<b>Required Date</b>	<b>Completion Date</b>
Receipt of application	08/11/2020	08/06/2020

		08/25/2020 late submittals
Letter of Acceptance	09/11/2020	08/12/2020
Radius Notice	09/01/2020	08/11/2020 Mailed
Interested Parties	None	None
Legal Notice	08/28/2020	08/11/2020 Emailed 08/14/2020 Published
Agency Notice	09/01/2020	08/11/2020
Property Posting Sign	09/06/2020	08/25/2020
Affidavit of Property Posting and Photos	09/09/2020	08/25/2020

20. On September 16, 2020, a public hearing before the Planning and Zoning Commission was held:

1. Applicant, Regina Phipps, presented the application.
2. Staff, Hanna Veal, presented the staff report.
3. Public testimony was heard from:
  - a. Shawn McFadden, in opposition, concerning the traffic loads that a higher density proposal would create. In favor of the proposed single-family dwelling unit plan.
  - b. George Nesbit, in opposition, the proposed house fits in with the surrounding neighborhood and believes that as the property owner, the home should be built as the applicant desires.
  - c. Dyan Bevins, in opposition, the reduction of density is not the issue. Questions regarding the TOD density requirements of the Comprehensive Plan designation. Subdivision process is a heavy burden for citizens, the proposed home is not possible even if the applicant chooses to subdivide.
4. Regina Phipps provided rebuttal testimony.
  - a. Subdivision process is an undue hardship for a property owner.
  - b. The original single-family home will be demolished once it is not needed anymore.
  - c. Staff's interpretation of the proposal as an accessory dwelling unit is inaccurate. The proposal is not meant to be subordinate.
  - d. No hard definition of a duplex.
  - e. Legal lot of record was questioned. It should not be the applicant's duty to find required documents to prove that the lot was created legally.
  - f. It should not be difficult for a homeowner to build what they want on their property.
5. Public testimony was closed.
6. Commissioner Wilde moved to approve the application as amended to include the following conditions:

- a. The applicant shall apply for a subdivision application prior to issuances of a construction permit.
- 7. Commissioner Pelton seconded the motion.
- 8. The motion carried on a 3/1 vote with commissioner Pelton dissenting.

21. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Correspondence Documents
- d. Record of Survey 3814
- e. Agency Comments: Idaho Department of Environmental Quality
- f. Written Public Comments: none provided
- g. Staff report
- h. September 16, 2020 Planning and Zoning Commission Hearing Minutes
- i. September 16, 2020 Planning and Zoning Commission Hearing Audio
- j. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision
- k. Appeal request

22. The Planning and Zoning Commission made the following findings:

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<p><b>Finding:</b> The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;</p> <p>The use is appropriate to the location, lot, and the neighborhood, and is compatible with uses within the R-3 General Zoning District. This application is in conformance with the surrounding neighborhood as the surrounding uses are single-family detached dwelling units.</p>
X			<p><b>Finding:</b> The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;</p>

			There are public services available that can accommodate the proposed development.
X			<p><b>Finding:</b> The use will not unreasonably diminish either the health, safety, or welfare of the community</p> <p>The application triggers a sidewalk installation which will increase the safety of those traveling along Alworth Street. The proposal of another dwelling unit on the site and a reduction in the required density does not diminish the safety, health, or the welfare of the surrounding community.</p>
X			<p><b>Finding:</b> The use is not in conflict with the comprehensive plan or other adopted plans, policies, or ordinances of the city.</p> <p>The application does not exclude goals within the Comprehensive Plan.</p>

On September 25, 2020 a timely appeal, was filed by Regina Phipps requesting that two conditions of approval for file CUPFY2020-16, required by the Planning and Zoning Commission be vacated. The decision(s) and or conditions appealed as noted on the appeal form included:

1. Condition of having to subdivide the property before building the single-family detached home.
2. The requirement to put in sidewalks along the property on 52<sup>nd</sup> Street.

