

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

THIS IS NOT A PREDETERMINED DECISION. ALL EVIDENCE WILL BE CONSIDERED. A DIFFERENT DECISION MAY RESULT IN AN UPDATE OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, OR CONDITIONS.

In the Matter of:)	CUPFY2021-0007
)	
Conditional Use Permit)	FINDINGS OF FACT,
303, 215 E. 34 th Street)	
and 3342 N. Carr Street)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
_____)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on April 21, 2021. 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. This permit is for the request of a Farmers Market and Community Gathering Destination (or as rephrased Outdoor Event Center).
2. This use is not defined by Garden City Code.
3. The applicant is Jorre Delgado.
4. The property owner of record is URBAN WILLOW LLC.
2. The location of the project is:
 - a. 300 E. 34th Street; Ada County Parcel Number R2734540550; described as LOTS 1/2 BLK 3 FAIRVIEW ACRES SUB NO 5
 - b. 3342 N. Carr Street; Ada County Parcel Number R2734541520; Described as LOTS 33/34 BLK 35 FAIRVIEW ACRES SUB NO 5
 - c. 215 E. 34th Street; Ada County Parcel Number R2734541395; Described as LOT 27 BLK 34 FAIRVIEW ACRES SUB #5.

5. The property is a legal lot of record.
6. The scope of the request applies to the entire property.
7. The subject property is 0.85 acres.
8. The project is located in the C-2 General Commercial zoning district.
9. The project is located in the Live-Work-Create and Activity Node: Neighborhood Destination designations of the Comprehensive Plan Future Land Use Map.
10. The project is not located in the SFHA according to the 2003 FIRM.
11. The project is located in the SFHA according to the 2017 FIS.
12. The existing use on the site is Farmers Market and Event Center.
13. 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 8-4D Parking and Off Street Loading Provisions
 - e. Garden City Code 8-4E Transportation and Connectivity Provisions
 - f. Garden City Code 8-4I Landscaping and Tree Protection Provisions
14. 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
15. The following previous approvals apply to this proposal:
 - a. CUPFY2019-04
 - b. SUBFY2021-0005
16. 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
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17. Additional application materials submitted include:

- a. Site Plan;
- b. Site Photos;
- c. Irrigation Letter;
- d. Landscape Plan;
- e. 300' Neighborhood List;
- f. Affidavit of Legal Interest;
- g. Application;
- h. Statement of Intent.

18. Agency Comments were received from:

- a. Fairview Acres, March 26, 2021

19. No public comments were received.

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

Noticing Requirement	Required Date	Completion Date
Receipt of application here	03/16/2021	
Letter of Acceptance	04/16/2021	03/29/2021
Radius Notice	04/06/2021	03/17/2021
Interested Parties	None	None
Legal Notice	04/02/2021	03/17/2021
Agency Notice	04/06/2021	03/17/2021
Property Posting Sign	04/11/2021	04/08/2021
Affidavit of Property Posting and Photos	04/11/2021	04/08/2021

21. On April 21, 2021, a public hearing before the Planning and Zoning Commission was held:

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

22. The record contains:

- c. Application Documents
- d. Noticing Documents
- e. Agency Comments: Fairview Acres
- f. Written Public Comments: Belinda Isley
- g. Staff report
- h. April 21, 2021 Planning and Zoning Commission Hearing Minutes
- i. April 21, 2021 Planning and Zoning Commission Hearing Audio
- j. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

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

<p>The draft findings are written both in approval and in denial. The Planning and Zoning Commission will select the corresponding conclusions and explanations during their decision. Potential explanations have been provided.</p>			
<p>GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS</p>			
Conclusion		Standard	
Compliant	Not Applicable to this Application	Not Compliant	
X		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>In Approval: The use is appropriate to the location, lot, and the neighborhood as location is in the Comprehensive Plan's land use designation of a Neighborhood Destination Center.</p> <p>In Denial: This request, as it is outdoors, is likely to be in conflict with the neighborhood residential uses particularly related to noise. The influx of people at events that will utilize more than it's fair share existing public parking.</p>
X		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> <p>In Denial: This request if for a use that will overrun the neighborhood as the neighborhood does not have adequate infrastructure to support the necessary parking, pedestrian</p>

			sidewalks, or policing required of the proposal.
X		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 use will not unreasonably diminish either the health, safety or welfare of the community.</p> <p>In Denial: Other uses provide adequate measures to reduce their impacts on the neighborhood. This use does not contemplate providing any infrastructure to support itself.</p>
X		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: This application is cohesive with future land use designations of the Comprehensive Plan:</p> <ul style="list-style-type: none"> a) Activity Node: Neighborhood Destination b) Live-Work-Create <p>The application may be supported by:</p> <p>Goal 1. Nurture the City</p> <ul style="list-style-type: none"> a.) 1.1 Objective: Promote city events, seasonal holidays and celebrations. b.) 1.4 Objective: Create a premier destination place to live, work, and recreate. <p>Goal 2. Improve the City Image</p> <ul style="list-style-type: none"> a.) 2.1 Objective: Encourage new and distinctive neighborhoods. <p>Goal 3. Create a Heart for the City</p> <ul style="list-style-type: none"> a.) 3.2 Objective: Create public gathering places at multiple locations throughout the City. <p>Goal 11. Serve the City</p> <ul style="list-style-type: none"> b.) Continue to maintain existing public facilities and support social services. Develop more civic uses sought by the community.

