



CITY OF GARDEN CITY

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File Number: VARFY2023-0001
Application Scope: Variance for Pedestrian Bridge
Location: 2900 W. Chinden Blvd. & 2288 N. Garden St.
Applicant: Sean Conner
Report Date: January 18, 2023



Staff Report
Report prepared by Hanna Veal

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A. Record Documents ([link to all file documents](#))

Individual links:

1. Application Materials
 - a) [VARFY2023-0001 Application and Materials](#)
2. Agency Comments: linked in [Section F](#)
3. Public Comments: linked in [Section G](#)
4. Noticing Documents
 - a) [City Noticing](#)
 - b) [Property Posting for Planning and Zoning](#)
5. [Draft Potential Recommendation](#)

B. Project Information

Proposed Scope of Work:

This application is for a Variance per Garden City Code 8-7A-2 Definition of Terms:

A modification of the requirements of this title as allowed by section [8-6B-9](#) of this title and enabled by Idaho Code section [67-6516](#).

The purpose of a variance is to establish procedures for the modification from the bulk and placement requirements of Garden City Code, Title 8.

The Variance provisions apply to requests to vary from the requirements of this title 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. A variance does not relieve an applicant from any of the procedural provisions of Garden City Code, nor does it allow establishment of a use that is not otherwise permitted in the applicable zoning district.

A variance shall be allowed only upon the approval of an application, 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.

Project Details:

- 1) Proposed variance is variance to Garden City Code Section:
 - a) 8-2B-3 Form Standards; To allow for the construction of the bridge structure within the 5' side setback.
- 2) The stated reason for the request is:
 - a) To allow for the construction of a pedestrian bridge between Parcel 1 (2900 W. Chinden) and Parcel 2 (2288 Garden Street) over the Canal (Settler's Irrigation District slough).

Site Conditions:

- 1) Street Address: 2900 W. Chinden and 2288 N. Garden Street
- 2) Parcel Number(s): R2734541992 & S1004336415
- 3) Subdivision: PAR #1992 OF BLKS 38-41 & VAC ST ADJ FAIRVIEW ACRES SUB #5 PARCEL B ROS 12693 #1990S& PAR #6415 @ CTR W POR SW4SW4 SEC 4 3N 2E #336410-B
- 4) Property Size: 12.95 acres & 1.44 acres
- 5) Zoning District: C-1 Highway Commercial & C-2 General Commercial
- 6) Zoning Overlay(s): None Utilized or Requested
- 7) Comprehensive Plan Land Use Map Designation:
 - a) Green Boulevard Corridor
 - b) Live-Work-Create
- 8) Legal Parcel of Record: Yes
- 9) Floodplain Designation:
 - a) The project is not in the floodplain according to the 2003 FIRM.
 - b) The project is in the floodplain according to FEMA's most recent modeling of the lower

Boise River, adapted by resolution 1083-20

- 10) Surrounding Uses within 600 feet:**
 - a) Drinking Establishment, full service
 - b) Drinking Establishment, Sapphire Room
 - c) Lodging: Riverside Hotel
 - d) Public Use: Greenbelt
 - e) City of Boise
- 11) Existing Use: Lodging – Riverside Hotel and Eating Establishment, full services**
- 12) Easements on site:**
 - a) Waterline Easement #200, 600, 045
 - b) 10' Water Easement #200, 600, 045
- 13) Site Access:**
 - a) Front: W. Main St.
 - b) Side: N. Garden St.
- 14) Sidewalks:** Attached sidewalk is installed along the 2288 N. Garden Street side and the 2900 W. Chinden side and are in good repair. There are no sidewalks along 2289 N. Garden Street.
- 15) Wetlands on site:** none identified

C. Discussion

Issue 1 – Setback variance request

This request is to allow for an encroachment into the 5' interior side setback.

This application seeks a variance for an elevated pedestrian pathway bridge to be constructed entirely within the 5' setback for about 20' of the property boundaries on both Parcels 1 & 2, over the Settler's Irrigation District slough (Canal). Both Parcels are seeking the same setback variance for their mutual benefit and the owners of the Parcels are unanimously in favor of granting a variance.

The applicant has been in contact with Settler's Irrigation District, however there is ongoing discussions regarding Settler's requirements for the construction.

The ROS has been accepted by the Idaho Department of lands for the small area of land that did not show ownership. This is still in process.

