

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

In the Matter of:)) Conditional Use Permit) Farmers Market / Event Center) 215 and 303 E. 34 th St.;) 3342 N. Carr St;) Garden City, Ada County, Idaho) _____)	CUPFY2019-4 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 April 17, 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 Hannah Ball of Urban Land Development.
2. The property owner of record is Urban Willow, LLC
3. The application is for the use “Farmer’s Market” and the use “Event Center”.
4. The location of the project is 215 E. 34th Street, 303 E. 34th Street and 3342 N. Carr Street. Ada County Parcel Numbers R2734541395, R2734541500, R2734541520 respectively; Lot 27, Block 34, Fairview Acres Sub No 5, Lots 33 and 34, Block 35, Fairview Acres Sub No 5, and Lots 31 and 32, Block 35, Fairview Acres Sub No 5, respectively.
5. The subject property is .85 acres.
6. The project is located in the Boise River and Greenbelt Overlay District.
7. The project is located in the Live/Work/Create Garden City Comprehensive Plan Land Use Designation.
8. The existing use on the site is: None
9. Current access to the site is from N. Carr Street and E. 34th Street
10. There are no sidewalks along the site.
11. The following sections of the Garden City Municipal Code apply to this proposal:

Standards	Compliant	Conclusions
GCC 8-7A Definitions of Uses GCC 8-1A-5 Interpretation	Yes	The uses “Farmer’s Market” and “Event Center” are not defined terms in Garden City Code. GCC 8-1A-5 requires the use of the Merriam Webster Dictionary to determine the definition of a use. The dictionary defines the uses as: <ul style="list-style-type: none"> • <u>Farmers Market</u>: <i>A market at which local farmers sell their agricultural products directly to consumers.</i>

		<ul style="list-style-type: none"> • <u>Event</u>: A social occasion or activity. • <u>Center</u>: A facility providing a place for a particular activity or service.
<p>GCC 8-3A-3 Allowed Uses</p>	<p>Yes</p>	<p>When a use is not listed in this section, a determination of whether the use is equivalent to a permitted or conditional use is required.</p> <p>The use “Farmer’s Market” is determined to require a conditional use permit based the following:</p> <ul style="list-style-type: none"> • The proposed farmer’s market shares several characteristics with the uses “Club”, “Food Store”, and “Retail Store”, such as operated for a recreational purpose (club), sales of fresh, partially or fully prepared food for consumption (food store), and sales of merchandise or services to the public for monetary compensation (retail store). • Relevant NAICS codes for this use may include 45230 – Fruit and Vegetable Markets – This industry comprises establishments primarily engaged in retailing fresh fruit and vegetables. • The proposed use could be consistent with the following objective of the Boise River and Greenbelt Overlay District purpose statement: “To create nodes of urban development in certain locations in the District through appropriate use and development standards” • The proposed use could be consistent with the following Comprehensive Plan Goals and Objectives: <p>Goal 1. Nurture the City</p> <p><i>1.1 Objective: Promote city</i></p>

		<p><i>events, seasonal holidays and celebrations.</i></p> <p><i>1.4 Objective: Create a premier destination place to live, work and recreate.</i></p> <p>Goal 2. Improve the City Image</p> <p><i>2.1 Objective: Encourage new and distinctive neighborhoods.</i></p> <p>The use “Event Center” is determined to require a conditional use permit based the following:</p> <ul style="list-style-type: none"> • The proposed event center shares several characteristics with the uses “club” and “special event”, such as operated for a recreational purpose primarily for the exclusive use of guests (club), and being open to the public on a temporary basis for less than three days (special event). • Relevant NAICS codes for this use may include 532289 – All Other Consumer Goods Rental and 722320 – Caterers. • The proposed use could be consistent with the following objective of the Boise River and Greenbelt Overlay District purpose statement: “To create nodes of urban development in certain locations in the District through appropriate use and development standards”. • The proposed use could be consistent with the following Comprehensive Plan Goals and Objectives: <p>Goal 1. Nurture the City</p> <p><i>1.1 Objective: Promote city events, seasonal holidays and</i></p>
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		<p><i>celebrations.</i> 1.4 Objective: <i>Create a premier destination place to live, work and recreate.</i></p> <p>Goal 2. Improve the City Image</p> <p>2.1 Objective: <i>Encourage new and distinctive neighborhoods.</i></p>
<p>GCC 8-3E-3A Allowed Uses</p>	<p>Yes</p>	<p>When a use is not listed in this section, an applicant can request a determination of whether a use is river oriented and an allowed use.</p> <p>8-3E-3B does not provide a specific set of standards to define a river-dependent or a river-oriented use. Examples provided by this section are kayak rental sales or an outdoor theater facing the river. Kayak rental sales appears to be river dependent due to the nature of kayaking. The outdoor theater facing the river is intended to be oriented toward the river rather than being merely adjacent to it.</p> <p>The term “oriented” is not defined by this title. The Merriam-Webster Dictionary defines oriented as:</p> <ul style="list-style-type: none"> • <i>Oriented: Intellectually, emotionally, or functionally directed (emphasis added)</i> <p>For the purposes of this analysis, the functional orientation of the use will be considered.</p> <p>Additional guidance on river-dependent and river-oriented uses can be found in 8-3E-4 (General Provisions). The term “river activated” is used in the context of determining setbacks, but provides a definition of the term and guidance on what is river activated:</p> <p><i>River Activated: Spaces and uses that are oriented to and engage the</i></p>

