

DEVELOPMENT SERVICES DEPARTMENT

6015 Glenwood Street • Garden City, Idaho 83714
Phone 208/472-2921 • Fax 208/472-2996

MEMORANDUM

TO: Planning and Zoning Commission
 FROM: Jenah Thornborrow, Development Services Director
 DATE: For April 20, 2016, Planning and Zoning Commission Meeting
 RE: DEV2015-00010 Appeal

The Planning and Zoning Commission serves as the review authority in appeals of decisions of the Planning Official related to Garden City Code Title 8. Appeal decisions are to consider the material contained within the record and to determine if the decision was correct based on the materials of that record. New evidence not provided within the record may warrant that the application be remanded to the original decision maker for further consideration. Garden City has adopted appeal procedures as included in your packet.

Action

The potential actions include: ***Grant the appeal, grant with conditions, or deny the appeal.***

Appellants

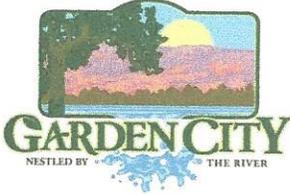
Donna Conn and Jim Neill

APPEAL

Appellants are appealing the staff decision to not approve, as submitted, Garden City File DEV2015-00010 a Land Division Amendment for the relocation of property lines Lots 28-32, Block 28 of Fairview Acres Subdivision No. 5.

The record contains the application materials submitted to Development Services Department as part of file DEV2015-00010 and also contains the additional record materials:

- Staff Review of application
- Appeal documents submitted by James Neill 3-21-2016
- Time line, as prepared by Jeff Lowe
- Memorandum from City Attorney
- Statement by Erika Akin
- Applicable Garden City Code
- Draft opinion, conclusions of law and decision of respondent



DEVELOPMENT CODE DECISION APPEAL

Permit info: DEV 2015-00010
 Application Date: 3-21-16 Rec'd by: lg.
 FOR OFFICE USE ONLY

6015 Glenwood Street ■ Garden City, ID 83714 ■ 208.472.2921 (tel.)
 208.472.2926 (FAX) ■ www.gardencityidaho.govoffice.com

APPELLANT

Name: Donna Conn & James Neill	Company: NA
Address: 207-209 E. 36th St.	City: Garden City, ID 83714
State: ID	Zip: 83714
Tel.: 208.891.7587	
E-mail: jimneillmail@gmail.com	

APPEAL

Application File No., Name and location:

Date of Decision: March 9, 2016

Whose Decision are you appealing?

Staff
 Design Review Committee
 Planning & Zoning Commission

What specific decision(s) and or conditions are you appealing? (please attach if necessary)

Denial, withholding of Lot Line Adjustment, see attached appeal and March 9, 2016, email from Thornbarron to Crawford.

How are you adversely affected by the decision? (please attach if necessary)

Unable to proceed with Lot Line Adjustment, displaced from home, required to destroy property.

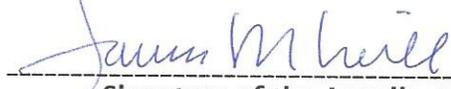
Please identify any evidence or supporting information to support your position that code was misinterpreted or misapplied. (please attach if necessary)

See attached appeal

APPLICATION INFORMATION REQUIRED

Completed Planning Submittal Form

I hereby certify that the information contained in this appeal form and in any accompanying materials is correct to the best of my knowledge. I further understand that unless directed otherwise by body deciding the appeal, the appeal will be on the record of which the decision was made.

 3-21-16

 Signature of the Appellant (date)

**BEFORE THE CITY COUNCIL
GARDEN CITY, IDAHO**

RECEIVED

MAR 21 2016

In re: Appeal of Donna Conn :
and James Neill :

The Appellants Donna Conn and James Neill hereby appeal the decision of Garden City Planning and Zoning Staff that a residential mobile home must be removed as a condition precedent to the approval and release for recording of a Lot Line Adjustment on land of Appellant Donna Conn, and in support thereof aver as follows:

1. Appellant Donna Conn is owner of property on 36th Street, known as Lots 28-32, Block 28, Fairview Acres Subdivision No. 5, comprising five lots, 50 feet wide and approximately 148 feet deep.
2. Appellant James Neill is owner in equity of a portion of the said property.
3. Donna Conn has owned the property with her late husband Harold since the 1960s. The Conns operated a trailer court or mobile home park in conformity with Village of Garden City and later City of Garden City rules. Harold was a member of city council, and Donna was involved in civic affairs in a number of capacities. The husband and wife owners were aware of city rules and regulations as they changed over the decades. They paid all applicable fees and taxes for the operation and ownership of their property.
4. Donna Conn is now in her eighties. She has polio and uses a walker and wheelchair. She recently had a fall and broke her hip, and is recovering from hip replacement surgery, and facing additional health problems.
5. Harold Conn has passed away. The trailers and other improvements on the property have deteriorated, due to age and lack of money, and difficulty in maintaining them.
6. In recent years, the city began threatening legal action and penalties against Conn for the condition of the trailers and the property. By virtue of changes in city rules over four decades, the trailers or mobile homes were no longer in conformity with the rules, but rather were grandfathered and protected from fluctuating regulatory systems as non-conformities. City officials found other alleged faults. Conn removed a trailer, displacing a long term resident and her last tenant. The remaining trailers and other structures were used by Donna Conn herself, her adult daughter and son, and grandchildren, as residences, office and storage use. The son's trailer was destroyed by fire, and he and his family do not reside at the property. The A-frame building was removed.