D. Decision Process

Required Decisions: The following decision processes are required for the project:

Decision	Recommendation Authority	Decision Authority
Variance	N/A	Planning and Zoning Commission

Required Findings, per [Garden City Code 8-6B-9 \(E\)](#):

In determining a decision following findings are required :

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);
2. The need for the variance is not the result of actions of the applicant or property owner;
3. The variance will not unreasonably diminish either the health, safety, or welfare of the community neighborhood;
4. The variance is the only reasonable alternative to overcome the undue hardship; and
5. The variance is the minimum relief necessary to allow reasonable use of the subject property.

Decision:

After hearing the evidence and considering the application, the decision maker shall make their decision. The decision maker shall report the facts upon which it based its conclusion, the ordinance and standards used in evaluating the application, the actions, if any, that the applicant could take to obtain a permit, and whether a permit is :

1. Granted,
2. Granted with conditions, or
3. Denied.

The decision maker may find that there is inadequate information to render a decision and may also continue the hearing for additional materials to be supplied. It is recommended that they continue the hearing to a date certain for noticing purposes.

The decision maker shall make its findings and decision no later than by the next regular scheduled meeting.

If there is a denial, state code requires that the decision maker identify what could be done to obtain approval.

Appeal of Decision:

Pursuant to [8-6A-9 Appeals](#), there is a 15-day appeal period to appeal the decision to the City Council. This period starts from the signed decision date and runs concurrently with the 15-day objection period noted above. An appeal is \$210 and must be filed on the appeal application form provided by the City. Appeals received after the 15-day appeal period will not be accepted.

E. Agency Comments

The following is a summary of the agency comments that were provided at the time of the drafting of this report. All comments are included in their entirety as a part of the record.

Agency	Comment Date	Summary
Garden City Engineer Link to comment	01/07/2023	<ul style="list-style-type: none"> • The slough is connected to gates for the Settlers Canal. Settler's has an interest in the slough. Please contact Settlers Irrigation and provide comments/approval from them for the project. • Please provide documents that show ownership of the channel or permissions to construct the bridge. How do the boundaries shown on ROS 10004 and ROS 12693 compare with the deed for the Oregon Trail Landmark LLC site? Is a disclaimer necessary from the State of Idaho Department of Lands? • Drainage from the bridge project must be accounted for the bridge deck, on both sides of the bridge and not discharge to the slough. It appears that run-off will leave the bridge deck and enter the slough. Please provide more detail. How does the project impact current grading/drainage plans for the Oregon Trail Landmark LLC property? • A storm water design report and a drainage system operation and maintenance manual for handling of storm water prepared by an Idaho licensed design professional will be required. • A site geotechnical report will be required for the design of the bridge storm water system prepared by a qualified license professional. Said report must identify the depth to seasonal high groundwater, provide a profile of encountered soils and their infiltration rates. The report also must provide a design infiltration rate recommendation for the storm water system. The storm water design must provide for at least three feet of vertical separation between the bottom of the storm water facility and the seasonal high groundwater. • The city is working with the Corps of Engineers on producing improvements along the river that will mitigate flood risk to the city. The connection of the slough at the river may require structural improvements to provide upland protection from flood waters. Care must be taken to not construct improvements that could interfere with future improvements. It appears the proposed bridge location is far enough from the river to not interfere, however the scope and limits of the proposed flood improvements are not known at this time. • It appears a Corps of Engineers 404 permit is required to perform the construction. Please provide the permit approval. • An Idaho Department of Water Resources stream alteration permit and approval of the Idaho State Land Department may be required as the bridge crosses the ordinary high water line. • The bridge proposes to connect two parcels of land with different ownership. The affidavit that has been submitted

		<p>with the application represents the hotel, but an affidavit should also be provided by Oregon Trail Landmark LLC, the landowner on the east side of the bridge.</p> <ul style="list-style-type: none"> The first page of the narrative that was provided with the application includes a discussion of the two parcels, but the limits of the two parcels do not match the county records of land ownership. The western boundary of Parcel 2 is shown as being coincident with the eastern boundary of Parcel 1. County records show a hiatus (triangular shaped) between the two parcels. Please see the comment above within "Property Ownership".
Department of Environmental Quality	01/04/2023	Standard Comments Given

F. Public Comment

None provided as of the drafting of this document.

G. Code/Policy Review

The below serves as an analysis of applicable provisions Garden City Code, Title 8, Development Code and identified applicable policies, plans, and previous approvals.

