

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

In the Matter of:)) Conditional Use Permit) W. 36 th Street) Garden City, Ada County, Idaho) _____)	CUPFY2019-6 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 June 19, 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 property owner and applicant is Michael Nelson of Rocky Mountain Audio and Visual.
2. The application is for:
 - a. Conditional Use Permit for the use "Storage Facility or Yard".
3. The location of the project is W. 36th Street St., Ada County Parcel R2734530132; PAR#0132 of Lots 34 Blk L, Fairview Acres Sub No. 4
4. The subject property is .099 acres
5. The project is located in the Garden City C-1 Highway Commercial Zoning District.
6. The project is located in the Transit Oriented Development Node Buffer of the Garden City Comprehensive Plan Land Use Designation.
7. The existing use on the site is: Vacant.
8. Current access to the site is from Brown Street.
9. There are sidewalks along W. 36th Street and W. Chinden Blvd., but no sidewalks are installed along Brown Street.
10. The following sections of the Garden City Municipal Code apply to this proposal:

This is drafted based on a denial of the request by the Planning and Zoning Commission. This is subject to change based on the Commission's decision.

Conditional Use Permit – Industry, Flex		
Standards	Compliant	Conclusions
GCC 8-7A Definitions of Uses	Noted	The definitions of uses that apply to this application are: Storage Facility or Yard.
GCC 8-2B-2 Allowed Uses	Yes	The use "Storage Facility or Yard" requires a conditional use permit in the C-1 Zoning District.
GCC 8-2C-37 Storage Facility or Yard	No	The application does not comply with the following provisions of this section: <i>B. Parking And Access:</i> <i>1. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.</i>

		<p>2. All surfaces used for parking shall be constructed with paving, vegetative cover or of dustless material.</p> <p><i>D. Site Maintenance:</i></p> <p>1. All outdoor storage of materials or vehicles shall be maintained in an orderly manner so as not to create a public nuisance.</p> <p>2. Materials or vehicles shall not be stored within the required yard setbacks.</p> <p><i>E. Other Standards Apply: Outdoor storage areas shall comply with section 8-1C-3, Property Maintenance Standards, of this title.</i></p>
<p>GCC 8-1C-3 Property Maintenance Standards</p>	<p>No</p>	<p>The application is not in compliance with the following provisions of GCC 8-1C-3 (Property Maintenance Standards):</p> <p><i>Q. Outdoor Storage: Where allowed the outdoor storage of vehicles, equipment, materials, or merchandise shall be in compliance with the following standards:</i></p> <p>1. No outdoor storage items shall block sidewalks, driveways to the site, or impede vehicular and pedestrian traffic and parking.</p> <p>2. For nonresidential uses, outdoor storage areas shall be screened from the view of adjacent property by a solid masonry wall or privacy fence or approved landscape buffer. The height of the wall or fence shall be the maximum of eight feet (8').</p> <p>4. No junk materials, goods, merchandise, or wares shall be stored outside in any residential zoning district or visible from an arterial street.</p> <p>5. Outdoor storage areas shall not exceed fifty percent (50%) of the total area of the site except where landscaping is provided in addition to the required setbacks as follows:</p> <p>a. The additional landscaping shall be equal to at least ten percent (10%) of the area of storage that is over the fifty percent (50%) of total site area; and</p> <p>b. The additional landscaping shall be located on the outside of the required solid masonry wall or privacy fence.</p>

		<p><i>c. Notwithstanding the provisions of this subsection, outdoor storage shall be allowed without landscaping in conjunction with the following land uses: agriculture; building material, garden and equipment; equipment rental, sales and services; nursery; vehicle sales and services.</i></p> <p>The application does not indicate the specific location of vehicles and equipment on the site. The application does not propose any fencing or screening. The application does not indicate the percentage of the site that will be dedicated to storage, which determines whether landscaping is required.</p>
GCC 8-4A-3 Fences and Walls	No	<p>The application is not in compliance with the following provisions of GCC 8-4A-3 (Fences and Walls)</p> <p><i>D. Setbacks: Fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage. Where there is no building frontage, fences greater than three and one-half feet (3.5') shall be set back minimally ten feet (10') from the back of the sidewalk so as to allow for street trees and landscaping between the fence and the sidewalk.</i></p> <p>The application does not propose any fencing or screening.</p>
GCC 8-4E-3 Public Street Connections	No	<p>The application is not in compliance with the following provisions of GCC 8-4E-3 (Public Street Connections):</p> <p><i>A. Clear Vision Triangle: All streets and driveways shall adhere to the standards of a clear vision triangle.</i></p> <p><i>1. Measurement: The clear vision triangle shall be measured as follows:</i></p> <p><i>a. The area is measured from the intersection of two (2) streets from the edge of pavement at the corner to a distance of forty feet (40') along each public street. The triangular area within is the "clear vision triangle". (Ord. 898-08, 9-8-2008)</i></p> <p><i>b. The area of the clear vision triangle at the intersection of private streets or driveways with a public street is dependent on the volume of traffic and existing safety</i></p>

