

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:	)	CUPFY2021-0011
	)	
Conditional Use Permit	)	FINDINGS OF FACT,
105 W 4rd Street	)	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 July 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. The request is for the use of Service Provider defined by Garden City Code 8-7A-1 as "The use of a site for an employee or employees of a company or person that provides materials or labor to perform a service or job not located on site. This may include, but is not limited to, building or trades contractor, damage restoration services or cleaning services. This is not the same as a "storage yard" as herein defined nor does this definition include construction or manufacturing on site."
2. The applicant is Greg Toolson.
3. The property owner of record is Todd Sawyer.
4. The location of the project is 105 W 43<sup>rd</sup> Street; Ada County Assessor parcel number R2734510454 Lot 31 Block D of Fairview Acres No 2 subdivision.
5. The property is a legal lot of record.
6. The property is not a legal parcel.
7. The subject property is 0.47 acres.
8. The scope of the request applies to a portion of the property.
9. The project is located in the C-2 General Commercial zoning district.

10. The project is located in the Mixed Use Commercial section 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 located in the SFHA according to the Flood Insurance Model utilized for the 2020 FIRM.
13. The existing use on the site is vacant.
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 8-2B Base Zoning District Regulations
  - d. Garden City Code 8-2C Land Use Provisions
  - e. Garden City Code 8-4A Design and Development Regulations- General Provisions
  - f. Garden City Code 8-4D Parking and Off Street Loading Provisions
  - g. Garden City Code 8-4D Transportation and Connectivity Provisions
  - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
  - i. Garden City Code 8-6A Administration
15. The following plans and policies apply to this proposal:
  - a. Garden City Comprehensive Plan
  - b. Garden City Sidewalk Policy
  - c. Garden City Transportation Needs List
  - d. Garden City Street Light Policy
16. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

<b>Conditional Use Permit</b>			
Provided			
Yes	No	NA	
X			Compliance Statement
X			Neighborhood Map
X			Will Serve – requested

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

- e. 300' Neighborhood List;
  - f. Neighborhood Meeting Letter;
  - g. Attendance List;
  - h. Affidavit of Legal Interest;
  - i. Application;
  - j. Statement of Intent.
18. Agency Comments were received from:
- a. North Ada County Fire and Rescue, June 18, 2021
  - b. Ada County Highway District, June 29, 2021;
  - c. Garden City Engineer, June 25, 2021;
  - d. Fairview Acres lateral WUA, June 16, 2021
19. There were no public comments received.
20. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application <a href="#">here</a>	06/15/2021	06/15/2021
Letter of Acceptance (30 days after receipt of application)	07/15/2021	06/17/2021
Radius Notice (15 days prior to hearing)	07/06/2021	06/22/2021
Interested Parties	None	None
Legal Notice (19 days)	07/02/2021	06/17/2021
Agency Notice (15 days)	07/06/2021	06/16/2021
Property Posting Sign (10 days)	07/11/2021	07/09/2021
Affidavit of Property Posting and Photos (7 days)	07/14/2021	07/09/2021

21. No additional noticing.
22. On July 21, 2021, a public hearing before the Planning and Zoning Commission was held:
- b. This section will be completed after the hearing.
23. The record contains:
- c. Application Documents
  - d. Noticing Documents
  - e. Agency Comments
  - f. Written Public Comments
  - g. Staff report
  - h. July 21, 2021 Planning and Zoning Commission Hearing Minutes
  - i. July 21, 2021 Planning and Zoning Commission Hearing Audio

- j. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision
24. In order to approve a conditional use permit application, the Planning and Zoning Commission shall make the following findings:

<p><b>The draft findings are written both in approval and in denial. The decision makers may select the corresponding conclusions and explanations during their decision or make different conclusions based on their review of the record materials.</b></p>			
<p><b>GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS</b></p>			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
<b>X</b>		<b>X</b>	<p><b>Finding:</b> 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><b>In Approval:</b> The use is appropriate to the location, lot, and the neighborhood and is compatible with uses within the C-2 General Zoning District.</p> <p><b>In Denial:</b> The application is not appropriate to the location, the lots, the surrounding neighborhood nor is it cohesive with the Comprehensive Plan's designation of the Activity Node: Transit Oriented Development Node.</p>
<b>X</b>			<p><b>Finding:</b> 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><b>Explanation:</b> There are public services available that can accommodate the proposed development.</p>
<b>X</b>		<b>X</b>	<p><b>Finding:</b> The use will not unreasonably diminish either the health, safety or welfare of the community;</p>

