

REGARDING THE APPLICATION OF: Sawtooth Botanical Garden (SBG) to have the P&Z review their Public Facility Conditional Use Permit, modified April 17, 2018, to operate a community garden on Lot 2, Block 1, Le Baron Estates Sub.

Findings of Fact, Conclusions of Law and Decision

**Requested Action:** A public hearing and review of the 2018 Modified Conditional Use Permit (CUP) issued to the Sawtooth Botanical Garden (SBG). No changes are proposed to the CUP as part of this review. The purpose is to verify continued compliance with the Findings of Fact from 2018 and to determine if the assigned conditions of approval from 2018 are being complied with. The address is 9 Gimlet Rd. and it is Lot 2, Block 1 of LeBaron Estates Subdivision. The lot is zoned Low Density Residential District (R-1) and is within the Scenic Highway Overlay (SHO) district.

**Representatives:** Jen Smith; SBG Executive Director

**Applicable Regulations:** Blaine Co. Code Title 8 (Comprehensive Plan); Title 9, (Zoning Ordinance), chapters 10, 21A & 25.

Section I. General Facts:

1. The request to review the 2018 Modified Conditional Use Permit (CUP) was received by Land Use on January 7, 2018.

2. Notice for the February 28, 2019 public hearing was provided as follows:

- A. Legal notice posted in the Idaho Mountain Express on February 13, 2019;
- B. Notice to surrounding property owners within three hundred (300) feet of the subject property and property owners within Aspen Hollow Sub on February 12, 2019.
- C. All County political subdivisions and area media on February 12, 2019.
- D. On site posting notice to be posted at least seven (7) days prior to public hearing. Site was posted on February 18, 2019.
- E. Public Service Announcement faxed to Idaho Mountain Express and KECH/KSKI on February 13, 2019.
- F. Posted on County web site on February 14, 2019.

► **FINDING:** Upon a motion by Commissioner Murphy, second by Commissioner Pynn and a 6-0 vote (Commissioner Ranill is absent), the Planning and Zoning Commission finds notice to be adequate and in compliance with applicable codes.

3. The following information and exhibits attached hereto were received at Land Use and Building Services on January 7, 2019 unless otherwise noted:

**A EXHIBITS: Application Submittals**

- A-1 Cover letter from Jen Smith, Executive Director
- A-2 Completed CUP application and response to Standards (6 pgs)
- A-2.5 Applicant responses regarding conditions; rec'd January 24, 2019 (3 pgs)
- A-3 1996 Subsurface Sewage Permit from So. Central Public Health District (SCPHD)
- A-4 1994 Subsurface Sewage Permit from SCPHD
- A-5 Lease Agreement (12 pgs)
- A-6 Vicinity Map
- A-7 Lot and Parcel Map
- A-8 300' Adjoiner List

A-9 Existing Land Uses, narrative

**B EXHIBITS: Agency Comments**

**C EXHIBITS: Blaine Co. supplements**

C-1 Findings of Fact document from April 2018

C-2 Notice of amplified sound event (private) for June 30, 2019; rec'd 5-30-2019

C-3 Notice of amplified sound event (SBG annual fundraiser) for August 22, 2019; rec'd July 19, 2019

**D EXHIBITS: Public Comments**

D-1 Matt Bogue, neighbor immediately to the north; rec'd February 11, 2019

D-2 Timmi Ryerson, 102 Aspen Hollow Rd; rec'd February 18, 2019

D-3 Allan Patzer, HOA president of Aspen Hollow Sub; rec'd February 25, 2019 and read into the record at the public hearing on February 28, 2019.

**Section II. Evaluation of Conditional Use Permit Compliance:  
Standards of Evaluation as Set Forth in §9-25-3 of the Zoning Ordinance and Conditions from April 17, 2018.**

**STAFF COMMENT:** Conditional compliance was found by the P&Z March 22, 2018 (Ex. C-1; Findings signed April 17, 2018). No changes are being proposed. Provided the P&Z finds compliance with all the conditions, it can be assumed that the Standards of Evaluation, stated below, are in compliance or not applicable.

