

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:)	CUPFY2023-0011
)	
Conditional Use Permit)	FINDINGS OF FACT,
5586 N. Maple Grove Rd.)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
)	

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on October 18, 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 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 Jeff Hatch.
3. The property owner of record is CRC DESIGN BUILD SYSTEMS LLC.
4. The location of the project is 5586 N. Maple Grove Rd.; Ada County Assessor parcel number(s) S0526417340; PAR #7340 OF NE4NSE4 SEC 26 4N 1E RS 6806.
5. The subject property is 0.491 acres.
6. The scope of the request applies to the entire property.
7. The project is located in the C-2 General Commercial zoning district.
8. The project is located in the Green Boulevard Corridor, Mixed Use Commercial, and the Neighborhood Destination Activity Node of the Garden City Comprehensive Plan Land Use Designation.

9. The project is 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).
10. The project is 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 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 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 8-4C-5 Prohibitions
 - 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
 - d. Chinden ITD Access Management
 - e. Garden City Transportation Needs
14. The following previous approvals apply to this proposal:
 - a. DSRFY2023-0006
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 Plan;
- c. Landscape Plan;
- d. 300' Neighborhood List;
- e. Affidavit of Legal Interest;
- f. Application;
- g. Statement of Intent.
- h. Ability to Serve Request
- i. Form Request to Obtain Fire Flow Test

17. Agency Comments were received from:

- a. Sawtooth Law, PLLC (District attorney), August 1st, 2023
- b. Idaho Department of Environmental Quality, August 2nd, 2023
- c. Republic Services, August 1st, 2023
- d. West Boise Sewer District, August 4th, 2023
- e. Idaho Transportation Department, August 2nd, 2023
- f. Ada County Highway District (ACHD), August 9th, 2023

18. Public comments were received from:

- a. Jake Smith, August 1st, 2023

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

Noticing Requirement	Required Date	Completion Date
Receipt of application	07/17/2023	07/18/2023
Letter of Acceptance	07/17/2023	08/18/2023
Radius Notice	09/05/2023	08/01/2023
Legal Notice	09/01/2023	08/02/2023
Agency Notice	09/05/2023	08/01/2023
Property Posting Sign	09/10/2023	09/08/2023
Affidavit of Property Posting and Photos	09/06/2020	09/08/2023

20. On September 20, 2023, a public hearing was held before the Planning and Zoning Commission. The application was moved to the date certain of October 18, 2023.

21. On October 18, 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. September 20, 2023, Planning and Zoning Commission Hearing Minutes

and Audio

g. October 18, 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	
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: In Approval: This proposal will not unreasonably diminish the health, safety, or welfare of the community as conditioned. The proposed landscaping will enhance the overall wellbeing of the community, while the maintenance of the existing sidewalk and the proposed pedestrian pathway along W. Chinden will increase the safety of non-vehicular transportation along the corridor.</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: In Approval: Due to the specific location and design of the project, this use will not diminish the ability for the area to develop as the Comprehensive Plan envisions per the Comprehensive Plan's future land use</p>

		<p>designations of the Green Boulevard Corridor, Neighborhood Commercial Node, and Mixed-Use Commercial.</p> <p>The application is in conformance with the Future Land Use Designations by providing a new 10' wide bicycle and pedestrian pathway along the Chinden Corridor, which will enhance the existing non-vehicular modes of transportation that otherwise does not exist in this area. It proposes to add landscaping to the streetscapes of N. Maple Grove and W. Chinden, further developing the vision of the Green Boulevard Corridor. Additionally, the use of a drive-through establishment is a less intensive commercial use that fits within the model of a mixed-use commercial neighborhood.</p> <p>The proposal is supported by the Comprehensive Plan's Goals:</p> <p>Goal 1. Nurture the City</p> <p class="list-item-l1">a.) 1.4 Objective: Create a premier destination place to live, work, and recreate.</p> <p>Goal 4. Emphasize the "Garden" in Garden City</p> <p class="list-item-l1">a.) 4.3 Objective: Beautify streets, sidewalks and gateways with landscaping, trees, and public art.</p> <p>Goal 7. Connect the City</p> <p class="list-item-l1">a.) 7.1. Objective: Create pedestrian and bicycle friendly connections.</p> <p class="list-item-l1">b.) 7.4 Objective: Maintain and improve standards for sidewalks, curbs, and gutters.</p> <p>Goal 12. Evolve as a Destination</p> <p class="list-item-l1">a.) 12.1 Objective: Support a positive business environment</p> <p class="list-item-l1">b.) 12.2 Objective: Continue to support commercial and industrial land uses.</p> <p class="list-item-l1">c.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture, and commerce.</p>
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		<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, conditions have been drafted to ensure compliance.</p> <p>In Denial:</p> <p>This proposal is in conflict with the definitions and visions of the Green Boulevard Corridor, Neighborhood Commercial Node, and Mixed-Use Commercial. 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>Additionally, the layout of the drive-through as proposed does not promote an urban design as it is a single-story structure occupying only 6% of the site and does not meet the desire for three story buildings at 40%- 60% lot coverage.</p> <p>Furthermore, the is in conflict with:</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>
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			<p>a.) 2.3 Objective: Promote quality design and architecturally interesting buildings.</p> <p>b.) 2.4 Objective: Create a vision for the design of all streets and highways consistent with city's urban setting.</p> <p>Goal 12. Evolve as a Destination</p> <p>a.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture and commerce.</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:

1. The scope of the application is to allow for the new construction of a drive-through establishment.

Prior to Construction:

1. Approval of this conditional use permit shall be contingent upon the approval of DSRFY2023-0006.

- The application shall be reviewed for compliance with Garden City Code standards set forth in 8-4 and of 8-2C-13. Approval specifically pertains to the design and site plans as approved by the Design Review Consultants and Garden City Development Services staff through the Garden City Design Review process.

- b. Any modifications to the approved site plans or structural designs shall adhere to the modification processes of the Design Review Consultation.
- 2. A Building permit shall be applied for and approved by Garden City Development Services Department.
- 3. The drive-through establishment shall provide 1 vehicular parking space per 1,000 square feet of building.
 - a. As proposed, the site shall provide at least 1 vehicular parking space.
- 4. Landscaping shall be compliant with Garden City Code 8-4I Landscaping and Tree Protection Provisions.
 - a. A minimum of five percent (5%) of the gross site area shall be landscaped areas, excluding areas for setback or perimeter landscaping.
 - i. Required landscape areas shall be at least seventy percent (70%) covered with vegetation at maturity, with mulch used under and around the plants. Use of mulch, organic or rock, as the only ground cover in required planting areas is prohibited.
 - b. A minimum of one class III or class II 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. A minimum of 6 trees are required along the frontage of N. Maple Grove Rd.
 - ii. A minimum of 4 trees are required along the frontage of W. Chinden Blvd.
 - 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.

Prior to Occupancy:

- 1. Occupancy of the site shall not commence until after a Certificate of Occupancy has been obtained from the Garden City Development Services Department.
- 2. 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 Garden City Code.
 - a. All stormwater systems shall be compliant with Garden City Code 8-4A-7.
 - b. All utilities shall be in compliance with Garden City Code 8-4A-8.
- 3. 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.
- 4. All onsite 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.

- a. There shall be a shared use agreement between the subject parcel at 5586 N. Maple Grove and the adjacent property at 9275 W. Chinden Blvd. for the shared use of the trash enclosure.
5. All internal pathway systems shall be a minimum of 5' in width and comply with the Americans with Disabilities Act.
 - a. Internal pathways shall have signage alerting drivers to the pedestrian crossings of the drive isle.
6. To reduce vehicle emissions, signage shall be provided advising drivers to reduce vehicle idling.
7. The site shall provide at least 1 bicycle parking space per 500 square feet of building square footage.
 - a. At least three (3) bicycle parking spaces shall be provided on-site.
 - b. Bicycle parking shall be a minimum of 6' long x 2' wide.
8. A 10' wide pedestrian pathway shall be installed along the frontage of W. Chinden in accordance with the adopted Chinden Blvd. South Sidewalk Project.
 - a. Coordination and approval from the Idaho Transportation Department shall be required.
9. Additional landscaping shall be planted between the application parcel and the ROW along both N. Maple Grove, and W. Chinden to minimize the appearance of "no man's land" and create a cohesive landscaped area to the edge of sidewalk.
 - a. A landscape license agreement shall be entered into with ACHD, with the property owner of 5586 Maple Grove being responsible for maintenance.
 - b. A landscape license agreement shall be entered into with ITD and Thurman Mill Drainage District, and any other entity having rights to the land between Chinden and 5586 N. Maple Grove. The property owner of 5586 shall be held responsible for maintenance of landscaping.

Site Specific Requirements for the Duration of the Use:

1. Any future fence or wall shall be required to be in compliance with code at the time of development.
2. 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.
- 3. 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, berthing, or art to a minimum height of four feet (4') where not in conflict with a necessary clear vision triangle.
- 4. 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.

October 18, 2023

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 e.g., providing adequate landscaping; Providing a drive-through stacking study; providing a use more align with the intent of the zoning district and Comprehensive Plan.

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.

October 18, 2023

Chairman, Planning and Zoning Commission

Date