

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:)	CUPFY2022-0008
)	
Conditional Use Permit)	FINDINGS OF FACT,
107 E 46 th 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 January 19, 2022. 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 Roy Chester of Outer Impact.
3. The property owner of record is J J & B Realty LP.
4. The location of the project is 107 E 46th St., Ada County Assessor parcel number(s) R2734500305. PAR#0305 POR OF LOTS 30&31 BLK 01 FAIRVIEW ACRES SUB NO 1 PARCEL A R/S 7941 #0293-S #0303-B
5. It is unknown if the property is a legal parcel of record.
6. The subject property is 1.110 acres.
7. The scope of the request applies to a portion of the property.
8. The project is located in the C-2 General Commercial zoning district.
9. The project is located in the Mixed-Use Commercial designation of the Garden City Comprehensive Plan Future 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 is Retail Production.
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 Base Zoning District Regulations
 - d. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - 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 8-4I Landscaping and Tree Protection Provisions
 - h. Garden City Code 8-6A Administration
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. 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. Landscape Plan;
 - d. 300' Neighborhood List;
 - e. Affidavit of Legal Interest;
 - f. Application;
 - g. Waiver Request
17. Agency Comments were received from:
 - a. Fairview Acres, dated January 7, 2022

- b. City Engineer, dated January 1, 2022
- c. North Ada County Fire and Rescue, dated January 5, 2022

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	12/14/2021	12/14/2021
Letter of Acceptance (30 days after receipt of application)	01/14/2022	12/21/2021
Radius Notice (15 days prior to hearing)	01/04/2022	12/30/2021
Interested Parties	None	None
Legal Notice (19 days)	01/01/2022	12/30/2021
Agency Notice (15 days)	01/04/2022	12/28/2021
Property Posting Sign (10 days)	01/09/2022	01/09/2022
Affidavit of Property Posting and Photos (7 days)	01/12/2022	01/10/2022

20. Additional noticing includes:

- a. Planning and Zoning start time re-noticing. Public Hearing start time to 5:30p.m.

21. On January 19, 2022, 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
- f. Written Public Comments
- g. Staff report
- h. January 19, 2022, Planning and Zoning Commission Hearing Minutes and 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 decision makers may select the corresponding conclusions and explanations during their decision or make different conclusions based on their review of the record materials.

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X		X	<p>Finding 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>In Approval: 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>In Denial: The use is not appropriate to the neighborhood as it is in transition. Adjacent entitled uses include high-density residential subdivisions which are not compatible with the proposed, more intense use of industry flex.</p>
X			<p>Finding 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		X	<p>Finding 3. The use will not unreasonably diminish either the health, safety or welfare of the community;</p> <p>Explanation:</p> <p>In Approval: The intended use of industry flex for unit 112 & 113 will not diminish the health, safety, or welfare of the</p>

			<p>community. Any uses that which occupy a tenant space adjacent to the approved use shall obtain a certificate of occupancy and comply with all agencies.</p> <p>In Denial: The application is not compliant with the vision of the city. The site should be occupied by a use that better implements the Comprehensive Plan, and thus is more supportive by public and private investments.</p>
X		X	<p>Finding 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>In Approval: 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 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>In Denial: The application may not be supported by Goal 7, Connect the City, Objective 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. (See also Action Steps 2.4.1 and 2.4.2</p>

- 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 "Industry Flex" in building A.
2. The existing on-site parking has been determined adequate for the designated use.

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, "occupancy analysis", shall be applied for and approved by Garden City Development Services Department.
 - a. A drawing of the entire structure identifying all building occupancies and loading per the 2018 International Building Code shall be submitted for review.
 - b. Improvements may be required by the structural or fire reviewers prior to the issuance of a Certificate of Occupancy.
3. Proof of the property being of legal record shall be provided to the Development Services Department.
4. A 4' wide pedestrian pathway strip shall be provided from the attached sidewalk on 46th Street to the primary entrances of the business suite.

Site Specific Requirements for the Duration of the Use:

1. Any and all new tenants shall obtain a certificate of occupancy or compliance prior to occupancy.
2. No structural work shall be done without the appropriate permits.
3. 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.
 - a. So as long as it can be demonstrated that there is at least one unit within building A contains the use “industry flex”, with a valid certificate of occupancy or compliance, and otherwise legal, the entitlements to this use for building A will not be nullified due to change of use or vacancy within a suite.
4. Any future outdoor lighting will be required to conform to the 8-4A-4 standards.
5. Maintenance of the clear vision triangle shall be in accordance with Garden City Code 8-4E-3 standards.
6. Should the parking lot be substantially altered, parking landscape provisions shall be required to be adhered to. A draft condition of approval has been recommended that should the current parking be amended that Design Review Committee approval be required to ensure compliance with 8-4I-6.
7. 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.
8. 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.
9. Limitations: 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.

10. Other Regulations Apply: A use in this category may require 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.

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. All utilities must comply with Garden City Code 8-4A-8.
26. 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.
27. 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.
28. 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.
29. 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.
30. Any violation of the conditions of this application is a criminal offence.
 31. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
 32. All previous uses are null and void unless otherwise conditioned.
 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. In order for approval by Garden City, the proposal must be in compliance with all standards of 8-6B-2. This project is not in compliance with 8-6B-2 standard(s) because it is not in compliance with the Garden City Comprehensive Plan Goal 7 Connect the City, Objective 7.1.5, and Garden City Code sections 8-1B-1 and 8-4E-7. Compliance can be met by providing adequate pedestrian connections through the site and providing legal documentation that the parcel was legally created.
2. 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.
3. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
4. 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) daytime 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.

5. Pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code, a takings analysis may be requested on final decisions.
6. 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