



In the matter of the application of:

**Jones – CU2022-0032**

The Canyon County Hearing Examiner considers the following:

1) Conditional Use Permit

CU2022-0032, 14031 Silverridge Rd (Parcel Number: R34484100), a portion of the SE¼ of Section 03, T4N, R3W, BM, Canyon County, Idaho

### Summary of the Record

1. The record is comprised of the following:

A. The record includes all testimony, the staff report, exhibits, and documents in Case File CU2022-0032.

### Applicable Law

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-07 (Conditional Use Permits), Canyon County Code §07-02-03 (Definitions), Canyon County Code §07-10-27 (Land Use Regulations (Matrix)), Idaho Code §67-6512 (Special Use Permits, Conditions, and Procedures), and Canyon County Code §09-09-17 (Area of City Impact Agreement).
  - a. Notice of the public hearing was provided pursuant to CCZO §07-05-01, Idaho Code §67-6509 and 67-6512.
  - b. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Idaho Code §67-6512.
  - c. Every use which requires the granting of a conditional use permit is declared to possess characteristics which require review and appraisal by the commission to determine whether or not the use would cause any damage, hazard, nuisance or other detriment to persons or property in the vicinity. *See* CCZO §07-07-01.
  - d. Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those: (1) Minimizing adverse impact on other development; (2) Controlling the sequence and timing of development; (3) Controlling the duration of development; (4) Assuring that development is maintained properly; (5) Designating the exact location and nature of development; (6) Requiring the provision for on-site or off-site public facilities or services; (7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction. *See* Idaho Code §67-6512, CCZO §07-07-17, and 07-07-19.
2. Any hearing examiner appointed by the board shall perform such duties as assigned by the board pursuant to Idaho Code section 67-6520. *See* CCZO §07-03-07.

3. There are no mandates in the Local Planning Act as to when conditional permits may or may not be granted, aside from non-compliance with the community master plan. I.C. § 67-6512. Chambers v. Kootenai Cnty. Bd. of Comm'rs, 125 Idaho 115, 117, 867 P.2d 989, 991 (1994).
4. The burden of persuasion is upon the applicant to prove that all criteria, including whether the proposed use is essential or desirable to the public welfare, are satisfied. CCZO §07-05-03.
5. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.
6. The County's hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

**The application (CU2022-0032) was presented at a public hearing before the Canyon County Hearing Examiner on July 19, 2023. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Canyon County Hearing Examiner decide as follows:**

#### **CONDITIONAL USE PERMIT HEARING CRITERIA – CCZO §07-07-05**

**1. Is the proposed use permitted in the zone by conditional use permit?**

**Conclusion:** Yes, the proposed use is permitted in the zone by conditional use permit.

- Findings:**
- (1) The subject parcel is zoned "A" (Agricultural) (Attachment 3a)
  - (2) The proposed use best fits the definition for "School (public or private) as defined in CCZO §07-02-03. "School (public or private)" is a permitted use through a conditional use permit per CCZO §07-10-27.
  - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
  - (4) Evidence includes associated findings and evidence supported within this document.

**2. What is the nature of the request?**

**Conclusion:** The applicant is requesting a conditional use permit for a "School (public or private)".

- Findings:**
- (1) The school will have a maximum of 20 students. They will be divided into two studios, one located downstairs for ages 4-7 years old and one located upstairs for ages 8-12 years old. Outdoor space includes lawn area, a sport court, and playground. The parcel is fenced on the west side and has a tree line on the southern side.
  - (2) The letter of intent (Attachment 1) states that on-site parking will be provided on the west side of the parcel and the circle drive will be used for a drop-off/pick-up area. The school will operate August through May, Monday through Thursday, 8:30 am to 3 pm.
  - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
  - (4) Evidence includes associated findings and evidence supported within this document.