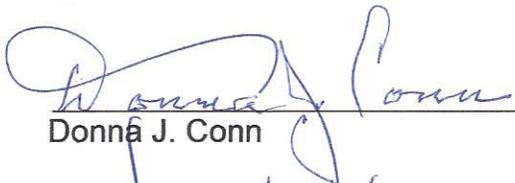
12. The key to the three-step plan was the Lot Line Adjustment, a process enacted and provided by city code by which existing lots can be adjusted in size and shape, so long as no new lots are created. The Lot Line Adjustment process can take as little as one to two weeks, since it is approved by the city engineer and does not require the delays of advertising and public meetings.
13. The Lot Line Adjustment was prepared and submitted in or about November or December 2015, and a meeting held with city planning staff. Planning staff congratulated the applicants on the design of the Lot Line Adjustment in that, among other things, it involved only one driveway on 36th Street, used an existing driveway apron, created rear-loaded lots with no front-facing garages, was compatible with the city's vision of a semi-commercial quality for 36th Street and otherwise.
14. The city thereafter communicated to the applicant Conn that one of the trailers must be removed as a condition to the approval of the Lot Line Adjustment.
15. In all the previous years of communication regarding the height of grass in her lawn (which is mowed and well maintained) or other condition of her property, the city had never alleged it could require the removal of a protected non-conforming use.
16. The basis for required removal was that the Lot Line Adjustment would place a lot line through the trailer. But, for one thing, the supposedly objectionable trailer already had a lot line through it at the time of application. Moreover, there were likely a number of other existing code violations (protected non-conformities and otherwise) that related to use, setbacks, build-to lines, parking ratios, etc., that city staff was not raising, so what elevated lot line location above other code sections? For another, the whole purpose of the Lot Line Adjustment process was to allow the removal of the trailer and the construction of new conforming structures.
17. Despite the illegal, irrational, factually erroneous and otherwise objectionable qualities of the city's refusal to approve the Lot Line Adjustment, the appellants determined that the expense and costs of delay involved in an appeal outweighed the expense and costs of delay involved in removing the trailer. Appellant Conn therefore emptied the trailer, placing items in storage and in their residences, all at considerable inconvenience and expense, and appellant Neill had the trailer demolished and removed in or about early February, 2016.
18. The demolished trailer was the trailer in which Donna Conn had resided with her late husband Harold. It was a sturdy, well-built trailer with "Alaska

Pack” insulation which had been the family home for many years. It contained many family memories. Instead of completing a move from that trailer into a new home, Donna Conn now lives in a smaller trailer at previous times used as an office. The other remaining trailer on the property is occupied by Donna Conn’s daughter and grandchildren, and one great-grandchild.

19. The appellants thereafter re-submitted the Lot Line Adjustment (attached as Exhibit A), and awaited its signature by the acting city engineer. By email of March 9, 2016 (attached as Exhibit B), the city staff, by development services director Jenah Thornborrow, advised appellants engineer that an additional trailer—one of the two remaining, occupied as family residences—would have to be removed before the Lot Line Adjustment would be approved. Despite statements to the contrary, this was the first time the removal of two trailers was raised as a requirement or condition of approval.
20. The city code does not require surrendering non-conforming rights as a condition for an otherwise by-right application. Instead, the city code has narrow restrictions on non-conformity, such as reconstruction after damage, none of which are applicable here.
21. A Lot Line Adjustment is to be signed by the city engineer, or in this case acting city engineer, and not by the development services director, and the development services director has no power to impose conditions, and any such conditions are illegal.
22. The city staff decision traps appellant Conn in a non-conforming use, while complaining that there is a temporary non-conformity during the transition to conforming use.
23. The city staff decision artificially and illegally freezes the time of analysis to a temporary interim period. Contrary to the erroneous facts assumed by city staff, the appellants’ application is for a lawful and conforming use, and only asks that appellant be permitted to occupy her non-conforming residence while the adjusted lots are sold and the new house built.
24. The city staff decision artificially and illegally contributes to wealth transfer, suffocating lower income property owners, making them die or remain indigent in their homes, making their property available to developers at distress prices.
25. The city staff decision would require appellant Conn to incur the cost and disruption of moving off her property during a time of infirmity and recovery from surgery, and then moving back.

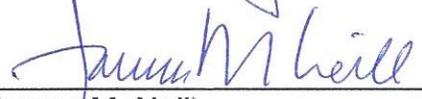
- 26. The staff decision is dribbled out in series, rather than communicated as a single intelligible set of comments or objections, which process is illegal, arbitrary, and irrational. The constant addition of conditions leaves applicant appellants with no assurance that additional conditions will not be imposed.
- 27. The staff decision has cost the appellants months of delay already, and should have been signed within a week of presentation, which delay and cost has threatened appellants health and ability to preserve and dispose of family assets and property.
- 28. The Lot Line Adjustment will facilitate the construction of five houses, with an approximate average value of \$200,000 to 250,000, a total of one million dollars or more in tax ratables. The delay has cost the city and other taxing bodies, including ironically the Redevelopment District in which the property is located, many thousands of dollars at the time of filing this appeal, all regarding the director's application of erroneous law to a temporary, interim condition of the proposed redevelopment of this property.
- 29. The decision of the director is in violation of Garden City Code, the Americans with Disabilities Act, and other statutory provisions, deprives appellants of rights and property protected by federal and state constitutions, and is otherwise arbitrary, capricious, irrational and contrary to law.

WHEREFORE, the appellants Donna Conn and James Neill respectfully request the decision of the director be overturned, and that the Lot Line Adjustment be immediately approved as submitted, without additional conditions or requirements of any kind, and released to appellants for recording in accordance with law.



 Donna J. Conn

Date: 3-21-16



 James M. Neill

Date: 3-21-16

RECEIVED
MAR 21 2016

Gmail

COMPOSE

Inbox (1,843)

Starred

Important

Sent Mail

Drafts (1)

Personal

Travel

More

 Jim

No Hangouts Contacts

[Find someone](#)



Just got this from Jenah.....

From: Jenah Thornborrow [mailto:jthorn@GARDENCITYIDAHO.ORG]
Sent: Wednesday, March 09, 2016 4:50 PM
To: David A. Crawford
Subject: Donna Conn property

Dave,

Jeff has passed along your correspondence.

