

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

In the Matter of:)	CUPFY2022-0001
)	
Conditional Use Permit)	FINDINGS OF FACT,
110 E. 43 rd 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 November 17, 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 Industry Flex defined by Garden City Code 8-7A-1 as “The use of a multi-tenant structure for the uses of: equipment rental and sales; light industry; motorcycle sale, service, storage rental; service provider; storage yard; vehicle service or other permitted uses within the zoning district which it is in.”
2. The applicant is Pam Gains.
3. The property owner of record is LOJO Properties LLC.
4. The location of the project is 110 E. 43rd Street.; Ada County Assessor parcel number(s) R2734500747; LOT 05 BLK 03 FAIRVIEW ACRES SUB NO 1 #0746 S #94048057.
5. The property is a legal parcel of record.
6. The subject property is 0.69 acres.
7. The scope of the request applies to the entire property.
8. The project is located in the C-2 General Commercial zoning district.
9. The project is located in the Activity Nodes Neighborhood Destination and Transit Oriented Development, and Mixed Use Commercial Future Land Use Designations 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 Flood Insurance Model utilized for the 2020 FIRM.
12. The existing use on the site appears to be Garage/Shop/Warehouse use(s), however, record of the use(s) has not been identified and may not be legally established.
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 8-2B Allowed Uses
 - d. Garden City Code 8-2C-24 Industry Flex or Light
 - e. Garden City Code 8-D Parking and Off-Street Loading Provision
 - f. Garden City Code 8-4E Transportation and Connectivity Provision
 - g. Garden City Code 8-6B-2 Conditional Use
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
 - d. Garden City Transportation Needs List
15. 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

16. Additional application materials submitted include:
 - a. Site Plan;
 - b. Floor Plans;
 - c. Neighborhood Meeting Letter;
 - d. Neighborhood Sign-In Sheet;
 - e. Thurman Mill Email
 - f. Waiver Request;
 - g. Site Photos;
 - h. 300' Neighborhood List;
 - i. Affidavit of Legal Interest;
 - j. Application;
 - k. Statement of Intent.

17. Agency Comments were received from:
 - a. ACHD, October 22, 2021
 - b. North Ada County Fire and Rescue, October 19, 2021
 - c. Garden City Engineer October 20, 2021
 - d. DEQ October 20, 2021
18. No public comments were received
19. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application	10/12/2021	10/04/2021
Letter of Acceptance (30 days after receipt of application)	11/04/2021	10/08/2021
Radius Notice (15 days prior to hearing)	11/02/2021	10/15/2021
Interested Parties	None	None
Legal Notice (19 days)	10/29/2021	10/13/2021
Agency Notice (15 days)	11/02/2021	10/13/2021
Property Posting Sign (10 days)	11/10/2021	Received 10/28/2021
Affidavit of Property Posting and Photos (7 days)	11/10/2021	Dated 10/20/2021 Received 10/28/2021

20. On November 17, 2021, a public hearing before the Planning and Zoning Commission was held:
 - a. This At the beginning of the meeting the Chairman asked if the applicant was in attendance and if they 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's representative, Glenn Walker, 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.
21. The record contains:
 - a. Application Documents
 - b. Noticing Documents
 - c. Agency Comments
 - d. Written Public Comments
 - e. Staff report
 - f. November 17, 2021 Planning and Zoning Commission Hearing Minutes

- g. November 17, 2021 Planning and Zoning Commission Hearing Audio
- h. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

22. 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>1. 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>While the use of industry flex is not congruent with the uses that are ideal for an activity node, the neighborhood is in transition and the proposed use will not preclude the neighborhood from redeveloping in alignment with the adopted vision of the City.</p> <p>Where the application is not compliant with current code, conditions of approval have been required to make the site compliant with current code requirements.</p>
X			<p>2. 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>3. The use will not unreasonably diminish either the health, safety or welfare of the community;</p>

