

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
DUTCH BROTHERS CONDITIONAL USE PERMIT
FILE NO. CU-23-02**

The above-entitled Conditional Use Permit application came before the Star City Council for their action on March 7, 2023, at which time public testimony was taken and the public hearing was closed. The Star City Council, having requested and taken oral and written testimony, and having duly considered the matter, does hereby make the following Findings of Fact and Conclusions of Law;

Procedural History:

A. Project Summary:

The Applicant is seeking approval of a Conditional Use Permit for a proposed coffee drive-through restaurant. The property is located at 12490 W. Goldcrest Street in Star, Idaho. The property consists of a total of 0.533 acres. The subject property is generally located on the southwest corner of W. State Street (Hwy 44) and S. Ripplerock Avenue. Ada County Parcel Number R8180750940.

B. Application Submittal:

A neighborhood meeting was held on February 2, 2023 in compliance with the application submittal requirement of the Star Unified Development Code (Section 8-1 A-6 C). The land use application was deemed complete on February 16, 2023.

C. Notice of Public Hearing:

Notice of Public Hearing on the application for the City of Star Council was published in accordance with the requirements of Title 67, Chapter 65, Idaho Code and the Star Unified Development Code on February 21, 2023. Notice of this public hearing was mailed to property owners within three-hundred feet (300') of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Star Unified Development Code on February 16, 2023. Notice was sent to agencies having jurisdiction in the City of Star on February 16, 2023. The property was posted in accordance with the Star Unified Development Code on February 23, 2023.

D. History of Previous Actions:

September 17, 2019	Council approved the Annexation (AZ-19-06) and Preliminary Plat/Planned Unit Development (PUD-19-0) for the Stonecrest development.
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April 21, 2021

Council unanimously approved the Final Plat (FP-20-02) for Stonecrest Subdivision.

LAND USE:

CONDITIONAL USE PERMIT:

The applicant is requesting approval of a Conditional Use Permit for an approximately 1,600 square foot coffee store, with a drive through. The applicant is proposing 25 parking spaces, 1 of which is ADA compliant. Section 8-4B-3H of the Unified Development Code states that one bicycle parking space shall be provided for every twenty-five (25) vehicle parking spaces. The applicant is proposing a bicycle rack on the south side of the building satisfying this requirement.

The Unified Development Code, Section 8-4B-3 requires a drive-through to provide room to queue 5 cars. The Applicant is proposing room for 37 cars to queue, along with an exit lane that is proposed to be 12 feet wide satisfying this section of the code. The drive through is proposed to have a lighted menu board, but no speakers to be used for orders. The building is proposed to have outdoor speakers that will play music during the hours of operation. The noise ordinance will need to be followed between the hours of 10:00 PM and 7:00 AM, seven days a week.

Primary access to the site will be from W. Goldcrest Street off S. Ripplerock Avenue. The proposed parcel is in an approved commercial development, the Applicant will need to obtain the appropriate approvals from ACHD for this access point. **Applicant will be required to secure a cross access agreement for the southern and western parcels. A shared parking agreement will also need to be obtained for the parking to the west and south of the parcel. These agreements shall be recorded before occupancy will be given.**

All signage, including building and directionals require separate permit and approval from Staff prior to installation.

Applicant has not submitted a lighting plan for the site. **Prior to issuing building permits, the applicant shall submit a full plan for all lighting on site, including fixture type and a photometric plan.** Shields and other modifications may be necessary to avoid fugitive light and changes may be required even after installation. Existing residential uses will need to be protected from fugitive lighting and unreasonable noise.

Applicant is proposing a building with a maximum height of approximately 24 feet. The Unified Development Code, Section 8-3A-4 provides for a maximum height of 35 feet. The proposed building satisfies this section of the code.

The applicant has submitted color renderings of the proposed building, which will still need to go through design review (Certificate of Zoning Compliance) for approval.

Unified Development Code, Section 8-4B-2 requires parking spaces to be 20 feet in depth and a minimum of 9 feet wide. The applicant is proposing 18 feet deep stalls that are 9 feet wide. The UDC states that when a vehicle bumper overhangs onto a sidewalk or landscape area, the parking stall dimensions may be reduced two (2) feet in length if two (2) feet is added to the width of the sidewalk or landscaped area, and the additional area is planted in ground cover. The proposed parking stalls satisfy this section of the development code.

The Applicant has submitted the general landscape plan for the Stonecrest Development. Given the changes to the lots and the current uses, the Applicant will need to submit a revised landscape plan for the area associated with this proposed use prior to issuing the building permit.

