

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:)	CUPFY2021-0008
)	
Conditional Use Permit)	FINDINGS OF FACT,
105 E. 41 st 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 May 19, 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. The request is for the use of Dwelling Unit defined by Garden City Code 8-7A-1 as "Any structure, or portion thereof, providing independent living facilities for one (1) "family" as herein defined, including provisions for living, sleeping, eating, cooking, and sanitation."
2. The applicant is Nick Kuklish.
3. The property owner of record is Nick Kuklish.
4. The location of the project is 105 E. 41st St., Garden City, Ada County Assessor parcel number(s) R2734502095.
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 .138 acres.
8. The project is located in the C-2 General Commercial zoning district.
9. The project is located in the Activity Node: Transit Oriented Development and Mixed-Use Commercial of the Garden City Comprehensive Plan Land Use Designation.

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 Vacant.
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 8-4B-3 Single Family and Two-Family Attached and Detached Dwelling
 - e. Garden City Code 8-4D Parking and Off-Street Loading Provisions
 - f. Garden City Code 8-4E Transportation and Connectivity Provisions
 - g. Garden City Code 8-4H Flood Hazard
 - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
 - i. Garden City Code 8-6A-3 General Application Process
 - j. Garden City Code 8-6A-4 Required Application Information
 - k. Garden City Code 8-6A-5 Administrative Process with Notice
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. DSRFY2021-0012
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

17. Additional application materials submitted include:
 - a. Site Plan;
 - b. Floor Plans;
 - c. Landscape Plan;

- d. Schematic Drawings;
- e. 300' Neighborhood List;
- f. Affidavit of Legal Interest;
- g. Grant of Easement;
- h. Application;
- i. Statement of Intent.

18. No Agency Comments were received from:

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	04/13/2021	04/09/2021
Letter of Acceptance (30 days after receipt of application)	05/09/2021	04/26/2021
Radius Notice (15 days prior to hearing)	05/04/2021	04/23/2021
Interested Parties	None	None
Legal Notice (19 days)	04/30/2021	04/23/2021
Agency Notice (15 days)	05/04/2021	04/26/2021
Property Posting Sign (10 days)	05/09/2021	05/07/2021
Affidavit of Property Posting and Photos (7 days)	05/12/2021	05/07/2021

21. On May 19, 2021 a public hearing before the Planning and Zoning Commission was held:

a. This section will be completed after the hearing.

22. The record contains:

- b. Application Documents
- c. Noticing Documents
- d. Agency Comments
- e. Written Public Comments
- f. Staff report
- g. May 19, 2021 Planning and Zoning Commission Hearing Minutes
- h. May 19, 2021 Planning and Zoning Commission Hearing Audio
- i. 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:

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.

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS

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 of a single-family detached dwelling unit is appropriate to the location, lot, and the surrounding neighborhood. The dwelling unit is compatible with uses within the C-2 General Zoning District.</p> <p>In Denial: The application does not meet this finding in that a single-family dwelling unit is not an appropriate use for the neighborhood. The neighborhood is commercial in nature and the residential use would be in conflict with the surrounding uses of vehicle services.</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 does not appear to be evidence on the record or comments from agencies that indicated the property is not able to be supported by public facilities or services. Agency comments did not reflect objection to the proposal in that no agency comments were received for this application. The applicant would be required to meet all applicable Garden City Code and agency requirements,</p>

			including any required permits and additional reviews
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: There does not appear to be evidence on the record or comments from agencies that the use will impact the health, safety and welfare of the community. Waivers are structural in nature rather than generated from the use. The construction of the dwelling would require a building permit and have to adhere to applicable Garden City Code and agency reviews.</p> <p>In Denial: List what actions, if any, the application could have taken to obtain approval.</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: The application is cohesive with the Comprehensive Plan's designation of the Mixed-Use Commercial, Transit Oriented Development Node and the Neighborhood Destination Activity Node. It supports the Comprehensive Plan's:</p> <p>Goal 1. Nurture the City</p> <p>a) 1.4 Objective: Create a premier destination place to live, work, and recreate.</p> <p>Goal 4. Emphasize the "Garden" in Garden City</p> <p>a) 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> <p>Goal 6. Diversity in Housing</p> <p>a) 6.2 Objective: Continue to be a</p>