The Lot Line Adjustment for Donna Conn's property was submitted on Decem

On December 14, 2015, he and Erika Akin met with Jim Neil. The meeting v following items were discussed:

- o The City could not approve the Lot Line Adjustment where
- o The City could not approve the Lot Line Adjustment where be on the same lot. Two mobile homes on one lot is not per
- o The City could not issue a building permit on a property u
- o The discussed cross access easement not depicted on the

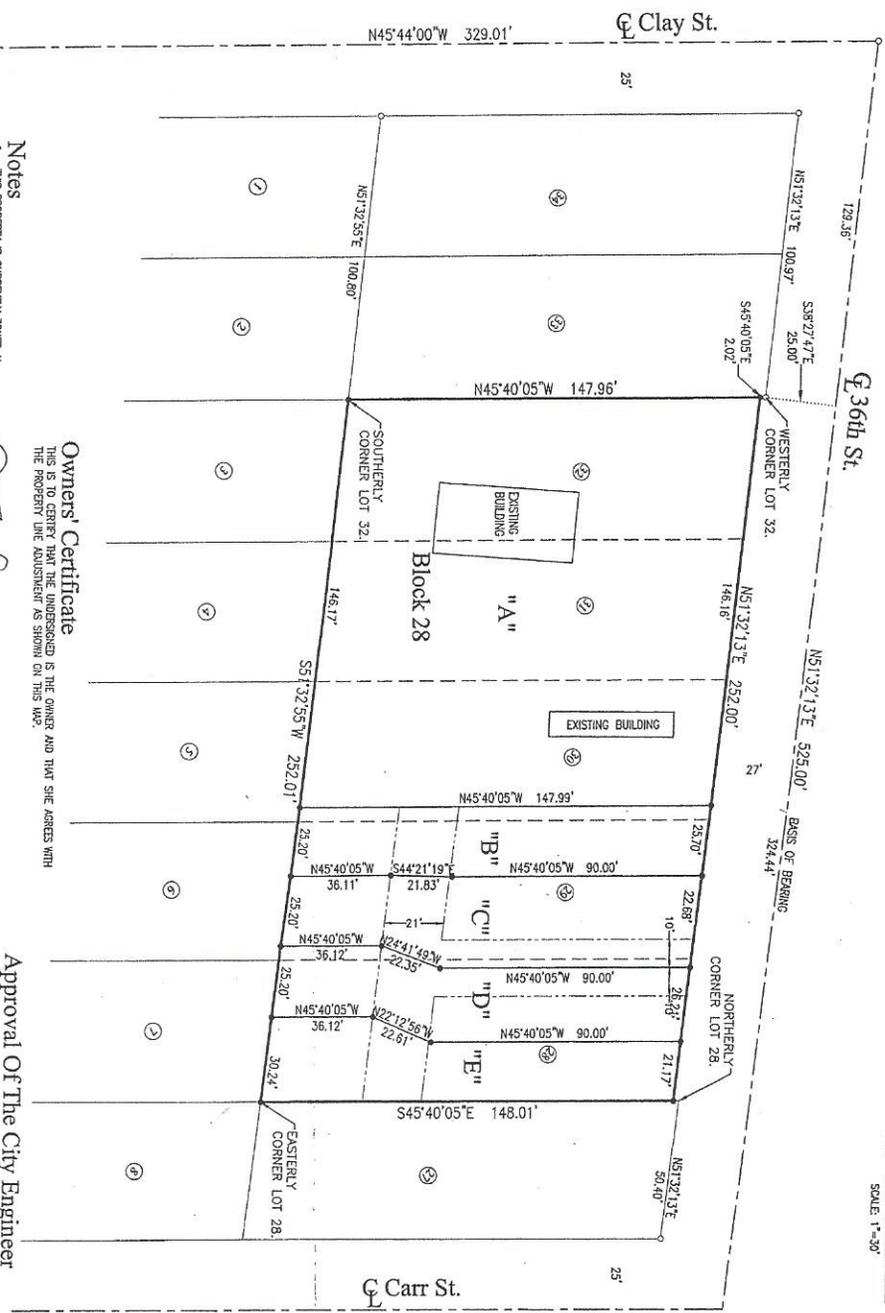
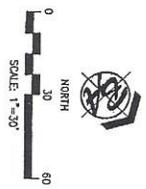
Jeff and Erika briefed me the same day.

I understand that you may not have been present at the meeting, however, th understand that you feel that the condition is arbitrary, however, staff does no

Sincerely,

Jenah E. Thornborrow, AICP
Development Services Director
[\(208\) 472-2924](tel:(208)472-2924)
Fax: [\(208\) 472-2996](tel:(208)472-2996)
web: gardencityidaho.org

Ex. B



- Legend**
- ACCESS EASEMENT
 - PROJECT / PROPERTY BOUNDARY
 - NEW PARCEL LINE
 - STREET CENTERLINE
 - EXISTING LOT LINE TO BE MOVED
 - EXISTING FENCE
 - ORIGINAL LOT NUMBER
 - PARCEL DESIGNATION
 - FOUND 1/2" PIN
 - SET 1/2"x2" IRON PIN WITH PLASTIC CAP LABELED B&A LS 4116

County Recorder's Certificate

STATE OF IDAHO)
 COUNTY OF ADA) INSTRUMENT NO. _____
 I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE
 OFFICE OF THE COUNTY CLERK OF SAID COUNTY, IDAHO, ON
 THIS _____ DAY OF _____, 2016,
 AT _____ O'CLOCK _____ M.,
 FOR RECORDING.
 EX-OPTION RECORDER: CHRISTOPHER D. RICH
 DEPUTY: _____

**Record of Survey
 Property Line Adjustment For:**

Donna Com

LOTS 28 THROUGH 32, BLOCK 28, OF PARKWAY ACRES SUBDIVISION NO. 5, AS SHOWN
 IN BOOK 11, PAGE 616, RECORDS OF ADA COUNTY, IDAHO STATE, DISTRICT 2, EAST, BASE
 SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 3 NORTH, RANGE 7 EAST, BISE
 MERRIDAY, ADA COUNTY, GARDEN CITY, IDAHO.

DATE: FEBRUARY 21, 2016
 SURVEY BY: KAY CHAMBERLAIN
 DRAWN BY: KAY CHAMBERLAIN
 JOB NUMBER: NUD9
 INDEX NO. 02-5-2-0-0-11-619

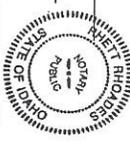
Owner's Certificate

THIS IS TO CERTIFY THAT THE UNDERSIGNED IS THE OWNER AND THAT SHE AGREES WITH
 THE PROPERTY LINE ADJUSTMENT AS SHOWN ON THIS MAP.