The application further complies with the Specific Use Standards in Section 8-5-13 of the UDC for the proposed use. This includes compliance with the maximum building height, vehicle stacking requirements for the drive through, location of the stacking lane and required 10' minimum buffer from existing residential lots.

Building Design Review

The Applicant has provided color renderings of the proposed building. The proposed building colors are dark gray, dark blue, charcoal, and ash. They are proposing to use a natural spruce material for the soffit, providing a wood look when under the canopy. The base of the building will be slit face CMU the upper portions a combination of vintage wood look fiber cement board and a smooth look fiber cement board. Windows and door frames will be aluminum and in light gray. The standard blue wall will have the trademark white windmill on three sides. Canopy pillars will be built out of CMU.

These materials are aligned with the design standards for the Central Business District. The colors are not entirely neutral earth tones as called for in the design standards. **The building will need to be reviewed by the Design Review Committee for final approval. At that time, the committee will work with the Applicant on complying with the design standards. This review will take place after the public hearing, during a regularly scheduled Committee meeting.** All signage will require separate sign permits to be approved by Staff.

E. Agencies Responding:

ITD
ACHD

February 23, 2023
Pending (transmitted to agency on 2/16/23)

F. Letters/Emails from the Public:

None

G. Comprehensive Plan and Unified Development Code Provisions and Conformance:

Comprehensive Plan

8.2.3 Land Use Map Designations:

Central Business District

The Central Business District is planned to be a vibrant downtown center for the community. Uses encouraged are commercial, retail, civic, private offices, and entertainment. High density housing is encouraged on the upper floors of mixed-use buildings and at the fringes of the land use designation. Developments in this district are to place an emphasis on pedestrian and bicycle access and compatibility.

8.3 Goal:

Encourage the development of a diverse community that provides a mix of land uses, housing types, and a variety of employment options, social and recreational opportunities, and where possible, an assortment of amenities within walking distance of residential development.

8.4 Objectives:

- Implement the Land Use Map and associated policies as the official guide for development.
- Manage urban sprawl in order to minimize costs of urban services and to protect rural areas.
- Encourage land uses that are in harmony with existing resources, scenic areas, natural wildlife areas, and surrounding land uses.
- Encourage commercial development that is consistent with a family friendly feel, not overburdening the community with big box and franchise uses and discourage the development of strip commercial areas.

8.5.5 Policies Related Mostly to The Central Business District Planning Areas:

- The CBD zoning district should allow for a mix of commercial, office, institutional, and civic type uses with specific provisions for residential use in appropriate locations with compatible densities.
- The city should develop a street improvement plan for the CBD identifying drainage and street improvements with a functional grid system and use public private partnerships to assure the system is built and that "ad hoc" development of parcels within the CBD do not block good planning.
- The city should develop a downtown grid system, in part, planning for the easterly extension of Tempe Lane and easterly extension of West First Street to help provide better downtown access and parking facilities.

- The east west public road from the Heron River Development, south of the LDS Church on Main Street, should be extended to Star Road.
- Implement, review, and update the 2011 Star Downtown Revitalization Plan for development strategies within the plan intended to stimulate development within the CBD.
- As recommended in the 2011 Star Downtown Revitalization Plan, the city should create an Urban Renewal District to stimulate development within the CBD.
- The city should encourage assemblage of the smaller properties where appropriate.

8.5.6 Policies Related Mostly to the Commercial Planning Areas:

- Assist in the provision of coordinated, efficient, and cost-effective public facilities and utility services, carefully managing both residential and non-residential development and design, and proactively reinforcing downtown Star's role as the urban core while protecting existing property rights. B. Encourage commercial facilities to locate on transportation corridors. C. Locate neighborhood services within walking distance to residential development. D. Discourage the development of strip commercial areas. E. Maintain and develop convenient access and opportunities for shopping and employment activities. F. Commercial areas of five acres or less should be encouraged in residential land use designations with appropriate zoning to allow for commercial services for residential neighborhoods and to limit trip lengths. Such commercial areas should be submitted for approvals with a Conditional Use Permit or Development Agreement to assure that conditions are placed on the use to provide for compatibility with existing or planned residential uses. These areas should be oriented with the front on a collector or arterial street.
- 8.5.9 Additional Land Use Component Policies:
- Encourage flexibility in site design and innovative land uses.
 - Work with Ada County Highway District (ACHD), Canyon Highway District #4 (CHD4), and Idaho Department of Transportation (ITD) for better coordination of roadway and access needs.
 - Support well-planned, pedestrian-friendly developments.
 - Dark sky provision should be adopted within the code to assure down style lighting in all developments and Star should consider joining the International Dark Sky Association.

