

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:	)	CUPFY2024 - 0008
	)	
Conditional Use Permit	)	FINDINGS OF FACT,
508 E. 40th Street	)	CONCLUSIONS OF LAW
Garden City, Ada County, Idaho	)	AND RECOMMENDATION
	)	
_____	)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on July 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 Parking facility defined by Garden City Code 8-7A-1 as "The primary use of a site for parking vehicles. The term "parking facility" includes surface lots and garages."
2. The applicant is Chad Weltzin with erstad Architects.
3. The property owner of record is PARLAY INVESTMENTS LLC.
4. The location of the project is 508 E. 40th Street.; Ada County Assessor parcel number R2734560160; FAIRVIEW ACRES SUB NO 07; LOTS 17/18 BLK 2 FAIRVIEW ACRES SUB NO 7.
5. The property is a legal parcel of record.
6. The subject property is 0.640 acres.
7. The scope of the request applies to the entire property.
8. The project is located in the C-2/DA zoning district.
9. The project is located in the Activity Node: Neighborhood Destination; Mixed Use Residential of the Garden City Comprehensive Plan Land Use Designation.

- 10. The project is in the:
  - a) 500 Year 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) 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 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 8-2B Base Zoning District Regulation
  - d. Garden City Code 8-4A Design and Development Regulations- General Provisions
  - e. Garden City Code 8-4D Parking and Off Street Loading Provisions
  - 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 General Provisions
  
- 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
  - d. Old Town Circulation Network Plan
  
- 14. The following previous approvals apply to this proposal:
  - a. ZONFY2023-0002
  - b. DSRFY2024-0011
  
- 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. Application;
  - b. Affidavit of Legal Interest;
  - c. Affidavit of Neighborhood Meeting;

- d. 300' Neighborhood List;
- e. Compliance Stateman & Stateman of Intent;
- f. Waiver Request;
- g. Site Plan;
- h. Landscape Plan;
- i. Neighborhood Map;
- j. Grading & Drainage plan;
- k. Record of Survey;
- l. Site Photos.

17. Agency Comments were received from:

- a. Republic Services; June 20th, 2024;
- b. Idaho Transportation Department, June 25th, 2024;
- c. North Ada County Fire and Rescue, June 25<sup>th</sup>, 2024.
- d. Garden City Engineer; July 3rd, 2024;
- e. Ada County Highway District; July 3rd, 2024;
- f. Idaho Department of Environmental Quality; July 5th, 2024.

18. No public comments were received.

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

Noticing Requirement	Required Date	Completion Date
Receipt of application		5/16/2024
Letter of Acceptance	6/15/2024	6/26/2024
Radius Notice	7/2/2024	6/20/2024
Legal Notice	6/28/2024	6/21/2024
Agency Notice	6/28/2024	6/20/2024
Property Posting Sign	7/7/2024	7/5/2024
Affidavit of Property Posting and Photos	7/10/2024	7/8/2024

20. On July 17, 2024, a public hearing before the Planning and Zoning Commission was held:

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

21. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Agency Comments
- d. Written Public Comments
- e. Staff report
- f. July 17, 2024 Planning and Zoning Commission Hearing Minutes and Audio
- g. 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:

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>GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS</b>			
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, the use is appropriate to the location, lot, and the neighborhood and is compatible with uses within the C-2/DA General Zoning District.</p> <p><b>In Denial:</b> The use is not appropriate for the location due to its proximity to the single family dwellings on adjacent parcels. As proposed, the site does not meet Garden City Code 8-4D or 8-4I-5 standards that regulate screening of a parking facility from adjacent 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> <b>In Approval:</b> There are public services available that can accommodate the proposed development.</p> <p><b>In Denial:</b> [List reasons for denial]</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> This proposal will not unreasonably diminish the health, safety, or welfare of the community.</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 Mixed Use Residential and Activity Node. And is 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 7, Connect the City.</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 7, Connect the City, Objective 7.1 : Create pedestrian and bicycle friendly connections.</p>

18. The record was reviewed by the Planning and Zoning Commission to render the decision.

## CONCLUSIONS OF LAW

The Planning and Zoning Commission reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets/does not meet** the standards of approval under **GCC 8-6B-2 Conditional Use**.

## DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission hereby **APPROVES/ DENIES** of the application subject to the following conditions:

### POTENTIAL CONDITIONS FOR APPROVAL DECISION

#### Application Specific Requirements:

##### Scope of this permit:

1. The scope of this permit is to allow for the use of a Parking Facility.
2. Any future permits must be in conformance with these approved plans. Staff may approve minor changes to the approvals so if they are compliant with Garden City Code including:
  - a. Substitutions of plant species, if there is no reduction in landscaping and the species are comparable in height and width. Substitutions of trees must be of the same or larger tree classification and be comparable or larger in tree canopy and height.
  - b. Less than 5% of rearrangement of elevations or building façade materials if there is no reduction in building modulation, fenestration, or glazing.
  - c. Less than 5% of rearrangement of site.