Pursuant to §9-25-3A of the Zoning Ordinance, *The commission or the board shall review the particular facts and circumstances of each proposed conditional use in the terms of the following standards and shall find adequate evidence showing that such use at the proposed location:*

1. *Will, in fact, constitute a conditional use as established for the zoning district involved;*
2. *Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this Title;*
3. *Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;*
4. *Will not be hazardous or disturbing to existing or future neighboring uses;*
5. *Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;*
6. *Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;*
7. *Will not involve uses, activities, 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, dust, odors, vibration, water pollution or safety hazards.*
8. *Will have vehicular approaches to the property which shall be designed as not to create an interference with traffic on surrounding public thoroughfares; and*
9. *Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.*
10. *Shall take into account the plans and needs of the state, or any agency, board, department, institution or district thereof, as required by Idaho Code section 67-6528.*

#### 4. Planning and Zoning Commission Findings for conditions.

1. This conditional use permit is for the operation of a public facility, cultural center. Any change in use of the property shall require a new conditional use permit.

***Applicant Response:*** *The operational function of the Sawtooth Botanical Garden (SBG) has not changed since last review of its CUP.*

▶ **FINDING: Compliance.**

2. The physical aspects of the proposed 2008 Master Plan, as shown on Exhibit A-4, (attached hereto and made a part hereof by reference) and discussed in Public Hearings held on November 6, 2008, December 3, 2008 and February 20, 2009, are all approved. More specifically the applicant has proposed and the Planning and Zoning Commission has approved the following; improved and expanded ADA compliant parking lot with a minimum of 40 parking spaces, rolled curb and lava rock garden accents and a new Admissions/Gift building.

***Applicant Response:*** *Planning is still underway for parking lot improvements and no substantial improvements will take place in 2019, at which time, SBG will seek approval for the improvements.*

▶ **FINDING: Compliance.**

3. Amplified sound during outdoor events shall be limited to two nighttime events each calendar year, and not more than one in any month. One of which shall be the Garden's annual gala fundraiser. ***Applicant Response:*** *Two nighttime events involving amplified sound occurred at SBG in 2018: the Garden's gala fundraiser on August 21, and a private event on June 30.*

a. Applicant shall have a staff member on site at all times during any such event to guide in the set-up of sound equipment and ensure decibel levels at property line are at or below levels predetermined with the Aspen Hollow HOA. Decibel levels will be monitored by staff and will be done with a decibel meter.

***Applicant Response:*** *SBG complied with this condition providing SBG staffing onsite at all times during these two events (from set-up through clean-ups) to ensure compliance specifications were achieved.*

▶ **FINDING: Compliance.**

b. All speakers shall be directed in a north and/or westward direction.

***Applicant Response:*** *This condition was in compliance through SBG staff supervision for both events.*

▶ **FINDING: Compliance.**

c. Such events shall have no more than two hundred (200) attendees (not including support workers).

***Applicant Response:*** *Neither of the two events exceeded 150 attendees.*

▶ **FINDING: Compliance.**

d. The applicant shall notify Blaine County Land Use and Building Services via email, surrounding residents within 300' of SBG's external property boundary, all residents within Aspen Hollow Subdivision and the Aspen Hollow Home Owners Assoc. shall be notified by hand delivered flyer or US mail, at least 30 days in advance of the event. All use of amplified sound or louder style performances will cease no later than 10:00 p.m.

***Applicant Response:*** *Written notification was delivered via email to the Aspen Hollow HOA Board of Directors who distributed the notifications to its home owners; hard copies of the notifications were distributed by hand 30 days prior to each of the two events (and then removed after the events if they had not been picked up), notifications were also delivered to Blaine County Land Use (Nancy Cooley) and the Blaine County Sheriff's Office (Sheriff Steve Harkins) for each of the two events 30 days prior. Both events wrapped up well before 10:00 pm.*

▶ **FINDING: Compliance.** Staff received notification at least 30 days prior to each event (Ex. C-2 & C-3). The P&Z finds that this condition should be modified with the addition of providing for the record, a signed affidavit as evidence of compliance for notification to surrounding residents within 300' of SBG's external property boundary, all residents within Aspen Hollow

Subdivision and the Aspen Hollow Home Owners Assoc. for each event. Revised condition is below.

**Revised Condition:** The applicant shall notify Blaine County Land Use and Building Services (LU & BS) via email, surrounding residents within 300' of SBG's external property boundary, all residents within Aspen Hollow Subdivision and the Aspen Hollow Home Owners Assoc. shall be notified by hand delivered flyer or US mail, at least 30 days in advance of the event. The applicant shall provide a signed affidavit as evidence of compliance of notification to the aforementioned parties, to Blaine County LU & BS.