Unified Development Code

8-3A-1: ZONING DISTRICTS AND PURPOSE ESTABLISHED:

The following zoning districts are hereby established for the interpretation of this title, the zoning districts have been formulated to realize the general purposes as set forth in this title. In addition, the specific purpose of each zoning district shall be as follows:

(CBD) CENTRAL BUSINESS DISTRICT: To provide for commercial, retail, civic, office, and entertainment uses. High density housing is encouraged on the upper floors of mixed-use buildings and may also be allowed at the fringes of the land use designation shown on the comprehensive plan. Live/work designed development is also encouraged in this district. Developments in this district are to place an emphasis on pedestrian and bicycle access and compatibility. Special emphasis shall be placed on development in the central downtown area to encourage and create a vibrant, walkable downtown community that incorporates the Boise River as an active amenity.

8-3A-3: USES WITHIN ZONING DISTRICTS

The following table lists principal permitted (P), accessory uses (A), conditional (C), or prohibited (N) uses.

ZONING DISTRICT USES	CBD
Drive-through establishment/drive-up service window	C

Notes:

1. Indicates uses that are subject to specific use standards in accord with chapter 5 of this title.

8-3C-2: ADDITIONAL CENTRAL BUSINESS DISTRICT STANDARDS:

- A. Comply with Section 8-3A-1: ZONING DISTRICTS AND PURPOSE ESTABLISHED.
- B. High density residential may be permitted within the CBD in mixed use buildings with commercial or office type uses on the first floor and high density residential on upper floors.
- C. New development on Main Street and Star Road, generally south of State Street, shall include transition consisting of a compatible mix of lower intensity commercial, retail and office type uses mixed with live/work type residential. Existing Single-Family uses are encouraged to convert to or redevelop as non-residential uses.
- D. Big Box commercial, generally a single-story single use building over 50,000 square feet, shall not be permitted and any single-story single use building which is large in scale, such as approaching the 50,000 square foot size, shall be located to front on Highway 44 or Star Road.
- E. The Council may place requirements on a mixed-use development, including a ratio of uses and/or timing of phases, to ensure that the overall development maintains its commercial intent.

8-1B-4: CONDITIONAL USES:

A. Purpose: The purpose of this section is to establish procedures that allow for a particular use on a particular property subject to specific terms and conditions of approval.

B. Applicability: The provisions of this section apply to all uses identified as conditional use in chapter 3, "District Regulations", of this title, and as otherwise required by specific development standards in chapter 5, "Specific Use Standards", of this title.

C. Process:

1. The applicant shall complete a preapplication conference with the administrator prior to submittal of an application for a conditional use.

2. An application and appropriate application fees, in accord with article A, "General Provisions", of this chapter, shall be submitted to the administrator on forms provided by the planning department.

3. The administrator may require additional information concerning the social, economic, fiscal or environmental effects of the proposed conditional use, prior to the scheduling of a public hearing.

D. Standards: In approving any conditional use, the city council may prescribe appropriate conditions, bonds and safeguards in conformity with this title that:

1. Minimize adverse impact of the use on other property.

2. Control the sequence and timing of the use.

3. Control the duration of the use.

4. Assure that the use and the property in which the use is located is maintained properly.

5. Designate the exact location and nature of the use and the property development.

6. Require the provision for on site or off-site public facilities or services.

7. Require more restrictive standards than those generally required in this title.

8. Require mitigation of adverse impacts of the proposed development upon service delivery by any political subdivision, including school districts, that provides services within the city.

8-1B-4E. FINDINGS: The council shall base its determination on the conditional use permit request upon the following:

1. That the site is large enough to accommodate the proposed use and meet all the dimensional and development regulations in the district in which the use is located.

2. That the proposed use will be harmonious with the Star comprehensive plan and in accord with the requirements of this title.
 3. That the design, construction, operation and maintenance will be compatible with other uses in the general neighborhood and with the existing or intended character of the general vicinity and that such use will not adversely change the essential character of the same area.
 4. That the proposed use, if it complies with all conditions of the approval imposed, will not adversely affect other property in the vicinity.
 5. That the proposed use will be served adequately by essential public facilities and services such as highways, streets, schools, parks, police and fire protection, drainage structures, refuse disposal, water, and sewer.
 6. That the proposed use will not create excessive additional costs for public facilities and services and will not be detrimental to the economic welfare of the community.
 7. That the proposed use will not involve activities or processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
 8. That the proposed use will not result in the destruction, loss or damage of a natural, scenic or historic feature considered to be of major importance.
1. That the site is large enough to accommodate the proposed use and meet all the dimensional and development regulations in the district in which the use is located.
 2. That the proposed use will be harmonious with the Star comprehensive plan and in accord with the requirements of this title.
 3. That the design, construction, operation and maintenance will be compatible with other uses in the general neighborhood and with the existing or intended character of the general vicinity and that such use will not adversely change the essential character of the same area.
 4. That the proposed use, if it complies with all conditions of the approval imposed, will not adversely affect other property in the vicinity.
 5. That the proposed use will be served adequately by essential public facilities and services such as highways, streets, schools, parks, police and fire protection, drainage structures, refuse disposal, water, and sewer.
 6. That the proposed use will not create excessive additional costs for public facilities and services and will not be detrimental to the economic welfare of the community.

