



PLANNING OR ZONING COMMISSION
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In the matter of the application of:

York – CU2023-0014

The Canyon County Planning and Zoning Commission considers the following:

- 1) Conditional Use Permit to allow a group home on a 5.41-acre parcel. The use will provide living space and amenities for up to 30 residents.

[Case #CU2023-0014, 5093 Deer Flat Road, Kuna (Parcel Number: R28994011), a portion of the NE ¼ of Section 19, T2N, R1W, 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 CU2023-0014.

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 Idaho Code §67-6531 & 67-6532 (Single Family Dwelling/Licensure, Standards and Restrictions).
 - 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. The commission shall have those powers and perform those duties assigned by the board that are provided for in the local land use planning act, Idaho Code, title 67, chapter 65, and county ordinances. CCZO §07-03-01, 07-07-01.
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, CU2023-0014, was presented at a public hearing before the Canyon County Planning and Zoning on January 4, 2024. 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 Planning and Zoning Commission decided 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: The use is allowed in the “A” subject to conditional use permit approval.

Findings: (1) Per CCZO Section 07-02-03, a group home is defined as follows: *A place or facility providing care and supervision for compensation for nine (9) or more persons during all or part of a twenty-four (24) hour day. Examples may include, but not be limited to, halfway houses and homes for the disadvantaged.*

Per CCZO Section 07-10-27, a group home use requires a conditional use permit in an “A” (Agricultural) Zoning District. Per CCZO Section 07-07-01: *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. The commission may require higher standards of site development than those listed specifically in this chapter in order to assure that the proposed use will be compatible with other property and uses in the vicinity. The commission may revoke or modify its approval of a conditional use permit in accordance with the procedures set forth in the hearing and appeals procedures found in article 5 of this chapter.*

(2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

2. What is the nature of the request?

Conclusion: The applicant applied for a conditional use permit with a letter of intent, conceptual site plan, and other information demonstrating the nature of the request (Exhibit 2, Staff Report).

Findings: (1) The applicant submitted a conditional use permit application for a group home use on parcel R28994011 on June 16, 2023. See Exhibit 2 of the Staff Report for the letter of intent, conceptual site plan, floor plan, elevations, land use worksheet, neighborhood meeting complete in compliance with CCZO Section 07-01-15, easement maintenance agreement for the 28' wide access, and warranty deed.

(2) Per the applicant's letter of intent (Exhibit 2a, Staff Report), the managed group home will contain residents that fall under disabled as defined by the Fair Housing Act. The home will provide normal living amenities for up to 30 residents. The residents will have responsibilities such as cleaning, cooking, home maintenance, and yard maintenance. Activities such as establishing and maintaining a large garden and equestrian facility are planned. The conceptual plan shows the proposed location of the building, parking, well, and septic system primary and replacement drain fields (Exhibit 2b).

- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

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

Conclusion: Due to the lack of an operations plan demonstrating how the use will minimize impacts to the surrounding properties and existing uses, the request does not align with land use and agricultural goals and policies in the 2030 Canyon County Comprehensive plan.

- Findings:**
- (1) The 2030 Canyon County comprehensive plan designates the subject parcel as ‘Agriculture’ and is located within the Intensive Agriculture Overlay (Exhibit 3c, Staff Report). The purpose of the overlay is to *protect working lands and operations...This designation aims to protect agriculture operations from incompatible uses and reduce the conflicts concerning noise, dust, smells, and safety (Page 28 of the 2030 Comp. Plan).*
 - (2) The request does not provide an operations plan or identify mitigation measures to ensure the use minimizes impacts to surrounding properties and agricultural uses in the area. The following concerns have not been addressed as part of the application submittal (Exhibit 2, Staff Report):
 - a. Buffering of building and operation from the adjacent dairy operation which would (1) reduce potential health concerns regarding the use being located near a manure composting field (Exhibit 5c, Staff Report); and (2) clustering the development near other dwellings.
 - b. Design and layout that matches the surrounding dwellings found in the area. The building and layout resemble a business or clinic (Exhibit 2b). If the use were to cease, the building layout may promote a commercial use such as professional office, clinic, or multi-dwelling use which is not allowed in an “A” Zone (CCZO Section 07-10-27).
 - c. Location of exterior lighting and plan to reduce light pollution through using shielded fixtures.
 - d. Buffer between the adjacent parcels through sight-obscuring fencing and landscaping along the perimeter.
 - (3) As proposed, the request does not align with the following goals and policies of the 2030 Canyon County Comprehensive Plan:
 - A. G12.01.00: Protect agricultural lands for long-term agricultural production from the encroachment of incompatible uses.
 1. *P12.01.01: Preserve and maintain agriculturally designated lands for agricultural use.*
 2. *P12.01.02: Encourage non-agricultural related development to the cities, areas of city impact, and other clearly defined and planned development areas.*
 3. *P12.01.04: Prioritize the protection of agriculture and farmlands in Canyon County as an essential part of the County's economy, identity, and sense of place.*
 - B. G4.02.00: Ensure that growth maintains and enhances the unique character throughout the County.
 1. *P4.02.01: Consider site capability and characteristics when determining the appropriate locations and intensities of various land uses.*
 - C. G4.05.00: Support a diversity of agricultural uses to sustain the agricultural and agriculturally related economy.
 1. *P4.05.01: Promote future development and land-use decisions that do not create hardship for farmers and agricultural operators.*
 2. *P4.05.03: Encourage uses on agricultural parcels to be planned and placed to limit interference with farming operations, which may include clustering of residences and other structures, placement near existing utilities and infrastructure, and placement to*

minimize conflicts with allowed agricultural uses on the proposed site and adjacent lands.

