

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

In the Matter of:)) Conditional Use Permit/Variance) 209 W. 36 th Street) Garden City, Ada County, Idaho) _____)	CUPFY2019-9/VARFY2019 -1 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 applicant is Josh Beach of Conger Group.
2. The property owner of record is C4 Investments LLC.
3. The application is for:
 - a. Conditional Use Permit for the use "Industry, Flex"
 - b. Variance of standards of Garden City Code 8-4I-5 (Perimeter Landscaping Provisions)
 - c. Variance of standards of Garden City Code 8-4E-6 (Sidewalk Standards)
4. The location of the project is 209 W. 36th Street St., Ada County Parcel R2734531468; PAR#1468 of Lots 30-34, Incl Blk X, Fairview Acres Sub No. 4
5. The subject property is .29acres.
6. The project is located in the Garden City C-2 General Commercial Zoning District.
7. The project is located in the Transit Oriented Development Node Buffer of the Garden City Comprehensive Plan Land Use Designation.
8. The existing use on the site is: Vacant.
9. Current access to the site is from Brown Street.
10. There are no sidewalks along Brown Street.
11. 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: Industry, Flex. The scope of this definition includes the uses "Equipment Rental and Sales", Motorcycle Sale, Service, Storage, Rental", Service Provider, and Vehicle Service".
GCC 8-1B-5 Interpretation	Noted	The definition of this use includes the uses "Industry, Light" and "Storage Yard" as allowed activities. However, these uses

		are prohibited in the C-2 zone. When there is a conflict in the provisions of this title, Garden City Code 8-1A-5 (Interpretation) requires the more restrictive provision applied. The prohibition of these uses in the C-2 zone is the more restrictive provision, prohibiting these uses as part of the use "Industry, Flex".
GCC 8-2B-2 Allowed Uses	Yes	The use "Industry, Flex" requires a conditional use permit in the C-2 Zoning District.
GCC 8-2C-24 Industry Flex GCC8-2C-16 Equipment Rental, Sales, and Service GCC 8-2C-36 Service Provider GCC 8-2C-41 Vehicle Service	Yes	The standards of this section include standards for the uses "Equipment Rental and Sales", Service Provider, and Vehicle Service". The proposal does not meet the minimum 15,000 square feet of site required for the use when taking requires site and landscape improvements into account. The use "Vehicle Service" is prohibited.
Title 8 Chapter 4 Design and Development Regulations	Yes	A design review is required for structures and site improvements associated with the proposal. A detached sidewalk and landscaping meeting the requirements of GCC 8-4E-6 is required.
GCC 8-6B-2 Conditional Use	No	<ol style="list-style-type: none"> 1. The Commission cannot find whether the use is or is not appropriate to the location, the lot, and the neighborhood. There is not enough information on the record concerning the use of the "crushed gravel service yard" depicted in the application. 2. The use will be supported by adequate public facilities or services to the surrounding area; or conditions can be established to mitigate adverse impacts. 3. The Commission cannot find whether the use at this location will or will not unreasonably diminish either the health, safety or welfare of the community as conditioned. There is not enough information on the record concerning the use of the

		<p>“crushed gravel service yard” depicted in the application.</p> <p>4. The Commission cannot find whether the use at this location is or is not in conformance with the comprehensive plan and other adopted plans, and ordinances of the city. There is not enough information on the record concerning the scope and scale of each use and concerning the use of the “crushed gravel service yard” depicted in the application.</p>
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Variance – GCC 8-4I-5 (Perimeter Landscaping Provisions)		
Standards	Compliant	Conclusions
GCC 8-6B-9 Variance	No	<p>1. The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property (a finding of undue hardship). The property’s configuration limits the ability to comply with this finding.</p> <p>2. The need for the variance is not the result of actions of the applicant or property owner. The applicant did not reconfigure the property prior to applying for the variance.</p> <p>3. The variance will unreasonably diminish either the health, safety or welfare of the community neighborhood. There is not enough information on the record concerning the use of the “crushed gravel service yard” depicted in the application. An additional variance may be necessary to reduce the driveway width, provided that the North Ada County Fire and Rescue District’s ability to protect the health, safety or welfare of the community neighborhood is not reduced.</p>

		<p>4. The variance is the not only reasonable alternative to overcome the undue hardship. There is not enough information on the record concerning the use of the “crushed gravel service yard” depicted in the application. An additional variance may be necessary to reduce the driveway width, provided that the North Ada County Fire and Rescue District’s ability to protect the health, safety or welfare of the community neighborhood is not reduced.</p> <p>5. The variance is not the minimum relief necessary to allow reasonable use of the subject property. There is not enough information on the record concerning the use of the “crushed gravel service yard” depicted in the application. An additional variance may be necessary to reduce the driveway width, provided that the North Ada County Fire and Rescue District’s ability to protect the health, safety or welfare of the community neighborhood is not reduced.</p>
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Variance – Garden City Code 8-4E-6 (Sidewalk Standards)		
Standards	Compliant	Conclusions
GCC 8-6B-9 Variance	No.	<p>1. The Commission cannot find whether the subject property is or is not deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property (a finding of undue hardship). There is not enough information on the record to determine whether the property is deprived of rights and privileges as noted in this finding.</p> <p>2. The Commission cannot find whether the need for the variance is or is not the result of actions of the</p>

