

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2019-03: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 19th day of June, 2019, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) for a Chiropractic Business in a residence (the “**Application**”). The property is located in Section 09, SE1/4 Township 3 North, Range 10 East B.M. and is zoned Agriculture (the “**Site**”). The Commission heard from the applicant in support of the Application. Upon conclusion of the public hearing, the Commission closed the record to additional evidence and commenced deliberations on the Application and, after making findings and conclusions in accordance with the applicable law, approved the CUP Application with Conditions, as hereafter defined.

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 Application, the analysis and recommendations of the Elmore County Land Use and Building Department (the “**Department**”) record and per Idaho Rule of Evidence 201, those facts which are in common knowledge or of which there is general public awareness and the accuracy of which can be readily determined from sources whose accuracy cannot reasonably be questioned (“**Judicially Noticed Fact**”).

I. The Commission finds that Application is comprised of:

A. Application form prepared and submitted by Jaren Sayer (the “**Applicant**”) for the CUP; and

B. Those supplemental letters, documentation and memoranda submitted by the Applicant or on his behalf, 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:

Jaren Sayer
2667 E Juliet Dr.
Meridian, ID 83642

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

- a) In accordance with Section 7-3-2 (A) of the Elmore County Zoning and Development Ordinance (“**Zoning Ordinance**”), the Applicant completed a pre-application conference with the director prior to the submittal of the application on April 5, 2019.
- b) In accordance with Section 7-3-3 of the Zoning Ordinance, the Applicant mailed out Neighborhood Meeting Letters on April 5, 2019, to neighboring property owners within three hundred (300’) feet, giving notice of the time, date, and location of the meeting.

- c) In accordance with Section 7-3-3 of the Zoning Ordinance, the Applicant conducted the required neighborhood meeting on May 5, 2019.
- d) On May 17, 2019 the Land Use and Building Department accepted a conditional use permit application, a master site plan, and the required four hundred (\$400) dollar fee from the Applicant to conduct a Chiropractic business per 7-9-3 (A) (B) of the Zoning Ordinance.
- e) On May 20, 2019 the Department deemed the CUP application complete and set a Public Hearing for June 19, 2019.
- f) In accordance with Sections 7-3-5 (C) of the Zoning Ordinance, the Department mailed Public Hearing Notices to landowners within the required three hundred (300') feet of the property on June 6, 2019.
- g) In accordance with Section 7-3-4 (A) of the Zoning Ordinance, the Department mailed Public Hearing Notices to agencies on June 6, 2019.
- h) In accordance with Section 7-3-5 (A) of the Zoning Ordinance, the Public Hearing Notice was published in the Mountain Home News Paper on May 29, 2019.
- i) In accordance with Section 7-3-5 (B) of the Zoning Ordinance, the Public Hearing Notice was posted on the property on June 11, 2019.
- j) The Commission opened the public hearing on June 19, 2019 and received verbal and written information regarding the Application.
- k) At the conclusion of the testimony, the Chairperson closed the public hearing.
- l) The Commission commenced deliberations on the Application.
- m) Thereafter, the Commission moved to approve the Application with nine (9) conditions of approval. The motion to approve the Application passed on a 5 to 0 vote.

IV. The Commission finds the proposed use of the Application as follows:

- A.** The Submitted master site plan proposes a Chiropractic Business in the Agriculture zone.
- B.** The Applicant's request for a Chiropractic Business is consistent with information submitted by the Applicant.

V. The Commission finds the following pertaining to the Site:

A. Site Description: Section 09, SE1/4 Township 3 North, Range 10 East B.M. A common way of locating the property is to head east on American Legion Boulevard, continue on Highway 20 East for 31.5 miles, turn left on Forest 61 for 17.5 miles, turn slight right onto Forest Road 114 for 4.8 miles then turn right onto North Pine-Featherville Road for 5.4 miles the property is located on the left.

B. Parcel Numbers: RP001240020040A

C. The "Owner" of the Site is:

Jaren Sayer
2667 E. Juliet Dr.
Meridian, ID 83642

D. Applicant's Property Right in the Site is: Applicant is the owner of the property.

E. Site Characteristics:

Property Size: The site is .81 acres in size.

Existing Structures: A residential home and detached garage.

Existing Vegetation: The vegetation consists of established mature trees and mountain vegetation.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: The proposed site is not within a designated flood zone.

Irrigation: The property is irrigated utilizing a private well.

Views: The property is visible from Pine-Featherville Road.

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

Based on the officially adopted Elmore County land use maps 2017-01, the Comprehensive Plan, and the Zoning Ordinance, the current zoning for the Site is Agriculture.

