

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:	)	
Conditional Use Permit	)	CUPFY2022-0013
5111 N Glenwood St	)	FINDINGS OF FACT,
Suites 5125 & 5137	)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho	)	AND DECISION
_____	)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on September 21, 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 Commercial Entertainment Facility defined by Garden City Code 8-7A-1 as “The use of a site for any profit-making activity which is generally related to the entertainment field. The term "commercial entertainment facility" includes motion picture theaters, carnivals, nightclubs, and dance halls.
- 2. The scope of this permit is for the use Commercial Entertainment Facility as defined by Garden City Code for suites 5125 and 5137.
- 3. The applicant is Troy DeRosier.
- 4. The property owner of record is TPC Glenwood, LLC
- 5. The location of the project is 5125 & 5137 N Glenwood St.; Ada County Assessor parcel number(s) R8191508765; PAR #8765 OF LOTS 37 & 38 & VAC ST ADJ TO LOT 37 STRAWBERRY GLEN
- 6. The subject property is 4.18 acres
- 7. The scope of the request applies to a portion of the property.
- 8. The project is in the C-2 General Commercial zoning district.

9. The project is in the Green Boulevard Corridor, Transit Oriented Development Node, and Future Planning Area of the Garden City Comprehensive Plan Land Use Designations.
10. The project is not located in the SFHA according to the 2003 FIRM.
11. The project is not located in the SFHA according to the Flood Insurance Model utilized for the 2020 FIRM.
12. The existing uses on the site, as defined by Garden City Code are Church or Place of Religious Worship and Health and Social Service.
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 Regulations
  - d. Garden City Code 8-4 Design and Development Regulations
  - e. Garden City Code 8-6A General Administration
  - f. Garden City Code 8-6B-2 Conditional Use Permits
14. The following plans and policies apply to this proposal:
  - a. Garden City Comprehensive Plan
  - b. Garden City Street Light Policy
15. The following previous approvals apply to this proposal:
  - a. FF2022-0043
  - b. ATS2022-0021
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

17. Additional application materials submitted include:
  - a. Floor Plans;
  - b. 300' Neighborhood List;
  - c. Affidavit of Legal Interest;
  - d. Application;

e. Statement of Intent.

18. Agency Comments were received from:

- a. Department of Environmental Quality 8/12/2022
- b. Ada County Highway District 9/6/2022

19. Public comments were received from:

- a. None

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

Noticing Requirement	Required Date	Completion Date
Receipt of application	8/16/2022	7/29/2022
Letter of Acceptance	9/15/2022	8/17/2022
Radius Notice	9/6/2022	9/1/2022
Interested Parties	None	None
Legal Notice	9/2/2022	8/11/2022
Agency Notice	9/6/2022	8/11/2022
Property Posting Sign	9/11/2022	9/10/2022
Affidavit of Property Posting and Photos	9/14/2022	9/10/2022

21. Additional noticing includes:

- a. None.

22. On September 21, 2022, 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. September 21, 2022 Planning and Zoning Commission Hearing Minutes and Audio
- i. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law, and Decision

24. 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>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><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> List what actions, if any, the application could have taken to obtain approval.</p>
X		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><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> List which public services or facilities that will be unable to accommodate this use.</p>
X		X	<p>3. 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></p> <p>This proposal will not unreasonably diminish the health, safety, or welfare of the community as defined in the purpose</p>

			<p>of the Local Land Use Planning Act, Idaho Code 67-6502.</p> <p><b>In Denial:</b>  The proposal will be detrimental to and unreasonably diminish the health, safety, or welfare of the community as defined in the purpose of the Local Land Use Planning Act, Idaho Code 67-6502 for the following reasons:</p> <p>The proposal fails to: pick which applies</p> <ul style="list-style-type: none"> <li>(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.</li> <li>(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.</li> <li>(c) To ensure that the economy of the state and localities is protected.</li> <li>(d) To ensure that the important environmental features of the state and localities are protected.</li> <li>(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fiber, and minerals, as well as the economic benefits they provide to the community.</li> <li>(f) To encourage urban and urban-type development within incorporated cities.</li> <li>(g) To avoid undue concentration of population and overcrowding of land.</li> <li>(h) To ensure that the development on land is commensurate with the physical characteristics of the land.</li> <li>(i) To protect life and property in areas subject to natural hazards and disasters.</li> <li>(j) To protect fish, wildlife, and recreation resources.</li> <li>(k) To avoid undue water and air pollution.</li> </ul>
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			(l) To allow local school districts to participate in the community planning and development process to address public school needs and impacts on an ongoing basis.
X		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><b>Explanation:</b></p> <p><b>In Approval:</b> The application is cohesive with the Comprehensive Plan's land use designations, and is supported by:  Goal 12. Evolve as a Destination</p> <ul style="list-style-type: none"> <li>a.) 12.1 Objective: Support a positive business environment</li> <li>b.) 12.2 Objective: Continue to support commercial and industrial land uses.</li> <li>c.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture, and commerce.</li> </ul> <p>Furthermore, as conditioned, 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 in conflict with: <b>list conflicts</b></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/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

#### 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. Documentation from Ada County confirming address shall be provided.
3. Documentation confirming that the property is a legal lot of record shall be submitted to the city.
4. The property owner of record is TPC Glenwood, LLC who has a registered agent of Caleb Roope. A revised Affidavit of Legal Interest shall be provided from TPC Glenwood, LLC to the applicant of Troy DeRosier shall be provided.
5. A building permit shall be applied for and approved by Garden City Development Services Department.
6. The chain link fence (at 8% the length) must be removed or replaced with code compliant fencing. An alternative is to provide documentation from both the property owner and the adjacent property that the fence is not owned by the same owner of the subject property.
7. Three bicycle parking spaces shall be provided. The bicycle parking dimensions, and location shall be in conformance with 8-4D-3 C.
8. Landscaping and street trees shall be installed and inspected for compliance with Garden City Code 8-4I. The landscaping plan shall be approved by Garden City Development Services Department prior to the planting.
  - a. One frontage tree shall be planted,
  - b. If there is less than 5% landscaping, landscaping at 8% of the deficient landscaping shall be planted.

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

1. The use shall comply with all Idaho Code regulations regarding the sale, manufacturing, or distribution of alcoholic beverages.
2. The use shall comply with the licensing requirements as set forth in title 3, "Business And License Regulations", of Garden City Code.
3. While the site is being utilized as a commercial entertainment facility (as opposed to when it is being utilized for private dance lessons, etc.), 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.
4. Any new or upgraded exterior lighting related to this use shall be in compliance with Garden City lighting standards.

### **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, and or tenants are 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 of this site 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

September 21, 2022

### **STANDARD CONDITIONS FOR DENIAL DECISION**

1. 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) LIST because it is not in compliance with the Garden City Comprehensive Plan Sections LIST and/ or Garden City code sections LIST. Compliance can be met by submitting an application that is code complaint.
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) 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.

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.

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Chairman, Planning and Zoning Commission

September 21, 2022