

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 - 0009
)	
Conditional Use Permit)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
4999 N Glenwood Street)	AND DECISION
Garden City, Ada County, Idaho)	
_____)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on August 21, 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 Drive-through establishment defined by Garden City Code 8-7A-1 as “Any use that permits service to take place directly with customers located in a motor vehicle. The term "drive-through establishment" shall include, but not be limited to, providing food or beverage service, bank service, prescription drugs, and/or film processing. The term "drive-up window service" shall not include fuel sales facility or vehicle washing facility as herein defined.”
2. The applicant is Rory Heggie.
3. The property owner of record is MAL LP.
4. The location of the project is 4999 N. Glenwood St., Parcel Number: R8191508798, PAR #8793 OF LOT 38 STRAWBERRY GLEN PARCEL B R/S 5330
5. The property is a legal parcel of record.
6. The subject property is 0.912 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 Green Boulevard Corridor; Neighborhood Node: Transit Oriented Development; Future Planning Area 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) outside 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 drive-through establishment.
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 Regulations
 - d. Garden City Code 8-2C Land Use Provisions
 - e. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - f. Garden City Code 8-4D Parking and Off-Street Loading Provisions
 - g. Garden City Code 8-4E Transportation and Connectivity Provisions
 - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
 - i. 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. CUP2001-01-09
15. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

Conditional Use Permit			
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. Landscape Plan;
- d. 300' Neighborhood List;
- e. Affidavit of Legal Interest;
- f. Application;
- g. Statement of Intent.

17. Agency Comments were received from:

- a. Ada County Highway District, 07/17/2024
- a. Republic Services 07/17/2024
- b. City Engineer, 07/19/2024
- c. DEQ, 07/24/2024
- d. Idaho Transportation Department, 08/06/2024

18. Public comments were received from:

- a. Jeff Vogt, 06/13/2024
- b. Robert J. Maynes, 07/24/2024

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

Noticing Requirement	Required Date	Completion Date
Receipt of application		7/3/2024
Letter of Acceptance	8/2/2024	7/30/2024
Radius Notice	8/6/2024	7/16/2024
Legal Notice	8/2/2024	7/17/2024
Agency Notice	8/6/2024	7/16/2024
Property Posting Sign	8/8/2024	8/12/2024
Affidavit of Property Posting and Photos	8/8/2024	8/12/2024

20. On August 21, 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. August 21, 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.			
GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X		X	<p>Finding 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;</p> <p>In Approval: The use is appropriate to the location, lot, and the neighborhood and is compatible with uses within the C-2 General Zoning District.</p> <p>In Denial: The application is not appropriate to the location or the neighborhood as the proposal is in conflict with the land use designations at this location per the Comprehensive Plan Land Use Map. Per Idaho Code § 67-6512(a) conditional uses shall not be in conflict with the Comprehensive Plan. LIST SPECIFIC REASONS.</p>
X		X	<p>Finding 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;</p> <p>Explanation:</p> <p>In Approval or Denial: As conditioned, the application meets this finding. There are public services available that can accommodate the proposed development.</p>

X		X	<p>Finding 3. The use will not unreasonably diminish either the health, safety or welfare of the community;</p> <p>Explanation:</p> <p>In Approval: As conditioned, this proposal will not unreasonably diminish the health, safety, or welfare of the community.</p> <p>In Denial: The application is not compliant with Garden City Code 8-4I-4 Landscaping Provisions for Specific Uses nor is it compliant with Garden City Code 8-2C-13 Land Use Provisions. These compliance issues directly impact the health, safety, and welfare of the community by not providing a traffic impact study nor a drive-through stacking study showing safe vehicular transportation routes thus potentially causing conflict with vehicular and pedestrian users.</p>
X		X	<p>Finding 4. The use is no in conflict with the comprehensive plan or other adopted plans, policies or ordinances of the city.</p> <p>Explanation:</p> <p>In Approval: The application is cohesive with the Comprehensive Plan’s designation of the Green Boulevard Corridor, Future Planning area, and Transit Oriented Development Neighborhood Node. And is supports the Comprehensive Plan’s Goal 2, Improve the City Image; Goal 4, Emphasize the “Garden” in Garden City; 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. Where the application is not compliant, or there wasn’t enough information to review,</p>