		<p><i>river and greenbelt.</i></p> <p><i>The characteristics of river activated are:</i></p> <ul style="list-style-type: none"> <i>a. Primary entrances to buildings that either face the greenbelt or are located within the first 10' of a building side perpendicular to the greenbelt;</i> <i>b. Active outdoor spaces like patios, decks, and balconies;</i> <i>c. Ground level transparency in non-residential uses of at least 60%.</i> <i>d. Open space and landscape areas that emphasize views of the river corridor from adjacent properties.</i> <i>e. An active mix of uses along the greenbelt that are open and accessible to the public users of the greenbelt.</i> <i>f. Pedestrian-bicyclist amenities outside of ground floor uses, such as tables and chairs, trash receptacles, drinking fountains, dog waste station, directional and interpretive signage, lighting, bike racks, bike repair stations, and public art to encourage social interaction.</i> <p>The proposed uses are adjacent to the Boise River and the Greenbelt and appear to be accessible perpendicular to the Greenbelt. The applicant's supplemental project letter and photos appear to indicate that fencing is at least 60% transparent. Bicycle and pedestrian amenities appear to be shown in the site plan, noted in the supplemental project letter, and shown in photographs of the site. However, the amenities appear limited to 28 bicycle spaces and the Greenbelt. Internal pedestrian connectivity or the location of other pedestrian bicycle amenities such as tables and chairs, trash receptacles, and other amenities does not appear to be shown in the applicant's materials. Internal pedestrian circulation appears to be determined by vendor configuration.</p>
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		Based on the information available on the record, the uses are considered river oriented and are considered an allowed use. The tables found in Garden City Code 8-3A-3 and 8-2B-2 list permitted, conditional, and prohibited uses. Allowed uses under these sections are intended to indicate that a use is allowed, subject to the use being a permitted use (not requiring a conditional use permit), a conditional use or prohibited in the zone. The uses appear to require a conditional use permit pursuant to Garden City Code 8-3A-3. A conditional use permit is required.
GCC 8-3A-4 General Provisions GCC 8-4D Parking and Off Street Loading Provisions	Yes	The revised parking plan received April 17, 2019 demonstrates there is enough parking for the proposed uses.
Title 8 Chapter 4 Design and Development Regulations	Yes	A sidewalk and landscaping meeting the requirements of 8-4E-6 and the Garden City Sidewalk Policy is required along N. Carr Street. A waiver is granted to the required sidewalk on E. 34 th Street to accommodate future development.
GCC 8-6B-2 Conditional Use	Yes	<ol style="list-style-type: none"> 1. The use, as conditioned, appropriate to the location, the lot, and the neighborhood. 2. The use, as conditioned, is supported by adequate public facilities or services to the surrounding area; 3. The use, as conditioned, will not unreasonably diminish either the health, safety or welfare of the community as conditioned; 4. The use, as conditioned, is in conformance with the comprehensive plan and other adopted plans, and ordinances of the city.

12. Other studies, plans or approvals reviewed include:

Garden City Comprehensive Plan	Yes	The proposal is consistent with the comprehensive land use designation of
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		<p>Live/Work/Create.</p> <p>It is in conformance with Garden City Comprehensive Plan Goals and Objectives:</p> <p>Goal 1. Nurture the City</p> <p>1.1 Objective: Promote city events, seasonal holidays and celebrations.</p> <p>1.4 Objective: Create a premier destination place to live, work and recreate.</p> <p>Goal 2. Improve the City Image</p> <p>2.1 Objective: Encourage new and distinctive neighborhoods.</p> <p>Goal 3. Create a Heart for the City</p>
Garden City Planning And Zoning Commission Sidewalk Policy	Yes	The policy was reviewed as part of this proposal.
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. Idaho Transportation Department
 - b. Idaho Department of Environmental Quality
 - c. Ada County Highway District

