

BEFORE THE PLANNING AND ZONING COMMISSION  
GARDEN CITY, ADA COUNTY, IDAHO

In the Matter of:	)	CUPFY2024-0002
	)	
Conditional Use Permit	)	FINDINGS OF FACT,
203 W 43rd St., 200 W 42nd St. &	)	CONCLUSIONS OF LAW
N 42nd St.	)	AND DECISION
Garden City, Ada County, Idaho	)	
_____	)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on January 17, 2024. 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 Warehouse and storage, Wholesale defined by Garden City Code 8-7A-1 as "The use of a site as a major stopping or transferring point for freight, storage, wholesale and distribution of manufactured products, supplies and equipment, excluding retail sales."
2. The applicant is Richard Sullivan.
3. The property owner of record is FLUME STREET LLC.
4. The location of the project is 203 W 43rd St., 200 W 42nd St. & N 42nd St.; Ada County Assessor parcel number(s) R2734510421, R2734510350 & R2734510361; LOT 28 BLK D EXC R/W FAIRVIEW ACRES SUB NO 2 #0420-B; LOT 6 BLK D FAIRVIEW ACRES SUB NO 2; LOT 7 BLK D FAIRVIEW ACRES SUB NO 02.
5. The property is a legal parcel of record.
6. The subject property is 2.047 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 Mixed Use Commercial, Transit Oriented Development of the Garden City Comprehensive Plan Land Use Designation.

10. The project is:
  - a. Outside of the Special Flood Hazard Area according to the 2020 adopted FIRM (the FIRM has adopted seclusion and utilizes the 2003 Flood Insurance Study).
  - b. In the 100 Year of the Special Flood Hazard Area according to FEMA's most recent model as adopted by resolution 1083-20.
  
11. The existing use on the site is Warehouse/Vacant.
  
12. 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 8-1C-3 Property Maintenance Standards
  - d. Garden City Code 8-2B Base Zoning Regulations
  - e. Garden City Code 8-2C-45 Land Use Provision – Warehouse, Storage, and Wholesale
  - f. Garden City Code 8-4A Design and Development Regulations- General Provisions
  - g. Garden City Code 8-4D Parking and Off-Street Loading Provisions
  - h. Garden City Code 8-4E Transportation and Connectivity Provisions
  - i. Garden City Code 8-4I Landscaping and Tree Protection Provisions
  - j. Garden City Code 8-6A Administration
  
13. 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
  
14. The following previous approvals apply to this proposal:
  - a. DSRFY2022-0006
  
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. Landscape Plan;

- c. 300' Neighborhood List;
- d. Affidavit of Legal Interest;
- e. Application;
- f. Statement of Intent;
- g. Tenant Improvement Plans;
- h. Site Photos.

17. Agency Comments were received from:
- a. City Engineer, December 12<sup>th</sup>, 2023
  - b. North Ada County Fire and Rescue, December 22<sup>nd</sup>, 2023
  - c. Flood Control District 10, December 28<sup>th</sup>, 2023

18. Public comments were received from:
- a. None

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

Noticing Requirement	Required Date	Completion Date
Receipt of application		12/07/2023
Letter of Acceptance	01/06/2024	12/20/2023
Radius Notice	01/02/2024	12/28/2023
Interested Parties	None	None
Legal Notice	12/29/2023	12/22/2023
Agency Notice	01/02/2024	12/20/2023
Property Posting Sign	01/07/2024	01/07/2024
Affidavit of Property Posting and Photos	01/10/2024	01/08/2024

20. On January 17, 2024, a public hearing before the Planning and Zoning Commission was held:
- a. The Chairman disclosed that he has a relationship with the applicant, Richard Sullivan, and SRS Distribution. They are currently working on a development that which he is a partner in. He doesn't not have any financial ties or vested interest in this application.
  - b. Representing the applicant, Emily Stewart presented the application.
    - i. Proposed replacing the chain-link fencing with decorative vinyl fencing. Would prefer chain-link for security and could screen from view with vinyl fencing.
    - ii. Barbed wire is not proposed.
    - iii. Requested a sidewalk waiver.
    - iv. Willing to install all required landscaping.
  - c. Staff, Hanna Veal, presented the staff report.
  - d. There was no public testimony.
  - e. Emily Stewart and Ward Chase provided a rebuttal:

- i. Outside activity would consist of deliveries. The types of vehicles would be smaller semi-trucks like pump trucks, occasionally larger semi-trucks.
  - ii. Scheduled deliveries anticipated 3-5 trucks a day.
- f. Public testimony was closed.
- g. Discussion included:
  - i. Sidewalk requirements along W. 42<sup>nd</sup> Street should be waived per the Sidewalk Policy based on the property being at a 'dead end'.
  - ii. The applicant shall work with Development Services staff to meet the landscaping requirements of the code.
    - 1. Would like to waive the requirements for perimeter landscaping along the northern property boundary line due to the privacy screening fence. However, if the code does not allow for a waiver to be granted, then the perimeter landscape shall be required.
  - iii. "Outdoor Activity" shall be allowed as proposed, and for deliveries during normal business hours.
  - iv. Chain-link fencing shall be concealed by another decorative, privacy fence as high or higher than the chain-link fence.
    - 1. Specifically concerned about the fencing along the N. property boundary line adjacent to the residential dwellings.
  - v. Street trees along W. 42<sup>nd</sup> Street shall not be required if the Fairview Acres easements or irrigation lines preclude it.
  - vi. The height requirements for the fence along W. 42<sup>nd</sup> Street shall be waived.
    - 1. If the code does not allow for such a waiver, then the fence along W. 42<sup>nd</sup> Street shall meet the code's height and setback requirements.
- h. Commissioner Brown moved to approve the application as drafted in the affirmative draft decision with drafted conditions of approval, with the following modifications to the conditions of approval:
  - i. Sidewalk requirements along W. 42<sup>nd</sup> Street shall be waived per the Sidewalk Policy based on the property being at a 'dead end'.
  - ii. Street trees along W. 42<sup>nd</sup> Street shall not be required if the Fairview Acres easements or irrigation lines preclude it.
  - iii. The applicant shall work with development Services staff to meet the landscaping requirements of the code.
  - iv. "Outdoor Activity" shall be allowed as proposed, and for deliveries during normal business hours.
  - v. Chain-link fencing shall be concealed by another decorative, privacy fence as high or higher than the chain-link fence.
  - vi. The height requirements for the fence along W. 42<sup>nd</sup> Street shall be waived.
    - 1. If the code does not allow for such a waiver, then the fence along W. 42<sup>nd</sup> Street shall meet the code's height and setback requirements.

- i. Staff member, Hanna Veal, requested a point of clarification regarding the perimeter landscaping conditions.
- j. Commissioner Brown amended the motion to include the following condition:
  - i. The applicant shall work with Development Services staff to meet the landscaping requirements of the code.
    - 1. If the code does not allow for a waiver to be granted for perimeter landscaping, then the perimeter landscape shall be required.
- k. Commissioner Wilde seconded the motion.
- l. The motion carried unanimously.

21. The record contains:
- a. Application Documents
  - b. Noticing Documents
  - c. Agency Comments
  - d. Staff report
  - e. January 17, 2024, Planning and Zoning Commission Hearing Minutes and Audio
  - f. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

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

<b>GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS</b>			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<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>Explanation:</b> As conditioned, the use is appropriate to the location, lot, and the neighborhood and is compatible with uses within the C-2 General Zoning District.</p>
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> There are public services available that can accommodate the proposed development.</p>
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> As conditioned, the application meets this finding. This proposal will not unreasonably diminish the health, safety, or welfare of the community</p>
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>The application supports the Comprehensive Plan's Goals:</p> <p>Goal 1. Nurture the City</p> <p>a.) 1.4 Objective: Create a premier destination place to live, work, and recreate.</p> <p>Goal 2. Improve the City Image</p> <p>a.) 2.2 Objective: Uphold standards for private property maintenance with a focus on nonresidential properties.</p> <p>Goal 12. Evolve as a Destination</p> <p>a.) 12.1 Objective: Support a positive business environment</p> <p>b.) 12.2 Objective: Continue to support commercial and industrial land uses.</p> <p>c.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture and commerce.</p> <p>Furthermore, the use, as conditioned, has been found to be compliant with the sections of code applicable to the application.</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** 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** of the application subject to the following conditions:

### CONDITIONS OF APPROVAL DECISION

#### **Application Specific Requirements:**

##### Scope of Permit:

1. The scope of this permit is to allow for Warehouse, Storage, and Wholesale use located at 203 W. 43rd St., 200 W. 42nd St. & N. 42nd St.
2. The existing on-site parking is adequate for the proposed use.
3. Sidewalk requirements along W. 42nd Street shall be waived per the Sidewalk Policy based on the property being at a 'dead end'.
4. "Outdoor Activity" shall be allowed as proposed, and for deliveries during normal business hours.

##### Prior to Occupancy:

1. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from Garden City Development Services Department.
2. A building permit shall be applied for and approved by Garden City Development Services Department.
3. Street trees along W. 42nd Street shall not be required if the Fairview Acres easements or irrigation lines preclude it. If trees are permitted by Fairview Acres, then:
  - a. Street trees shall be installed and inspected for compliance with Garden City Code 8-4I.
  - a. Five Class II or Class III trees shall be installed adjacent to W. 42<sup>nd</sup>. Street within the landscaped buffer.
4. The applicant shall work with Development Services staff to meet the landscaping requirements of the code.