			<p>Goal 12. Evolve as a Destination</p> <ul style="list-style-type: none"> a.) 12.1 Objective: Support a positive business environment b.) 12.2 Objective: Continue to support commercial and industrial land uses. c.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture and commerce. <p>In Denial:</p> <p>This application is not cohesive with future land use designation of the Comprehensive Plan:</p> <ul style="list-style-type: none"> a) Live-Work-Create <p>The application is not be supported by the Comprehensive Plan:</p> <p>Goal 4. Beautify and Landscape</p> <ul style="list-style-type: none"> a.) 4.13 Objective: Beautify streets, sidewalks and gateways with landscaping, trees, and public art. b.) 4.3.1: Continue to require sidewalks and landscaping in all new development, and in major alterations and re-use of existing commercial sites. <p>Goal 5. Focus on the River</p> <ul style="list-style-type: none"> a.) 5.2 Objective: Landscape along the river. b.) 5.8.1: Acknowledge the increasing attraction of the Greenbelt and potential conflicts for all types of users: river-related activities, maintenance, recreation bicyclists and walkers, other wheeled device users, and commuters. Plan for the future to maintain compatibility among users through signage, shielded lighting, wider greenbelt sections at congestion points, delineation lines, and enforcement, including off-hour use. <p>Goal 7. Connect the City</p> <ul style="list-style-type: none"> a.) 7.1 Objective: Create pedestrian and bicycle friendly connections.
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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:

POTENTIAL CONDITIONS FOR APPROVAL DECISION

Application Specific Requirements:

Prior to Occupancy:

1. Occupancy of the site shall not commence until after a Certificate of Compliance has been obtained from Garden City Development Services Department.
2. Temporary use of the site can occur prior to the installation of the sidewalk and required landscaping. The City approved sidewalk and street trees shall be provided by December 31, 2021. Failure to complete these improvements by this date will result in an automatic revocation of this approval.
3. If the subdivision SUBFY2021-0005, Casino Beach is not recorded and associated improvements made, a new site plan shall. The site plan shall adhere to the Design Review Process, and all related improvements must be made by April 1, 2022.
4. A site plan for each event shall be submitted to North Ada County Fire and Rescue District with ample time for their review and comment.
5. All temporary structures shall obtain the appropriate permits prior to being placed on site.
6. A corrected Affidavit of Legal Interest shall be provided to Staff.

Site Specific Requirements for the Duration of the Use:

1. If SUBFY2021-0005, Casino Beach is approved; the conditional use permit will no longer apply to the individual properties created through the subdivision once a building permit is applied for on the lot should it change the use of the lot.
2. The market shall be permitted on any and all common lots within the SUBFY2021-0005 Casino Beach Subdivision if the subdivision is approved.

3. Temporary closures of 34th Street north of Carr is permitted for automobiles only. 34th Street must maintain open to pedestrians and bicyclists. Any temporary closure of right of ways must obtain approval from Ada County Highway District and the Garden City Police and Clerk Departments.
4. No closures of rights-of-way to bicycles and pedestrians wishing to gain access to the Greenbelt is permitted.
5. The vacation of 34th Street shall not occur unless approved by Garden City Council.
6. Restroom facilities, including hand washing facilities shall be provided.
7. Bicycle parking shall be provided.
8. Vehicular parking shall be provided.
9. Areas of pedestrian activity shall be separated from areas of vehicular use.
10. Between the hours of nine o'clock (9:00) P.M. one day and eight o'clock (8:00) A.M. the following day, it shall be unlawful for any person or business to make, cause, or allow loud or offensive noise by means of voice, musical instrument, horn, radio, loudspeaker, automobile, machinery, other sound amplifying equipment, domesticated animals, or any other means which disturbs the peace, quiet, and comfort of any reasonable person of normal sensitiveness residing in the area. Loud or offensive noise is that which is plainly audible within any residence or business, other than the source of the sound, or upon a public right-of-way or street at a distance of one hundred feet (100') or more from the source of said sound.
11. The use shall comply with all Idaho Code regulations regarding the sale, manufacturing, or distribution of alcoholic beverages.
12. The use shall comply with the licensing requirements as set forth in title 3, "Business And License Regulations", of this code.
13. Security shall be provided for the entire premises including inside the building and any parking lot or outside usable space. Security shall be provided in the prescribed manner:
 - a. Security personnel are required and shall wear identical attire clearly identifiable with the word "Security" on the backside of shirts; and
 - b. Security staff should have some means of two-way communication; and
 - c. Video surveillance is required; and

- d. Parking areas shall be lighted; and
 - e. No loitering outside of the establishment shall be permitted.
14. This conditional use permit may be revoked at any time, if it is determined by the Garden City Chief of Police that parking and/or traffic, noirs, or activities are having a significant detrimental effect on public safety.
 15. All advertising, publicity, and promotion, including social media, for this event must state the following, "Parking for the event is limited, please use alternative modes of transportation such as walking, public transportation, bicycle, or ride-share services."
 16. Events that are anticipated to utilize more than 50% of the on-street parking on 36th - 32nd Streets from Osage to the River, and Carr Street shall provide a shuttle service.
 17. If the market is to use the public parking lot located on 36th Street, then a shared parking agreement shall be applied for and approved by City Council.

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. All outdoor living spaces must comply with Garden City Cod 8-3C General Provisions- Living Space Requirements.

23. All outdoor service and equipment areas shall comply with Garden City Cod 8-4A-5 Outdoor Service and Equipment Areas.
24. All stormwater systems must comply with Garden City Code 8-4A-7.
25. 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.
26. 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.
27. 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.
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. Any violation of the conditions of this application is a criminal offence.
30. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
31. All previous uses are null and void unless otherwise conditioned.
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. This approval shall expire 365 days from its approval, unless otherwise extended as allowed by Garden City Code .
35. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
36. 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.
37. A takings analysis pursuant to Idaho Code may be requested on final decisions.
38. 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.

STANDARD CONDITIONS FOR DENIAL DECISION

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