Garden City Title 8 Code Sections			
Code Section	Review Authority	Compliance Issues	Analysis/ Discussion
Title 8, Chapter 1: General Regulations			
8-1A-4 Applicability			The regulations of Garden City Code, Title 8 Development Code of the City, shall apply and govern development and use of all properties within the corporate limits of the city.
8-1B-1 Nonconforming Properties		Not Determined	There is not enough information to determine if the lot located at 2900 W. Chinden is a legal lot of record. Property deeds and descriptions will be required prior to the issuance of a building permit proving legal status.
Title 8, Chapter 2: Base Zoning District Regulations			
8-2B-1 Purpose	PZ	No compliance issues noted	The purpose of the two (2) commercial districts is to provide a full range of commercial uses and services for both the residents of Garden City and the region. Location determines the type and form of commercial uses. Activities which are more compatible with mixed use or residential uses and minimally disruptive to the neighborhood are to be located in the general commercial (C-2) district.
8-2B-2 Allowed Uses	PZ		The application proposes a bridge structure.
8-2B-3 Form Standards	PZ	Complaint upon approval	The required setbacks in C-2 and C-1 zoning districts are: Front: 5' Interior Side: 5' Rear: 5' Street side: 5'

			<p>The allowable maximum height is: n/a The minimum lot size in C-1 is 3,000sq.ft. The minimum lot size in C-2 is n/a.</p> <p>There are encroachments – The encroachments into the 5' side setback of both parcel 1 and parcel 2 would be permitted upon approval of the variance application. Said encroachment would only be permitted for the proposed bridge structure, about a 20' length of the eastern property boundary line on Parcel 1 and for the same width but on the western property boundary line of Parcel 2. The bridge structure would cross over the Settler's Irrigation District property which is the canal.</p> <p>All improvements are more than 70' from the Boise River. However, the bridge does intend to extend over the Settler's Irrigation District slough.</p>
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Title 8, Chapter 4: Design and Development Regulations

8-4A-7 Stormwater Systems	PZ	Compliant as conditioned.	<p>A draft condition of approval has been provided requiring that the stormwater systems be built in compliance with provisions of 8-4A-7.</p> <p>The City Engineer provided comments regarding the stormwater drainage systems and how they are to be constructed. Refer to engineer's comments.</p>
8-4A-9 Waterways	PZ	Compliant as conditioned	<p>The proposal does not include tiling of the canal.</p> <p>Any alteration to the Boise River or the floodway will be required to comply with an approved floodplain development permit.</p> <p>The City Engineer provided additional comments. Refer to the engineer's comments for further discussion and conditions.</p>
Title 8, Chapter 6, Article A: Administration			
8-6A-3 General Application Process	PZ	No compliance issues noted	The application was reviewed and considered complete within 30 days of submittal, a notice of application acceptance was issued to the applicant, and staff started processing the application.
8-6A-4 Required Application Information	PZ	No concerns noted	No application waivers requested pursuant to 8-6A-4A.
8-6A-7 Public Hearing Process	PZ/DRC/CC	No compliance issues noted	The applicant provided a neighborhood meeting more than one month and less than three months prior to application submittal. The City provided a radius notice, notifications to agencies with jurisdiction, and ran a legal notice in the Idaho Statesman, at least 15 days prior to the first hearing. The applicant provided an affidavit more than 7 days prior to the hearing that the property was posted more than 10 days prior to the hearing.

