

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

In the Matter of:)) Conditional Use Permit) 8561 W. State Street) Garden City, Ada County, Idaho) _____)	CUPFY2019-15 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 October 16, 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 Shay Bertola, Maverik Country Stores
2. The property owner of record is Maverik Country Stores.
3. The application is for a conditional use permit to expand the legal nonconforming use “auto service center”.
4. The location of the project is 8561 W. State St., Ada County Parcel R8123251860; described as PAR#1860 @CTR W of Lot 11, Steins Sub.
5. The subject property is 1.2 acres.
6. The project is located in the Garden City C-2 General Commercial Zoning District.
7. The project is located in the Green Boulevard Corridor designation of the Garden City Comprehensive Plan Land Use Map.
8. The existing use on the site is: Auto Service Center
9. Current access to the site is from W. State Street
10. There are no sidewalks along the property on W. State Street
11. The following sections of the Garden City Municipal Code apply to this proposal:

Note: The findings are written both in favor and in denial of the application. The Commission will select the appropriate findings when making their decision.		
Standards	Compliant	Conclusions
GCC 8-1B-3 Nonconforming Uses	Yes	According to Ada County Assessor records, the use was established in 1978. Pursuant to Ordinance 132 in effect at that time, the use “auto service center” was an allowed use in commercial zoning districts. The use is a legal nonconforming use. A legal nonconforming use requires a conditional use permit to expand.
Title 8 Chapter 4 Design and Development Regulations	Yes/No	IN FAVOR: The use, as conditioned, meets the requirements of this section. Conditions

		<p>have been placed to ensure compliance with all agency requirements. A condition of approval is required to have the location and configuration of the detached sidewalk and landscaping improvements decided by the Design Committee.</p> <p>IN DENIAL:</p> <p>The use does not meet the requirements of this section. The trash enclosure is not located in accordance with Republic Services requirements. Conditions cannot be placed to mitigate this issue.</p>
<p>GCC 8-6B-2 Conditional Use</p>	<p>Yes/No</p>	<p>IN FAVOR:</p> <ol style="list-style-type: none"> 1. The use expansion, as conditioned, is appropriate to the location, the lot, and the neighborhood; 2. The use expansion will be supported by adequate public facilities or services to the surrounding area. Conditions have been established to mitigate adverse impacts. 3. The use expansion will not unreasonably diminish either the health, safety or welfare of the community as conditioned; and 4. The use expansion at this location is in conformance with the comprehensive plan and other adopted plans, and ordinances of the city. <p>IN DENIAL:</p> <ol style="list-style-type: none"> 1. The use expansion is not appropriate to the location, the lot, and the neighborhood. The record does not indicate whether lighting will be downshielded to prevent glare on other properties. 2. The use expansion will not be supported by adequate public facilities or services to the surrounding area. Conditions can not be established to mitigate adverse impacts. The location of the

		<p>access points have not been approved by ITD.</p> <p>3. The use expansion will unreasonably diminish either the health, safety or welfare of the community. The record does not indicate whether lighting will be downshielded to prevent glare on other properties. Vehicle and pedestrian circulation has not been addressed. The record does not indicate whether the fuel pump locations diminish the health, safety or welfare of the community.</p> <p>4. The use expansion at this location is not in conformance with the comprehensive plan. Specifically, the use is not in conformance with the Green Boulevard Corridor. The use expansion increases vehicle trips and does not adequately enhance multi-modal transportation methods.</p>
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12. Other studies, plans or approvals reviewed include:

	Yes/No	IN FAVOR
<p>Garden City Comprehensive Plan</p>		<p>The proposal is consistent with the comprehensive land use designation of Green Boulevard Corridor of the Garden City Comprehensive Plan Future Land Use Map. It is in conformance with the following Garden City Comprehensive Plan Goals and Objectives:</p> <p>Goal 12: Evolve as a Destination Objective 12.2: Continue to support commercial and industrial land uses</p> <p>IN DENIAL:</p> <p>The proposal is not consistent with the comprehensive land use designation of Green Boulevard Corridor of the Garden City Comprehensive Plan Future Land Use Map. The use expansion increases vehicle trips and does not adequately</p>

		enhance multi-modal transportation methods.
Garden City Streetlight Policy	Yes/No	<p>IN FAVOR:</p> <p>The policy requires a streetlight installed 400' from every property. The nearest streetlight from the property is 410'. A streetlight is required by the policy.</p> <p>IN DENIAL:</p> <p>N/A</p>
Garden City Planning And Zoning Commission Sidewalk Policy	Yes/No	<p>IN FAVOR:</p> <p>The policy requires a detached sidewalk and landscaping improvements. The location and configuration of these improvements is under review by the Design Committee.</p> <p>IN DENIAL:</p> <p>N/A</p>
Comments from Other Departments and Agencies	Yes/No	<p>IN FAVOR:</p> <p>This approval includes a condition requiring compliance and approval from applicable agencies.</p> <p>IN DENIAL:</p> <p>N/A</p>

13. A copy of the application and plans was transmitted to interested and affected public agencies and written comments were received from:
 - a. Garden City Engineer
 - b. 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. Ordinance 132
 - i. Staff report, and referenced materials

- j. Public Comments
 - k. Planning and Zoning Commission Hearing Sign Up Sheet
 - l. Signed Findings of Fact, Conclusions of Law, and Decision
15. The application was received September 16, 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 September 16, 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 September 19, 2019, and on September 16, 2019, notice was mailed to all property owners within a 300-foot radius of the said property in compliance with the public notice requirements of Section 8-6A-7 of the Garden City Municipal Code.
 18. A sign was posted on or before October 6, 2019, in accordance with Garden City Code for the public hearing October 16, 2019.
 19. **On October 16, 2019, at the Planning and Zoning Commission public hearing**
 - a. **This section will be completed after the hearing.**

CONCLUSIONS OF LAW

The Planning and Zoning Commission reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets/does not meet** the standards of approval under **GCC 8-6B-2 Conditional Use**.