			<p>Explanation:</p> <p>The intended use will not diminish the health, safety, or welfare of the community. Any uses that which occupy a tenant space shall obtain a certificate of occupancy and comply with all agencies.</p>
X			<p>4. 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>The application is for a neighborhood in transition and does not detract from the redevelopment potential of the neighborhood in alignment with the Comprehensive Plan’s land use designation of an activity node. Furthermore, the use has been found to be compliant, or conditioned to be compliant, with the sections of code applicable to the application. The application supports the Comprehensive Plan’s Goal 1, Nurture the City; Goal 7, Connect the City; and Goal 12, Evolve as a Destination.</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 a multi-tenant structure to be classified as the use of "Industry Flex".
 - a. Garden City Code 8-7A-1 defines this use as "The use of a multi-tenant structure for the uses of: equipment rental and sales; light industry; motorcycle sale, service, storage rental; service provider; storage yard; vehicle service or other permitted uses within the zoning district which it is in."
2. The existing structure shall remain in compliance with 8-1B-2 Nonconforming Structures.
3. The 20 existing vehicular parking spaces provided on site shall be considered sufficient to meet GCC 8-4D-5 Required Number of Off-Street Parking Spaces standards.

Prior to Occupancy:

1. Occupancy of any tenant spaces shall not commence until after a Certificate of Occupancy or a Certificate of Compliance has been obtained from Garden City Development Services Department.
 - a. Every time a new tenant occupies a space, they shall first obtain a Certificate of Occupancy or Certificate of Compliance from Garden City Development Services.
2. Any existing use within the tenant spaces shall obtain a Certificate of Occupancy or a Certificate of Compliance.
3. Site Plans shall show all 20 designated vehicular and 8 bicycle parking locations.
4. A 4' wide painted pedestrian pathway shall be provided from the public sidewalk along 43rd Street to the primary entrances of all seven tenant spaces.
5. The trash enclosure(s) shall be compliant with all provisions in Garden City Code 8-4A-5 Outdoor service and Equipment Areas.
6. All existing non-conforming fences shall be either removed and/or replaced with that of Garden City Code compliant fencing materials.
7. The site shall provide for at least 8 bicycle parking spaces on site per GCC 8-4D-5 Required Number of Off-Street Parking Spaces standards.

Site Specific Requirements for the Duration of the Use:

1. The parking lot shall be compliant with the provisions set forth in Garden City Code 8-4D-3 Parking Design and Improvement Standards. Including but not limited to:

- a. Parking spaces shall not interfere with the visibility and access to the main building entrance.
 - b. Parking areas shall be designed so that all vehicles are able to turn around within the site boundaries.
 - c. Improvement standards shall be met such as lighting if the intent is to use the property after daylight hours.
2. All mechanical equipment emissions; shipping and/or delivery; or other outdoor activity areas shall be located a minimum of five hundred feet (500') from any abutting residential districts.
3. Any use involving explosive manufacturing or storage, flammable substance storage, foundry, freight and truck terminal, manufacture or processing of hazardous chemicals, power plant, food product storage and processing plant shall be located a minimum of one thousand feet (1,000') from a hospital.
4. The following adverse effects shall be mitigated through setbacks, buffers, sound attenuation and/or hours of operation:
 - a. Noise, odor, or vibrations; or direct or reflected glare; detectable by the human senses without the aid of instruments.
 - b. Radioactivity and electric or electromagnetic disturbances which unduly interfere with the normal operation of equipment, instruments, or appliances on abutting properties.
 - c. Any other emission or radiation which endangers human health, results in damages to vegetation or property or which exceeds health and safety standards.
5. If required of the specific use, there shall also be approval from the Environmental Protection Agency, the U.S. Department of Agriculture, Central District Health Department, the Ada County air quality board and Idaho Department of Water Resources. 5. Maintenance of the clear vision triangle shall be maintained in accordance with Garden City Code 8-4E-3.
6. Maintenance of the clear vision triangle shall be maintained in accordance with Garden City Code 8-4E-3.
7. Maintenance of the painted pathway shall commence at such a frequency that the pathway does not appear faded or worn.

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