All use of amplified sound or louder style performances will cease no later than 10:00 p.m.

4. A gift shop offering for sale garden related items, for the benefit and support of the garden, to be housed in an admission building or the visitors building, is permitted.

*Applicant Response: SBG's gift shop was opened up in March and sales are hitting budget targets.*

▶ **FINDING: Compliance.**

5. Parking area is to be reviewed and approved by Blaine County building department prior to construction to insure ADA requirements are being met.

*Applicant Response: See item #3 above; SBG is still in the planning stages for parking lot improvements and will seek approval from Blaine County P&Z once plans are complete and funds have been procured. ADA compliance is assured.*

▶ **FINDING: Compliance.**

6. Exterior lighting shall comply with Title 9, chapter 29A: Outdoor Lighting. Additionally, parking lot lighting shall be timed to turn off approximately one hour after dark.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

7. Signs must be reviewed by the Land Use and Building Services to determine if a sign permit is required.

*Applicant Response: SBG is in compliance and no new signs have been placed nor will be without approval.*

▶ **FINDING: Compliance.**

8. Snow Removal & Storage shall occur per Master Plan. See Exhibit A-3, received January 28, 2009. *Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

9. Any structure over 30" in height requires communication by the applicant with Land Use and Building Services prior to construction to determine if a building permit is required.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

10. Fire Extinguishers to be kept and maintained per 2012 International Fire Code.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

11. The applicant shall apply for and obtain a building permit for all structures prior to commencement of construction or change of use.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

12. The applicant shall apply for and obtain a Scenic Highway Site Alteration permit or alternatively a categorical exclusion prior to commencing any landscaping, earth movement or construction activities within 100' of Highway 75.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

13. The applicant shall encourage alternative means of transportation to and from the site whenever reasonable to do so. Such encouragement shall include but necessarily be limited to providing shuttle, bus and/or van service to events and promotion of car-pooling when appropriate. A bicycle rack shall be provided.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

14. The applicant shall maintain the property in an orderly fashion.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

15. Hours of operation shall be no earlier than 9:00 am so as to not interfere with peak traffic times. Further, hours of special activities shall not conflict with peak traffic times.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

16. Parking is permitted only on the north side of Gimlet Road. Signed approval agreement, in contractual form between Sawtooth Botanical Garden and Gimlet Master Association is required to be filed with the Administrator prior to any street parking. Access roadways shall be maintained clear and unobstructed at all times for fire standards.

*Applicant Response: SBG is in compliance.*

▶ **FINDING: Compliance.**

17. There shall be a Public Hearing before the Planning and Zoning Commission one year from the date of this signed Findings of Fact document, or sooner at the Administrator's discretion, reviewing the Standards of Evaluation as outlined in Chapter 24 of the Zoning Ordinance and the Conditional Use Permit conditions of approval. The cost of the notification for the rehearing shall be borne by the applicant.

▶ **FINDING: Compliance. Condition revised. See below.**

### Section III.

#### Decision and Modifications, if applicable

Upon a motion by Commissioner Murphy, a second by Commissioner Pynn and a vote of 6-0 (Commissioner Ranill is absent), the Blaine County Planning and Zoning Commissions finds the Sawtooth Botanical Garden of Lot 2, Block 1 of LeBaron Estates Subdivision in compliance with the Standards of Evaluation and Conditions of their conditional use permit issued in April of 2018 as discussed at tonight's public hearing. Revisions were made to conditions 3d, to account for record keeping of required neighbor notification prior to events and to 17, requiring yearly Administrative review only, if no changes are requested.

#### Required Conditions:

This conditional use permit is for the operation of a public facility, cultural center. Any change in use of the property shall require a new conditional use permit.

1. The physical aspects of the proposed 2008 Master Plan, as shown on Exhibit A-4, (attached hereto and made a part hereof by reference) and discussed in Public Hearings held on November 6, 2008, December 3, 2008 and February 20, 2009, are all approved. More specifically the applicant has proposed and the Planning and Zoning Commission has approved the following; improved and expanded ADA compliant parking lot with a minimum of 40 parking spaces, rolled curb and lava rock garden accents and a new Admissions/Gift building.