7. That the proposed use will not involve activities or processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

8. That the proposed use will not result in the destruction, loss or damage of a natural, scenic or historic feature considered to be of major importance.

8-3A-4: ZONING DISTRICT DIMENSIONAL STANDARDS:

Zoning District	Maximum Height Note Conditions	Minimum Yard Setbacks Note Conditions			
		Front ⁽¹⁾	Rear	Interior Side	Street Side
CBD	35'	0'	0'	0' ⁴	0'

Notes:

1. Front yard setback shall be measured from the face of the garage to the face of the sidewalk, allowing for 20' of parking on the driveway without overhang onto the sidewalk.

2. Zero-Lot-Line and reduced front and rear setback waivers may be requested through the Development Agreement process. All other side yard setback requests for detached structures shall not be granted waivers, unless as part of a Planned Unit Development.

3. All setbacks in the CBD, C-1, C-2, LO, IL, PS, RC and M-U zone shall maintain a minimum 15' when adjacent to a residential use or zone.

4. As approved by the Fire District.

Note Conditions:

D. Maximum Height Limit:

1. Height exceptions shall not be permitted except by discretion of the council with the submittal of a conditional use permit or development agreement application.

8-4B-3: REQUIRED NUMBER OF OFF-STREET PARKING SPACES:

Restaurant with drive-through	1 per 200 square feet gross floor area plus; plus, queue space for 5 cars for drive-up service.
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8-5-13: DRIVE-THROUGH ESTABLISHMENT:

A. A drive-through establishment shall be an accessory use where the drive-through portion of the facility (including stacking lanes, speaker and/or order area, pick up windows, and exit lanes) is not immediately adjacent to the drive-through portion of another facility, or immediately adjacent to a residential district or an existing residence, unless approved through a planned unit development.

B. All establishments providing drive-through service shall identify the stacking lane, menu and speaker location (if applicable), and window location on applicable permit applications.

C. A site plan shall be submitted that demonstrates safe pedestrian and vehicular access and circulation on the site and between adjacent properties. At a minimum the plan shall demonstrate compliance with the following standards:

1. Stacking lanes shall have sufficient capacity to prevent obstruction of the public right of way by patrons;
 2. The stacking lane shall be a separate lane from the circulation lanes needed for access and parking;
 3. The stacking lane shall not be located within ten feet (10') of any residential district or existing residence;
 4. Any stacking lane greater than one hundred feet (100') in length shall provide for an escape lane;
 5. A letter from the transportation authority indicating the site plan is in compliance with the authority's standards and policies shall be required.
- D. The applicant shall provide a six-foot (6') sight obscuring fence where a stacking lane or window location adjoins a residential district or an existing residence.
- E. Menu boards are considered as signs.
- F. Approval from the Fire District is required for the location and access of the drive-thru facility.

Findings for Conditional Use Permits (UDC §8-1B-4E):

1. That the site is large enough to accommodate the proposed use and meet all the dimensional and development regulations in the district in which the use is located.

The Council finds nothing in the record indicating that the site of the proposed use would not be large enough to accommodate the proposed use or meet all of the dimensional and development regulations in the district in which the use would be located.

2. That the proposed use will be harmonious with the Star comprehensive plan and in accord with the requirements of this title.

The Council finds that the proposed use request is harmonious with the Star Comprehensive Plan and is in accord with the requirements of this Title. The proposed development meets the intent or purpose.

3. That the design, construction, operation and maintenance will be compatible with other uses in the general neighborhood and with the existing or intended character of the general vicinity and that such use will not adversely change the essential character of the same area.

The Council finds that operation of the proposed use would be compatible with the other uses in the general area.

4. That the proposed use, if it complies with all conditions of the approval imposed, will not adversely affect other property in the vicinity.

The Council finds that the proposed use, with imposed conditions of approval, would not adversely affect other property in the vicinity.

5. That the proposed use will be served adequately by essential public facilities and services such as highways, streets, schools, parks, police and fire protection, drainage structures, refuse disposal, water, and sewer.