		<p><i>conditions at the intersection as determined by the transportation authority. The clear vision triangle shall not be less than seven feet (7').</i></p> <p>GCC 8-7A (Definitions) defines the term "Clear Vision Triangle" as "a triangular area on a corner lot within which there are certain height limitations in order to provide sight distance for vehicles."</p> <p>The proposed use's location adjacent to the intersection of Brown Street and Orchard St. is a safety hazard to motorists and pedestrians.</p>
Title 8 Chapter 4 Design and Development Regulations	Yes	<p>A design review is not required for this application. A detached sidewalk and landscaping is required along Brown Street.</p>
GCC 8-6B-2 Conditional Use	No	<p>1. The use is not appropriate to the location, the lot, and the neighborhood. The proposal does not comply with GCC 8-2C-37, GCC 8-1C-3, GCC 8-4A-3, and GCC 8-4E-3.</p> <p>2. The use will not be supported by adequate public facilities or services to the surrounding area; or conditions can be established to mitigate adverse impacts. The proposal does not meet the clear vision triangle requirements of GCC 8-4A-3. Conditions cannot be established to mitigate adverse impacts.</p> <p>3. The use at this location will unreasonably diminish either the health, safety or welfare of the community. The proposal does not meet the clear vision triangle requirements of GCC 8-4A-3. Electrical infrastructure is located at the Brown Street entrance to the property. This infrastructure can be hit by moving vehicles onsite, which can cause a power outage and endanger the health, safety or welfare of the community.</p>

		4. The use at this location is not in conformance with the comprehensive plan and other adopted plans, and ordinances of the city. The use is not in conformance with any goals, objectives or action steps of the Comprehensive Plan. The use is not in conformance with the Transit Oriented Node Designation of the Comprehensive Plan. The use is not in conformance with GCC 8-2C-37, GCC 8-1C-3, GCC 8-4A-3, and GCC 8-4E-3.
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12. Other studies, plans or approvals reviewed include:

Garden City Comprehensive Plan	No	The use at this location is not in conformance with any goal, objective or action step of the comprehensive plan or the Transit Oriented Development Node designation of the Comprehensive Plan Land Use Map.
Garden City Planning And Zoning Commission Sidewalk Policy	Yes	The policy was reviewed for this application. A waiver to sidewalk standards was not requested pursuant to the policy.
Comments from Other Departments and Agencies	Yes	This decision 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. Garden City Engineer
- b. Idaho Transportation Department

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. Correspondence with applicant
 - l. Signed Findings of Fact, Conclusions of Law, and Decision
15. The application was received March 5, 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. The application was scheduled for April 17, 2019.
 16. 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.
 17. A legal public hearing notice for the proposed conditional use permit application was published on April 1, 2019 and on March 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. The item was not heard at the April 17, 2019 hearing due to noncompliance with the property posting requirements of GCC 8-6A-7 (Public Hearing Process).
 19. The item was rescheduled for May 15, 2019.
 20. The item was not heard at the May 15, 2019 hearing due to noncompliance with the property posting requirements of GCC 8-6A-7 (Public Hearing Process).
 21. The Commission continued the item to a date certain of June 19, 2019.
 22. A property posting sign was posted on or before June 9, 2019, in accordance with Garden City Code 8-6A-7 for the public hearing of June 19, 2019
 23. On June 19, 2019, at the Planning and Zoning Commission public hearing:
 - a. This section will be filled in when the hearing is completed.

CONCLUSIONS OF LAW

Conditional Use Permit

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**.