##### Prior to Permit Issuance:

1. There shall be no construction off site without the permission of the adjacent property owner. This includes utilization of the adjacent property for this application's required landscaping, drainage, and fencing.
2. There shall be a minimum of X bicycle parking spaces provided.
3. The landscaping shall be in conformance with this approval as reviewed and approved or otherwise conditioned.
  - a. If any trees are to be removed from the site, a tree mitigation plan must be submitted in compliance with GCC 8-4I-7 Tree Preservation provisions.
    - i. Any trees removed prior to the certified arborist's report being submitted will be considered to have been healthy, and thus, mitigation will be required.
  - b. A minimum of five percent (5%) of the gross site area shall be landscaped areas, excluding areas for setback or perimeter landscaping.

- i. At least 1,487sqft of landscaping shall be provided excluding perimeter landscaping or landscaping within the setbacks.
  - c. Perimeter landscaping shall be installed in accordance with 8-4I-5 along the northern and southern property boundary lines.
    - i. Perimeter landscaping shall be at least ten feet (10') wide measured from the property line to the interior of the lot;
    - ii. A screen consisting of vegetation shall be at least six feet (6') wide and six feet (6') in height at maturity;
    - iii. At least one tree shall be planted for every fifteen (15) linear feet of perimeter length (or as appropriate to the selected species) to quickly establish continuous canopy coverage.
  - d. 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 corresponding setback for every increment of fifty feet (50') of linear feet of frontage.
    - i. The frontage of E. 40<sup>th</sup> Street shall have a total of 3 class II or III trees.
    - ii. Trees shall be planted adjacent to 40<sup>th</sup> Street within the landscape buffer to meet street tree requirements of Garden City Code 8-4I.
  - e. Plant high branching deciduous trees throughout the parking lot interior to provide shade for pedestrians, vehicles and surfaces.
    - i. Internal shade trees shall be provided at a minimum ratio of one tree planted for every five (5) parking spaces supplied.
    - ii. Solid masonry or wood fencing a minimum of six feet (6') in height with landscaped screening shall be provided between parking lots and residential uses.
- 4. Any future outdoor lighting will be required to be in compliance with code at the time of development.
- 5. All stormwater systems must comply with Garden City Code 8-4A-7.
  - a. Stormwater swales incorporated into required landscape areas shall be vegetated with grass or other appropriate plant materials. Gravel, rock, or cobble stormwater facilities are not permitted on the surface of required landscape areas, unless designed as a dry creek bed or other design feature
  - b. If ACHD requires stormwater swales within the landscape buffer along 40th Street, the swales shall be designed in such a way to accommodate the Garden City required Street trees.
- 6. All vehicle parking spaces shall meet the minimum dimensional standards set forth in Garden City Code 8-4D-3.

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 Design Review permit shall be approved.
3. 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
4. If any portion(s) of the existing fence are found in disrepair, decay, or broken, it shall be replaced or repaired.
5. Contrasting hardscape material shall be installed at the drive aisles to better identify the pedestrian crossings along 40<sup>th</sup> Street.
6. Bicycle Parking:
  - a. Bicycle parking spaces shall be placed in such a way that when mounting and dismounting the bicycles do not reverse into the sidewalk traffic area nor 40<sup>th</sup> Street.
  - b. All bicycle parking shall be located so as to not prevent sidewalk traffic from maintaining a continuous momentum.
7. All HVAC systems and outdoor service and equipment areas shall be identified for permit review and screened to be compliant with Garden City Code 8-4A-5 Outdoor Service and Equipment Areas.
  - a. Utility boxes and transformers will also require screening. Coordination with Idaho Power will be required.
8. Prior to occupancy, 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 along E. 40<sup>th</sup> Street in accordance with Garden City Code 8-4E-6 and the Garden City Sidewalk Policy.
    - a. The sidewalk shall be installed to the edge of property.
    - b. The sidewalk shall be installed at a consistent elevation above any curb cut so as to not incline at the curb cut.
    - c. The sidewalk shall be a minimum of 5' in width.
    - d. The sidewalk shall be detached by a minimum 6' landscape or furniture zone.
    - e. Improvements may be made within the right-of-way provided a landscape license agreement or other approval from Ada County Highway District.
9. A pathway system shall extend through the development site and connect to public sidewalk on E. 40<sup>th</sup> Street.
  - a. A pathway shall be a minimum width of four feet (4').



- b. Pedestrian amenities shall be provided along sidewalks and pathways to support defensible space, crime prevention, pedestrian comfort and accessibility.

Site Specific Requirements for the Duration of the Use:

1. Driveways shall adhere to the standards of a clear vision triangle at all times.
2. All 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.

**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.

July 17, 2024

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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 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.

July 17, 2024

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Chairman, Planning and Zoning Commission

Date