Donna A. Com
 DONNA A. COM
 DATE: 2-25-16

Acknowledgment

ON THIS 24th DAY OF February, in the year of our Lord 2016, before me the undersigned,
 personally appeared DONNA A. COM, known or identified to me to be the person
 whose name is subscribed to the within instrument and acknowledged to me that
 she executed the same.
 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THE DAY AND YEAR IN THIS
 CERTIFICATE FIRST ABOVE WRITTEN.



Approval Of The City Engineer

I, THE UNDERSIGNED CITY ENGINEER IN AND FOR THE CITY OF GARDEN CITY, ADA
 COUNTY, IDAHO, HEREBY APPROVE THIS RECORD OF SURVEY AND THAT IT IS IN
 CONFORMANCE WITH GARDEN CITY CODE RELATING TO LOT LINE ADJUSTMENTS.

ACTING CITY ENGINEER - GARDEN CITY, IDAHO _____

Surveyor's Certificate

I, KAY CHAMBERLAIN, A PROFESSIONAL LAND SURVEYOR, LICENSED BY THE STATE
 OF IDAHO, HEREBY CERTIFY THAT THIS SURVEY HAS BEEN PREPARED FROM A SURVEY
 MADE ON THE GROUND UNDER MY SUPERVISION AND THAT I AM AWARE OF ALL
 AN ACQUAINTANCE REPRESENTATION OF SAID SURVEY, AND I AM IN CONFORMANCE WITH THE
 CORNER PERPETUATION AND PLANS ACT OF IDAHO CODE 55-1601 THROUGH 55-1612.



- Notes**
1. THIS PROPERTY IS CURRENTLY ZONED M.
 2. ALL EXISTING BUILDINGS ARE ACCURATELY
 LOCATED.
 3. THIS RECORD OF SURVEY IS BEING FILED TO
 ADJUST THE PROPERTY LINES BETWEEN LOTS 28
 THROUGH 32, BLOCK 28, AS SHOWN HEREON.

Reference Documents

SUBDIVISION PLATS
 PARKWAY ACRES SUBDIVISION NO. 5
 RECORDS OF SURVEY
 BOOK NO. 424
 PAGE NO. 5796
 INSTRUMENT NO.
 DEED TO THE ADA COUNTY
 HIGHWAY DISTRICT NO. 112855381

B&A Engineers, Inc.
 Consulting Engineers, Surveyors & Planners
 5505 W. Franklin Rd. Boise, Id. 83705
 (208) 343-3381

EX. A-1

50th St.

N51°32'13"E 525.00' BASIS OF BEARING
324.44'

WESTERLY CORNER LOT 32.

NORTHERLY CORNER LOT 28.

S38°21'47"E 25.00'
S45°40'05"E 2.02'

N51°32'13"E 252.00'

N51°32' 50.4'

N45°40'05"W 147.96'

N45°40'05"W 147.99'

S45°40'05"E 148.01'

SOUTHERLY CORNER LOT 32.

E 100.80'

S51°32'55"W 252.01'

146.17'

25.20'

25.20'

25.20'

25.20'

30.24'



Block 28

"A"

"B"

"C"

"D"

"E"

(2)

(3)

(4)

(5)

(6)

(7)

(33)

(32)

(31)

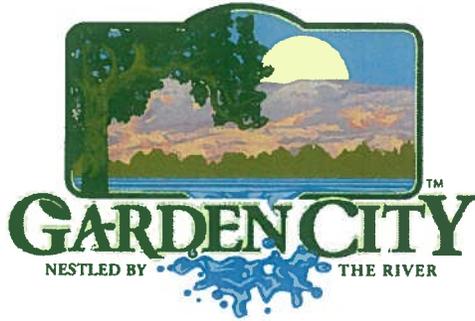
(30)

(29)

(28)

EA: CC

Ex. A. 2



CITY OF GARDEN CITY

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

BEFORE THE GARDEN CITY COUNCIL August 24, 2015

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

APPEAL OF **JIM NEILL**: RE DECISION OF THE DEVELOPMENT SERVICES PLAN REVIEW STAFF OF THE CITY OF GARDEN CITY, DECISION TO NOT APPROVE APPLICATION, DEV2015-00010 A LAND DIVISION AMMENDMENT, AS SUBMITTED.

Jim Neill for appellant

Jenah Thornborrow for respondent

Charles Kennedy, Planning and Zoning Commission Chair

Jim Neill appeals the staff decision to not approve, as submitted, Garden City File DEV2015-00010 a Land Division Amendment for the relocation of property lines Lots 28-32, Block 28 of Fairview Acres Subdivision No. 5.

BACKGROUND

On December 10, 2015 the applicant applied for a Land Division Amendment relocating the property lines of Lots 28-32, Block 28 of Fairview Acres Subdivision No. 5.. Upon review of the submittal Garden City Development Services staff member, Jeff Lowe, determined that the application could not be approved, as it is not compliant with Garden City Code. Garden City staff members Jeff Lowe and Erika Akin met with the applicant on December 14, 2015 to discuss Lowe's concerns. The concerns noted were:

- The City cannot approve the relocation of property lines wherein the new property lines are drawn through a structure.
- Two mobile homes on one lot is not permitted. The City cannot approve the relocation of property lines wherein the property line is moved such that two mobile homes previously on separate lots would now be on the same lot.
- The City could not issue a building permit on a property upon which sits a non-conforming use.
- The cross access easement not depicted on the record of survey.

On March 4, 2016 a Mylar was submitted. The applicant had addressed the property lines through the structure by removing the structure. The other items had not been addressed. On March 9, 2016 staff indicated that the Mylar could not be approved. On March 21, 2016 the City received an appeal of the

decision.

ACTION TO BE TAKEN

The Planning and Zoning Commission is tasked with determining whether or not Garden City Staff made the decision in accordance with applicable laws and regulations. The Commission makes its decision on the record presented in the application and supplemental evidence provided by the appellant or respondent as a part of this appeal.

The record contains the application materials submitted to Development Services Department as part of file DEV2015-00010 and also contains the additional record materials:

- Staff Review of application
- Appeal documents submitted by James Neill 3-21-2016
- Time line, as prepared by Jeff Lowe
- Memorandum from City Attorney
- Statement by Erika Akin
- Applicable Garden City Code
- Draft opinion, conclusions of law and decision of respondent

The Planning and Zoning Commission decision may include, in part, or entirety, the action to ***grant the appeal, grant with conditions*** and/or ***deny the appeal***.