**3. Is the proposed use consistent with the comprehensive plan?**

**Conclusion:** The proposed use is consistent with the 2020 Canyon County Comprehensive Plan.

- Findings:** (1) The Future Lane Use Designation in the 2020 Canyon County Comprehensive Plan is Residential (Attachment 3b)
- (2) The use is consistent with the following goals and policies of the 2020 Canyon County Comprehensive Plan:

<b>Chapter 1. Property Rights</b>
<b>Policy 1.</b> No person shall be deprived of private property without due process of law. <b>Policy 10.</b> Land use laws and decisions should avoid imposing unnecessary conditions or procedures on development approvals.
<b>Chapter 2. Population</b>
<b>Goal 3.</b> To guide future growth in order to enhance the quality and character of the county while providing and improving the amenities and services available to Canyon County residents.
<b>Chapter 3. School Facilities</b>
<b>Policy 9.</b> Ensure adequate school facilities and services that meet the educational, social and recreational needs of the community. <b>Policy 10.</b> Support schools as the social and cultural centers of neighborhoods.
<b>Chapter 4. Economic Development</b>
<b>Policy 5.</b> Canyon County should not overdevelop and should retain agricultural lands/uses and control environmental impacts through conditions placed on subdivision plats and conditional use permits. <b>Policy 6.</b> Encourage commercial and residential development in a controlled, planned, and constructive manner, which will enhance, not destroy, the existing lifestyle and environmental beauty of Canyon County. <b>Policy 7.</b> Canyon County should identify areas of the county suitable for commercial, industrial and residential development. New development should be located in close proximity to existing infrastructure and in areas where agricultural uses are not diminished.
<b>Chapter 5. Land Use</b>
<b>Goal 2.</b> To provide for the orderly growth and accompanying development of the resources within the county that is compatible with the surrounding area. <b>Residential</b> This policy recognizes that population growth and the resulting residential development should occur where public infrastructure, services and facilities are available or where there is a development pattern already established. <b>Implementation Action:</b> Encourage commercial areas, zones or uses that are contiguous to existing county or city commercial areas, zones or uses but recognizing additional areas or zones, beyond those already existing, may be desirable and that some mixed uses are compatible.
<b>Chapter 12. Community Design</b>
<b>Policy 2.</b> Encourage development of self-sustaining communities that maintain the rural lifestyle and good quality of life of the county.
<b>Chapter 13. Agriculture</b>
<b>Policy 4.</b> Development shall not be allowed to disrupt or destroy irrigation canals, ditches, laterals, drains and associated irrigation works and rights-of-way.

The applicant is being given due process of law through the hearing process. The conditions of approval (Attachment 1) have been reviewed by the applicant and are determined to be necessary. The school will provide education, a vital service helping to meet the needs of the growing community. The subject parcel is within an existing subdivision and residential area. It will not fragment agricultural land or natural resources. Irrigation facilities and easements shall not be disturbed (Condition 5).

- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
- (4) Evidence includes associated findings and evidence supported within this document.

**4. Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area?**

**Conclusion:** The proposed use will not be injurious to other property in the immediate vicinity or negatively change the essential character of the area.

- Findings:**
- (1) According to the zoning map (Attachment 3b), the subject parcel and adjacent parcels are zoned "A" (Agricultural). Other parcels in the vicinity are zoned "R-R" (Rural Residential), "CR-R-1" (Conditional Rezone – Single-Family Residential). Some parcels along Highway 44 are zoned "C-1" (Neighborhood Commercial).
  - (2) The character of the area is mainly rural residential with larger residential lot sizes (Attachment 2, 3c). There are some agricultural and light commercial uses along Highway 44.
  - (3) The potential impacts of the use include noise and traffic. These will be mitigated through conditions limiting the hours of operation and number of students.
  - (4) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on March 1 and June 7, 2023. Newspaper notice was published on June 7, 2023. Property owners within 600' were notified by mail on June 7, 2023. The property was posted on June 15, 2023.
  - (5) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
  - (6) Evidence includes associated findings and evidence supported within this document.

**5. Will adequate water, sewer, irrigation, drainage and stormwater drainage facilities, and utility systems be provided to accommodate the use?**

**Conclusion:** Adequate facilities and systems for the use will be provided prior to commencement of use.

- Findings:**
- (1) The letter of intent states that the property has an existing private well and irrigation which are adequate for the propose use.
  - (2) According to Southwest District Health, the existing septic system is not adequate for the proposed use (Attachment 4b). The septic system will need to be upgraded prior to commencement of use (Conditions 1a, 7).
  - (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on March 1 and June 7, 2023. Newspaper notice was published on June 7, 2023. Property owners within 600' were notified by mail on June 7, 2023. The property was posted on June 15, 2023.
  - (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
  - (5) Evidence includes associated findings and evidence supported within this document.

**6. Does legal access to the subject property for the development exist or will it exist at the time of development?**

**Conclusion:** Legal access to the subject property for the development exists.

- Findings:**
- (1) The property has access to Highway 44 via Silverridge Road (private) and Raymond Drive (public). Both roads are paved.
  - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on March 1 and June 7, 2023. Newspaper notice was published on June 7, 2023.