			<p>conditions have been drafted to ensure compliance.</p> <p>In Denial: This proposal is in conflict with the definitions and visions of the Future Planning Area and the Transit Oriented Development Neighborhood Node of the Future Land Use Designations of the Comprehensive Plan.</p> <p>A drive through is inherently a use that focuses on single-occupancy motor vehicles. As such, the use conflicts with the vision to make this location a local and regional destination. A drive-through's intent is to allow vehicles to pass quickly through an area, which does not promote a cohesive business environment with surrounding small-scale retail, art, office spaces, or residential dwelling units that the Comprehensive Plan envisions for the area.</p> <p>The application may not be supported by Goal 2 Improve the City Image, Goal 4, Emphasize the "Garden" in Garden City, Goal 7, Connect the City, Goal 10 Plan for the Future, and Goal 12 Evolve as a Destination.</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 expansion of a pre-existing drive through establishment use. The expansion of the use is to allow for of a second stacking lane.
2. Perimeter landscaping shall not be required based on the existing site conditions. The improvements would create an undue burden for the applicant which would negatively impact the site function and neighboring parcels.

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. 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. Landscaping and street trees shall be installed and inspected for compliance with Garden City Code 8-4I.
4. 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.
5. 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.
6. All utilities 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.
7. Vehicle parking space dimensions shall be compliant with Garden City Code 8-4D-3.

8. At least 8 bicycle parking spaces shall be provided on-site.
 - a. Bicycle parking shall be a minimum of 6' long x 2' wide
 - b. On-site spaces shall be located within fifty feet (50') of the building entrance(s);
 - c. Be separated by a physical barrier to protect the bicycles from damage by motor vehicles if located within a motor vehicle parking area. The physical barrier can be curbs, poles, wheel stops, or other similar features;
 - d. Be easily accessible from the street;
 - e. Not impede pedestrian or vehicular circulation or loading zones. The facilities shall be incorporated, whenever possible, into the structure's design or street furniture; and
 - f. Be properly illuminated to increase security and avoid accidents and adhere to section 8-4A-4 of this chapter, Outdoor Lighting.

9. Landscaping and street trees shall be installed and inspected for compliance with Garden City Code 8-41.
 - a. At least 5% of the site shall consist of landscaping, excluding landscaping in required setbacks.
 - i. Required landscape areas shall be at least seventy percent (70%) covered with vegetation at maturity, with mulch used under and around the plants.
 - b. At least 2 Class II or III street trees per the Treasure Valley Tree Selection Guide shall be planted between the sidewalk and N. Glenwood St. for a total of 6 Class II or III street trees.
 - c. A minimum of one tree per one thousand (1,000) square feet of landscaped area and one shrub per one hundred fifty (150) square feet of landscaped area shall be planted.
 - d. A variety of tree species shall be provided in accordance with 8-41-3.

10. 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:
 - a. A minimum of 5' in width and comply with the Americans with Disabilities Act.
 - b. Internal pathways shall have signage alerting drivers to the pedestrian crossings of the drive isle.
 - c. Uninterrupted by motorized vehicles. If there is no other feasible alternative, the vehicular crossing of the pedestrian path or sidewalk shall be designed in a way to visibly delineate and protect the pedestrian network. This may be achieved by raising the pedestrian path or sidewalk, changes in materials, colors, landscaping, or other such treatments

11. To reduce vehicle emissions, signage shall be provided advising drivers to reduce vehicle idling.

12. The applicant shall install a curb at the southernmost approach to direct traffic north per the Idaho Transportation Department comment.
13. A new site plan shall be submitted showing an escape lane.

Site Specific Requirements for the Duration of the Use:

1. Any future fence or wall will be required to be in compliance with code at the time of development.
2. Any future outdoor lighting will be required to be in compliance with code at the time of development.
3. All streets and driveways adhere to the standards of a clear vision triangle.
4. Service shall be provided to those who elect to walk or bike.
 - a. Service shall be available in an area that is protected from the weather and separate from vehicle stacking lanes.
 - b. A seating area either indoor or outdoor with temporary or permanent shelter, sufficient for a minimum of ten (10) people shall be provided.
 - c. The patio furniture shall be permanent in nature and be made of materials resistant to weather conditions.
 - d. A minimum of one (1) outdoor trash receptacle shall be provided.
 - e. A restroom shall be provided for patrons.
5. All site and vehicular lane lighting shall be down-shielded, screened or oriented to prevent spillage of light on any residence, residential zone, or public roadway.
 - a. Stacking lanes shall be screened from view of the public right-of-way, patios and pedestrian use areas with landscaping or a combination of plantings, structures, berming, or art to a minimum height of four feet (4') where not in conflict with a necessary clear vision triangle.
6. Employees shall collect on-site and off-site litter generated by customers at least once per business day.

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 Code 8-3C General Provisions- Living Space Requirements.
23. All outdoor service and equipment areas shall comply with Garden City Code 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 21, 2024

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.

August 21, 2024

Chairman, Planning and Zoning Commission

Date

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