- D. G4.07.00: Protect rural qualities that make the County distinct and conserve and enhance the elements contributing to a good quality of life.
1. *P4.07.01: Plan land uses that are compatible with the surrounding community.*
 2. *P4.07.02: Discourage incompatible development near existing agricultural businesses that would cause the operator undue hardship through complaints, traffic, or other complications.*

- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

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: Due to the lack of an operations plan demonstrating how the use will minimize impacts on the surrounding properties and existing uses, the request will be injurious to the immediate vicinity and character of the area.

- Findings:** (1) The area is zoned “A” (Agricultural) with a 22.73-acre average lot size (Exhibit 3d, Staff Report). According to CCZO §07-10-25(1), the purpose of the Agricultural Zone is as follows:
- A. *Promote the public health, safety, and welfare of the people of the County by encouraging the protection of viable farmland and farming operations;*
 - B. *Limit urban density development to Areas of City Impact in accordance with the comprehensive plan;*
 - C. *Protect fish, wildlife, and recreation resources, consistent with the purposes of the "Local Land Use Planning Act", Idaho Code title 67, chapter 65;*
 - D. *Protect agricultural land uses, and rangeland uses, and wildlife management areas from unreasonable adverse impacts from development; and*
 - E. *Provide for the development of schools, churches, and other public and quasi-public uses consistent with the comprehensive plan.*

The only other zoning district found within a one-mile radius is a “CR-R-R” (Conditional Rezone – Rural Residential; Exhibit 3d, Staff Report). There are no platted subdivisions within the vicinity. The nearest platted subdivisions are located approximately one mile away from the subject property north of Dye Lane (Exhibit 3f, Staff Report).

- (2) The subject parcel consists of moderately suited soils and is not designated as prime farmland (Exhibit 3h, Staff Report). Canyon Soils Conservation District had no comments or concerns regarding the request (Exhibit 4f, Staff Report). However, the parcel is surrounded by prime farmland and large agricultural properties. The parcel abuts large agricultural parcels. The parcels to the west and south of the subject parcel have an existing dairy operation (Exhibit 3a, Staff Report). The south boundary of the subject parcel abuts the dairy operation’s manure composting area (Exhibit 5c, Staff Report).
- (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on November 15, 2023. Newspaper notice was published on November 24, 2023. Property owners within 600’ were notified by mail on November 15, 2023. The property was posted on November 15, 2023.

48 letters of opposition were received (Exhibit 5, Staff Report) expressing the following concerns:

- Impacts on the rural lifestyle and character, such as allowing a commercial building in an agricultural/rural area,
- Sparse emergency services and amenities such as grocery stores, medical offices, and sidewalks,
- Location and size of use,

- Impacts on existing agricultural uses. The use is adjacent to the dairy operation's manure composting field and anaerobic digester (CU2004-573; Exhibit 8, Staff Report),
 - Neighborhood safety and integrity, and
 - Property values.
- (4) The request does not provide an operations plan or identify mitigation measures to ensure the use minimizes impacts to surrounding properties and agricultural uses in the area. *See Criteria 3, Finding (2) for more information.*
- (5) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

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

Conclusion: Adequate facilities can be provided for the requested use.

- Findings:**
- (1) The subject parcel is vacant. Therefore, the proposed use will need to install services such as water, irrigation, power, and sanitary services. The parcel is not located near city services so city sewer and water are not available. The applicant proposes a well, septic system and indicates surface water rights are available from a facility near Robinson Road (Exhibit 2c, Staff Report). The conceptual plan (Exhibit 2b, Staff Report) shows the proposed location of the well and septic system primary and replacement drain fields.
- (2) The property is in a nitrate priority area (Exhibit 3k, Staff Report). Page 99 of the 2030 Canyon County Comprehensive Plan defines the nitrate priority area as follows: *General locations in Canyon County, as defined by the appropriate state agencies where groundwater test results show the presence of nitrates in varying amounts.* Southwest District Health (SWDH) finds the request does not require a Nutrient Pathogen (NP) Study. The use is anticipated to generate a wastewater flow of 1,350 gallons per day. SWDH does not indicate the septic system required for the use but states a transient public drinking water community well may be required (Exhibit 4b, Staff Report). If approved, applicable requirements of SWDH and DEQ (Exhibit 4d, Staff Report) would need to be met before commencement of use.
- (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on November 15, 2023. Newspaper notice was published on November 24, 2023. Property owners within 600' were notified by mail on November 15, 2023. The property was posted on November 15, 2023.