EVIDENCE FOR APPEAL

The evidence provided by the appellant to support the appeal is included in the appeal documents received by Garden City on March 21, 2016.

ANALYSIS

The proposed Record of Survey for the Lot Line Adjustment depicts the combining of Lots 30, 31, and 32 Block 28 of Fairview Acres Subdivision No. 5 into Parcel "A" which would result in two mobile homes being located on the same Parcel. The result would be a mobile home utilized as an accessory dwelling unit, and an accessory structure located in front of a primary use, both of which are not permitted by Garden City Code (GCC8-2B F.5; GCC 8-2C-2; GCC 8-4J).

If the City were to approve the Record of Survey as proposed, the result would be the creation of a Non-conforming Use and therefore the City would be violating the Code. As stated in Garden City Code (GCC 8-1A-4), no person or public agency may undertake a modification to a division of property unless it is compliant with the Code. Since it is unlawful to violate the Code, the City could not approve the Record of Survey as proposed with two mobile home units located on a single parcel.

Mr. Neill's appeal does not contradict that staff accurately interpreted Garden City Code, nor does his appeal justify approving an application that is in violation of Garden City Code.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

FINDINGS OF FACT

1. The owner of record is Donna J. Conn.
2. The owner as identified in the application materials is Donna Conn and Jim Neill.
3. The location of the project is 205, 209, and 211 E. 36th Street; Lots 28-32, Block 28 Fairview Acres Subdivision No. 5.
4. The property is located in the M zoning district.
5. This project is not in the floodplain as designated by the adopted FEMA FIRM maps.
6. No easements are apparent on the property.
7. The following section of the Garden City Code apply to this proposal:
 - 7-2-3 International Residential Code Amendments
 - 8-1A-4 Applicability
 - 8-1B-3 Nonconforming Uses
 - Table 8-2B-2
 - 8-5a Land Division Regulations Article A. General Provisions And Standards
 - 8-5c-1: Land Division Amendments
 - 8-6a-2 Duties And Authority
8. The record contains:
 - a. Application Materials received December 10, 2015
 - b. Appeal application and exhibit materials received March 21, 2016
 - c. Appeal Noticing Documents
 - d. Staff plan review
 - e. Time line of events
 - f. Memorandum from Garden City Attorney
 - g. Draft opinion of respondent
 - h. Appeal hearing minutes and transcript of April 20, 2016
 - i. Planning and Zoning Commission Opinion and Findings of Fact, Conclusions of Law and Decision.
9. The application was received December 10, 2015.
10. On December 14, 2015 the applicant met with Garden City Development Services staff to discuss the identified issues with the application.
11. On March 4, 2016 a Mylar was submitted.
12. On March 9, 2016 staff indicated that the Mylar could not be approved.
13. An appeal was submitted on March 21, 2016.
14. Notice of Appeal was provided to the petitioner in accordance with Garden City Code 8-6A-9.
15. The Planning and Zoning Commission heard and decided the appeal of a staff level decision.
16. During the Planning and Zoning Commission Appeal Hearing on April 20, 2016:
 - a. A staff report was presented by Jenah Thornborrow.
 - b. Jim Neill represented the application.

CONCLUSIONS OF LAW

Approval of the proposed Land Division Amendment is governed by 8-5C-1 code consideration of Title 8 of the Garden City Code:

1. A property boundary adjustment shall not reduce the property size below the minimum dimensional standards prescribed by this title; or if one or more of the properties is nonconforming as to the minimum dimensional standards prescribed by this title, the property boundary adjustment shall not increase the nonconformity.

This application, as submitted, proposes the creation of nonconforming uses. However, as conditioned, the application would not result in such nonconformities.

2. A property boundary adjustment shall not increase the original number of properties, and may decrease the original number of properties.

This application will not cause an increase in the original number of properties.

3. A property boundary adjustment shall not change or move any public streets or publicly dedicated areas in any manner.

There are no publically dedicated areas adjusted by this proposal.

4. Any private or public easement shall be vacated in accord with the requirements of this title.

No easement is intended to be vacated.

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Planning and Zonings concurs with Garden City Development Services staff findings of fact and conclusions of law, and as augmented above to include the appeal. Furthermore, the Planning and Zoning Commission finds that the staff's findings, inferences, conclusions and decisions are not in violation of constitutional or statutory provisions; are not in excess of the statutory authority; are not made upon unlawful procedure; are based on substantial evidence; and are not arbitrary, capricious, or an abuse of discretion. As such the Planning and Zoning Commission **DENIES** the appeal to overturn the staff's decision that the City cannot approve application DEV2015-00010 a Land Division Amendment for the relocation of property lines Lots 28-32, Block 28 of Fairview Acres Subdivision No. 5 as submitted. The application DEV2015-00010 a Land Division Amendment for the relocation of property lines Lots 28-32, Block 28 of Fairview Acres Subdivision No. 5 is approved subject to the following conditions:

1. The applicant or owner shall have one year to complete the following tasks

- a. Cause the property to be surveyed and a record of survey recorded;
 - b. Execute and record the necessary deeds to accomplish the property boundary adjustments as approved;
 - c. Obtain new tax parcel numbers from the Ada County assessor; and
 - d. Provide copies of the recorded record of survey, recorded deeds, and the new tax parcel numbers to the Garden City Development Services Department prior to the issuance of any building permits on any of the subject lots.
2. The two remaining mobile homes on proposed lot "A" must be removed, or a surety in compliance with Garden City Codes and policies therefore, must be submitted to the City prior to the City Engineer signature of the record of survey.
 3. If the applicant utilizes a surety for the assurance that the mobile homes will be removed, a building permit, upon review and approval for compliance with applicable code, may be issued prior to the physical removal of the homes. However, a Certificate of Occupancy will not be issued on any building permit on the subject lots until after which time the mobile homes have physically been removed.
 4. Comply with City (acting) Engineer's letter dated December 30, 2016.
 5. A cross access easement shall be provided for lots B-E. The easement shall be delineated on the Property Line Adjustment Record of Survey, or a cross access easement otherwise be recorded and submitted to the City, to provide access to 36th Street for Parcels "B", "C", "D", and "E". The easement shall note that it is for ingress/egress for said Parcels and shall remain in perpetuity.
 6. No additional access on 36th Street for Parcels "B", "C", "D", "E", is permitted.
 7. All fees associated with this application shall be paid to the City prior to the release of the Property Line Adjustment Record of Survey Mylar.
 8. Upon determination by the planning official that the final property boundary adjustment is in conformance with this applicable codes and conditions, a certificate of code compliance shall be issued.

