

## BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

**In Re:** ADD-2016-012: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 20<sup>th</sup> day of July, 2016, for a public hearing, held pursuant to public notice as required by law, on a request for an appeal of Elmore County Land Use and Building Department Director (the “**Director**”) for the requirement of an accessory dwelling unit application in the Agriculture Zone (the “**Application**”). Property is located in Lot 5, Riverside Acreage Subdivision (the “**Site**”). The Commission heard from the applicant in support of the Application. The Commission received additional written testimony and information for the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

#### FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

**I. The Commission finds that Application is comprised of:**

**A.** Appeal application form prepared and submitted by Frederick Watkins (the “**Applicant**”); and

**B.** Those supplemental letters, email messages, plans, reports, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with Application to the Commission.

**II. The Commission finds that the Applicant is:**

Frederick Watkins  
3042 Monterey Street  
Oxnard, CA 93033

**III. The Commission finds the following as to the procedural matters pertaining to the Application:**

**A.** The Applicant submitted building plans to the Department on May 23, 2016.

**B.** The Applicant engaged in emails with the Staff regarding the property and building criteria starting on February 3, 2016. Staff explained the requirement for an accessory dwelling permit on June 2, 7, and 10, 2016. The Applicant questioned the requirement for an accessory dwelling on June 2, 4, 5, 7, and 11, 2016 followed by a request from the Applicant on June 14, 2016 for an Appeal Application.

**C.** The Elmore County Land Use and Building Director (the “**Director**”) issued a final decision on June 10, 2016.

D. The Applicant submitted the Application to appeal the decision of the requirement for an accessory dwelling to the Department on June 20, 2016.

E. The Department deemed the Application complete on June 21, 2016.

F. The Department mailed notice of the public hearing to agencies on June 23, 2016 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on June 29, 2016 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on July 8, 2016 pursuant to Zoning Ordinance Section 6-4-5 B.

I. The Commission opened the public hearing on July 20, 2016 and received verbal and written information regarding the Application.

J. The Commission moved to **deny** the Appeal Application and uphold the Director decision. The motion to **deny** the Appeal Application passed on a 3-1 vote.

**IV. The Commission finds the Director's Decision as follows:**

A. There are two "dwellings" identified on the set of plans that were submitted. Pursuant to the Ordinance the Director and Building Official have the authority and determined that there are two separate dwellings only attached by a carport.

B. The Director determined that the submitted building plans may be approved if an Accessory Dwelling Unit Application is applied for and approved by the Director.

**V. The Commission finds the Appeal Application as follows:**

A. **The Commission finds** the appeal of the Director's decision for the requirement of an accessory dwelling unit application in the Agriculture Zone.

B. **The Commission finds** that the submitted building plans show the mother-in-law quarters on the plans.

**VI. The Commission finds the following pertaining to the Site:**

A. **Site Description:** Lot 5 Riverside Acreage Subdivision, B.M. A common way of locating the property is from Interstate 84 take exit 112 and head south on Highway 78 to Old Highway 30. Head east on Old Highway 30 to intersection of S Humpherys Road and turn right. Head south on S Humpherys Road to the intersection of W. Osprey St. and turn left. Head east on W. Osprey St. and the site is on the right side of the road.

B. **Parcel Number:** RP001510000050A

C. **The "Owner" of the Site is:**

Frederick Watkins

3042 Monterey St  
Oxnard, CA 93033

**D. Applicant's Property Right in the Site is: Owner**

**E. Site Characteristics:**

*Property Size:* The Site contains approximately 2.560 acres.

*Existing Structures:* None.

*Existing Vegetation:* The vegetation consists mainly of tall weeds.

*Slope:* Relatively flat and less than 10% slope.

*Flood Zone Status:* FEMA defined Zone A.

*Irrigation:* None.

**VII. The Commission finds the current zoning of the Site as follows:**

The current zoning for the Site is Agriculture pursuant to the adopted zoning map, Elmore County Ordinance 2013-02.

**VIII. The Commission finds the surrounding land use and zoning as follows:**

Land uses to the south are the Snake River. Land uses to the north are agriculture and grazing. Land uses to the east are platted residential subdivision. Land uses to the west are platted residential subdivision.

**IX. The Commission finds the existing services as follows:**

*Access Roads:* Publically maintained road W Osprey St.

*Fire Protection District:* Glenns Ferry Fire Department.

*Sewage Disposal:* None.

*Water Service:* None.

*Highway District:* Glenns Ferry Highway District (the "Highway District").

**X. The Commission finds the following as the applicable law for consideration of the Application:**

**A.** Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "Comprehensive Plan"); and

**B.** Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and

C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

D. The Building Code, as resolution number 561-14 with the current building codes recognized by Elmore County as:

- The 2012 Version of the International Building Code.
- The 2012 Version of the International Residential Code, Appendices A,B,C and D, Mechanical Parts V and VI.
- The 2012 Version of the International Energy Conservation Code.

Collectively referred to as the “**Building Code**” in these findings.

**XI. Comprehensive Plan:**

A. **The Commission finds** no conflict with the building of a residence and mother-in-law quarters in the Comprehensive Plan.

**XII. Zoning Ordinance:**

**The Commission finds** the Director has authority to interpret and enforce the Zoning Ordinance pursuant to Zoning Ordinance Sections 6-3-3 A, 6-3-5 A and 6-5-1 B-C.

**The Commission finds** the Zoning Ordinance has the following definitions in Chapter 2:

**MOTHER-IN-LAW QUARTERS:** Refers to separate living quarters for family members. See the definitions of Dwelling, Secondary Attached and Detached.

**DWELLING, SECONDARY ATTACHED:** A dwelling unit that shares a common wall or walls with the principal dwelling, has a separate outside entrance from the principal dwelling, and is subordinate to the principal dwelling.