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 February 25, 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. On March 19, 2019 a letter of acceptance with hearing date was sent to the applicant.
17. A transmittal to other agencies including notice, application and other documents was sent on March 20, 2019 more than fifteen days prior to the public hearing.
18. A legal public hearing notice for the proposed conditional use permit application was published on April 1, 2019, and on March 22, 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.
19. A sign was posted on or before April 7, 2019, in accordance with Garden City Code for the public hearing of April 17, 2019.
20. On April 17, 2019, at the Planning and Zoning Commission public hearing
 - i. The applicant Hannah Ball and the applicant's representative Jeffery Bower presented the application.
 - ii. Staff Chris Samples presented the staff report.
 1. Public comment – Germaine Howson
 2. Public Comment – Kristen Jenson representing The Riverside Hotel
 3. Public Comment – Earl Sullivan representing Telaya Winery
 4. Public Comment – Meryl Lingard and Dave Brand
 5. Public Comment – Julian Lucarelli
 6. Public Comment – Todd Hans representing The Waterfront HOA
 7. Public Comment – Michael Slavin
 8. Public Comment – Todd Weltner
 9. Public Comment – Chris Carlson
 10. ACHD comments and correspondence
 11. Revised Parking Study
 - iii. Public testimony was received from:

In Favor:

 1. Mona Worchol- Executive Director Capital City Market. Knows how to run market from experience downtown. This would be a mini market. Estimates a successful night could be 100 people. Because there is a fence, there is a way to restrict the number of people.
 2. Matt Williams- President of the board of the Capital City Market.
 3. Sondra Skinner- Markets are essential to vendors. Desires markets on days other than Saturday and in other locals.
 4. Katie Painter- The market is small. The issues brought up might not be an issue. Disappointed in the car centric planning that has gone on. The requirement of large parking reduces viability of transit. A sidewalk is an expensive ask for a farmer's market.
 5. Margaret Temple- The area have very little traffic. There are no sidewalks except on 36th Street.
 6. Carl Whayle- Selected home for availability of places to walk and bike. This is an additional location to walk and bike. Parking is overrated.

7. Ben Murray-This area is designated Live-Work-Create is the most lively place in Garden City. The amount of positive feedback that this area gets.
8. Lea Rainey- Garden City is on the National Registry as a food desert. A market solidifies a community. The Roots has bike and vehicle parking available for the market. Garden City is fighting a stigma and this is a positive event that changes negative opinions.
9. Will Howard- Most of the traffic came from the greenbelt last year. Read a letter from Mike Slavin operator of the previous market.
10. Susan Bauter- The market is well run and family friendly.

Opposed:

11. Victor Meyer- the Market was the only use addressed. The temporary use was a temporary bar last year.
- iv. The applicant's representative Jeffery Bower and Hannah Ball provided rebuttal testimony addressing the parking. Indicated that they feel that frontage on right-of-way in front of property owned by Ms. Ball is adequate. The project will have two to five portable restrooms on site. There are no permanent structures. Beer and wine are to be served through a catering permit. The events are less than 200 people.
 - v. Staff noted that they have not reviewed the data provided in the parking study provided to the Commission during the meeting. Drinking establishment is a permitted use. There is nothing in code that prohibits an outdoor drinking establishment in code.
 - vi. The Commission closed public testimony.
 - vii. During discussion
 1. Commissioner Brown noted in favor of approving this use. There are three issues: 1) Sidewalks: is in concurrence with ACHD recommendation to place a sidewalk on Carr Street only can't expect this applicant to fix sidewalk issue. 2) Parking: 60% of the people who attended the market last year walked or biked. The parking is public. There is enough information for determination. 3) Port-a-potties are adequate.
 2. Commissioner Page noted he echoed Commissioner Brown's comments. He further noted if sidewalks are not built with changes of use there won't be sidewalks. The Commission is not supposed to consider expense, however, tearing out sidewalks immediately is not good stewardship. Cannot pre-assume approval of future projects.
 3. Kennedy- Noted that the applicant volunteered to sunset the use fall of 2021. With the use being 30 months or less no reason to put full load of sidewalks on this application.
 - viii. Commissioner Page moved to approved the application with the following amendment to the draft findings of fact, conclusions of law, and decision:
 1. Additional condition sunset clause of November of 2021.
The motion was withdrawn.
 - ix. Commissioner Brown- moved to approved the application with the following amendment to the draft findings of fact, conclusions of law, and decision:
 1. Additional condition sunset clause of November of 2021.

2. Adhere to the Ada County Highway District's sidewalk requirements.
- x. Commissioner Page seconded the motion.
- xi. The motion passed 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:

For the Duration of the Use:

1. The uses shall cease no later than November 30, 2021.
2. A detached sidewalk and landscaping meeting the requirements of Garden City Code, ACHD requirements, and the Garden City Sidewalk Policy shall be installed on N. Carr Street. The detached sidewalk and landscaping requirements are waived for E. 34th Street.
3. ACHD requirements noted in ACHD comments received 4/17/2019 shall be adhered to.

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 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.
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