



CITY OF GARDEN CITY

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File Number: CUPFY2023 - 0009
Requested Use: Bike Knoll for Public Use
Use as Defined By GCC Title 8: Public Use
Location: Adjacent to 521 E. 41st Street.
Applicant: Kelly Gonzalez
Planning and Zoning Commission Hearing Date: August 23rd, 2023, 6:30 p.m.
City Council Hearing Date: August 28th, 2023



STAFF REPORT

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A. Project Information

Proposed Scope of Work:

Request	Review Process
Conditional Use Permit	GCC 8-6B-2

A conditional use may be found to be appropriate or inappropriate at a given property. In some situations, conditions of approval may be required to assist the proposed use in being appropriate to a location and in conformance with code. In other situations where the use cannot be conditioned to be appropriate to the location or code, it should not be permitted.

Project Details:

- 1) Applicant: Kelly Gonzalez
- 2) Owner: Idaho Department of Lands
- 3) **Title 8 Use:** Public Use
- 4) **Definition of Use:** 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.
- 5) **Definition of Terms: Riparian Zone:** The area between the ordinary high-water mark of the Boise River including tributaries where water comes from and flows back into the Boise River and the greenbelt and/or nature path; or where there is no greenbelt and/or nature path adjacent to the river or tributary, the area measured twenty-five feet (25') in width from the riverbank.

Site Conditions:

- 1) Existing Use: Riparian Zone and Public Use (Greenbelt)
- 2) Zoning District: The subject property is outside of a platted parcel; it does not have a zoning designation. It is adjacent to the Boise River and C-2 zoned property.
- 3) Comprehensive Plan Land Use Map Designation:
 - a) Activity Node: Neighborhood Destination
 - b) Mixed Use Residential
- 4) Floodplain Designation: Currently in the FEMA Floodplain Zone AE
 - a) Does not appear in the Floodway
- 5) Surrounding Uses:
 - a) Dwelling Unit, Multi-Family
 - b) Manufactured Home Park
 - c) Dwelling Unit, Single Family, Detached
 - d) Commercial Uses
- 6) Adjacent Zoning: C-2
- 7) Adjacent Comprehensive Plan Designations:
 - a) Activity Node: Neighborhood Destination
 - b) Green Boulevard Corridor
 - c) Main Street Corridor
- 8) Easements on site:
 - a) FA03 IDAHO DEPARTMENT OF LANDS GREENBELT EASEMENT, 97,015,421, GREENBELT EASEMENT 25'
 - b) SBI AGREEMENT 29TH TO 43RD 9-14-1992, AGREEMENT FOR LINE REPLACEMENT

- c) FA03 B17-23 BILLS WARRANTY DEED, 7,617,472, WARRANTY DEED
9) Wetlands on site: none identified

C. Discussion

The applicant has indicated that the intent of the project is to provide access and public amenities along the Greenbelt adjacent to The Boardwalk Apartments in Garden City for recreational pursuits. The use will be for the general public, and is not located on the Boardwalk owned property. Subsequently, this application has been processed as a request for the Garden City Code defined use 'Public Use' for public recreation adjacent to the Boise River. This application has not been processed as an expansion of any previously granted permits regarding the Boardwalk.

The identified area that which the bike knoll is to be built is intended to be granted to the City, after construction has occurred. Once constructed and granted to the City, it will be the City's responsibility to maintain. Further agreements and permits will be required prior to the construction and granting of the land.

The exact parcel of land has yet to be surveyed.¹ The Garden City Engineer is currently working on surveys that will further identify the metes and bounds. There are conditions drafted within the decision document to require that the survey be recorded with the county prior to construction. For reference, the bike knoll will be approximately 120 feet long and 30 feet wide at its greatest point. It will be 2,450sqft in size.

The project is located riverside of the Greenbelt (publicly owned land) which is identified as a riparian zone. Riparian zones should be left natural, however, Garden City Code does allow for uses/construction to occur within a riparian zone if it is required by public necessity, for public recreation, and wildlife habitat improvement. This project would be considered for public recreation use. To construct, the use/encroachment will need to be approved by FEMA, the Idaho Department of Lands and the Army Corps of Engineers. City Council will also need to approve of the ownership agreement for maintenance once constructed.

Improvements in the Riparian Area as defined by Garden City Code require a conditional use permit approval from the Planning and Zoning Commission and the City Council.

