

STAFF REPORT

Planning Department File No. 2019-06-016

**CONDITIONAL USE APPLICATION
FOR
A NON-FARM DWELLING and A NON-FARM PARTITION**

Planning Commission Meeting Date: July 25, 2019

- 1. APPLICANT:** Jay Beebe
1392 Ridgeview Road
Adrian, OR 97901
- 2. PROPOSED ACTION:** Conditional Use approval for one non-farm dwelling and a non-farm partition.
- 3. PROPERTY IDENTIFICATION:** Tax Lot 3400, T22S, R46E, Sec.26; Assessors Map 22S46E; Malheur County Reference #10942.
- 4. PROPERTY LOCATION AND DIRECTIONS:** West of the intersection of Succor Creek Hwy and Highway 201, in Adrian, OR.
- 5. ZONING:** Exclusive Farm Use (C-A1).
- 6. PARCEL SIZE:** The parcel is 351.79 acres.
- 7. PARCEL USE:** Vacant lot; uneven terrain with slopes and a canal going through the middle of the parcel.
- 8. SURROUNDING USE:** All adjoining properties are in Exclusive Farm Use (C-A1).
- 9. ACCESS:** US Highway 201.
- 10. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.
- 11. FIRE PROTECTION:** The parcel is within the Adrian Rural Fire Protection District. (Letter Attached).
- 12. NATURAL HAZARDS:** None.
- 13. WATER RIGHTS:** No water rights on property.
- 14. SOIL TYPE:** There is a small portion, on the west side of the proposed partition, with

soils that are class I and III if irrigated; if non-irrigated - the entire proposed partition is covered with soils in class VI and VII.

- 15. ZONING HISTORY:** In 2010, a property line adjustment was performed, granting 14.61 acres to tax lot 100 (ref#10944) and 5.00 acres to tax lot 400 (ref#10963).

GENERAL CONDITIONAL USE CRITERIA

MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY: In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

- A. Comprehensive Plan goals and policies, as applicable.
- B. Specific plan recommendations

Proposed Finding: MCC 6-6-8-1 regulates the conditional use process for a non-farm dwelling. MCC 6-6-8-2 regulates the non-resource partition in the exclusive range use zone.

- C. Existing development and viewpoints of property owners in the surrounding area.

Proposed Finding: Letter notice was sent to adjoining landowners and published in the Argus Observer on July 5, 2019. No comments were received.

- D. Availability of services and utilities.

Proposed Finding: The parcel is located within Adrian Rural Fire Protection District.

- E. The effect of the proposed use on the stability of the community's social and economic characteristics.

Proposed Finding: The proposed dwelling will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics, due to the parcel being located on a bare parcel with primarily class 7 soils, unfit for farming.

- F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

Proposed Finding: The proposed dwelling is outside the sage grouse habitat. There are no water sources on the parcel to sustain a fish habitat. Because of those findings, the proposed structure would not interfere with traditional fish and wildlife.

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

Proposed Finding: The proposed dwelling is set to be placed on the proposed non-farm partition, approximately 33 acres on the southern part of the property, off Succor Creek Rd. Out of the adjacent properties, there is a dwelling on the neighboring tax lot 3500, approximately 150 feet from the proposed property line, with no other dwellings in the immediate vicinity.

2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

Proposed Finding: The proposed dwelling would benefit the appearance of the neighborhood and County.

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

Proposed Finding: As instructed by County Roadmaster, the proposed parcel has adequate visibility from both directions on Succor Creek Cut Off Rd and is deemed as a safe approach. The County will require a culvert to put in the approach and has no other objections to the request.

4. Visual screening of outdoor waste and storage areas.

Proposed Finding: The proposed development is for a dwelling. Outdoor waste storage will be minimal.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

Proposed Finding: Control of outdoor lighting will not be necessary.