2. Amplified sound during outdoor events shall be limited to two nighttime events each calendar year, and not more than one in any month. One of which shall be the Garden's annual gala fundraiser.
  - a. Applicant shall have a staff member on site at all times during any such event to guide in the set-up of sound equipment and ensure decibel levels at property line are at or below levels predetermined with the Aspen Hollow HOA. Decibel levels will be monitored by staff and will be done with a decibel meter.
  - b. All speakers shall be directed in a north and/or westward direction.
  - c. Such events shall have no more than two hundred (200) attendees (not including support workers).
  - d. Revised:** The applicant shall notify Blaine County Land Use and Building Services (LU & BS) via email, surrounding residents within 300' of SBG's external property boundary, all residents within Aspen Hollow Subdivision and the Aspen Hollow Home Owners Assoc. shall be notified by hand delivered flyer or US mail, at least 30 days in advance of the event. The applicant shall provide a signed affidavit as evidence of compliance for notification to the aforementioned parties to Blaine County LU & BS.
 

All use of amplified sound or louder style performances will cease no later than 10:00 p.m.
3. A gift shop offering for sale garden related items, for the benefit and support of the garden, to be housed in an admission building or the visitors building, is permitted.
4. Parking area is to be reviewed and approved by Blaine County building department prior to construction to insure ADA requirements are being met.
5. Exterior lighting shall comply with Title 9, chapter 29A: Outdoor Lighting. Additionally, parking lot lighting shall be timed to turn off approximately one hour after dark.
6. Signs must be reviewed by the Land Use and Building Services to determine if a sign permit is required.
7. Snow Removal & Storage shall occur per Master Plan. See Exhibit A-3, received January 28, 2009.
8. Any structure over 30' in height requires communication by the applicant with Land Use and Building Services prior to construction to determine if a building permit is required.
9. Fire Extinguishers are to be kept and maintained per the 2012 International Fire Code.
10. The applicant shall apply for and obtain a building permit for all structures prior to commencement of construction or change of use.
11. The applicant shall apply for and obtain a Scenic Highway Site Alteration permit or alternatively a categorical exclusion prior to commencing any landscaping, earth movement or construction activities within 100' of Highway 75.
12. The applicant shall encourage alternative means of transportation to and from the site whenever reasonable to do so. Such encouragement shall include but necessarily be limited to providing shuttle, bus and/or van service to events and promotion of car-pooling when appropriate. A bicycle rack shall be provided.
13. The applicant shall maintain the property in an orderly fashion.
14. Hours of operation shall be no earlier than 9:00 am so as to not interfere with peak traffic times. Further, hours of special activities shall not conflict with peak traffic times.
15. Parking is permitted only on the north side of Gimlet Road. Signed approval agreement, in contractual form between Sawtooth Botanical Garden and Gimlet Master Association is required to be filed with the Administrator prior to any street parking. Access roadways shall be maintained clear and unobstructed at all times for fire standards.
16. **Revised:** There shall be an Administrative review one year from the date of this signed Findings of Fact document, or sooner at the Administrator's discretion, reviewing the Standards of Evaluation as outlined in Chapter 24 of the Zoning Ordinance and the Conditional Use Permit conditions of approval. If changes to the conditional use permit are proposed or at the Administrator's discretion, a public hearing with the Planning and Zoning Commission is required. Applicable fees shall be borne by the applicant.

Applicant or any aggrieved person has the right to appeal this decision to the Blaine County Board of Commissioners pursuant to Blaine County Code 9-32-4 by filing a notice of appeal in accordance with that section within twenty (20) days of the date of this order and decision.

IT IS SO ORDERED.

DATED this 2nd day of April, 2019

BLAINE COUNTY PLANNING AND ZONING COMMISSION

By:   
Rachel Martin; Chair

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CERTIFICATE OF MAILING

The undersigned person hereby certifies that on the 2nd day of April, 2019, she served a true and correct copy of the foregoing document by depositing the same in the U.S. Mail addressed as follows or by service otherwise as noted:

Jolyon Sawrey  
jolyon@vitalinkarchitecture.com

Jen Smith  
jen@sbgarden.org

  
Linda Lewis  
Land Use Services Staff