On September 30, 2020, the applicant/appellant/property owner and interested parties were notified that the appeal would be held on October 26, 2020, in accordance with Section 8-6A-9 of the Garden City Code. The respondent is the City.

On October 26, 2020, prior to commencing the appeal hearing:

1. Mayor Evans asked each Council Member if they had any conflicts of interest related to the appeal. Each member of the Council disclosed that they had no conflicts of interest.
2. Mayor Evans identified each determination by the Planning and Zoning Commission being appealed.
3. Mayor Evans noted the order of the hearing was the appellant (Ms. Phipps) first, the respondent (the City) second, and the appellant third for rebuttal.

## DISCUSSION 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 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 decision.**

The City Council is tasked with determining if 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.

During discussion Council Member Page noted that he was sympathetic with the applicant and feels that the goal of caring for aging parents is noble.

However, Council Member Page did not find the Planning and Zoning Commission's decision to be arbitrary or capricious. The record indicates well-reasoned logic that includes code citations and options for the applicant to accomplish the stated goal. With regard to the requested sidewalk waiver, he pointed out that the Garden City Comprehensive Plan identifies desires related to sidewalks 25 times. Specific sections of the Comprehensive Plan that are examples applicable to this application include 7.1.1 and 4.3.1. He concluded that waiving the sidewalk requirement does not serve the City's Comprehensive Plan or the best interest of Garden City.

As far as subdividing, Council Member Page noted that the applicant indicated that costs are the primary deterrent. He stated that even if the City were to relieve some of the costs associated with the sidewalk, most of the cost would be associated with surveying and engineering which is otherwise required for the proposed development. He noted concerns related to the legal agreement as proposed by the appellant for the removal of the home. Council Member Page cautioned that the City Council should be very careful of the legalities of any such agreement and noted reservations for an agreement that may put the City in a position to take on the liability. He concluded that for those reasons he feels that the Planning and Zoning Commission's decision should be sustained.

Council Member Souza noted that it appears that at one point in time there may have been two lots that were combined into one lot and two homes at this location, and this tilts the appeal towards Ms. Phipps. He also noted that there were no objections, but rather support from the neighbors. Council Member Souza further indicated that he felt that it would be in poor taste to require a home to be demolished upon the passing of someone.

He noted that in addition to what Council Member Page had discussed, the City has required virtually every applicant during his tenure to build a sidewalk, therefore that

condition is not arbitrary or capricious. Council Member Souza commended everyone involved including the applicant. He expressed that the Planning and Zoning Commission is a volunteer board; of which he is certain that no member wants to intentionally harm their fellow citizens of our community, and he is certain that these decisions do not come about easily for anyone. He concluded that he agrees with the Planning and Zoning Commission's decision. He encouraged the applicant to address the City Council with financial hardships related to the subdivision fees assessed by the City. Provided that hardship is identified, he would be likely to be in favor of granting relief.

Council Member Jorgensen noted that the staff has been consistent in every communication advising the applicant on the options available since 2016. She felt that the Commissioners were very thoughtful in their deliberation and approach. She stated that this is clearly a very difficult situation, but we must be conscious about setting precedent, the future of the City, and long-term goals of the community. Council Member Jorgensen noted that she would be in favor of a potential fee relief review. She concluded that she felt that the Planning and Zoning Commission did not error, and she would affirm the Planning and Zoning Commission's decision.

Accordingly, on October 26, 2020, Council Member Jorgensen moved to **affirm** the Planning and Zoning Commission's Findings of Fact, Conclusions of Law, and Decision. Council Member Souza seconded the motion. The Motion passed on a 3/0 vote. The Garden City Council has reviewed the appeal and concludes the Planning and Zoning Commission did not error in the required conditions of approval.

## DECISION

WHEREFORE, based upon the foregoing opinion, the City Council affirms the Planning and Zoning Commission's findings of fact, conclusions of law, and decision. 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.

Teresa Jorgensen, James Page, and Jeffrey Souza **CONCUR**.

Dated this 9<sup>th</sup> day of November 2020

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