The project proposes to install 8 hoop bike racks, a drinking fountain with an extra watering spout, a dog waste station, gas lamps, and benches to rest. The applicant is not proposing to dedicate any public vehicular parking. Proposed site renderings were submitted as part of the packet, but site plans and landscape plans were not submitted for review due to the lack of a formal survey being completed.

Most of Title 8 Article E is not applicable because it is not adjacent to a public right-of-way, there is no public street connection, and there is no vehicular traffic on site. Thus, this property

¹ The Record of Survey (ROS 13080) submitted with the application does not identify the area of land that is to be the bike knoll. The survey submitted establishes and illustrates the location of the original meander line of the south bank of the Boise River as determined by the Idaho Department of Lands on October 30, 2019

would not necessitate a sidewalk, transit consideration, or generate clear vision triangle concerns. The Greenbelt acts as the project's bike and pedestrian accessibility.

Additional permits and documentation required for the completion of this project may take more than a year. All conditional use permits are automatically set to expire within a year unless the Commission determines otherwise. The applicant has not requested an extension to the one year expiration, but staff would encourage discussion. Other permits associated with the Boardwalk development have been granted a 5-year approval time.

D. Decision

The Planning and Zoning Commission has been provided a draft document that includes findings of fact, conclusions of law, and a decision in the affirmative and in denial. This is done to provide potential options based on the staff's review of the project. This is not intended to be a predetermined decision. All evidence will be considered, and the document may be updated based on the Planning and Zoning Commission's review of the application.

Required Decisions:

Pursuant to Garden City Code [Table 8-6A-1 Authorities and Processes](#), Planning and Zoning Commission is the final decision maker for a Conditional Use Permit. There is no recommending authority to the Planning and Zoning Commission. Pursuant to [GCC 8-6A-2A](#), The City Council shall have the authority to review any action taken by the Planning and Zoning Commission regarding Conditional Use Permits, which would be final unless appealed. In rare instances, such as this application for work within a Riparian Area, a conditional use will need to go to the City Council.

Required Findings:

To approve a conditional use permit, the Planning and Zoning Commission must find the application meets the following findings found in [GCC 8-6B-2](#):

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;
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;
3. The use will not unreasonably diminish either the health, safety or welfare of the community; and
4. The use is not in conflict with the comprehensive plan or other adopted plans, policies, or ordinances of the city.

Decision:

After hearing the evidence and considering the application, the decision maker shall make their decision. The decision maker shall report the facts upon which it based its conclusion, the ordinance and standards used in evaluating the application, the actions, if any, that the applicant could take to obtain a permit, and whether a permit is :

1. Granted,

2. Granted with conditions, or
3. Denied.

The decision maker may find that there is inadequate information to render a decision and may also continue the hearing for additional materials to be supplied. It is recommended that they continue the hearing to a date certain for noticing purposes.

The decision maker shall make its findings and decision no later than by the next regular scheduled meeting.

If there is a denial, state code requires that the decision maker identify what could be done to obtain approval.

Appeal of Decision:

Pursuant to 8-6A-9 Appeals, those with standing may appeal a decision within fifteen days from the date of **action**. Action is the date the Planning and Zoning Commission formalizes their decision. The Planning and Zoning Commission may formalize their decision by approving a draft decision or a draft decision with noted changes at the hearing. If additional time is needed to review the decision document for accuracy, they may continue the formalization of the decision to a subsequent meeting. The date of action may be a different date than the applicant is provided with a signed copy of the decision in accordance with Idaho Code 67-6535.

An appeal is \$210 plus the costs of transcripts and must be filed on the appeal application form provided by the City. Appeals received after the 15-day appeal period will not be considered timely and will not be accepted.

E. Agency Comments

The following agency comments were provided:

Agency	Comment Date	Summary
Ada County Highway District Link to Comment	07/06/2023	<ul style="list-style-type: none"> • No impact fee due and inspection is not required
Garden City Engineer Link to Comment	07/08/2023	<ul style="list-style-type: none"> • Prior to performing any grading on the site, the applicant must prepare and have approved by the city an erosion and sediment control plan. • Water service must be reviewed and approved by the city's Public Works Department. • A storm drainage report for the project is required with the submittal of the construction plans. Drainage must not be directed to the river. Please provide text within the report discussing both the depth and elevation of expected seasonal high groundwater. • A site grading and drainage plan will be required with

		<p>complete construction plans. Said plan must be reviewed and approved by the city.</p> <ul style="list-style-type: none"> • An O&M (Storm Water Operation and Management) manual may be required. • Storm Water Operation and Management Agreement may be required. • A supplemental easement that encompasses the improvements may be required. • The site is currently located in FEMA Zone AE and/or the floodway. Compliance with the city's floodplain ordinance will be required. Additionally, the applicant should also review the original FEMA work maps (not the current adopted maps) as the city has been placed in seclusion. These are available on the city's website. The current maps (June 2020) do not display the possible future risk of the flooding potential of the Boise River.
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F. Public Comment

None provided as of the drafting of this document.