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

- A. Based on the officially adopted Elmore County land use maps, the Comprehensive Plan and the Zoning Ordinance, the surrounding land use and zoning are as follows:
- a) North: Agriculture
 - b) East: Agriculture/Residential
 - c) South: Agriculture /Residential
 - d) West: Agriculture/Residential
 - e) The site of the proposed Chiropractic Business is not located in a designated flood zone.

VIII. The Commission finds the existing services as follows:

- A. Based on the officially adopted Elmore County land use map 2017-01 and materials found in the Department's file for CUP-2019-03, the following facts concerning services and infrastructure, are not in dispute and are adopted as finding of fact in the Commission's Findings of Fact, Conclusions of Law, and Order (FCO):

- a) Access Street and Designation: Access to the proposed site will be off of Pine-Featherville Road.
- b) Fire Protection: The property is not located in a Fire District.
- c) Sewage Disposal: The property utilizes a private septic system; Applicant has obtained an Accessory Use Authorization from Central District Health for the proposed use.
- d) Water Service: The property utilizes a private well.
- e) Irrigation District: The property is not located in an Irrigation District.
- f) Drainage District: None

IX. 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 May 18, 2018 as Ordinance 2018-03; and
- c) The Local Land Use Planning Act, Idaho Code § 67-6501 et seq; and
- d) Other applicable local, state, and federal laws and regulations.

X. The Commission finds the following regarding the Comprehensive Plan.

- A.** That the Comprehensive Plan Future Land Use Map (Map 4) has the proposed property classified as Agriculture.
- B.** The Application is in conformance with the Comprehensive Plan as stated in the findings.

XI. The Commission finds the following regarding the Zoning Ordinance.

- A.** The Elmore County Planning and Zoning Ordinance is the document governing the Site pursuant to Zoning Ordinance Title 7 Chapter 9.
- B.** In order to approve the CUP application, the following findings as set forth in Title 7 Chapter 9 Section 7-9-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Title 7 Chapter 2, Table 7-2-26 (B), Elmore County Land Use Table, as contained in this Ordinance;

The Commission finds: The parcel for the proposed Chiropractic Business is zoned Agriculture. In accordance with 7-2-26 (B), a Personal Business or Professional Service requires a conditional use permit in the Agriculture zone.

The Commission voted 5-0 that the Application meets this standard.

2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and this Ordinance;

A. Comprehensive Plan: The evidence presented to the Commission is consistent with the multiple relevant goals and objectives of the 2014 Comprehensive Plan, including, but not limited to:

- a) **Private Property Rights Goal Statement 2-** *The community goal is to acknowledge the responsibilities of each property owner as steward of the land, to use their property wisely, maintain in good condition and preserve it for future generations (pg.12).*

The Commission finds: Applicant proposes to provide a part time Chiropractic service to the Community of Pine and Featherville.

The Commission finds: Applicant will be utilizing a privately-owned recreation cabin for the proposed business with hours of operation limited to Friday and Saturdays from eight (8) a.m. to twelve (12) p.m.

The Commission finds: The Applicant proposed one to two customer vehicles on the property during business hours; the proposed number of vehicles will exclude personal or family and friend's vehicles.

- b) **Economic Goal Statement 1-** *Diversify and improve the economy of Elmore County in ways that are compatible with community values (pg. 30).*

The Commission finds: Applicant will be utilizing an existing business license from Applicant's practice in Ada County to provide the same services in Elmore County.

The Commission finds: Increasing the diversity of a local economy means diversifying the ownership structures of enterprise; thus, sustaining the local economy.

The Commission finds: Increasing services such as a local Chiropractic Business will help expand health care access to a small community that does not currently have such services.

Economic Objective 1- *Support existing business industry in the County (pg. 30).*

The Commission Finds: Pine and Featherville are popular recreational sites to a number of Idaho and non-Idaho residents.

The Commission finds: Participating in recreational activities is a huge part of an active lifestyle.

The Commission finds: Some recreational activities can lead to injuries that require attention. Chiropractic Care is a service that could support the treatment of some injuries while maximizing healing and recovery without having to utilize hospitals or medications.

The Commission finds: Elmore County has existing Chiropractic Offices; however, there are not any such services in or near Featherville. The closest Chiropractic service is at least 60 miles away.

- c) **Land Use Goal 1-** *Provide for the orderly growth and accompanying development of the resources within the County that is compatible with a rural lifestyle (pg. 35).*

The Commission finds: The Goal of the County is to encourage growth and development in an orderly fashion and to recognize that land is valuable and should be utilized in a constructive manner.