All agency comments received (Exhibit 4, Staff Report) do not oppose the request. No comments were received from Boise-Kuna Irrigation District, ID Power, or Intermountain Gas.

48 letters of opposition were received (Exhibit 5, Staff Report) with some letters expressing concerns about water use (consumption/quality). The request was reviewed by affected agencies including DEQ and SWDH who did not find water consumption or quality impacts that could not be addressed through their permitting process prior to commencement of use.

- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

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

Conclusion: Based on testimony received during the public hearing and Exhibit 5ii of the staff report, legal access via a 28' wide ingress/egress easement is unknown.

- Findings:**
- (1) The parcel has frontage along Robinson Road, an arterial roadway. The parcel appears to have access from Deer Flat Road via a 28' wide ingress/egress access easement as shown in the approval of AD2022-0018 (Exhibit 7 & 2e, Staff Report).

Per Exhibit 5ii of the Staff Report and testimony by Ronald Plummer at the public hearing, the access easement is shown in the record of survey (Instrument #2002-31358) and the road maintenance agreement signed by only one owner, Steve Colson (Instrument No. 2022-028175). Mr. Plummer testified that access approval was never granted legally through his property to serve the subject parcel. During the public hearing, the applicant did not provide any evidence demonstrating the legality of the 28' access easement. Therefore, the Planning and Zoning Commission finds that evidence of legal access was not adequately provided.

- (2) The access is not built to County minimum requirements (Exhibit 6, Staff Report). The driveway within the 28' wide access easement shall comply with fire district requirements (CCZO Section 07-10-03(2)) and be constructed per CCZO Section 07-10-03(3) which will require certification by an engineer prior to building permit certificate of occupancy.
- (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on November 15, 2023. Newspaper notice was published on November 24, 2023. Property owners within 600' were notified by mail on November 15, 2023. The property was posted on November 15, 2023.

Nampa Highway District #1 requires the request to take access via the 28' wide access easement. Direct access from Robinson Road is prohibited (Exhibit 4c, Staff Report). As a condition of approval, a commercial apron will be required.

Idaho Transportation Department (ITD) has no comments or concerns regarding the request (Exhibit 4e, Staff Report).

- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

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

Conclusion: The use is not anticipated to create interference with existing or future traffic patterns.

Findings: (1) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on November 15, 2023. Newspaper notice was published on November 24, 2023. Property owners within 600' were notified by mail on November 15, 2023. The property was posted on November 15, 2023.

Nampa Highway District #1 requires the request to take access via the 28' wide access easement. Direct access from Robinson Road is prohibited (Exhibit 4c, Staff Report). As a condition of approval, a commercial apron will be required. During the approach permit review, public right-of-way dedication may also be required along Robinson Road.

Idaho Transportation Department (ITD) has no comments or concerns regarding the request (Exhibit 4e, Staff Report).

46 letters of opposition were received (Exhibit 5, Staff Report) expressing concerns about increased traffic on Robinson and Deer Flat Roads. The request was reviewed by affected agencies including Nampa Highway District #1 and ITD who did not have traffic issues based on the request that could not be addressed through their permitting process prior to the commencement of use.

- (2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

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 are not anticipated to be impacted by the request.

Findings: (1) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on November 15, 2023. Newspaper notice was published on November 24, 2023. Property owners within 600' were notified by mail on November 15, 2023. The property was posted on November 15, 2023.

Kuna Rural Fire District supports the request subject to complying with fire service access and firefighting water supply conditions (Exhibit 4a, Staff Report). The applicant plans to provide fire sprinklers in the building (Exhibit 2a, Staff Report).

Kuna School District has no concerns regarding the request (Exhibit 4g, Staff Report). No comments were received from the Canyon County Sheriff's Office or Canyon County Paramedics/Ambulance District.

48 letters of opposition were received (Exhibit 5, Staff Report) expressing concerns about the area having sparse emergency services including 911 reports regarding existing group home facilities. However, the request was reviewed by affected agencies including Kuna Rural Fire District and Kuna School District who did not find an emergency services issue that could not be addressed through their permitting process prior to the commencement of use.

(2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0014.

Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Planning and Zoning Commission **denies** Case # CU2023-0014, a conditional use permit for a group home use on Parcel R28994011.

Per Idaho Code Section 67-6519, the following actions may be taken to obtain approval:

1. Provide a site plan/operation plan including the relocation of the building and operations away from the adjacent manure composting field, including fencing and landscape along the north, west, and south property boundaries, and an exterior lighting plan to reduce lighting pollution in a rural area.
2. Establish a single-family dwelling on the property first, or provide a plan demonstrating how the building and layout are similar to single-family dwellings found in the area or can be reconfigured to be a single-family dwelling if the use were to expire or cease.

DATED this 18 day of January, 2024.

PLANNING AND ZONING COMMISSION
CANYON COUNTY, IDAHO


Robert Sturgill, Chairman

State of Idaho)

SS

County of Canyon County)

On this 18 day of Jan, in the year 2024, before me Amber Lewter, a notary public, personally appeared Robert Sturgill, 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: Amber Lewter

My Commission Expires: 10/20/2029

