

BEFORE THE PLANNING AND ZONING COMMISSION  
GARDEN CITY, ADA COUNTY, IDAHO

In the Matter of:	)	VARFY2019 - 2
	)	
Variance 520 E. 47 <sup>th</sup> Street Garden City, Ada County, Idaho	)	FINDINGS OF FACT, CONCLUSIONS OF LAW; AND DECISION
	)	
	)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on August 21, 2019. The Planning and Zoning Commission reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law and Decision:

**FINDINGS OF FACT**

1. The applicant is Mark Butler, Land Consultants, Inc.
2. The property owner of record is Dillon Boise, LLC
3. 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.
4. 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
5. The subject properties are 2.26 acres in total size.
6. The project is located in the Garden City C-2 General Commercial Zoning District.
7. The project is located in the Transit Oriented Development Node Buffer of the 2006 Garden City Comprehensive Plan Land Use Designation.
8. The existing use on the site is: Wrecking Yard.
9. Current access to the site is from E. 48<sup>th</sup> Street.
10. The following sections of the Garden City Municipal Code apply to this proposal:

<b>The findings are drafted both favor of and against approval of the decision. The Commission's decision will be determined at the hearing.</b>			
<b>GCC 8-6B-9 VARIANCE: REQUIRED FINDINGS</b>			
Compliant			
Yes	No	N/A	City Standards and Conclusion

X	X	<p>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)</p> <hr/> <p>Conclusion:</p> <p>IN APPROVAL: The properties are 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). The record demonstrates the location of the property adjacent to residential uses requires additional screening more than the same use in a different location.</p> <p>IN DENIAL: The properties are not 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). The record demonstrates that the applicant has been able to enjoy the continued use of the property as a wrecking yard without a need to stack cars over 8' in height.</p> <p>The record does not contain evidence justifying a 0' setback for the fence.</p>
X	X	<p>Finding: The need for the variance is not the result of the actions of the applicant or property owner;</p> <hr/> <p>Conclusion:</p> <p>IN APPROVAL: The need for the requested variances are not the result of the actions of the applicant or property owner. The need arises from the requirements to comply with Garden City Code.</p> <p>IN DENIAL: The need for the variance is the result of the actions of the applicant or property owner. The record demonstrates that the use has not historically stacked cars over 8' in height since at least 1986 and documented in 1995.</p> <p>The actions of the property owner in 1986 and 1995, as substantiated by correspondence with the City at these</p>

		<p>times, demonstrates the property owner did not identify a need to stack cars over 8' tall. Instead, the property owner requested a variance in 1986 for an 8' tall fence. On August 17, 1995 the property owner document compliance with the 8' fence requirements of GCC 8-7-5 in association with a zoning certificate request. The 1995 documentation does not indicate a desire for a 12' fence height.</p> <p>The record does not contain evidence justifying a 0' setback for the fence.</p>
X	X	<p>Finding: The variance will not unreasonably diminish either the health, safety or welfare of the community neighborhood;</p> <p>Conclusion:</p> <p>IN APPROVAL: The variance does not unreasonably diminish the health, safety or welfare of the community neighborhood. The record demonstrates the fence height and setback meet this finding.</p> <p>IN DENIAL: The variance unreasonably diminishes the health, safety or welfare of the community neighborhood. The record does not contain evidence that the fence height and setback meet this finding.</p>
X	X	<p>Finding: The variance is the only reasonable alternative to overcome the undue hardship;</p> <p>Conclusion:</p> <p>IN APPROVAL: The variance is the only reasonable alternative to overcome the undue hardship. The variance is necessary to adequately screen vehicles.</p> <p>IN DENIAL: The variance for a 12' fence height is not the only reasonable alternative to overcome the undue hardship. The property owner has created the undue hardship by stacking cars taller than 8' in height, in excess of the historical use of the property dating to 1986. Documentation from 1986 and 1995 demonstrate the use has consistently stacked cars to 8' in height and has never previously requested a variance for a 12' fence height.</p> <p>The record does not contain evidence justifying a 0' setback for the fence.</p>
		<p>Finding: The variance is the minimum relief necessary to allow reasonable use of the subject property;</p>

			<p><b>Conclusion:</b></p> <p><b>IN APPROVAL:</b> The variance is the minimum relief necessary to allow reasonable use of the subject properties. The requested variances are necessary to adequately screen the use from view.</p> <p><b>IN DENIAL:</b> The variance for a 12' fence height is not the minimum relief necessary to allow reasonable use of the subject properties. Documentation from 1986 and 1995 demonstrate the applicant has enjoyed reasonable use of the subject properties without a need for additional relief beyond the 8' fence.</p> <p>The record does not contain evidence justifying a 0' setback for the fence.</p>
--	--	--	---

12. Other studies, plans or approvals reviewed include:

Comments from Other Departments and Agencies	Noted	<p><b>IN APPROVAL:</b> This approval includes a condition requiring compliance and approval from applicable agencies.</p> <p><b>IN DENIAL:</b> This part of the decision does not apply to a denial.</p>
--	-------	--

13. A copy of the application and plans was transmitted to interested and affected public agencies and no written comments were received.