6. Special criteria listed below, as applicable:

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

Proposed Finding: The proposed non-resource dwelling will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices. The parcel is surrounded by properties zoned exclusive farm use and BLM land to the south-west. However, not all properties are currently farmed, and will not be impacted by the placement of the dwelling on the proposed parcel. The proposed dwelling will have a private driveway, designated to only access the proposed dwelling, so there will be not impact to the Succor Creek Rd traffic.

SPECIFIC CONDITIONAL USE CRITERIA

MCC 6-6-8-1 - NONRESOURCE DWELLINGS IN EFU, ERU OR EFFU ZONES:

A. Conditions For Allowance: The use:

1. Is compatible with farm uses and is consistent with ORS 215.243; and

Proposed Finding: Due to the location of the proposed dwelling site, being surrounded by Succor Creek Rd, Succor Creek Cut Off Rd and US Hwy 201, the single family dwelling is not anticipated to contribute to a traffic increase or cause any neighboring farming practices to be interrupted or restricted. Therefore, the proposed use is compatible with farm use.

2. Does not interfere seriously with accepted farming practices on adjacent lands; and

Proposed Finding: The parcel is buffered from area farm land by Succor Creek Rd. Therefore, a single family dwelling will not interfere with adjacent farm practices.

3. Does not materially alter the stability of the overall land use pattern of the area; and

Added by OAR 660-033-130(4)(a)(D) - June 1, 1998: In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall;

- i. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries and the

location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.

- ii. Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm / lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph:
 - iii. Determine whether approval of the proposed non-farm / lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.

- B. As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the non-farm parcel: (the use of a straw-man may be necessary):

“The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.” Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.113.

Proposed Finding: Due to the adverse conditions of the soil and being hilly with some fairly steep slopes, the subject parcel cannot be reasonably put to farm use in conjunction with other land. The parcel is away from any water delivery system for the farm ground. From these facts, it is concluded that the proposed dwelling is generally unsuitable land for the production of farm crops and livestock.

MCC 6-6-8-2: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:

A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:

1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How? Address each issue;

Proposed Finding: This site is hilly and has no water rights. There is a small portion with potential soils in class I and III, if irrigated and class VII otherwise.

2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem?

Proposed Finding: There are some irrigated row crops on the neighboring properties, that the dwelling will have no effect on.

3. Will the proposed use materially alter the stability of the overall land use pattern of the area?

Proposed Finding: The site is on a hilltop, currently undeveloped.

4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:

- a. If located on range or agricultural lands, are the proposed nonresource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.
- b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses?

Proposed Finding: The majority of the proposed parcel is on class VI land, determined as average, un-cleared range, sparse ground cover and poor grazing. It is considered prime farmland if irrigated.

5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items?

Proposed Finding: The entire parent parcel is on class VI and VII land, determined as average, un-cleared range, sparse ground cover and poor grazing.

6. Is an existing dwelling used as a residential home for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10)?

Proposed Finding: The proposed partition is for a single family residence that fits the criteria listed in ORS 443.400(5) through (10).

7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

Proposed Finding: There are no historical dwellings that are located on the parent parcel.

OTHER PROPOSED FINDINGS OF FACT

Oregon Revised Statute 215.284(2)(c):

“The dwelling will be sited on a lot or parcel created before January 1, 1993”; and

Oregon Administrative Rule 660-033-0020(1)(4):

“Date of Creation and Existence. When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.”

The applicant has submitted additional proposed findings of fact in the conditional use application.

PROPOSED CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcel: (Parent parcel is tax lot #3400, Section 26, T22S, R46E, Assessor’s map 22S46E. Malheur County Reference #10942)

“The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-

resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.”

2. Evidence shall be provided showing the parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use and the back taxes have been paid for the previous ten (10) years.
3. The applicant must comply with the culvert requirements imposed by the Malheur County Road Department.
4. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
5. This approval is valid for four years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

EXHIBITS

1. Applicant’s Approved Conditional Use Application
2. Agency Letters
3. Maps