The Commission finds: The proposed location is zoned Agriculture but is located in a popular recreation and vacation site to many as well as to some who reside in the area on a full-time basis.

The Commission finds: The proposed use will not change the character of the area nor will the use negatively impact the area but could provide a positive resource to visitors, recreationists and local homeowners.

B. Zoning and Development Ordinance: The evidence presented to the Commission is in accordance with the zoning Ordinance in the following areas:

- a) *Elmore County Land Use Table 7-2-26 (B)-Personal Business or Professional Service requires a Conditional Use permit in an Agriculture zone (pg. 108).*

The Commission finds: The proposed Chiropractic Business is an allowed use in the Agriculture Zone with a Conditional Use Permit.

The Commission finds the Application is in accordance with the Zoning Ordinance.

The Commission voted 5-0 that the Application meets standard two (2).

3. **The proposed use complies with the purpose statement of the applicable base zone of Ordinance Section 7-2-5 and with the specific use standards as set forth in this Chapter;**

The purpose statement for the Agriculture base zone is found in Ordinance 2018-03, section 7-2-5 (A), providing:

“General Agriculture: The purpose of the Ag district is to preserve and protect the supply of agriculture and grazing land in Elmore County until development is appropriate. This district will also control the infiltration of urban development and other uses into agriculture areas, which will adversely affect agricultural operations. Uses that are compatible with farming, ranching, grazing, forest products, and limited mining may be considered in this district. Residential land use is allowed in the Ag zone subject to site development standards and compatibility with agricultural operations. The "Ag" land use designation is the base zone throughout Elmore County. It contains areas of productive irrigated croplands, grazing lands, forestland, mining lands, public lands as well as rangeland and ground of lesser agricultural value.”

The Commission finds: The evidence presented to the Commission shows that a personal Business or Professional Service is a permitted use in the Agriculture zone with a Conditional Use Permit.

The Commission voted 5-0 that the Application meets this standard.

4. The proposed use shall comply with all applicable County Ordinances;

The Commission finds: Staff has proposed conditions upon approval of the Conditional Use Permit to ensure that this application will meet all applicable County Ordinances.

The Commission voted 5-0 that the Application meets this standard.

5. The proposed use shall comply with all applicable State and Federal laws, rules and/or regulations;

The Commission finds: The Applicant earned a degree in Sports Medicine and a Doctorate in Chiropractic.

The Commission finds: Applicant founded "Health Quest Chiropractic" in Boise, Idaho in 2001.

The Commission finds: Applicant upholds a current license for Chiropractic in the State of Idaho.

The Commission finds: Applicant obtained an Accessory Use Authorization approval from Central District Health in order to comply with Health Department regulations for a business within Applicant's residence located in Featherville, Idaho.

The Commission finds: Applicant will maintain all state and federal license requirements for the proposed Chiropractic Practice.

The Commission voted 5-0 that this Application meets this standard.

6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;

The Commission finds: The Site of the proposed Chiropractic Business is in the Agriculture Zone. The evidence does not present significant impacts or substantial changes to the essential character of the general vicinity the Business is located.

The Commission finds: The proposed business will be located at the Applicant's residence and will have limited hours of operation; those hours will be Friday and Saturday mornings 8:00 a.m. to 12:00 p.m.

The Commission finds: The Applicant proposes to maintain appropriate landscaping.

The Commission adopted: site map of proposed access and location of the proposed Chiropractic Business as displayed at the public hearing, Exhibit G.

The Commission finds: Applicant does not propose the use of advertising signs but rather to utilize social media and the local newsletter as means of advertising.

The Commission finds: Aesthetically, the proposed use will not change the existing views from the west, east, north, or south. The Application, with conditions, will be designed, constructed, operated and maintained in such a way as to be harmonious and appropriate in appearance with the existing and intended character of the general vicinity and will not change the essential character of the area.

The Commission voted 5-0 that the Application meets this standard.

7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;

The Commission finds: The proposed use will not impede the normal development within the area.

The Commission finds: Applicant proposes to conduct the Chiropractic business Friday and Saturday mornings.

The Commission finds: The proposed hours of operation will result in minimal traffic in the area, thus, reducing the impact on existing neighboring uses or impede their normal development.

The Commission finds: The Applicant proposes, with the exception of personal or family and friend's vehicles, there to be no more than one to two customer vehicles during hours of operation.

The Commission finds: The Applicant has obtained appropriate approval from the Mountain Home Highway District which maintains the roads that Applicant will be utilizing to approach the proposed property.