		<p>applicant or property owner. There is not enough information on the record to determine whether the need for the variance is or is not the result of the actions of the applicant or property owner.</p> <p>3. The Commission cannot find whether the variance will or will not unreasonably diminish either the health, safety or welfare of the community neighborhood; There is not enough information on the record to determine whether the variance will or will not unreasonably diminish the health, safety or welfare of the community neighborhood.</p> <p>4. The Commission cannot find whether the variance is the only reasonable alternative to overcome the undue hardship. There is not enough information on the record to determine whether the variance is or is not the only reasonable alternative. and</p> <p>5. The Commission cannot find whether the variance is or is not the minimum relief necessary to allow reasonable use of the subject property. There is not enough information on the record to determine whether the variance is or is not the minimum relief necessary.</p>
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12. Other studies, plans or approvals reviewed include:

Garden City Comprehensive Plan	No	The Commission cannot find whether the use at this location is or is not in conformance with the comprehensive plan or the Transit Oriented Development Node designation of the Comprehensive Plan Land Use Map. There is not enough information on the record concerning the scope and scale of each use and concerning the use of the “crushed gravel service yard” depicted in the application.
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Garden City Planning And Zoning Commission Sidewalk Policy	No	At the applicant's request, the policy was not reviewed.
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. Garden City Sewer
 - c. Garden City Engineer
 - d. Department of Environmental Quality
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 April 2, 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 May 15, 2019.
16. A transmittal to other agencies including notice, application and other documents was sent on April 29, 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 30, 2019 and on April 29, 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 continued at the May 15, 2019 due to noncompliance with the property posting requirements of GCC 8-6A-7 (Public Hearing Process).
19. 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
20. 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**.

Variance of GCC 8-4I-5 (Perimeter Landscaping Provisions)

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-9 Variance**.

Variance of GCC 8-4E-6 (Sidewalk standards)

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-9 Variance**.

****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** of the applications subject to the following conditions:

Conditional Use Permit:

Scope of Permit:

1. The scope of the permit is for the use "Industry, Flex". The uses specifically authorized by this permit are "Equipment Rental and Sales", "Motorcycle Sale, Service, Storage, Rental" and "Service Provider".
2. The use "Vehicle Service" is not authorized this permit.
3. The scope of the permit does not approve the site and landscape plan. Approval of required building, site, and landscape improvements, excluding the detached sidewalk and landscape configuration, shall be approved in a Design Review.

Prior to Occupancy

4. A detached sidewalk and landscaping meeting the requirements of Garden City Code 8-4E-6 and the Garden City Sidewalk Policy shall be installed.
5. A certificate of occupancy shall be obtained.

Site Specific Requirements for the Duration of the Use

6. The following conditions shall apply to all uses within the scope of the use "Industry, Flex":
 - a. Setback:
 - i. All mechanical equipment emissions; shipping and/or delivery; or other outdoor activity areas shall be located a minimum of five hundred feet (500') from any abutting residential districts.

- ii. Any use involving explosive manufacturing or storage, flammable substance storage, foundry, freight and truck terminal, manufacture or processing of hazardous chemicals, power plant, food product storage and processing plant shall be located a minimum of one thousand feet (1,000') from a hospital.
 - b. Limitations: The following adverse effects shall be mitigated through setbacks, buffers, sound attenuation and/or hours of operation:
 - i. Noise, odor, or vibrations; or direct or reflected glare; detectable by the human senses without the aid of instruments.
 - ii. Radioactivity and electric or electromagnetic disturbances which unduly interfere with the normal operation of equipment, instruments, or appliances on abutting properties.
 - iii. Any other emission or radiation which endangers human health, results in damages to vegetation or property or which exceeds health and safety standards.
 - c. Other Regulations Apply: A use in this category may require approval from the Environmental Protection Agency, the U.S. Department of Agriculture, Central District Health Department, the Ada County air quality board and Idaho Department of Water Resources.
- 7. The following conditions shall apply to the use "Service Provider":
 - d. No structure, facility, drive lane, parking area, or loading area shall be located adjacent to a residential district.
 - e. Parking and Access:
 - i. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.
 - ii. All surfaces used for parking shall be constructed with paving, vegetative cover or of dustless material.
 - f. Limitations: The site shall not be used as vehicle wrecking as herein defined.
 - g. Site Maintenance:
 - i. All outdoor storage of materials or vehicles shall be maintained in an orderly manner so as not to create a public nuisance.
 - ii. Stored items shall not block sidewalks or parking areas and may not impede vehicular or pedestrian traffic.
 - h. Other Standards Apply: Outdoor storage areas shall comply with section 8-1C-3, Property Maintenance Standards, of this title.
- 8. The following conditions shall apply to the use "Equipment Rental and Sales":
 - i. Limitations:
 - i. All repair activities (including, but not limited to, open pits and lifts) shall occur within an enclosed structure.
 - ii. All equipment repairs shall be limited to between the hours of seven o'clock (7:00) A.M. and seven o'clock (7:00) P.M., Monday through Saturday.
 - iii. Damaged or wrecked equipment shall not be stored on site for purposes other than repair.
 - iv. All equipment shall be parked on site and not in adjoining streets or alleys.
 - v. All discarded vehicle parts or equipment, or permanently disabled, dismantled, or junked vehicles shall be removed from the premises within thirty (30) days of arrival.

- j. Site Design: All new structures constructed for equipment repair shall be constructed so that the entrances to individual workstation/service bays do not face abutting residential parcels or the public rights of way.
- k. Maintenance: All paved and unpaved areas shall be maintained grease and oil free.

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** of the applications 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