

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

In the Matter of:)	CUPFY2020-10
)	
Conditional Use Permit)	FINDINGS OF FACT,
208 and 212 W. 40 th St.)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
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THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on April 15, 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 applicant is Robert Welfley with Forever Green, Inc.
2. The property owner of record is Brian Pooley.
3. The location of the project is 208 and 212 W. 40th Streets; Ada County Parcel Numbers R2734510760 and R2734510770, respectively
4. The application is a conditional use permit for the use Service Provider. The scope of the conditional use permit is limited to the properties listed in this decision.
5. The subject property is 1.378 acres.
6. The project is located in the C-2 General Commercial zoning district.
7. The project is located in the Mixed-Use Commercial of the Garden City Comprehensive Plan Land Use Designation.
8. The project is not located in the floodplain according to the 2003 FIRM.
9. The project is not located in the floodplain according to the 2017 FIS.
10. The existing use on the site is:
 - a. Dwelling Unit, Single Family Attached (not a legal use)
 - b. Service Provider (existing landscape business requesting a CUP)
11. The following standards apply to this proposal:
 - a. Garden City Code 8-6B-2: Conditional Use

- b. Garden City Code 8-6A: Administration – General Provisions
- c. Garde City Code 8-2C-36: Land Use Provisions – Service Provider

12. 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

13. The applicant provided the following application information:

Materials Provided Per GCC Table 8-6A-2 Required Application Information			
Provided			
Yes	No	NA	
X			Compliance Statement
X			Neighborhood Map
	X		Site Plan
		X	Landscape Plan
		X	Schematic Drawings
		X	Lighting Plan
		X	Topographic Survey
		X	Grading Plan
X			Will Serve
X			Verification that address is an Ada County Approved Address

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

Noticing Requirement	Required Date	Completion Date
Neighborhood Meeting	2/26/2020	2/18/2020
Letter of Acceptance	4/3/2020	2/21/2020
Radius Notice	4/3/2002	2/21/2020
Interested Parties	N/A No Interested Parties	
Legal Notice	4/3/2020	2/26/2020
Agency Notice	4/3/2020	2/21/2020
Property Posting Sign	4/5/2020	3/31/2020
Affidavit of Property Posting and Photos	4/8/2020	3/31/2020 (Date stamp of property posting photo used in lieu of affidavit)
Agenda Posting	4/14/2020	2/26/2020
Website Posting	4/14/2020	2/26/2020

15. On 4/15/2020, a public hearing before the Planning and Zoning Commission was held:

- a. This section will be completed after the hearing.

16. The record contains:
 - a. Application
 - b. Compliance Statement
 - c. Letter of Intent
 - d. Neighborhood Map
 - e. Site Photos
 - f. Will Serve Letter
 - g. Noticing Documents:
 - h. Agency Comments:
 - i. Garden City Engineer
 - i. 4/15/2020 Planning and Zoning Commission Hearing Minutes
 - j. 4/15/2020 Planning and Zoning Commission Hearing Audio
 - k. Signed Findings of Fact, Conclusions of Law and Decision

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

The draft findings are written both in approval and in denial. The Planning and Zoning Commission will select the corresponding findings in their motion for a decision.			
GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			
Compliant	Not Compliant	Not Applicable to this Application	Standard
			<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 application meets this finding. The application is in conformance with the reviewed sections of code noted in this decision.</p> <p>In Denial: LIST WHAT ACTIONS, IF ANY, THE APPLICATION COULD HAVE TAKEN TO OBTAIN APPROVAL.</p>
			<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:</p> <p>In Approval: The application meets this finding. The application is in conformance with the reviewed sections of code noted in this decision.</p> <p>In Denial: LIST WHAT ACTIONS, IF ANY, THE APPLICATION COULD HAVE TAKEN TO OBTAIN APPROVAL.</p>
			<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 application meets this finding. The application is in conformance with the reviewed sections of code noted in this decision.</p> <p>In Denial: LIST WHAT ACTIONS, IF ANY, THE APPLICATION COULD HAVE TAKEN TO OBTAIN APPROVAL.</p>
			<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 meets this finding. The application is in conformance with the reviewed sections of code noted in this decision.</p> <p>In Denial: The LIST WHAT ACTIONS, IF ANY, THE APPLICATION COULD HAVE TAKEN TO OBTAIN APPROVAL.</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/does not meet** 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/ DENIES** of the application subject to the following conditions:

Conditions for approval are in grey
Conditions for denial are in red

IN APPROVAL

Site Specific Requirements:

Prior to Occupancy:

1. The scope of the conditional use permit is for the use Service Provider.
2. The scope of the conditional use permit does not include the existing multi-family dwelling unit use located on the property operating without a certificate of occupancy.

Prior to Occupancy:

1. A parking analysis meeting the requirements of Garden City Code shall be submitted for review prior to a certificate of occupancy and/or certificate of compliance.
2. Landscaping meeting the requirements of Garden City Code shall be installed prior to a certificate of occupancy and/or certificate of compliance.

Site Specific Requirements for the Duration of the Use:

1. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.
2. All surfaces used for parking shall be constructed with paving, vegetative cover or of dustless material.
3. The site shall not be used as vehicle wrecking as herein defined.
4. All outdoor storage of materials or vehicles shall be maintained in an orderly manner so as not to create a public nuisance.
5. 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.

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 as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.
 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. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
20. This approval is for this application only. Additional permits, licenses and approvals may be necessary.
21. Property maintenance standards shall be maintained as required by Garden City Code.
22. The property owner is responsible for the maintenance of all landscaping and screening devices required.
23. 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.
24. 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.
25. 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.
26. 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.
27. Any violation of the conditions of this application is a criminal offence.
28. 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.
29. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
30. All previous uses are null and void unless otherwise conditioned.
31. 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.
32. 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.
33. 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.
34. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
35. 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.
36. A takings analysis pursuant to Idaho Code may be requested on final decisions.
37. 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

In Denial

1. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within ten (10) days after the action of the decision.
2. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
3. Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.
4. Pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code, a takings analysis 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