

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:	)	CUPFY2023-0010
	)	
Conditional Use Permit	)	FINDINGS OF FACT,
107 E. 40th St.	)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho	)	AND DECISION
_____)		

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 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 Chris Keith.
3. The property owner of record is TLB INVESTMENTS LLC.
4. The location of the project is 107 E. 40th St.; Ada County Assessor parcel number(s) R2734502460; PAR #2460 LOT 31 EXC SELY 120' BLK 7 FAIRVIEW ACRES SUB 1.
5. It is unknown if the property is a legal parcel of record.
6. The subject property is 0.42 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 Node: Transit Oriented Development and the Mixed Use Commercial designations of the Garden City Comprehensive Future

Land Use Map.

10. The project is not located in the SFHA according to the 2003 FIRM.
11. The project is partly located in the SFHA according to the Flood Insurance Model utilized for the 2020 FIRM.
12. There is no existing use on record with the city.
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
    - i. Ord. 1034-22 Adopted June 12, 2023
  - 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:

<b>Conditional Use Permit</b>			
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. 300' Neighborhood List;
  - d. Affidavit of Legal Interest;
  - e. Application;
  - f. Statement of Intent.
  - g. Ability to Serve request.
  - h. Compliance Statement and Statement of Intent

- i. Affidavit of Neighborhood Meeting
  - j. Site Photos
  - k. Ability to Provide Fire Flows
17. Agency Comments were received from:
- a. Ada County Highway District, July 7<sup>th</sup>, 2023
  - b. Centurion Engineers, July 7<sup>th</sup>, 2023
18. Public comments were received from:
- a. Barry Lesit, July 8, 2023
19. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application		06/14/2023
Letter of Acceptance	07/14/2023	06/27/2023
Radius Notice	07/04/2023	06/28/2023
Interested Parties	None	None
Legal Notice	06/30/2023	06/28/2023
Agency Notice	07/04/2023	06/27/2023
Property Posting Sign	07/09/2023	07/04/2023
Affidavit of Property Posting and Photos	07/12/2023	07/05/2023

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

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

- a. This section will be completed after the hearing.

22. 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

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	
<b>X</b>		<b>X</b>	<p><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;</p> <p><b>In Approval:</b> As conditioned, and due to the current adjacent land uses, the use of industry flex is appropriate to the location, lot, and the neighborhood and is compatible with uses within the C-2 General Zoning District.</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><b>In Denial:</b> The use is not congruent with the uses that are ideal for an activity node and may hinder the neighborhood from redeveloping in alignment with the adopted vision of the City.</p> <p>The potential uses that which fall under the term Industry Flex are not compatible with the existing, adjacent residential uses.</p>
<b>X</b>		<b>X</b>	<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 existing public facilities might not be capable of servicing potential, unknown tenants on-site, as those tenants have not yet been identified.</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> The intended use will not unreasonably diminish the health, safety, or welfare of the community. It has been conditioned that any uses that which occupy a tenant space shall obtain a certificate of occupancy and comply with all agencies. Additionally, a sidewalk has been proposed and conditioned to meet Garden City Code standards, enhancing the safety of the corridor for both bicyclists and pedestrians.</p> <p><b>In Denial:</b> The proposal will be detrimental to and unreasonably diminish the health, safety, or welfare of the community due to the intensity of the use and lack of code compliance.</p>
X		X	<p><b>Finding 4.</b> 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 designation of the Activity Node: Transit Oriented Development and Mixed Use Commercial. And it supports the Comprehensive Plan’s Goal 2, Improve</p>

		<p>the City Image; 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><b>In Denial:</b>  The application may not be supported by Goal 9. Develop a Sustainable City, 9.3 Objective: Promote and recognize green building construction, Goal 2. Improve the City Image, 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, 4.3 Objective: Beautify streets, sidewalks and gateways with landscaping, trees, and public art.</p> <p>Furthermore, the application does not propose to improve the Osage St. pedestrian frontage according to the Garden City Transportation Needs List.</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 Industry Flex.
2. The 5 required frontage trees along Osage St. are not required due to the existing site conditions.
  - a. Re-evaluation of existing or proposed site conditions shall be performed upon any additional permit requested for this site. If site conditions change, then the site shall be in compliance with the Garden City Code at the time of development or permit.
3. Approval of this permit is based on alternative site plan #2, showing the 5' wide detached sidewalk and 6' wide landscape buffer.