5. The site shall meet perimeter landscaping provisions as set forth in Garden City Code 8-4I-5. A site plan shall be submitted to the Garden City Development Services Department for review, and an inspection will be conducted prior to occupancy.
  - a. If the code does not allow for a waiver to be granted for perimeter landscaping, then the perimeter landscape shall be required.
6. A minimum of five percent of the gross site area shall be landscaped areas, excluding areas for setback or perimeter landscaping.
  - a. At least 4,465sqft of landscaping is required.
7. A minimum of one tree per 1,000sqft of landscaped area and one shrub per 150sqft of landscaped area shall be planted.
8. A certified arborist report shall be submitted with details of all trees on site. Details shall include caliper inches, health status, and location of the tree.
9. Outdoor storage shall be screened from the view of adjacent property by a solid masonry wall or privacy fence or approved landscape buffer in compliance with Garden City Code 8-1C-3 Property Maintenance Standards.
10. All existing and proposed fencing on the site shall meet Garden City Code 8-4A-3 Fences and Walls standards:
  - a. All chain link fencing shall be removed from the property.
    - i. If chain -link fencing is to remain, the chain-link fencing shall be concealed by another decorative, privacy fence as high or higher than the chain-link fence.
  - b. The use of barbed wire, razor wire, boxes, sheet metal, old or decayed wood, broken masonry blocks, chain link, chain link with slats, or other like unsightly materials for fencing shall be prohibited.
  - c. The height requirements for the fence along W. 42<sup>nd</sup> Street shall be waived. If the code does not allow for such a waiver, then the fence along W. 42<sup>nd</sup> Street shall meet the code's height and setback requirements.
    - i. The applicant shall work with Development Services staff to meet the fencing requirements of the code and determine if a waiver can be granted.
  - d. Fences greater than three and one-half feet (3.5') shall be set back to be flush or behind the building frontage. Where there is no building frontage, fences greater than three and one-half feet (3.5') shall be set back minimally ten feet (10') from the back of sidewalk so as to allow for street trees and landscaping between the fence and the sidewalk.
  - e. Anyone constructing a fence or wall over six feet (6') in height shall first obtain design review consultant(s) recommendation for approval followed by approval from the planning official and a building permit from the city prior to construction.



- f. Any fence located in the floodway shall secure a floodplain permit from the city prior to construction.
  - g. All chain-link fencing shall be removed from the property.
- 11. A site plan demonstrating shall be submitted showing that all parking stall spaces meet the minimum dimensional standards set forth in Garden City Code 8-4D-3.
- 12. A site plan shall be submitted demonstrating compliance with Garden City Code 8-4D-7 Off-Street Loading Standards.
  - a. All spaces shall have fourteen feet (14') of vertical clearance;
  - b. Convenient access to loading spaces shall be provided with not less than fifteen feet (15') in width.
- 13. There shall be a minimum of 4 bicycle parking spaces provided. The bicycle parking dimensions, and location shall be in conformance with Garden City Code 8-4D-3 and 8-4D-5.
- 14. All outdoor storage shall be setback a minimum of 5' from the property boundary line in accordance with Garden City Code 8-2B-3 Form Standards.
  - a. A site plan shall be submitted showing compliance.
- 15. Safe pedestrian and vehicle access and circulation on the site and between adjacent properties shall be demonstrated as follows:
  - a. Direct, comfortable, and safe pedestrian connection from the public sidewalk system and the parking area to the structure shall be provided through sidewalks or pathways that are:
    - i. A minimum of 5' in width; and
    - ii. Americans with Disabilities Act (ADA) compliant; and
- 16. The applicant shall provide a legally binding cross access agreement between the property located at 113 W. 43<sup>rd</sup> Street and the property at 203 W. 43<sup>rd</sup>.
- 17. Driveways, aisles, and turnaround areas when used for fire and refuse access shall have a minimum width of twenty feet.

Site Specific Requirements for the Duration of the Use:

- 1. Outside activity areas shall be located a minimum of three hundred feet (300') from any property line adjoining a residence or a residential district.
- 2. The use may include accessory office uses not to exceed twenty five percent (25%) and retail sales not to exceed ten percent (10%) of the gross floor area of the use.
- 3. Any future outdoor lighting shall be required to be in compliance with Garden City Code at the time of installation.

4. Any future outdoor service equipment including but not limited to HVAC equipment, trash, recycling, or other waste bins, transformers, utility vaults, etc. shall be found in compliance with Garden City Code at the time of installation.
5. 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.
6. 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.

  
Chairman, Planning and Zoning Commission

January 17, 2024  
Date