14. The record contains:

- a. Application Materials
- b. Letter of Application Acceptance
- c. Agency Review Transmittal
- d. Radius Notice
- e. Legal Advertisement in Idaho Statesman
- f. Affidavit of property posting
- g. Staff report, and referenced materials
- h. City Council Hearing Minutes dated November 12, 1986
- i. Letter from Robert Under, Garden City Public Works Director, dated November 14, 1986
- j. Letter from property owner in response to November 14, 1986 letter, undated
- k. Letter of intent for Zoning Permit 95-08-10 dated August 18, 1995.
- l. Garden City Code 8-7-5 in effect on November 14, 1986 (Ordinance 443)
- m. Garden City Code 8-7-5 in effect on August 18, 1995 (1988 Code)
- n. Planning and Zoning Commission Hearing Sign Up Sheet
- o. Signed Findings of Fact, Conclusions of Law, and Decision

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. **This section will be completed after the hearing.**

### **CONCLUSIONS OF LAW**

The Planning and Zoning Commission reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets/does not meet** the standards of approval under **GCC 8-6B-9 Variance**.

### **DECISION**

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission hereby **APPROVES/ DENIES** of the application subject to the following conditions:

**Conditions for an approval are in Grey**

**Conditions for a denial are in Red.**

#### **Scope of Decision**

1. The scope of the decision is for:
  - a. Variance allowing a 12' fence height as depicted in the application materials
  - b. Variance allowing a 0' setback on the front and side property lines as depicted in the application materials

#### **Prior to Construction**

1. A building permit for the fence shall be applied for and approved by Garden City Development Services Department.

#### **General Requirements**

1. 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 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.
2. This Conditional Use Permit shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to a permit, the permit shall be granted to the applicant and successors in interest to the premises for which it was approved.

3. This approval is only approval of the conditional use permit. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
4. The approval is specific to the application provided and reviewed. Final approval is based on substantial conformance. 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.
5. Final approval is subject to the approval of other reviewing agencies and City Departments. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail.
6. 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.
7. Unobstructed easements, including but not limited to, drainage, water, and sewer easements shall be provided as required by the City Public Works or Planning Official.
8. The property owner is responsible to maintain the site to edge of roadway asphalt.
9. If there are any tree grates, they shall be widened to accommodate the growing tree trunk and prevent girdling of any trees planted in tree wells within sidewalks or other public right of way.
10. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead and diseased plant materials shall be replaced.
11. 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.
12. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
13. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan.
14. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
15. 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.
16. 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. 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.
17. The landscape installation shall stabilize all soil and slopes.
18. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
19. This approval is for this application only. Additional permits, licenses and approvals may be necessary.
20. Property maintenance standards shall be maintained as required by Garden City Code.
21. The property owner is responsible for the maintenance of all landscaping and screening devices required.

22. Cross-Connections: All cross-connections between the domestic water lines and the irrigation water lines shall be in accord with the City's adopted standards, specifications and ordinances.
23. 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.
24. No change in terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his or her authorized representative and an authorized representative of the reviewing agency. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Garden City.
25. The Commission may revoke a conditional use permit for any of the following: A) Violation of Garden City Code or State or Federal Laws; B) Failure to abide by any conditions of this permit; C) Causing or allowing a nuisance as determined by Garden City Code, in connection with the use for which the permit is granted.
26. Any violation of the conditions of this application is a criminal offence.
27. The Commission may revoke a conditional use permit for any of the following: A) Violation of Garden City Code or State or Federal Laws; B) Failure to abide by any conditions of this permit; C) Causing or allowing a nuisance as determined by Garden City Code, in connection with the use for which the permit is granted.
28. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
29. All previous uses are null and void unless otherwise conditioned.
30. This approval shall become null and void if a building permit or certificate of occupancy has not been issued within one year of the approval. An extension may be granted by the Commission upon findings that the application and or the applicable City regulations have not changed. Such extension shall be applied for sixty (60) days prior to the expiration date for the original approval; only one extension of not more than three hundred sixty five (365) days shall be granted.
31. Should there be a change in use, there is a clear intent to cease the use, or the use is discontinued for more than one year without written documentation submitted to the City, legal noticing, and property posting indicating intent to continue the use, this approval shall become void.
32. There is a 10 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within ten (10) days after the action of the decision.
33. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
34. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
35. A takings analysis pursuant to Idaho Code may be requested on final decisions.
36. 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.

---

Chairman, Planning and Zoning Commission

Date

**IN DENIAL:**

1. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within 15 days after the action of the decision.
2. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
3. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
4. A takings analysis pursuant to Idaho Code may be requested on final decisions.
5. 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.

---

Chairman, Planning and Zoning Commission

Date