The decision of the Planning and Zoning Commission may be appealed to the Garden City Council. The decision of the Council shall be final.

Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 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.

Kent Brown, Stephanie Butler, James Page, **CONCUR.**

Dated this 20th day of April, 2016

Chuck Kennedy
Chair, Planning and Zoning Commission
City of Garden City, Idaho

April 11, 2016
MEMORANDUM

To: Jenah Thornborrow
From: Frank Walker

Re: 205 E 36th Street Lot Line Adjustment

Jenah, I have reviewed Jeff's report on this matter as well as Jim Neill's appeal documents. For the sake of brevity, I will not go over the facts since they are developed in Jeff's report.

Simply stated, the proposed lot line adjustment would violate Garden City Code by placing two residential structures on one lot. It would also create a lot line through an existing structure. Jeff's report sums it up best:

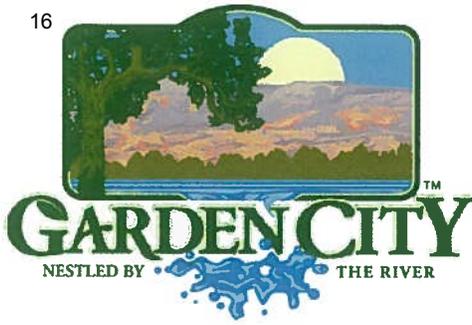
If the Property Line Adjustment were approved as presented, the result would be the *creation* of two non-conformities: a building with two property lines through it, and a mobile home utilized as an accessory structure located in front of a primary residence.

While the concept of the future development of the property is advantageous, the proposed method to construct the development cannot be achieved as proposed by the applicant. The applicant wishes to record the Property Line Adjustment Record of Survey with existing structures that are not complaint with City Code or Building Code (2012 IRC). Further, no person or public agency may undertake any development unless it complies with Garden City Code. This means that the City cannot approve a land division, or issue permits, for development that is in clear violation of the Code.

(Underline added).

In reviewing Mr. Neill's appeal, he states nothing which would contradict this or justify approving an application that violates city code. For example, a point made is "the city code does not require surrendering non-conforming rights as a condition for an otherwise by-right application." The City is not asking that anyone surrender a right. It is the applicant who is proposing something that would be illegal under the city code. A by-right application, moreover, does not create a special right to violate the code.

In conclusion, the City does not have the authority to approve an application in violation of its code. There is no discretion on this issue. The appeal should be denied.



DEVELOPMENT SERVICE DIVISION

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 Phone 208/472-2900 • Fax 208/472-2996

ADMINISTRATIVE PLAN REVIEW Lot Line Adjustment

Name of Reviewer: Jeff Lowe

Date: January 20, 2015 **REVISED MARCH 9, 2016**

FILE NO. **DEV2015-00010**

Review: Approved with conditions

This review is for compliance with applicable Garden City development code (Title 8) and laws.

1. The applicant is Donna Conn and James Neill
2. The location of the project is 205, 209, and 211 E. 36th Street; Lots 28-32, Block 28 Fairview Acres Subdivision No. 5
3. The property is located in the M zoning district.
4. This project is not in the floodplain as designated by the FEMA FIRM maps.
5. No easements are apparent on the property.

Description:

The application is to move and reconfigure the property lines among Lots 28 through 32, Block 28 OF Fairview Acres Subdivision No. 5. The number of lots will remain unchanged: from 5 Lots to 5 parcels.

Multiple structures are located on the subject parcels, not all of which appear to be depicted on the submitted Record of Survey (ROS). Of the structures depicted, one (1) structure straddles the common line of Lots 29 and 30, one structure sits wholly within Lot 30, and a third straddles the common line of Lots 31 and 32. The proposed ROS depicts two new (moved) parcel lines through the structure on Lots 29 and 30. The combining of Lots 30, 31, and 32 into Parcel "A" would result in two dwelling structures (mobile homes) being located on the same Parcel.

NOTE: A revised ROS submitted on March 4, 2016, indicates that the structure straddles the common line of Lots 29 and 30, has been removed. The previous site specific condition of approval has been removed.

Code Reference:

2012 International Residential Code (IRC): (This review does not constitute a formal review of Title 7 of Garden City Code. However, it is noted that the proposal is in conflict with the Title 7 and the 2012 IRC)

The IRC defines Lot Line – a line dividing one lot from another or from a street or any public space.

The IRC requires that building projections beyond the exterior wall shall not extend over the lot line. Therefore, a structure placed over lot lines (or lines reconfigured through an existing structure) would not meet the requirements of Fire-Resistant Construction.

Garden City Code (GCC) Title 8:

Nonconforming Structure: Any structure that legally existed prior to the adoption date of this code, or at the time of annexation or rezone, which does not conform to the site area, coverage, setback, open space, height, or other regulations prescribing physical development standards for the district in which it is located.

Setback Line: A line established by this Title, generally parallel with and measured from the lot line, defining the limits of a yard in which no building or structure may be located aboveground except as may be provided herein or in any code (fire, building, life safety, etc.) adopted by the City.

GCC Table 8-2B-2 shall be used to determine maximum building height, required setbacks, maximum lot coverage and minimum lot size standards for development in each of the respective base zoning districts. The minimum interior side building setback in the M zoning district is 3-feet and may be allowed to be 0-feet; fire-resistant construction is required.

GCC 8-2C-15 states that accessory dwelling units may not be located in front of a principal dwelling and a manufactured/mobile home is not permitted as an accessory dwelling unit.