The Commission finds: The Applicant has a private drive and has specified locations for personal vehicles and customer vehicles that will reduce the eye sore for neighboring property owners.

The Commission adopts: An aerial map of the proposed property as Exhibit 1 from the Public Hearing; the Commission utilized this map in deliberations when discussing parking and approach to the business.

The Commission voted 5-0 that the Application meets this standard.

8. **The proposed use shall be served adequately by available public facilities and services such as highways, streets, sheriff protection, fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;**

The Commission finds: The Proposed use will be served by the following facilities:

Highways/Roads – Pine-Featherville Road is maintained by the Mountain Home Highway District.

Fire Protection – The Applicant's property is not located in a Fire District. Staff has proposed conditions to ensure that the Applicant has an adequate fire prevention plan.

Drainage Structures – No drainage structures for the proposed use are planned or required at this time.

Refuse Disposal – Applicant will be responsible for obtaining and maintaining appropriate refuse disposal.

Water/Sewer – Applicant's property utilizes an individual septic system and well.

The Commission finds: The Application and its proposed use, will be adequately served by available public facilities and services such as highways, streets, and law enforcement.

The Commission voted 5-0 that the Application meets this standard.

9. **The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;**

The Commission finds: All on-site improvements will be funded by the applicant.

The Commission finds: The Applicant proposes that the Chiropractic Business will be a positive benefit to Pine and Featherville residents and others who engage in recreational activities in the area.

The Commission finds: Agencies that could be potentially impacted by this Conditional Use have been notified; Central District Health mailed the Department a copy of the Accessory Use Authorization for the proposed use.

The Commission voted 5-0 that the Application meets this standard.

10. **The proposed use shall 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 or odors;**

The Commission finds: The proposed use will take place inside the Applicant's residence and will have minimal traffic due to the hours proposed.

The Commission finds: Applicant proposed there to be a maximum of two customer vehicles during business hours; personal, friends and family vehicles are excluded from the allowed number of vehicles on the property.

The Commission finds: Staff has proposed conditions to ensure the Chiropractic Business adheres to all state, federal and local rules and regulations to include ensuring the place of business meets the ADA requirements.

The Commission voted 5-0 that the Application meets this standard.

11. **The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance;**

The Commission finds: The proposed property site has not been identified as having a natural scenic feature of major importance.

The Commission finds: Applicant is a home owner in the Featherville area and acknowledges what the area has to offer in terms of beauty and recreation, therefore Applicant proposes to ensure that the property of the proposed use is maintained appropriately in order to preserve the natural features of the area.

The Commission voted 5-0 that the Application meets this standard.

The Commission adopts: the oral report that was presented by Staff during the June 19, 2019 Public Hearing as attachment H.

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 Title 7 Chapter 3 have been met.
2. The Commission concludes that the notice requirements of Idaho Code § 67-6512 have been met.
3. The Commission concludes that the Application complies with the required findings set forth in Section 7-9-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted 5-0 and hereby **approves** the Application with the following conditions:

1. **Conditional Use Permit be granted to Jaren Sayer to conduct a Chiropractic Business on Parcel 001240020040A.**
2. **Failure to comply with any condition may result in the revocation of the conditional use permit.**
3. **Proposed use shall comply with all requirements of Title 7 Chapter 2 (“Zoning”) and Chapter 9 (“Conditional Use Permit”) of the Elmore County Zoning and Development Ordinance 2018-03.**
4. **The Applicant shall abide by the conditions required by the Central District Health for the Accessory Use Permit.**
5. **Applicant shall obtain permits for any structures, roads, or other permissible projects on site; this will include an advertisement sign if projected in the future.**
6. **The Applicant shall comply with all applicable fire codes, fire restrictions and fire management plan requirements of the state.**
7. **Hours of Chiropractic Business operation shall not exceed 8 hours per weekend and will not commence before 8:00 a.m. and will conclude by 12 p.m. on Fridays and Saturdays.**
8. **The Applicant shall ensure that all property taxes are paid when due and will not be delinquent.**
9. **The Applicant shall comply with all requirements of state, federal, and local laws to include ensuring the business is ADA compliant.**

Dated this 21st day of August, 2019.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN
VICE CHAIRMAN K.C. DUERIG
SUSAN FISH
ED OPPEDYK
JEFF BLANKSMA
MITCH SMITH

VOTED AYE
VOTED AYE
ABSENT
VOTED AYE
VOTED AYE
VOTED AYE



Patti Osborn, Chairperson

ATTEST:



Beth Bresnahan, Director

NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(c)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-10 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 fourteen (14) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.