

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

In the Matter of:)	CUPFY2020-14
)	
Conditional Use Permit)	FINDINGS OF FACT,
5219 W. Chinden Blvd.)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
<hr/>		

THIS MATTER, came before the Garden City Planning And Zoning Commission on August 19, 2020 and was continued to a date certain for consideration on September 16, 2020. 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 request is for the use of Drive Through Establishment defined by Garden City Code 8-7A-1 as "Any use that permits service to take place directly with customers located in a motor vehicle. The term "drive-through establishment" shall include, but not be limited to, providing food or beverage service, bank service, prescription drugs, and/or film processing. The term "drive-up window service" shall not include fuel sales facility or vehicle washing facility as herein defined."
2. The applicant is Jeff Likes representing Travis Stroud of Dutch Brothers.
3. The property owner of record is Park Hampton LLC.
4. The location of the project is 5219 W. Chinden Blvd.; Ada County Assessor parcel number(s) R7334170125 described as POR LTS 1-6 & 13-15 IN TCA 06 RANDALL ACRES SUB NO 06 BLK B.
5. The property is a legal lot of record.
6. The application is for a design review for the use of Drive-Through Establishment.
7. The scope of the conditional use permit is limited to the parcels # R7334170125
8. The subject property is 2.410 acres.
9. The project is located in the C-2 General Commercial zoning district.
10. The project is located in the Green Boulevard Corridor; Light Industrial Bradley

Technology of the Garden City Comprehensive Plan Land Use Designation.

11. The project is not located in the SFHA according to the 2003 FIRM.
12. The project is not located in the SFHA according to the 2017 FIS.
13. The existing use on the site is Vehicle Sales.
14. The following standards apply to this proposal:
 - a. Garden City Code 8-1A-4 Applicability
 - b. Garden City Code 8-1B Existing Nonconforming Properties, Structures, and Uses
 - c. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - d. Garden City Code 8-4C Design Provisions for Nonresidential Structures
 - e. Garden City Code 8-4F Sign Provisions
 - f. Garden City Code 8-4I Landscaping and Tree Protection Provisions
15. The following plans and policies apply to this proposal:
 - a. Garden City Comprehensive Plan
 - b. Garden City Sidewalk Policy
 - c. Garden City Street Light Policy
 - d. Chinden ITD Access Management
16. The following previous approvals apply to this proposal:
 - a. DSRFY2020-21
 - b. FF2020-31
17. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

Conditional Use Permit			
Provided			
Yes	No	NA	
X			Compliance Statement
X			Neighborhood Map
X			Will Serve

18. Additional application materials submitted include:
 - a. Site Plan;
 - b. Floor Plans;
 - c. Materials Plan;
 - d. Grading Plan;
 - e. Landscape Plan;

- f. 300' Neighborhood List;
- g. Affidavit of Legal Interest;
- h. Application;
- i. Statement of Intent.

19. Agency Comments were received from:

- a. Central District Health, July 6th, 2020
- b. North Ada County Fire and Rescue, July 8th, 2020.

20. No public comments were received.

21. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application here	07/14/2020	06/17/2020
Letter of Acceptance	07/17/2020	07/06/2020
Radius Notice	08/04/2020	07/20/2020
Interested Parties	None	None
Legal Notice	07/30/2020	07/20/2020
Agency Notice	08/04/2020	07/16/2020
Property Posting Sign	08/09/2020	08/25/2020
Affidavit of Property Posting and Photos	08/12/2020	08/25/2020

22. On August 19, 2020, without reviewing the application, the Planning and Zoning Commission continued to a date certain of Wednesday, September 16, 2020 due to noticing deficiencies.

23. On September 16, 2020, a public hearing before the Design Review Committee was held:

- a. At the beginning of the meeting the Chairman asked if the applicant was in attendance, agreed with the draft findings of fact, conclusion of law and recommended decision in the affirmative, if there was any member of the public who wished to testify in opposition to the application, or if the staff or any member of the Commission have any reason that the application should be heard.
- b. The applicant Jeff Likes, noted that he was in attendance and that he agreed with the decision and conditions as drafted in the affirmative.
- c. There was no one from the public who wished to testify.
- d. The staff nor any member of the Commission noted a reason why this item needed to be heard.
- e. The application was moved to the consent agenda and approved.