			<p><b>Explanation:</b></p> <p><b>In Approval:</b> There are public services available that can accommodate the proposed development.</p> <p><b>In Denial:</b> The expansion of the use is detrimental to the public health, safety, or general welfare of the Community by expanding across multiple parcels without the proper legal descriptions or entitlements in place.</p>
X		X	<p><b>Finding:</b> The use is no in conflict with the comprehensive plan or other adopted plans, policies or ordinances of the city.</p> <p><b>Explanation:</b></p> <p><b>In Approval:</b> The application is cohesive with the Comprehensive Plan’s designation of the Mixed Use Commercial. 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> <p><b>In Denial:</b> The application is cohesive with the Comprehensive Plan’s designation of the Activity Node: Transit Oriented Development Node as it does not increase the density as required by the node.</p> <p>The application may not be supported by Goal 5. Focus on the River, Objective 5.5 Create more accessibility to the Boise River and Greenbelt, and Goal 7, Connect the City, Objective 7.3 Protect neighborhoods from through traffic.</p>

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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 Service Provider.
2. In conformance with the Garden City Transportation Needs List, no sidewalk is required along Stockton. However, pedestrian oriented features such as landscaping, fencing no taller than 3.5’ft, lighting, street art and furniture, and signage encouraged.
  - a. What constitutes as “pedestrian oriented” features for this particular application can be determined by the Design Review Committee.
3. At least 14 vehicular parking spaces shall be provided on site.
4. All landscaping shall be reviewed and approved by the Design Review Committee.
5. A minor land division will be required prior to any of the two parcels being sold so to match the parcel descriptions; or the property owner shall consolidate both parcels into one to match that of the original Lot 31 of Fairview Acres.

Prior to Building Permit:

1. A Design Review Application shall be submitted for and approved by the Design Review Committee. The Design Review Committee shall have authority over form standards and design and development standards.

- a. The Design Review Committee shall address the encroachment of the 5ft setback.

Prior to Occupancy:

1. The site and building must be constructed in accordance with the approved design review file.
2. The pedestrian pathway connecting the primary entrance of the building to Stockton shall be at least 4ft in width unless otherwise determined by the Design Review Committee.
3. Perimeter landscaping shall be provided between other paved vehicular use areas, including driveways, and vehicle storage areas and all property lines unless otherwise determined by the Design Review Committee.
  - a. Perimeter landscaping is required along the southern property boundary line, adjacent to parcel # R2734510440.
  - b. A perimeter landscaping area shall be at least five (5) feet wide measured from the property line to the interior of the lot;
  - 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.
  - d. A screen consisting of vegetation shall be at least six feet (6') wide and six feet (6') in height at maturity;
2. The pedestrian access from the primary entrance to Stockton shall be at least 4ft wide in accordance with Garden City Code 8-4E-7.
3. All existing barbed wire shall be removed from the site, and there shall be no installation of any additional barbed wire.
4. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from Garden City Development Services Department.
5. A building permit shall be applied for and approved by Garden City Development Services Department.
6. All surfaces used for parking shall be constructed with paving, vegetative cover or of dustless material.
7. A cross access easement agreement shall be made between parcels R2734510454 and R2734510452 to allow for the rear parcel to have both pedestrian and vehicular access to 43<sup>rd</sup> Street.
8. 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.

**Site Specific Requirements for the Duration of the Use:**

1. The site shall not be used as vehicle wrecking as herein defined.
2. All outdoor storage of materials or vehicles shall be maintained in an orderly manner so as not to create a public nuisance.
3. Stored items shall not block sidewalks or parking areas and may not impede vehicular or pedestrian traffic.
4. Outdoor storage areas shall comply with all sections of Garden City Code 8-1C-3, Property Maintenance Standards.
5. All streets and driveways shall adhere to the standards of a clear vision triangle.

**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.

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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.

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Chairman, Planning and Zoning Commission

Date