****Items in grey font are potential conditions of approval that apply only to an approval of this application.****

****Items in red font are potential conditions of denial that apply only to a denial of this application.****

DECISION

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

Conditional Use Permit:

Prior to Occupancy

1. A detached sidewalk and landscaping meeting the requirements of Garden City Code 8-4E-6 and the Garden City Sidewalk Policy shall be installed along Brown Street.

Site Specific Requirements for the Duration of the Use

1. The scope of the permit is for the use "Storage Facility or Yard".
2. Site Layout:
 - a. The distance between structures shall be a minimum of twenty five feet (25').
 - b. No structure, facility, drive lane, parking area, or loading area shall be located adjacent to a residential district.
3. Parking And Access:
 - a. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.
 - b. All surfaces used for parking shall be constructed with paving, vegetative cover or of dustless material.
4. Limitations:
 - a. Storage units, facility areas or vehicles shall not be used as dwellings or as a commercial or industrial place of business.
 - b. The site shall not be used as a vehicle wrecking or junk yard as herein defined.
5. Site Maintenance:
 - a. All outdoor storage of materials or vehicles shall be maintained in an orderly manner so as not to create a public nuisance.
 - b. Materials or vehicles shall not be stored within the required yard setbacks.
 - c. Stored items shall not block sidewalks or parking areas and may not impede vehicular or pedestrian traffic.
6. Outdoor storage areas shall comply with section 8-1C-3, Property Maintenance Standards, of this title.
7. Clear Vision Triangle: All streets and driveways shall adhere to the standards of a clear vision triangle.
 - a. Measurement: The clear vision triangle shall be measured as follows:
 - i. The area is measured from the intersection of two (2) streets from the edge of pavement at the corner to a distance of forty feet (40') along each public street. The triangular area within is the "clear vision triangle". (Ord. 898-08, 9-8-2008)
 - ii. The area of the clear vision triangle at the intersection of private streets or driveways with a public street is dependent on the volume of traffic and existing safety conditions at the intersection as determined by the transportation authority. The clear vision triangle shall not be less than seven feet (7'). (Ord. 944-12, 5-14-2012)
 - b. Standards Within The Clear Vision Triangle:
 - i. Trees planted within a clear vision triangle shall be pruned to a minimum height of eight feet (8') above the ground or sidewalk surface and fourteen feet (14') above the adjacent street surface.
 - ii. No evergreen trees shall be planted within any clear vision triangle.
 - iii. The maximum height of any berm or vegetative ground cover at maturity within the clear vision triangle shall be three feet (3') from the lowest adjacent street grade.
 - iv. No fences higher than three feet (3') from the lowest adjacent street grade are permitted in the clear vision triangle.
 - v. No signs taller than three feet (3') are permitted in the clear vision triangle, except for street/stop signs approved by the transportation authority.
8. Outdoor Storage: Where allowed the outdoor storage of vehicles, equipment, materials, or merchandise shall be in compliance with the following standards:

- a. No outdoor storage items shall block sidewalks, driveways to the site, or impede vehicular and pedestrian traffic and parking.
 - b. For nonresidential uses, outdoor storage areas shall be screened from the view of adjacent property by a solid masonry wall or privacy fence or approved landscape buffer. The height of the wall or fence shall be the maximum of eight feet (8').
 - c. No junk materials, goods, merchandise, or wares shall be stored outside in any residential zoning district or visible from an arterial street.
 - d. Outdoor storage areas shall not exceed fifty percent (50%) of the total area of the site except where landscaping is provided in addition to the required setbacks as follows:
 - i. The additional landscaping shall be equal to at least ten percent (10%) of the area of storage that is over the fifty percent (50%) of total site area; and
 - ii. The additional landscaping shall be located on the outside of the required solid masonry wall or privacy fence.
9. Fencing shall be installed along all property lines in conjunction with the following standard:
- a. An eight (8') fence shall be installed along all property lines. The fence height shall be lowered to accommodate the clear vision triangle noted in condition 7 above.
 - b. Fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage. Where there is no building frontage, fences greater than three and one-half feet (3.5') shall be set back minimally ten feet (10') from the back of the sidewalk so as to allow for street trees and landscaping between the fence and the sidewalk.

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

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission hereby **DENIES** 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 15 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

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