Discussion:

Two of the three structures located at the subject site are nonconforming since they are located straddling existing property lines. Exterior walls of dwellings, garages, and accessory buildings must maintain a 5' minimum separation distance from the property line or otherwise be constructed to be fire protected. Because the subject structures are straddling property lines, they would not comply with Garden City Code or the IRC because the walls are not fire-rated and there are openings (doors and windows) within the walls.

If the Property Line Adjustment were approved as presented, the result would be the *creation* of two non-conformities: a building with two property lines through it, and a mobile home utilized as an accessory structure located in front of a primary residence.

While the concept of the future development of the property is advantageous, the proposed method to construct the development cannot be achieved as proposed by the applicant. The applicant wishes to record the Property Line Adjustment Record of Survey with existing structures that are not compliant with City Code or Building Code (2012 IRC). Further, no person or public agency may undertake any development unless it complies with Garden City Code. This means that the City cannot approve a land division, or issue permits, for development that is in clear violation of the Code.

The City Engineer has reviewed and approved the Property Line Adjustment as presented relative to engineering content. The Property Line Adjustment may be approved by Development Services provided the following conditions are satisfied: (NOTE: this in no way constitutes approval of a non-conforming use but an acknowledgement of a non-intensification of a use.)

Conditions of Approval:

1. Remove one of the structures on the proposed Parcel "A" prior to the City Engineer signing the Property Line Adjustment Record of Survey. The structure that is remaining is permitted as a Temporary structure and a building permit may be issued for a permanent dwelling unit, subject to compliance with applicable zoning and building codes, and may remain until the permanent structure is complete. No Certificate of Occupancy for the permanent dwelling may be issued until the Temporary Unit has been removed.
2. The applicant has verbally indicated that a cross access easement shall be provided for lots B-E. A Cross access easement shall be delineated on the Property Line Adjustment Record of Survey, or a cross access easement otherwise be recorded and submitted to the City, to provide access to 36th Street for Parcels "B", "C", "D", and "E". The easement should note that it is for ingress/egress for said Parcels and shall remain in perpetuity.
3. Comply with City Engineer's (acting) letter dated December 30, 2016.
4. No additional access on 36th Street for Parcels "B", "C", "D", "E", is permitted.
5. All fees associated with this application shall be paid to the City prior to the release of the Property Line Adjustment Record of Survey Mylar.
6. The Property Line Adjustment Record of Survey shall be recorded, and a copy of such must be provided to the City, prior to the issuance of any building permits upon the new Parcels.

DEV2015-00010, Conn, Neill Lot Line Adjustment Timeline
Prepared by Jeff Lowe

-On December 9, 2015, Jenah Thornborrow let me, Jeff Lowe, know that Jim Neill would like to meet about Donna Conn's property. Jeff Lowe sent email to Jim Neill asking if he would like to meet; no response.

-On December 10, 2015, an application for a Lot Line Adjustment at 205, 207, 209, and 211 E 36TH Street was submitted by Jim Neill as a co-owner. Jeff Lowe spoke with Neill to set up a time to meet on the application.

-On December 14, 2015, Lowe and Erika Akin, staff, met with Jim Neill concerning the proposed Lot Line Adjustment application, DEV2015-00010. The meeting was requested because of some concerns that staff had with the application as submitted on December 10, 2015. There was no communication with the applicant prior to the submittal. The following items were discussed:

- The City could not approve the Lot Line Adjustment wherein (new) Lot lines are drawn through a structure.
- The city could not approve the Lot Line Adjustment wherein the Lot line is moved such that two mobile homes previously on separate lots would now be on the same lot. Two mobile homes on one lot is not permitted – the city cannot create/approve something that is against the code.
- The City could not issue a building permit on a property upon which sits a non-conforming use i.e. a mobile home
- The cross access easement not depicted on the ROS.

-This email was received, and response sent:

From: Jim Neill [<mailto:jimneillmail@gmail.com>]

Sent: Monday, December 14, 2015 3:03 PM

To: Jeff Lowe

Subject: Re: Voice mail

Thanks, Jeff, I appreciate the outcome -oriented approach. Many Garden City property owners may want to make changes in their land use, but the regulatory path is financially perilous especially to people who don't have a lot of money or familiarity with the system. I'd like to see more owner participation in redevelopment, but don't want to see what military refers to as collateral damage. I'd like to see Donna Conn in a new house and not in a catch-22, and sure you feel the same.

City's concerns make sense but best cure to getting out of trailers is making it safe and affordable to do so. "Temporary " use, conditions on building permits? Push the cost impact deeper into the spread sheet so a "threshold" cost doesn't stop a financially frail enterprise. It's not going to be easy, but do-able.

Jim

On Dec 14, 2015 1:17 PM, "Jeff Lowe" <jlowe@gardencityidaho.org> wrote:

Hi Jim, thanks for the voicemail. We do want to have this project be successful - the proposal has many positives. We have been discussing the building permit aspect with Donna Conn living in the existing unit while the other is being constructed and are looking for a legal solution.

We will continue with the review of the LLA application so that remains on track while the above is investigated.

Thanks and let me know if you have questions. Jeff

-On December 30, 2015, the Land Group (acting engineer) sent a letter with a recommendation of approval for the Lot Line Adjustment relative to the technical perspective. The letter did note one of staff's concerns regarding the proposed lines intersecting an existing building.

-On February 4, 2016, a demolition permit was issued to remove a structure from the subject site; the structure was removed soon thereafter.

-On March 4, 2016, a Mylar for the Lot Line Adjustment was submitted.

-Subsequently, the following email chain with Dave Crawford of B&A Engineers occurred:

March 9, 2016 4:50pm

Dave,

Jeff has passed along your correspondence.

The Lot Line Adjustment for Donna Conn's property was submitted on December 1, 2015. There was no communication with B&A or the owner prior to the submittal.

On December 14, 2015, he and Erika Akin met with Jim Neill. The meeting was requested because of some concerns that staff had identified with the application. The following items were discussed:

- *The City could not approve the Lot Line Adjustment wherein (new) Lot lines are drawn through a structure.*
- *The City could not approve the Lot Line Adjustment wherein the Lot line is moved such that two mobile homes previously on separate lots would now be on the same lot. Two mobile homes on one lot is not permitted – the City cannot create/approve something that is against the code.*
- *The City could not issue a building permit on a property upon which sits a non-conforming use i.e. a mobile home.*
- *The discussed cross access easement not depicted on the ROS.*

Jeff and Erika briefed me the same day.