The Council finds that the proposed use be adequately served by essential public facilities and services.

6. That the proposed use will not create excessive additional costs for public facilities and services and will not be detrimental to the economic welfare of the community.

The Council finds that the proposed use would not create excessive additional costs for public facilities and would not be detrimental to the economic welfare of the community. The City has not received notice from any agency having jurisdiction stating that this application will create excessive additional costs for the public facilities and services as the development will pay for all changes in services.

7. That the proposed use will not involve activities or processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

The Council finds that the proposed use would involve activities that would not be detrimental to any person, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

8. That the proposed use will not result in the destruction, loss or damage of a natural, scenic or historic feature considered to be of major importance.

The Council finds that the proposed use would not result in the destruction, loss or damage of natural, scenic or historic feature of major importance since none are apparent on this site.

Public Hearing of the Council:

a. A public hearing on the application was held before the City Council on March 7, 2023, at which time testimony was heard and the public hearing was closed. The City Council made their decision at that time.

b. Oral testimony in favor of the application was presented to the City Council by:
Chris Todd, Applicant

- c. Additional Oral testimony to the application was presented to the Council by:
None
- d. Oral testimony uncommitted to the application was presented to the Council by:
None
- e. Written testimony in favor of or opposing the application was presented to the City Council by:
Alex Domy

Deliberations and Conclusions of Law:

The Council reviewed the particular facts and circumstances of this proposed conditional use permit application in accordance with the City of Star Title 8 (Unified Development Code), deliberated on the matter, resulting in discussions on the request.

Council finds that, with added conditions of approval, the Applicant has met all requirements of the Unified Development Code and the intent and purpose of the Comprehensive Plan and Map requirements. The Council concluded that the Applicant's request meets the requirements for Conditional Use. Council hereby incorporates the staff report dated March 7, 2023, together with the hearing minutes into the official decision as part of these Findings of Fact, Conclusions of Law.

Council added to the Conditional Use Permit the following site-specific conditions of approval to their decision to approve the application to include the following:

None

Conditions of Approval:

1. The approved Conditional Use shall comply with all statutory requirements of applicable agencies and districts having jurisdiction in the City of Star.
2. **Prior to issuance of a building permit, all Star Sewer and Water District requirements shall be met. A letter of approval from the District shall be submitted with the building permit.**
3. **Prior to issuance of a building permit, the applicant shall submit a full plan for all lighting on site, including fixture type and a photometric plan. Shields and other modifications may be necessary to avoid fugitive light and changes may be required even after installation.**
4. **The building will need to go through the design review process and receive approval prior to issuing of building permits.**
5. **The applicant may be responsible for additional mitigation measures regarding noise and lighting for existing, adjacent residential uses when it is determined by the City that unreasonable, negative impacts are a direct result of the business activity. This**

shall include, but not be limited to additional landscaping, fencing/walls, and light shields or relocation of light poles.

- 6. Applicant shall submit a revised landscape plan for the proposed use prior to issuing building permits.**
- 7. Prior to final occupancy, a cross access agreement for the southern and western parcels in the subdivision, and a shared parking agreement for parking to the west and south of the parcel shall be recorded for the property.**
8. Pressurized irrigation systems shall comply with the Irrigation District(s) and the City of Star Codes. Plans for pressurized irrigation systems shall be submitted to, and approved by the City of Star Engineer, prior to installation.
9. A form signed by the Star Sewer & Water District shall be submitted to the City prior to issuance of building permit stating that all conditions of the district have been met, including annexation into the District.
10. The applicant shall provide a sign, to be located at all construction entrances, indicating the rules for all contractors that will be working on the property starting at grading and running through occupancy that addresses items including but not limited to dust, music, dogs, starting/stopping hours for contractors (7a.m. start time). **Sign shall be approved by the City prior to start of any construction.**
11. The applicant shall obtain all the proper building permits from the City Building Department prior to occupancy or the unit.
12. The Conditional Use Permit may be revoked or modified by the City Council for any violation of any Condition of Approval.
- 13. The applicant shall obtain a sign permit prior to any signage being placed on the site or building.**
14. A Certificate of Zoning Compliance will be required prior to the start of construction.
15. Any additional Condition of Approval as required by Staff and City Council.
16. Any Conditions of Approval as required by Star Fire Protection District.

The Council voted unanimously to approve the Conditional Use Permit on March 7, 2023.

Dated this 18th day of April, 2023.

Star, Idaho

By: _____

Trevor A. Chadwick, Mayor

ATTEST:

Jacob M. Qualls, City Clerk