

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

THIS IS NOT A PREDETERMINED DECISION. ALL EVIDENCE WILL BE CONSIDERED. A DIFFERENT DECISION MAY RESULT IN AN UPDATE OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, OR CONDITIONS.

In the Matter of:)	VARFY2023-0001
)	
Variance)	FINDINGS OF FACT,
2900 W. Chinden & 2288 N. Garden St.)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
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THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on January 18, 2023. The Planning and Zoning Commission reviewed the application and materials submitted. Based on the evidence presented, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. A variance shall be allowed only upon the approval of an application by the commission, subject to the requirements of Garden City Code, a showing of undue hardship because of unique physical characteristics of the site, and that the variance is not in conflict with the public interest.
2. A variance shall apply only to requests to vary from the requirements of Garden City Code, Title 8, with respect to lot size, coverage, width, and depth; front, side, and rear setbacks; parking spaces; building height; and all other provisions of this title affecting the size and shape of a structure or the placement upon properties.
3. The applicant is Sean Connor.
4. The property owner of record is Riverside Hospitality LLC and Oregon Trail Landmark LLC.
5. The location of the project is located at:
 - a. 2900 W. Chinden Blvd.; Ada County Assessor's Parcel # R2734541992; described as PAR #1992 OF BLKS 38-41 & VAC ST ADJ FAIRVIEW ACRES SUB #5 PARCEL B ROS 12693 #1990S; and
 - b. 2288 N. Garden St.; Ada County Assessor's Parcel #S1004336415; described as PAR #6415 @ CTR W POR SW4SW4 SEC 4 3N 2E #336410-B.
6. The application is a variance to code section 8-2B-3 Form Standards.

7. The subject properties are 12.95 acres and 1.44 acres.
8. The project is located in the C-1 Highway Commercial & C-2 General Commercial zoning district.
9. The project is located in the Green Boulevard Corridor and the Live-Work-Create designations of the Garden City Comprehensive Plan Land Use Designation.
10. The project is not located in the floodplain according to the 2003 FIRM.
11. The project is located in the floodplain according to FEMA's most recent modeling of the Lower Boise River.
12. The existing use on the site is Lodging and Eating Establishment, Full Services.
13. Agency Comments were received from:
 - a. City Engineer; dated January 7, 2023
 - b. Department of Environmental Quality; dated January 4, 2023
14. No public comments were received.
15. The following standards apply to this proposal:
 - a. Garden City Code 8-6B-9: Variance
 - b. Garden City Code 8-6A: Administration – General Provisions
16. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

Variance			
Provided			
Yes	No	NA	
X			Compliance Statement
X			Neighborhood Map
X			Site Plan
		X	Verification that address is an Ada County Approved Address

17. Additional application materials submitted include:
 - a. Site Plan;
 - b. Construction Plans;
 - c. Landscape Plans;
 - d. Affidavit of Legal Interest (2);
 - e. Neighborhood meeting information;
 - f. Application.
18. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Neighborhood Meeting		12/15/2022
Application Received		12/19/2022
Radius Notice	01/03/2023	12/29/2022
Legal Notice	12/30/2022	12/29/2022
Property Posting Sign	01/08/2023	01/06/2023
Affidavit of Property Posting and Photos	01/11/2023	01/06/2023

19. On January 18, 2023, a public hearing before the Planning and Zoning Commission was held:

a. This section will be completed after the hearing.

20. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Agency Comments
- d. Public comments
- e. Staff report
- f. Planning and Zoning Commission Hearing Minutes
- g. Planning and Zoning Commission Hearing Audio
- h. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

21. In review of a Variance application the following findings apply:

The draft findings are written both in approval and in denial. The Planning and Zoning Commission will select the corresponding conclusions and explanations during their decision. Potential explanations have been provided			
GCC 8-6B-9 VARIANCE: REQUIRED FINDINGS			
Conclusion			
Compliant	Not Applicable to this Application	Not Compliant	Standard
X		X	Finding 1. 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>Explanation:</p> <p>In Approval: The subject 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 uniqueness of the properties involved.</p> <p>Due to the surrounding limiting pedestrian environments including the canal, The Boise River, and W. Main Street, access to Parcel 2 is constrained in such a way that creates undue hardship.</p> <p>In Denial: The subject properties are not deprived by the provision of this title of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because while the setbacks are constraining, there is still opportunity to enhance alternative pedestrian connections that which already exist.</p>
X		X	<p>Finding 2. The need for the variance is not the result of actions of the applicant or property owner;</p> <p>Explanation:</p> <p>In Approval: The need for the variance is not the result of the actions of the applicant. The zoning district regulations were not created by the applicant or property owner(s). Additionally, the size, shape, and topography of Parcel 1, 2 and the Canal creates undue hardship.</p> <p>In Denial: The need for the variance is due to the existing setbacks placed on the property by Garden City Code 8-2B-3 and the actions of the applicant by proposing to encroach into the setback. The property was obtained in its current state, and there</p>

