

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:	)	CUPFY2023-0009
	)	
Conditional Use Permit	)	FINDINGS OF FACT,
Adjacent to 510 E. 41st 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 August 23, 2023. 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 Public Use defined by Garden City Code 8-7A-1 as “The use of a site for public parks, schools, administrative and cultural buildings and structures, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials, recycling and public service facilities.”
2. The applicant is Kelly Gonzalez.
3. The property owner of record is Idaho Department of Lands.
4. The subject property is un-platted public property riverside of an adjacent to 510 E. 41<sup>st</sup> Street, (Parcel) and the Boise River.
5. The subject property is approximately 120 feet long and 30 feet wide between the Greenbelt and the Boise River, at 2,450 square feet in size along the Greenbelt.
6. The project is not within a zoning district. It is adjacent to the C-2 zoning district.
7. The project is located in the Neighborhood Destination and Mixed-Use Residential Future Land Use Designations of the Garden City Comprehensive Plan.
8. The project is currently in the FEMA Floodplain Zone AE and/or Floodway.

9. The following standards apply to this proposal:
  - a. Garden City Code 8-1A-4 Applicability
  - b. Garden City Code 8-7A-1 Definition of Uses
  - c. Garden City Code 8-7A-2 Definitions of Terms
  - d. Garden City Code 8-2B-2 Allowed Uses
  - e. Garden City Code 8-4 Design and Development Regulations
  - f. Garden City Code 8-4H Flood Hazard – Riparian Zone
  - g. Garden City Code 8-6B-2 Conditional Use
  - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
10. The following plans and policies apply to this proposal:
  - a. Garden City Comprehensive Plan
  - b. Garden City Street Light Policy
11. 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

12. Additional application materials submitted include:
  - a. 300' Neighborhood List;
  - b. Application.
  - c. Compliance Statement and Statement of Intent
  - d. Site Photos
  - e. Concept drawings
13. Agency Comments were received from:
  - a. Ada County Highway District, dated July 6, 2023
  - b. Garden City Engineer, dated July 8, 2023
14. No public comments were received.
15. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application	07/14/2020	05/26/2023
Letter of Acceptance	06/26/2023	06/27/2023
Radius Notice	07/04/2023	06/27/2023
Interested Parties	None	None
Legal Notice	06/30/2023	06/28/2023
Agency Notice	07/04/2023	06/27/2023

Property Posting Sign	08/13/2023 <sup>1</sup>	08/12/2023
Affidavit of Property Posting and Photos	08/16/2023	08/15/2023

16. On July 19, 2023, a public hearing was held before the Planning and Zoning Commission, and was continued to the date certain of August 23, 2023.

17. On August 23, 2023, a public hearing before the Planning and Zoning Commission was held:

a. This section will be completed after the hearing.

18. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Agency Comments
- d. Written Public Comments
- e. Staff report
- f. July 19, 2023, Planning and Zoning Commission Hearing Minutes and Audio
- g. August 23, 2023, Planning and Zoning Commission Hearing Minutes and Audio
- h. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

19. In order to approve a conditional use permit application, the Planning and Zoning Commission shall make the following findings:

<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>			
<b>GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS</b>			
Conclusion			
Compliant	Not Applicable to this Application	Not Compliant	Standard
<b>X</b>		<b>X</b>	<b>Finding 1.</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;

<sup>1</sup> Property posting deadlines updated to reflect the August 23, 2023 Planning and Zoning hearing.