DECISION

Decision for approval is in grey

Decision for denial is in red

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 this permit is to expand the legal nonconforming use “auto service center”.
2. The legal nonconforming use expansion is an expansion from four (4) fuel pumps to 16 fuel pumps.

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 photometric plan and light fixture cut sheets shall be submitted for administrative review.
4. Idaho Transportation Department Access Permits shall be secured for the access points on W. State Street.

5. A streetlight shall be installed on the property in accordance with the Garden City Streetlight Policy.
6. A detached sidewalk and landscaping shall be installed in accordance with Garden City Code 8-4E-6 and the Garden City Sidewalk Policy. The location and configuration of these improvements shall be approved by the Design Committee.
7. Vehicular and pedestrian circulation shall be reviewed and approved by the Design Committee.
8. A copy of safety procedures associated with the fuel pumps and the storage of fuel shall be provided to the City.

Site Specific Requirements for the Duration of the Use

1. Site Layout:
 - a. Air, water, telephone, and vending machines shall be located in an area that does not impede vehicular traffic.
 - b. All restroom entrances shall be accessed from inside the building.
 - c. The total height of any overhead canopy or weather protection device shall not exceed twenty feet (20').
2. Access And Parking:
 - a. Stacking lanes shall have sufficient capacity to prevent obstruction of the public right of way by patrons.
 - b. The stacking lane shall be a separate lane from the circulation lanes needed for access and parking.
3. Site Maintenance: All paved and unpaved areas shall be maintained grease and oil free
4. Accessory Use:
 - a. Mobile recycling trucks, emission control trucks and temporary, nonpermanent structures may be located on a fuel sales facility site through approval of a conditional use permit.
 - b. When fuel sales are allowed as an accessory use, the fuel sales facilities shall not occupy more than twenty five percent (25%) of the subject property.
5. Other Regulations:
 - a. If the use is unattended, the standards as set forth in section 8-4A-6, "Self-Service Uses", of this title shall also apply.
 - b. Installation of underground fuel tanks shall require written approval from the Idaho division of environmental quality, Idaho department of water resources, and the fire authority.

General Requirements

1. Any changes in the design, construction, operation or use shall be brought to the immediate attention of the Planning Official for determination if the changes are in substantial conformance with the City's action. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
2. This Conditional Use Permit shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to a permit, the permit shall be granted to the applicant and successors in interest to the premises for which it was approved.
3. This approval is only approval of the conditional use permit. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
4. The approval is specific to the application provided and reviewed. Final approval is based on substantial conformance. Any changes to the plans and specifications upon which this

- approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
5. Final approval is subject to the approval of other reviewing agencies and City Departments. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail.
 6. All improvements and operations shall comply with applicable local, state and federal requirements and procedures whether specifically addressed in the analysis of this application or not. This shall include but not be limited to 8-4A General Provisions of Design and Development Regulations.
 7. Unobstructed easements, including but not limited to, drainage, water, and sewer easements shall be provided as required by the City Public Works or Planning Official.
 8. The property owner is responsible to maintain the site to edge of roadway asphalt.
 9. If there are any tree grates, they shall be widened to accommodate the growing tree trunk and prevent girdling of any trees planted in tree wells within sidewalks or other public right of way.
 10. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead and diseased plant materials shall be replaced.
 11. Where landscaping might impact motorist or pedestrian sight distance, shrubs shall be maintained below three feet (3') in height and trees shall be pruned so that the lowest branches will be at least seven feet (7') above the ground level.
 12. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
 13. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan.
 14. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
 15. All planting areas that border driveways, parking lots, and other vehicle use areas shall be protected by curbing, wheel stops, or other approved protective devices.
 16. Trees shall be planted at least three feet (3') from curbs, sidewalks, driveways and other hard surfaces to buffer from stress caused by vehicle overhang and compacted soils, or planted with sufficient space to provide for the full maturity of the particular tree species. All other plant material, except sod or ground cover, shall be set back a minimum of one foot (1') from any curb edge to protect from vehicle overhang and mechanical damage.
 17. The landscape installation shall stabilize all soil and slopes.
 18. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
 19. This approval is for this application only. Additional permits, licenses and approvals may be necessary.
 20. Property maintenance standards shall be maintained as required by Garden City Code.
 21. The property owner is responsible for the maintenance of all landscaping and screening devices required.
 22. Cross-Connections: All cross-connections between the domestic water lines and the irrigation water lines shall be in accord with the City's adopted standards, specifications and ordinances.
 23. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the

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

Chairman, Planning and Zoning Commission

Date

Decision for Denial

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

1. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within ten (10) days after the action of the decision.
2. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
3. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
4. A takings analysis pursuant to Idaho Code may be requested on final decisions.
5. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

Chairman, Planning and Zoning Commission

Date