			are existing pedestrian connections that which connect Parcel 1 and Parcel 2 over the preexisting Canal.
X		X	<p>Finding 3. The variance will not unreasonably diminish either the health, safety or welfare of the community neighborhood</p> <p>Explanation:</p> <p>In Approval: This proposal will not unreasonably diminish the health, safety, or welfare of the community. The encroachment will allow for a bridge that will, in fact enhance the pedestrian connections within the neighborhood and thus create a safer alternative while reducing the congestion of the pathways that already exist.</p> <p>In Denial: It is a general rule applied to all properties in Garden City that improvements must be made within the subject property, and not within the setbacks as identified in Garden City Code 8-2B-3.</p> <p>The variance is proposed within the 5' side setback identified within the C-1 and C-2 zoning districts.</p>
X		X	<p>Finding 4. The variance is the only reasonable alternative to overcome the undue hardship</p> <p>Explanation:</p> <p>In Approval: There is no other reasonable alternative to overcome this undue hardship.</p> <p>In Denial: The variance is not the only reasonable alternative to overcome the undue hardship. Other methods of relief include:</p>

			Construction to enhance the existing pedestrian connections along N. Garden Street and the Greenbelt.
X		X	<p>Finding 5. The variance is the minimum relief necessary to allow reasonable use of the subject property</p> <p>Explanation:</p> <p>In Approval: The variance is the minimum relief necessary to allow reasonable use of the subject property.</p> <p>In Denial: The variance is not the minimum relief necessary to allow reasonable use of the subject property. Other methods of relief include enhancing the pre-existing pedestrian connections along the Greenbelt and N. Garden Street.</p>

22. The record was reviewed in its entirety by the Planning and Zoning Commission to render the decision.

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:

IN APPROVAL

Specific Conditions

1. A cross access easement shall be granted by Settler's Irrigation to the property of Parcel 1 (Riverside Hospitality) and Parcel 2 (Oregon Trail Landmark LLC) for access between the parcels over the Canal via the bridge.
2. All comments made by the City Engineer shall be resolved and approved by the City Engineer.

3. Approval of this request includes the approval of construction within the 5' interior side setback.
 - i. The variance to code is limited to the area that which consists of the pedestrian bridge.
4. Approval from Settler's Irrigation District must be obtained prior to any construction.
5. Documents that show ownership of the channel and permissions to construct the bridge shall be submitted
6. An approved Army Corps of Engineers 404 permit, or a determination that it is not required, shall be submitted to the city prior to construction.
7. An approved Idaho Department of Water Resources stream alteration permit, or a determination that it is not required shall be submitted to the city prior to construction.
8. Documentation confirming the city has accurate, and all required affidavits of legal interest shall be submitted to the city prior to issuance of a construction permit.
9. The owners shall record an acknowledgement that the city is working with the Army Corps of Engineers on producing improvements along the river that will mitigate flood risk to the city. This acknowledgement will need to state that the owners understand that there is a chance that the mitigation efforts will affect the bridge and that the city will not be financially responsible for damages to the proposed improvements

General Requirements

1. This approval is only approval of the variance requested.
2. Any structure, building, fence, sign or use built, erected, reconstructed, used, maintained, established, existing or occupied under an approved variance as herein provided shall be deemed in conformity with the provisions of this title to the extent it complies with the provisions of said variance.
3. Approval of this variance shall not be considered as establishing a binding precedent to grant other variance requests.
4. A variance does not relieve an applicant from any of the procedural provisions of Garden City Code or policies, nor does it allow establishment of a use that is not otherwise permitted in the applicable zoning district.
5. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
6. This variance shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to the variance, the variance shall be granted to the applicant and successors in interest to the premises for which it was approved.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. Any violation of the conditions of this application is a criminal offence.
13. 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.
14. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
15. 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.
16. A takings analysis pursuant to Idaho Code may be requested on final decisions.
17. 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.

January 18, 2023

Chairman, Planning and Zoning Commission

Date

STANDARD CONDITIONS FOR DENIAL DECISION

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 within ten (10) days after the action of the decision.
2. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.

3. Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.
4. Pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code, a takings analysis 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.

January 18, 2023

Chairman, Planning and Zoning Commission

Date