			<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. The proposed use is compatible to its' surroundings and it augments the sense of place and livability of the neighborhood.</p> <p><b>In Denial:</b> List what actions, if any, the application could have taken to obtain approval.</p>
X		X	<p><b>Finding 2.</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></p> <p><b>In Approval:</b> There are public services available that can accommodate the proposed development.</p> <p><b>In Denial:</b> The ability to serve has not been submitted for review and it is unclear if the city will be able to provide services for the use.</p>
X		X	<p><b>Finding 3.</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> Provided all conditions of approval are satisfied, complied with, and enforced, the use will not unreasonably diminish the health, safety, or welfare of the community.</p> <p><b>In Denial:</b> List what actions, if any, the application could have taken to obtain approval.</p>
X		X	<p><b>Finding 4.</b> The use is not 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 Residential and Neighborhood Destination Node. And it 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 5 Focus on the River; and Goal 12, Evolve as a Destination.</p> <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: LIST CONFLICTS.</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 Public Use.
2. This approval shall expire one (1) year from its approval, unless otherwise extended as allowed by Garden City Code.

Prior to Construction:

1. A record of survey describing the land designated for the area dedicated to this project referred to as “the bike knoll” shall be provided to the city and Idaho Department of Lands to define the parameters of this application.
2. Permission shall be granted for the construction of the requested improvements and perpetual public use by Idaho Department of Lands.
3. An ownership and maintenance agreement for the improvements, including but not limited to the bicycle racks, bicycle fix-it station, dog/ water fountains, impervious surface, and landscaping shall be made with the City, approved by City Council, and recorded. Otherwise, the applicant shall be responsible for the maintenance of the improvements.
4. The agreement shall include an acknowledgement that the city is working with the United States Army Corps of Engineers to identify methods to mitigate flood risk. The acknowledgement will need to state that the applicant understands that there is a chance that the mitigation efforts will require the removal of the improvements that the city will not be financially responsible for damages to the proposed improvements.
5. For Garden City approval the application shall at minimum require approval of a riparian permit and a permit for work within the floodplain. If it is determined that the work is within the floodway, the permit requirements for work within the floodway shall be adhered to. Other Garden City approvals may be required.
6. Should there be work in areas that are governed by either Idaho Department of Water Resources or United States Army Corps of Engineers, the approved permits, including, but not limited to a 404 permit, shall be provided to Garden City prior to the issuance of any Garden City permits.
7. All applicable Garden City permits shall be applied for and approved by Garden City.

Site Specific Requirements for the Duration of the Use:

1. The proposed use and subject property is to remain open and accessible to the public in perpetuity.
2. No fencing of the subject property is permitted.

3. Unless otherwise permitted, no person shall damage, transplant or remove any tree or plant or injure the bark, or pick the flowers or seeds, of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. A person shall not dig in or otherwise disturb grass areas, or in any other way injure or impair the riparian zone.
4. Approved accesses to the Boise River must be designed in such a way so as to not destabilize the banks of the river.
5. Vegetation maintenance shall adhere to the following guidelines
  - a. No use of restricted use chemicals or soil sterilant will be allowed .
  - b. No use of pesticides, herbicides, fertilizers will be allowed unless approved by regulatory agencies that have jurisdiction over the Boise River.
  - c. All applications of pesticides, herbicides and fertilizers shall be done by a licensed applicator and applied at minimum application rates and shall be limited to two (2) times a calendar year unless otherwise approved.
  - d. No trees shall be removed unless the City arborist has verified that the tree poses danger to life, limb or property. Should any tree die it shall be mitigated in accordance with Garden City Code mitigation 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 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. The date of action is the date the decision body formalizes the written decision. The decision body may formalize their decision by approving a draft decision or a draft decision with noted changes at the hearing. The date of action may be a different date than the applicant is provided with a signed copy of the decision.
34. Pursuant to 8-6A-9 Appeals, those with standing may appeal a decision within fifteen days from the date of action.
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.

August 23, 2023

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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) 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 LIST.
2. The date of action is the date the decision body formalizes their decision. The decision body may formalize their decision by approving a draft decision or a draft decision with noted changes at the hearing. The date of action may be a different date than the applicant is provided with a signed copy of the decision.
3. Pursuant to 8-6A-9 Appeals, those with standing may appeal a decision within fifteen days from the date of action.
4. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
5. 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.
6. Pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code, a takings analysis may be requested on final decisions.
7. 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.

August 23, 2023

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Chairman, Planning and Zoning Commission

Date