I understand that you may not have been present at the meeting, however, the information was communicated to an owner (per the application materials). I also understand that you feel that the condition is arbitrary, however, staff does not have the authority to approve applications that are contrary to code.

Sincerely,

Jenah E. Thornborrow, AICP

From: David A. Crawford [mailto:dacrawford@baengineers.com]

Sent: Wednesday, March 09, 2016 2:23 PM

To: Jeff Lowe
Subject: RE: Donna Conn property

Jeff,

Unfortunately the concerns you mentioned were never communicated and has left a very awkward position for the project. The application of code you cite is new and was not part of the city's response. This additional condition warranted a response in the original written communication. The omission has caused unnecessary delays and additional costs to the owner which must now be borne by the owner. Had this been communicated up front the owner could have saved mobilization fees which have already been spent.

Again, it is not without merit to point out that the re-development path afforded by the completed work seems to benefit the City without the application of an additional arbitrary condition.

Has this communication been presented to the Planning Director?

*Sincerely,
David Crawford*

From: Jeff Lowe [<mailto:jlowe@GARDENCITYIDAHO.ORG>]
Sent: Wednesday, March 09, 2016 1:53 PM
To: David A. Crawford
Subject: RE: Donna Conn property

Hi David, thanks for responding. We conveyed our concerns to Jim Neil when we met with him a few months ago. We told him that we wanted to work with him to get this going and that is why the condition below was written the way it was. But the City cannot approve something that is non-conforming. The PBA does create an issue because now by placing two homes on one parcel, neither of which meets code, and a mobile home cannot be an accessory dwelling unit or an accessory structure located in the front yard.

We agree that the development of the property is promising and the ideas presented are great.

Jeff Lowe, AICP

From: David A. Crawford [<mailto:dacrawford@baengineers.com>]
Sent: Wednesday, March 09, 2016 12:11 PM
To: Jeff Lowe
Subject: RE: Donna Conn property

Jeff,

This is quite a surprise. The only "condition" received was that from the Acting City Engineer, as attached.

This review is what was acted upon as it was the only information conveyed by your department. It clearly indicated the only concern was structures which cross property lines.

This was the information acted upon. Additional conditions were never presented.

Please consider the following:

The property boundary adjustment as submitted does not increase any existing non-conformity; rather, in good faith the conditions as written were addressed in full.

It is clear that the property boundary adjustment as submitted creates a clear path for re-development of the property consistent with the requirements of Garden City.

It is likely that the owner does wish to re-develop the land.

Approving the property boundary adjustment as submitted seems to clear a reasonable path to allow this to occur without the imposition of additional burdensome conditions.

We look forward to any additional information or discussion that may be presented by staff.

*Sincerely,
David Crawford*

From: Jeff Lowe [<mailto:jlowe@GARDENCITYIDAHO.ORG>]

Sent: Wednesday, March 09, 2016 9:45 AM

To: David A. Crawford

Subject: Donna Conn property

Hi Dave, this is in regard to the ROS you submitted for Donna Conn's property on 36th. It is a good thing that the structure that straddled the common line of Lots 29 and 30, has been removed.

There remains one structure that needs to be removed from the site in order for the City to approve the Lot line Adjustment. If the Property Line Adjustment were approved as presented, the result would be the creation of a non-conformity: a mobile home utilized as an accessory structure located in front of a primary residence.

This is the condition of approval that I had written: "Remove one of the structures on the proposed Parcel "A" prior to the City Engineer signing the Property Line Adjustment Record of Survey. The structure that is remaining is permitted as a Temporary structure and a building permit may be issued for a permanent dwelling unit, subject to compliance with applicable zoning and building codes, and may remain until the permanent structure is complete. No Certificate of Occupancy for the permanent dwelling may be issued until the Temporary Unit has been removed."

Can you please advise on the intent of the structure that is currently located on Lot 30? As noted in the condition above, the City can approve the project if one of the structures is removed.

Jeff Lowe, AICP

While Staff had prepared a review letter, the letter was not sent, in anticipation of the non-conformities being mitigated by the applicant. The letter was attached to the email sent by Jenah to Dave Crawford on March 9, 2016.

On March 21, 2016, an appeal was filed by Jim Neill.

On or about March 31, 2016, Pat Conn, the daughter of Donna Conn, visited with Lowe and Thornborrow about the subject property. Ms Conn indicated that both existing structures on proposed Parcel "A" are occupied and that one is designed for ADA needs. The intent would be for a new

structure to be built on Lot "A" that would accommodate the occupants of both structures. During this discussion, Ms. Conn was presented with some options in order to move the project forward. :

- Approve the LLA as proposed contingent on successful appeal. It was noted that at the time of building permit review, the same issues of nonconformity would be noted in the review. **OR**
- Place surety in accordance with Garden City Code standards for sureties, for removal cost of the mobile homes, obtain a building permit for new dwelling, with a Certificate of Occupancy conditioned on removal of the nonconforming structures, and receive temporary occupancy until homes are removed.

From: [Erika Akin](#)
To: [Jenah Thornborrow](#)
Subject: Meeting with Jim Neill notes
Date: Wednesday, April 13, 2016 8:50:15 AM

In early December 2015, a meeting was set up between Jim and Jeff to discuss a lot line adjustment application for several parcels on East 36th. I was asked to join them by Jeff. Jeff told Jim Neill that the City could not approve a lot line adjustment that created non conformities. The potential non conformities identified on the proposed ROS were the establishment of a lot with two existing mobile/manufactured homes, placing a new property line through an existing structure, and if the new home were proposed on the larger lot, the permit could not be approved with mobile/manufactured home as accessory dwelling units. There was discussion of what was currently existing on the property since Google images showed multiple structures and possibly an RV that was being used as a residence. Clarification was requested.

I do not recall the discussion of the cross access. Since I was asked to join the meeting at the last minute, I do not know if this was called as a response to a failed planning review or informal discussion of options.

Thank you,

Erika Akin
Planner/GIS
Development Services
208.472.2922