

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

In the Matter of: ) ) Conditional Use Permit ) Day Care Center and School ) Garden City, Ada County, Idaho ) _____ )	CUPFY2019-12  FINDINGS OF FACT, CONCLUSIONS OF LAW; AND DECISION
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THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on September 18, 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 Brian Garrett with OA+D.
2. The property owner of record is James A. Kissler, LLC
3. The application is for a conditional use permit for the uses “Day Care Center” and “School”.
4. The location of the project is 3203 and 3231 W. Chinden Blvd. Ada County Parcel R2734530430 and R2734530540, respectively.
5. The subject properties are 0.67 acres.
6. The project is in the Garden City C-1 Highway Commercial Zoning District.
7. The project is in the Activity Node – TOD Node, Live-Work-Create, and Green Boulevard Corridor designations of the Garden City Comprehensive Plan Land Use Map.
8. The existing use on the site is none.
9. Current access to the site is from W. Chinden Blvd.
10. There are sidewalks installed along W. Chinden Blvd. No sidewalks are installed along W. 32<sup>nd</sup> Street.
11. The following sections of the Garden City Municipal Code apply to this proposal:

Standards	Compliant	Conclusions
<b>GCC 8-7A Definitions of Uses</b>	N/A	The definitions of uses that apply to this application are: Day Care Center and School
<b>GCC 8-2B-2 Allowed Uses</b>	Noted	The use “Day Care Center” requires a conditional use permit in the C-1 Zoning District.
<b>Title 8 Chapter 4 Design and Development Regulations</b>	N/A	Design Review application DSRFY2019 – 20 is being reviewed by the Design Committee on September 16, 2019.
<b>GCC 8-6B-2 Conditional Use</b>	Yes	1. The use is appropriate to the location, the lot, and the neighborhood;

		<p>2. The use will be supported by adequate public facilities or services to the surrounding area. Conditions can be established to mitigate adverse impacts;</p> <p>3. The use will not unreasonably diminish either the health, safety or welfare of the community as conditioned; and</p> <p>4. The use at this location is in conformance with the comprehensive plan and other adopted plans, and ordinances of the city.</p>
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12. Other studies, plans or approvals reviewed include:

<p>Garden City Comprehensive Plan</p>	<p>Yes</p>	<p>The proposal is consistent with the comprehensive land use designations of Activity Node-TOD Node, Live-Work-Create and Green Boulevard Corridor. It is also in conformance with Garden City Comprehensive Plan Goals and Objectives:</p> <p><i>Goal 2: Improve the City Image</i>  <i>Objective 2.1: Encourage new and distinctive neighborhoods.</i></p> <p><i>Goal 4: Emphasize the "Garden" in Garden City</i>  <i>Objective 4.3: Beautify streets, sidewalks, and gateways with landscaping, trees, and public art.</i>  <i>Action Step 4.3.1: Continue to require sidewalks and landscaping in all new development, and in major alterations and re-use of existing commercial sites.</i></p> <p><i>Goal 11: Serve the City</i>  <i>Objective 11.1: Support additional educational facilities.</i></p> <p><i>Goal 12: Evolve as a Destination</i>  <i>Objective 12.1: Support a positive business environment.</i>  <i>Objective 12.2: Continue to support commercial and industrial land uses.</i>  <i>Objective 12.3: Create a premier destination for work, recreation, entertainment, culture and commerce.</i></p>
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Garden City Planning And Zoning Commission Sidewalk Policy	Yes	A sidewalk meeting the requirements of 8-4E-6 and the Policy is required.
Comments from Other Departments and Agencies	Yes	This approval includes a condition requiring compliance and approval from applicable agencies.

13. A copy of the application and plans was transmitted to interested and affected public agencies and written comments were received from:
  - a. Ada County Highway District
  - b. Idaho Transportation Department
  - c. Garden City Engineer
  - d. Central District Health Department
  - e. Republic Services
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. Agency Comments
  - h. Staff report, and referenced materials
  - i. Public Comments
  - j. Planning and Zoning Commission Hearing Sign Up Sheet
  - k. Signed Findings of Fact, Conclusions of Law, and Decision
15. The application was received August 20, 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. A transmittal to other agencies including notice, application and other documents was sent on August 20, 2019 more than fifteen days prior to the public hearing.
17. A legal public hearing notice for the proposed conditional use permit application was published on August 26, 2019, and on August 20, 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.
18. A sign was posted on or before September 8, in accordance with Garden City Code for the public hearing of September 18, 2019
19. On September 18, 2019, at the Planning and Zoning Commission public hearing
  - a. Brian Garrett presented the proposed conditional use permit.
  - b. Staff Chris Samples presented the staff report.
  - c. Public testimony was heard from:
    1. Melissa Levick in opposition, noting that there was no objection to the day care facility, but had serious concerns over the ability of her

business, Western Collective, to expand due to the required 300 ft. buffer between a school and a drinking establishment

2. Cary Pruitt in opposition, noting:
  - a. Most of our traffic is outside of school hours.
  - b. State of Idaho limits location to two locations
  - c. Goal is to own all property adjacent to existing property.
  - d. Front door from 175 ft. From property line
  - e. Does not oppose school, but is concerning about limitations brought about by existing code.
  - f. Expansion would bring their use adjacent to the proposed use
- b. Brian Garrett provided rebuttal testimony, noting that his client did not object to a drinking establishment near the proposed day care facility. He further noted that his client was willing work with Western Collective on any future land use applications.
- c. Public testimony was closed.
- d. Commissioner Rasmussen moved to approve the application as proposed in the draft decision.
- e. Commissioner Pelton seconded.
- f. The motion carried unanimously.

### **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 the standards of approval under **GCC 8-6B-2 Conditional Use**.

### **DECISION**

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

#### **Scope of Permit**

1. The scope of the permit is for the uses "Day Care Center" and "School".
2. The use "School" shall be limited to the function of a nursery school and a pre-school.

#### **Prior to Occupancy**

1. A building permit for the structure shall be applied for and approved by Garden City Development Services Department.
2. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from Garden City Development Services Department.
3. A minimum six-foot (6') fence shall be installed around all outdoor play areas.

#### **Site Specific Requirements for the Duration of the Use**

1. On site vehicle pick up, parking and turnaround areas shall be provided to ensure safe discharge and pick up of clients.
2. In residential districts or uses adjoining an adjacent residence, the hours of operation shall be between six o'clock (6:00) A.M. to eight o'clock (8:00) P.M.
3. All outdoor play areas shall be completely enclosed by a minimum six-foot (6') fence to secure against exit/entry by small children and to screen abutting properties.
4. Outdoor play equipment over six feet (6') high, shall not be located in a front yard setback or within any required setback.
5. Outdoor play areas in residential districts adjacent to an existing residence shall not be used after dusk.
6. The use shall comply with the licensing requirements as set forth in title 3, "Business and License Regulations", of this code.

#### **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.

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Chairman, Planning and Zoning Commission

Date