24. The record contains:

- b. Application Documents
- c. Noticing Documents

- d. Agency Comments
- e. Written Public Comments: none provided
- f. Staff report
- g. August 19, 2020 Planning and Zoning Commission Hearing Minutes
- h. August 19, 2020 Planning and Zoning Commission Hearing Audio
- i. September 16, 2020 Planning and Zoning Commission Hearing Minutes
- j. September 16, 2020 Planning and Zoning Commission Hearing Audio
- k. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

25. In order to approve a conditional use permit application, the Planning and Zoning Commission shall make the following findings:

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<p>Finding: The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;</p> <p>Explanation:</p> <p>In Approval: The use of a drive through is appropriate to the location, lot, and the neighborhood and is compatible with uses within the C-2 General Zoning District. While there is access provided from W. 53rd Street, the drive-through is located on Chinden Boulevard.</p>
X			<p>Finding: The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;</p> <p>Explanation:</p> <p>In Approval: There are public services available that can accommodate the proposed development.</p>

X		<p>Finding: The use will not unreasonably diminish either the health, safety or welfare of the community;</p> <p>Explanation:</p> <p>In Approval: The drive through will not diminish the health, safety or welfare of the community. The proposed sidewalks and landscaping will enhance the overall wellbeing of the community.</p>
X		<p>Finding: The use is no in conflict with the comprehensive plan or other adopted plans, policies or ordinances of the city.</p> <p>Explanation:</p> <p>In Approval: The application is cohesive with the Comprehensive Plan's designation of the Green Boulevard Corridor and Light Industrial Bradley Technology. And is supports the Comprehensive Plan's Goal 1, Nurture the City; Goal 2, Improve the City Image; Goal 4, Emphasize the "Garden" in Garden City; Goal 7, Connect the City; and Goal 12, Evolve as a Destination.</p> <p>Furthermore, the use has been found to be compliant with the sections of code applicable to the application.</p>

18. The record was reviewed by the Planning and Zoning Commission to render the decision.

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:

CONDITIONS FOR APPROVAL DECISION

Application Specific Requirements:

Scope of Permit:

1. The scope of this permit is to allow for the use of a drive-through establishment.

Prior to Occupancy:

1. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from Garden City Development Services Department.
2. Prior to a certificate of occupancy being granted, the applicants existing drive-through located a 5177 W. Chinden Boulevard shall be physically removed and a notarized and recorded document shall be provided to the City indicating that the use of a drive-through has been removed and all rights to the use have ceased.
3. A building permit shall be applied for and approved by Garden City Development Services Department.
4. The application must receive design review committee approval. Compliance with the building design and site layout, and access and parking as regulated by GCC 8-2C-13, additionally GCC 8-4E-6 Sidewalk standards and 8-4I Landscape standards shall be reviewed with the design review application. The noted codes are not an exhaustive list of codes that will pertain to the design review.

Site Specific Requirements for the Duration of the Use:

The site shall be designed such that:

- a) The speaker system is located so that the sound from a speaker system is directed away from a residence, residential zone, park, or school and not audible off the site; and
 - i) Stacking does not create an impact off site; and
 - ii) Vibration, noise, odors, etc., are not allowed off site; and
 - iii) The use does not otherwise create a negative impact to an existing or planned pedestrian corridor; and
 - iv) The use does not hinder the implementation of Garden City adopted plans or policies.
- b) A seating area either indoor or outdoor with temporary or permanent shelter, sufficient for a minimum of ten (10) people shall be provided.
- c) A minimum of one (1) outdoor trash receptacle shall be provided.
- d) A restroom shall be provided for patrons.
- e) Operational Standards: 1. To reduce vehicle emissions, signage shall be provided advising drivers to reduce vehicle idling.
- f) Employees shall collect on-site and off-site litter generated by customers at least once per business day.

- g) Service shall be provided to those who elect to walk or bike at all hours that the drive-through is in operation.

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. The property owner is responsible to maintain the site to edge of roadway asphalt.
8. 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.
9. 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.
10. 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.
11. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
12. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.

13. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
14. 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.
15. 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.
16. The landscape installation shall stabilize all soil and slopes.
17. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
18. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
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. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
28. All previous uses are null and void unless otherwise conditioned.
29. 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.

30. 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.
31. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
32. 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.
33. A takings analysis pursuant to Idaho Code may be requested on final decisions.
34. 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