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.
  - a. All tenant spaces shall obtain a certificate of occupancy.
2. A Building permit shall be applied for and approved by Garden City Development Services Department.
3. A public works and utility permit shall be submitted for review and approval of the site work that will be required to bring the site into compliance with:
  - a. A detached sidewalk shall be installed in accordance with Garden City Code 8-4E-6 and the Garden City Sidewalk Policy.
  - b. Landscaping and street trees shall be installed and inspected for compliance with Garden City Code 8-4I.
4. The property shall submit legal descriptions and records of surveys to demonstrate that the parcel is of legal record.
  - a. If it cannot be demonstrated that the parcel is of legal record. Then a subdivision application shall be submitted and approved by City Council.
5. All existing chain-link fencing and barbed wire shall be removed or replaced with code compliant fencing materials.
6. The 6' tall wooden fence along Osage St. shall be either be setback 10' from the property line or replaced with a 3.5' tall fence that meets the standards set forth in the Transportation Needs List.
7. Any future outdoor lighting shall be in compliance with code at the time of building permit review.
8. HVAC equipment, trash dumpsters, recycling, trash compaction, and other service functions shall be incorporated into the overall design of buildings and landscaping so that the visual and acoustic impacts of these functions are fully

- contained and out of view from adjacent properties and public streets.
9. The site shall be compliant with all provisions in Garden City Code 8-4A-7 Stormwater Systems.
  10. The site shall be compliant with all provisions of Garden City Code 8-4A-8 Utilities.
  11. A 5' wide detached sidewalk with a 6' or 8' landscape buffer shall be installed along the frontage of 40<sup>th</sup> Street in accordance with Garden City Code, Garden City Sidewalk Policy, ACHD, and ADA standards.
    - a. The sidewalk shall be installed to the edge of property.
    - b. Improvements may be made within the right-of-way provided a landscape license agreement or other approval from ACHD.
  12. Parking lot trees shall be planted in accordance with tree requirements of Garden City Code 8-4I-6.
    - a. One tree shall be provided within the parking lot. This tree shall be a high-branching, deciduous shade tree that can quickly provide canopy coverage. The eastern redbud tree proposed does not meet the intent of this code.
  13. A minimum of five percent (5%) of the gross site area shall be landscaped areas, excluding areas for setback or perimeter landscaping.
  14. A minimum of one class II or class III tree shall be planted in the frontage of every adjacent streetside. An additional class II or III tree shall be planted in the buffer for every fifty feet (50') of linear feet of frontage.
    - a. 40<sup>th</sup> Street shall have at least 3 class II or III trees installed along its frontage.
      - i. The applicant shall coordinate with Idaho Power and Development Services staff to find a viable tree species.
    - b. Osage St. Shall have at least 5 class II or III trees installed along its frontage.
  15. The site shall meet perimeter landscaping provisions as set forth in 8-4I-5. A site plan must be submitted to Garden City for review, and an inspection must be conducted.
  16. All on site service areas for waste, recycling, or trash; and equipment areas for transformer and utility vaults shall be located in an area not visible from a public street or adjoining property, or shall be screened from view from a public street and adjoining property with a privacy fence.

Site Specific Requirements for the Duration of the Use:



1. 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.
2. 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.
3. There will be a minimum of 8 bicycle parking spaces provided. The bicycle parking dimensions, and location shall be in conformance with Garden City Code 8-4D-5.
4. Any future fence or wall shall be in compliance with code at the time of development.
5. All roof and wall mounted mechanical, electrical, communications, and service equipment should be screened from public view from the adjacent public streets and properties by the use of parapets, walls, fences, enclosures, or by other suitable means.
6. 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.
7. 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.
8. Every new tenant shall obtain either a certificate of occupancy or certificate of compliance prior to occupying a tenant space.
9. All streets and driveways shall adhere to the standards of a clear vision triangle.

### **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 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.
34. Pursuant to 8-6A-9 Appeals, those with standing may appeal a decision within fifteen days from the date of action.
  35. This approval shall expire one (1) year from its approval, unless otherwise extended as allowed by Garden City Code .
  36. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
  37. 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.
  38. A takings analysis pursuant to Idaho Code may be requested on final decisions.
  39. 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) because it is not in compliance with the Garden City code sections 8-4E-6, 8-4E-7, nor 8-4I. This project is not in compliance with the Garden City Comprehensive Plan Goals 2, 4, 9. Compliance can be met by providing legal documentation of record; providing code compliant landscaping and streetscape improvements; and providing improvements along Osage to meet the Garden City Transportation Needs List requirements.
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

DRAFT