<p>8-6B-9 Variance</p>		<p>Compliance dependent upon the Planning and Zoning Commission's findings, conclusions, and conditions</p>	<p>A request for construction within setbacks does fall within the applicability of a variance. With that being said, code requires that certain findings must be found to grant a variance. Furthermore, the Commission can impose conditions of approval to ensure that the variance will not constitute a special privilege and is in conformance with the Comprehensive Plan.</p> <p>In order to grant a variance, the following findings must be found (the finding below are paraphrased, the findings in their entirety are found in Findings):</p> <p>Finding 1: Finding 1 requires a finding of undue hardship due to “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”.</p> <p>The application notes that the parcels are unique in shape and location, specifically noting that the entire length of the contiguous boundary between Parcels is separated by the Canal. It also notes that the property is isolated by the canal, and currently deprived of the ability to provide pedestrian connectivity.</p> <p>Despite the impacts the applicant notes, the canal area between the two parcels does not appear to have a unique size, shape, or location considering it is a waterway. It is unique in that it is larger than other waterways found within Garden City. Additionally, the size and shapes of Parcel 1 and Parcel 2 do appear unique in that they are larger parcels than what would be typically seen in Garden City.</p> <p>Parcel 2 does appear to be detached from surrounding businesses and amenities because of the canal and the City of Boise municipality boundary line. The parcel is surrounded by non-friendly pedestrian features such as the canal, W. Main Street, and arguably the Boise River.</p> <p>Finding 2: Finding 2 requires a finding that the need for the variance is not the result of actions of the applicant or property owner.</p> <p>While certainly the configuration of the lot(s) and the setbacks are not a result that stems from the action of the applicant or property owner, the Commission must also find that the need in its entirety does not stem from the result of the proposed request.</p> <p>As noted in finding 1, the limit of a variance is to a finding of undue hardship related to the size, shape, topography, or location of a property. The limits placed on a property by Garden City Code, in and of themselves, are not an undue hardship. By virtue of purchasing a property, the property owner accepts these limitations. Absent a finding of undue</p>
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			<p>hardship, the variance becomes the result of the actions of the applicant or property owner, as the intent is to exceed the setback requirements of Garden City Code 8-2B-3.</p> <p>Finding 3: Finding 3 requires that the proposed variance does not diminish the health, safety, or welfare of the community or neighborhood.</p> <p>The advancement into the setback for the length of 20' to accommodate the bridge structure needs to be tempered with a conclusion that the request will not diminish the health, safety, and welfare of the community.</p> <p>The variance if granted, would allow for the improvement of the community's health and safety, and the welfare of the neighborhood by increasing pedestrian infrastructure and connections within the City. This area of the City's Greenbelt has been notoriously noted as an area of congestion and unsafe travel conditions due to the mix of users utilizing the Greenbelt. The pedestrian bridge as proposed could alleviate some of that congestion by creating alternative pathway systems.</p> <p>A component of the project consists of extensive revegetation efforts along and within the canal which will reduce erosion and sedimentation and help to maintain if not enhance the existing ecosystem along the river.</p> <p>Finding 4: Finding 4 requires a finding that the variance "is the only reasonable alternative to overcome the undue hardship".</p> <p>It must be determined that building within the code required setback is reasonable, and that there is not another reasonable alternative.</p> <p>The term "reasonable" is not defined in Garden City Code. 8-1A-4 requires the latest Merriam-Webster Dictionary definition: Reasonable: Not extreme or excessive; moderate or fair; inexpensive.</p> <p>Potential alternatives to overcome the undue hardship would include enhancing the existing pedestrian connections between Parcel 1 and Parcel 2 over the Canal located at the Greenbelt and N. Garden Street. Permissions would need to be granted in such instances, as any work to the existing bridge on N. Garden Street would be within the public Right-of-way under ACHD's jurisdiction and improvements costs could be excessive. Enhancing the Greenbelt would also require permissions and might prove impossible considering the constraints of the canal, and the fact that the existing width of the pathway seems to already be maximized.</p> <p>Finding 5:</p>
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			Finding 5 requires a finding that the variance is the “minimum relief necessary to allow reasonable use of the subject property”.
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Other Items Reviewed	
Plan/Policy	Discussion/ Analysis
Idaho Code 67-6516 Local Land Use Planning Variance Definition	<p>Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.</p>
Previous entitlement that might affect this project	<p>DSRFY2022-0025 and DSRFY2022-0012. Both applications have been reviewed in the last year. DSRFY2022-0025 was the Design Review application for the bridge itself, reviewed by the Committee in November.</p> <p>DSRFY2022-0012 was for the proposed site improvements to the previously known restaurant Joes Crab Shack, now to be Ling and Loui's. The site improvements included the anticipated pedestrian bridge.</p>
Garden City Comprehensive Plan	<p>This application is in future land use designations of the Comprehensive Plan:</p> <ul style="list-style-type: none"> a) Green Boulevard Corridor b) Live-Work-Create <p>The application may be supported by:</p> <p>Goal 7. Connect the City</p> <p>Goal 12. Evolve as a Destination</p> <p>5.5.2 Develop a city-wide pathway and sidewalk plan with links to the Boise River Greenbelt. Consider linear pathways adjacent to existing waterways such as the Thurman Mill Ditch and waterways to the Settler's Canal that can link to the river and provide alternative locations for parking and river activity staging</p> <p>7.1. Objective: Create pedestrian and bicycle friendly connections.</p>