Property owners within 600' were notified by mail on June 7, 2023. The property was posted on June 15, 2023.

- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
- (4) Evidence includes associated findings and evidence supported within this document.

**7. Will there be undue interference with existing or future traffic patterns?**

**Conclusion:** The use is not expected to cause undue interference with existing or future traffic patterns.

- Findings:**
- (1) The school will have a maximum of 20 students not including the applicant's children.
  - (2) The average number of trips per day is expected to increase by 5-7 twice per day for approximately 140 days of the year since students will likely be part of the same family or carpooling.
  - (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on March 1 and June 7, 2023. Newspaper notice was published on June 7, 2023. Property owners within 600' were notified by mail on June 7, 2023. The property was posted on June 15, 2023.
  - (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
  - (5) Evidence includes associated findings and evidence supported within this document.

**8. Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and will the services be negatively impacted by such use or require additional public funding in order to meet the needs created by the requested use?**

**Conclusion:** Essential services will be provided to accommodate the use. The use is not anticipated to negatively impact essential services or require public funding.

- Findings:**
- (1) All essential services which could be impacted were notified of the proposed use. One comment was received from Black Canyon Irrigation District regarding protection of their irrigation facilities. See Condition 8 for compliance.
  - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on March 1 and June 7, 2023. Newspaper notice was published on June 7, 2023. Property owners within 600' were notified by mail on June 7, 2023. The property was posted on June 15, 2023.
  - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.
  - (4) Evidence includes associated findings and evidence supported within this document.

**Canyon County Code §09-09-17 (Area of City Impact Agreement) - AREA OF CITY IMPACT AGREEMENT ORDINANCE**

**Conclusion:** The property is located within the Middleton Area of City Impact. A notice was sent to the City of Middleton per Canyon County Code Section 09-09-17.

- Findings:**
- (1) No comment was received from the City of Middleton

- (2) Affected agencies were noticed on March 1 and June 7, 2023. Newspaper notice was published on June 7, 2023. Property owners within 600' were notified by mail on June 7, 2023. The property was posted on June 15, 2023.
- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0032.

## **Order**

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Hearing Examiner **approves** Case # CU2022-0032, a conditional use permit for a private school on parcel R34484100 subject to the following conditions as enumerated:

### Conditions of Approval

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the subject property and the proposed use.
  - a. The septic system must meet IDAPA 58.01.03 Individual Subsurface Sewage Disposal Rules and any other Southwest District Health requirements prior to commencement of use.
2. The number of students shall not exceed 20, not including the applicant's children.
3. The hours of operation during which students are dropped off, in school, and picked up shall be 7:30 a.m. to 3:30 p.m. Monday through Thursday.
4. The proposed use shall be in general conformance with the applicant's Letter of Intent (Attachment 1).
5. Signage shall meet CCZO §07-10-13 requirements, and shall not exceed 32 sq. feet as proposed by the applicant unless an additional sign permit is applied for and approved by the Director.
6. A change of occupancy for the house through Canyon County Building Division with all necessary approvals including Southwest District Health and Middleton Fire District is required prior to commencement of use.
7. The applicant shall not impede, disrupt, or otherwise disturb the existing irrigation structures on and adjacent to the subject property without written approval from Black Canyon Irrigation District.
8. This conditional use permit must follow land use time limitation as stated in CCZO 07-07-23: "When a conditional use permit is granted, the land use or construction of its facility proposed in the application must have commenced within three (3) years of the date of the final decision by the presiding party or a court of appropriate jurisdiction. The improvements for the approved use must be completed within five (5) years of the same date."
9. Applicant shall submit a detailed site plan to scale prior to commencement of use to be approved by Canyon County DSD Director or Planning Official showing/including the following: property boundaries, the residence, parking areas, ingress/egress, potential yurt location, play area, potential sign location, and other locations of significance to the proposal including dimension and scale.

DATED this 19 day of July, 2023.



HEARING EXAMINER  
CANYON COUNTY, IDAHO

Bruce Eggleston  
Bruce Eggleston, Hearing Examiner;

State of Idaho )

SS

County of Canyon County )

On this 19<sup>th</sup> day of July, in the year 2023, before me Bonnie Puleo, a notary public, personally appeared Bruce Eggleston, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she) executed the same.

Notary: Bonnie Puleo

My Commission Expires: 12/10/2027