**DWELLING, SECONDARY DETACHED:** A dwelling unit that is located in a completely separate structure from the principal dwelling and is subordinate to the principal dwelling.

**DWELLING OR DWELLING UNIT:** Any structure, or portion thereof, providing independent living facilities for one "family" as herein defined, including provisions for living, sleeping, eating, cooking, and sanitation.

**The Commission finds** that Zoning Ordinance Section 6-8-86 A states the following:

This Section provides standards for an accessory dwelling unit (ADU) to be added to a single-family dwelling, or as a detached ADU. The purpose of accessory dwelling units is to provide more affordable housing; provide additional density with minimal costs and disruption to existing neighborhoods. A house with an accessory dwelling unit is similar to that of a duplex, but can be distinguished from a duplex because of its less intense use, smaller size and that the principle dwelling with an [sic] attached ADU must retain the appearance of a single-family dwelling.

**The Commission finds** the submitted building plans from the Applicant state there is a "Mother-In-Law Quarters" that is attached and has a separate outside entrance from the principle dwelling. **The Commission further finds** the identified "Mother-In-Law Quarters" is subordinate in size to the principle dwellings. Therefore **the Commission upholds** the Director's decision.

**The Commission finds** the submitted building plans from the Applicant contain two separate independent living facilities that include provisions for living, sleeping, eating, cooking and sanitation. **The Commission further finds** living facilities in the "Mother-In-Law Quarters" include separate provisions for living, sleeping, eating, cooking and sanitation, therefore the identified "Mother-in-law quarters" on the submitted plans fit the Zoning Ordinance definitions of DWELLING UNIT and DWELLING, SECONDARY ATTACHED. Therefore, **the Commission upholds** the Director's decision.

**The Commission finds** the "Mother-In-Law Quarters" identified on the submitted building plans is less intensive and smaller in size than the principle dwelling. **The Commission further finds** that based on the elevations of the submitted plans that the "Mother-In-Law Quarters" are attached and retain the same appearance of the principle dwelling. Therefore, **the Commission finds** the submitted plans meet the Zoning Ordinance purpose and description of an Accessory Dwelling Unit and **the Commission upholds** the Director's decision.

**The Commission finds** the submitted building plans may be approved once the Director approves an Accessory Dwelling Unit Application.

**The Commission finds** an Accessory Dwelling Unit Application may be approved by the Director pursuant to Zoning Ordinance Table 6-8-11 (C), Zoning Ordinance Section 6-8-86 and 6-4-6.

### **XIII. The Building Code:**

**The Commission finds** the Building Official has authority to interpret and enforce the Building Code pursuant to Building Code section R104.1.

**The Commission finds** the Building Code has the following definitions in Section R202:

DWELLING. Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**The Commission finds** that based on the testimony from the Building Official that the Building Code states the following:

Kitchen shall meet an area used or designated to be used for the preparation of food.

Each dwelling unit shall be provided a kitchen area and every kitchen area shall be provided with a sink.

**The Commission finds** the Building Code does not define “permanent” or “permanent provisions”.

**The Commission finds** the building plans submitted by the Applicant contain two separate kitchen areas for the preparation of food and each contain a sink.

**The Commission finds** the submitted building plans from the Applicant contain two separate independent living facilities that include provisions for living, sleeping, eating, cooking and sanitation. **The Commission further finds** living facilities in the “Mother-In-Law Quarters” include separate provisions for living, sleeping, eating, cooking and sanitation, therefore the identified “Mother-in-law quarters” on the submitted plans fit the Building Code definition of DWELLING UNIT. Therefore **the Commission upholds** the Director’s decision.

#### **XIV. Additional Findings**

**The Commission finds** that the lot is within the platted subdivision of Riverside Acres and based on the Applicant’s testimony the subdivision has covenants and restrictions. The Applicant testified that duplexes or mother-in-law quarters are not allowed in the subdivision pursuant to the covenants and restrictions. **The Commission further finds** that the Department does not enforce subdivision covenants and restrictions.

**The Commission finds** that based on the Building Official’s testimony the identified “Mother-In-Law Quarters” could be a separately rented dwelling unit by a current or future land owner.

#### **XV. Idaho Code § 67-6519(4)(c) The actions, if any, that the Applicant could have taken to obtain approval.**

**The Commission finds** the submitted building plans can be approved once the Director approves an Accessory Dwelling Unit Application pursuant to the procedures in the Zoning Ordinance.

**The Commission finds** the Applicant can revise the building plans to show only one Zoning Ordinance defined dwelling unit.

### **CONCLUSIONS OF LAW**

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.
2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the requirements of Zoning Ordinance Section 6-3-1 have been met.

**ORDER**

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Appeal Application, the Commission voted 3-1 and hereby **denies** the Appeal Application and upholds and affirms the Director's decision. The dissenting vote believed the "mother-in-law quarters" to be a suite instead of a dwelling.

Dated this 17th day of August, 2016.

**COMMISSION VOTE:**

CHAIRPERSON PATTI OSBORN	VOTED AYE
VICE CHAIRMAN K.C. DUERIG	VOTED AYE
SUSAN FISH	VOTED NAY
ED OPPEDYK	ABSENT
JEFF BLANKSMA	ABSENT
SHANE ZENNER	ABSENT
DAVE HOLLAND	VOTED AYE

  
\_\_\_\_\_  
Patti Osborn, Chairperson

**ATTEST:**

  
\_\_\_\_\_  
Alan Christy, Director

**NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B**

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

**NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F**

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

**NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-4-2 F**

No application that has been denied by the Director, the Commission, or the Board shall be resubmitted, in the same form for the same use, within one year from the date of denial.