			<p>leader and set an example for the region in creating a diversity of housing.</p> <p>Goal 7. Connect the City</p> <ul style="list-style-type: none"> a) 7.4 Objective: Maintain and improve standards for sidewalks, curbs and gutters. b) 7.1. Objective: Create pedestrian and bicycle friendly connections <ul style="list-style-type: none"> a. 7.1.5 Re-develop Osage and Stockton streets as shared mobility corridors that are attractive for pedestrians and bicyclists while maintaining access to local businesses. Consider the opportunities for an art pathway and one-way direction for each street. <p>Goal 12. Evolve as a Destination</p> <ul style="list-style-type: none"> a) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture and commerce. <p>In Denial:</p> <p>Goal 2. Improve the City Image</p> <ul style="list-style-type: none"> a) 2.3 Objective: Promote quality design and architecturally interesting buildings. b) 2.4 Objective: Create a vision for the design of all streets and highways consistent with city's urban setting. <p>Goal 4. Emphasize the "Garden" in Garden City</p> <ul style="list-style-type: none"> a) 4.3 Objective: Beautify streets, sidewalks and gateways with landscaping, trees, and public art. <p>Goal 7. Connect the City</p> <ul style="list-style-type: none"> a) 7.1.5 Re-develop Osage and Stockton streets as shared mobility corridors that are attractive for pedestrians and bicyclists while maintaining access to local businesses. Consider the opportunities for an art pathway
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			and one-way direction for each street. (See also Action Steps 2.4.1 and 2.4.2)
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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:

Scope of Permit:

1. The scope of this permit is to allow for the use of a single-family dwelling unit with an attached garage exceeding 1,000 square feet.
2. The building permits must be in conformance with the approved plans. Staff may approve minor changes to the approvals so if they are compliant with Garden City Code including:
 - a. Substitutions of plant species, if there is no reduction in landscaping and the species are comparable in height and width. Substitutions of trees must be of the same or larger tree classification and be comparable or larger in tree canopy and height.
 - b. Less than 5% of rearrangement of elevations or building façade materials if there is no reduction in building modulation, fenestration, or glazing.
 - c. Less than 5% of rearrangement of site.

Prior to Building Permit Issuance:

1. The site and building must be constructed in accordance with the approved design review file DSRFY2021-0012.
2. The applicant shall work with staff to achieve approval of the site plan and proposed development prior to submittal of a building permit.
3. A public works and utility permit shall be submitted for review and approval of the site work that will be required to bring the site into compliance with:
 - a. Landscaping and street trees shall be installed and inspected for compliance with Garden City Code 8-4I.
4. The development shall be compliant with Ada County Fire and Rescue Agency Comments.
5. The applicant shall mitigate for removed trees or shall provide a certified arborist's certification demonstrating the trees removed were dead, dying or a hazard in accordance with Garden City Code 8-4I-7 (Tree Preservation Provisions).
6. Approval contingent upon the submittal and the recordation of a cross access agreement between the proposed residential dwelling and the adjacent parcel located at 106 E. 41st Street.
7. No landscaping shall be planted on the adjacent property located at 106 E. 41st Street.
8. Perimeter landscaping shall be installed to meet Garden City Code 8-4I-5 Perimeter Landscaping Provisions Standards.
 - a. A perimeter landscaping area shall be at least ten feet (10') wide measured from the property line to the interior of the lot;
 - b. A screen consisting of vegetation shall be at least six feet (6') wide and six feet (6') in height at maturity;
 - c. At least one tree shall be planted for every fifteen (15) linear feet of perimeter length (or as appropriate to the selected species) to quickly establish continuous canopy coverage.
9. All landscaping shall be compliant with Garden City Code 8-4I-3 General Landscaping Standards and Irrigation Provisions.
10. The required street trees and frontage trees are permitted to be Class I trees if there is conflict with the powerlines above.
 - a. Class I trees are permitted as substitutes at a 1:2 Class II to Class I ratio.
 - b. Two class II trees are required along the frontier of Osage. If substitution is required, then Four Class I trees are required in the frontage to meet substitution standards.

11. All outdoor lighting shall be compliant with Garden City Code 8-4A-4 Outdoor Lighting.
12. Any existing or proposed fencing shall be compliant with standards set forth in Garden City Code 8-4A-3 Fences and Walls.
13. All utilities on the site, including telephone, cable television, and electrical systems shall be underground and in compliance with Garden City Code 8-4A-8.
14. All stormwater systems must comply with Garden City Code 8-4A-7.
15. The structure shall be designed in such a way to create a relationship between the dwelling and Osage Street. The relationship shall be created through architectural features such as:
 - a. Pedestrian level windows.
 - b. Articulation of the façades.
 - c. All façade materials shall wrap around the structure by at least 2 feet.

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. A building permit shall be applied for and approved by Garden City Development Services Department.
3. A 20' wide cross access easement shall be recorded where the shared drive isle is located and granted to the property for the purposes of the driveway ingress and egress.

Site Specific Requirements for the Duration of the Use:

1. All roof and wall mounted mechanical, electrical, communications, and service equipment should be screened from public view from the adjacent public streets and properties using parapets, walls, fences, enclosures, or by other suitable means.
2. The clear vision triangle shall be maintained throughout the duration of the use and in accordance with Garden City Code 8-4E-3.
3. The shared parking agreement with the adjacent property located at 106 E. 41st Street shall satisfy all guest parking requirements.

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.

Chairman, Planning and Zoning Commission

Date

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

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