G. Code/Policy Review

The below serves as an analysis of applicable provisions Garden City Code, Title 8, Development Code and identified applicable policies, plans, and previous approvals.

Garden City Title 8 Code Sections			
Code Section	Review Authority	Compliance Issues	Analysis/ Discussion
Title 8, Chapter 1: General Regulations			
8-1A-4 Applicability			The regulations of Garden City Code, Title 8 Development Code of the City, shall apply and govern development and use of all properties within the corporate limits of the city.
8-1B-1 Nonconforming Properties		Compliant as conditioned	<p>More information is required. The property that which will be utilized for the new public use "bike knoll" has yet to be surveyed and recorded.</p> <p>A condition has been drafted to require a formal survey be done, and recorded with the county.</p>
Title 8, Chapter 2: Base Zoning District Regulations			
8-2B-1 Purpose		No compliance issues noted	C-2 General Commercial: The purpose of the two (2) commercial districts is to provide a full range of commercial uses and services for both the residents of Garden City and the region. Location determines the type and form of

			commercial uses. More intense commercial activities are intended to be located along arterial streets in the highway commercial (C-1) district. Activities which are more compatible with mixed use or residential uses and minimally disruptive to the neighborhood are to be located in the general commercial (C-2) district.
8-2B-2 Allowed Uses	PZ	No compliance issues noted	Garden City Code Table 8-2B-1 does not requires a conditional use permit for the proposed use. However, a conditional use permit is required for the construction within the riparian zone.
8-2B-3 Form Standards		Compliant upon approval and as conditioned	<p>No structures are proposed. It appears that the bike knoll will be located within the original high water line established by Idaho Department of Lands based on the ROS submitted by the applicant.</p> <p>In all districts, no new or substantially improved structure shall be permitted within seventy feet (70') from the riverbank of the Boise River without a design review and conditional use permit with approval of city council or otherwise designated by city council.</p> <p>Approvals must find that the structure is required by public necessity, public recreation or wildlife habitat improvements;</p> <p>The project must meet the approval of the Federal Emergency Management Agency and national Flood Insurance Program and does not jeopardize the city's participation in the national Flood Insurance Program.</p> <p>Approvals must find that the bike knoll is in conformance with the Garden City comprehensive plan.</p>
Title 8, Chapter 4: Design and Development Regulations			
8-4A-3 Fences and Walls	PZ	No compliance issues noted	No fence is proposed.
8-4A-4 Outdoor Lighting	PZ	Complaint as Conditioned	<p>A lighting plan was not submitted.</p> <p>This proposal does not identify any outdoor lighting. Any future outdoor lighting will be required to be in compliance with code at the time of development.</p> <p>The nearest street lighting is on the Veterans Memorial Parkway ≈130 feet from the future project. There are two streetlights within the 400 feet minimum distance.</p>
8-4A-7 Stormwater Systems	PZ	Complaint as Conditioned	A draft condition of approval will be provided requiring that the stormwater systems be built in compliance with provisions of 8-4A-7.
8-4A-8 Utilities	PZ	Compliant as Conditioned	All utilities for a new structure shall be installed underground. For the purposes of this section, the term "utilities" shall include, but not be limited to, electric, natural gas, water,

			wastewater collection, storm drainage, telephone, and cable services. All development shall be connected to the Garden City water and sewer systems.
8-4A-9 Waterways	PZ	Complaint as Conditioned	Any alteration to the Boise River or the floodway will be required to comply with an approved floodplain development permit.
8-4H Flood Hazard			
8-4H-6 Riparian Zone	PZ	Complaint upon approval	A conditional use permit is required for any and all new uses within the Riparian zone. The riparian zone is to be left natural. However, new uses are permitted within the zone so long as they are required by public necessity (for example, bridges or water pumps), for public recreation (for example, the greenbelt), and wildlife habitat improvements (for example, vegetation, nesting structures); provided, that the use/encroachment meets the approval of the Federal Emergency Management Agency and National Flood Insurance Program and does not jeopardize the city's participation in the National Flood Insurance Program. The proposed "bike knoll" expects to have 8 hoop bike racks, a drinking fountain with extra waterspout, dog waste station, gas lamps, benches. All of which are intended to be dedicated for public use, and meet the "public recreation" qualification of this section of code.
8-4I Landscaping and Tree Protection Provisions			
8-4I-2 Applicability			For all new residential and nonresidential uses, all landscaping standards of this article shall be met.
8-4I-7 Tree Preservation Provisions	PZ	Compliant as conditioned	Due to lack of landscape plans and a ROS identifying the exact location of the land being developed. Tree mitigation is of possible concern. Site development shall make all feasible attempts to maintain existing trees four inch (4") caliper or greater within their design. Mitigation shall be required for all existing trees four inch (4") caliper or greater that are removed or damaged from the site. Mitigation shall be replacement of the total calipers lost on site up to an amount of one hundred percent (100%) replacement. (Example: Two 10-inch caliper trees removed may be mitigated with four 5-inch caliper trees, five 4-inch caliper trees, or seven 3-inch caliper trees.)
Title 8, Chapter 6, Article A: Administration			
8-6A-3 General Application Process		No compliance issues noted	The application was reviewed and considered complete within 30 days of submittal, a notice of application acceptance was issued to the applicant, and staff started processing the application.

8-6A-4 Required Application Information			No application waivers requested pursuant to 8-6A-4A.
8-6A-7 Public Hearing Process		No compliance issues noted	The applicant provided a neighborhood meeting more than one month and less than three months prior to application submittal. The City provided a radius notice, notifications to agencies with jurisdiction, and ran a legal notice in the Idaho Statesman, at least 15 days prior to the first hearing. The applicant provided an affidavit of property posting more than 7 days in advance of the hearing validating that the property was posted more than 10 days prior to the hearing.

Other Items Reviewed	
Plan/Policy	Discussion/ Analysis
Idaho Code 67-6512 Local Land Use Planning Special Use Permits, Conditions, and Procedures	<p>Garden City Code noticing requirements are compliant with this Statute.</p> <p>The statute notes that upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:</p> <ol style="list-style-type: none"> (1) Minimizing adverse impact on other development; (2) Controlling the sequence and timing of development; (3) Controlling the duration of development; (4) Assuring that development is maintained properly; (5) Designating the exact location and nature of development; (6) Requiring the provision for on-site or off-site public facilities or services; (7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction. <p>Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects and any aviation hazard as defined in section 21-501(2), Idaho Code, of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.</p>
Garden City Comprehensive Plan	<p>Idaho Code § 67-6512(a), requires that special or conditional use permits shall be issued only when “not in conflict with the [comprehensive] plan.” The reason for the special treatment of conditional use permits, presumably, is that by their nature, they allow uses not in accordance with the normal zoning for an area. Thus, conditional use permits are, in essence, mini-zones. Conditional use permits are not required to be “in accordance with” the comprehensive plan. Instead, it is sufficient that they not be “in conflict” with the comprehensive plan.²</p>

² [2022 Givens Pursley Land Use Handbook](#)

This application is in future land use designations of the Comprehensive Plan:

- a) Activity Node: Neighborhood Destination
- b) Mixed Use Residential

The application may be supported by:

Goal 1. Nurture the City

- a.) 1.4 Objective: Create a premier destination place to live, work, and recreate.

Goal 2. Improve the City Image

- a.) 2.3 Objective: Promote quality design and architecturally interesting buildings.
- b.) 2.4 Objective: Create a vision for the design of all streets and highways consistent with city's urban setting.

Goal 4. Emphasize the "Garden" in Garden City

- a.) 4.1 Objective: Beautify and landscape
- b.) 4.3 Objective: Beautify streets, sidewalks and gateways with landscaping, trees, and public art.

Goal 5. Focus on the River

- a.) 5.2 Objective: Landscape along the river.
- b.) 5.4 Objective: Develop a river walk.
- c.) 5.5 Objective: Create more accessibility to the Boise River and Greenbelt.
- d.) 5.6 Objective: Protect wildlife habitat associated with the river.
- e.) 5.7 Objective: Maintain and protect the Greenbelt Pathway
- f.) 5.8 Objective: Plan for the Future of the Greenbelt Pathway and the Boise River

Goal 12. Evolve as a Destination

- a.) 12.1 Objective: Support a positive business environment
- b.) 12.2 Objective: Continue to support commercial and industrial land uses.
- c.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture and commerce.