

## **STAFF REPORT**

**Planning Department File No. 2019-04-013**

### **CONDITIONAL USE APPLICATION FOR ONE NON-FARM DWELLING and TWO NON-FARM PARTITIONS**

Planning Commission Meeting Date: May 23, 2019

- 1. APPLICANT:** Jason and Rachel Johnson  
1821 Sand Hollow Road  
Vale, OR 97918
- 2. PROPOSED ACTION:** Conditional Use approval for two non-farm partitions and one non-farm dwelling.
- 3. PROPERTY IDENTIFICATION:** Tax Lot 1400, T19S, R45E, Sec. 1; Assessors Map 19S45ED001; Malheur County Reference #14516.
- 4. PROPERTY LOCATION AND DIRECTIONS:** South of Vale, on Airport Rd, until the intersection with Sand Hollow Rd. Parcel is directly across Sand Hollow Rd.
- 5. ZONING:** Exclusive Range Use (C-A2).
- 6. PARCEL SIZE:** The parcel is 332.62 acres.
- 7. PARCEL USE:** Vacant lot with a 40'x40' shop on it. Bare hillside.
- 8. SURROUNDING USE:** North and West: Exclusive Farm Use; all the other adjoining properties are Exclusive Range Use.
- 9. ACCESS:** Sand Hollow Rd.
- 10. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.
- 11. FIRE PROTECTION:** The parcel is within the Vale Rural Fire Protection District. (Letter Attached).
- 12. NATURAL HAZARDS:** None.
- 13. WATER RIGHTS:** No water rights on property.
- 14. ZONING HISTORY:** In 2015, a property line adjustment was performed bringing 17.47

acres from tax lot 6100 (for taxing purposes, the adjusted parcel was designated as 6101, Ref#20602) to tax lot 1400.

## **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 nonresource 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 May 3, 2019. No comments were received.**

- D. Availability of services and utilities.

**Proposed Finding: The parcel is located within the Vale 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 hill side with minimal grazing opportunity.**

- 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 150' away from Sand Hollow Rd. Out of the adjacent properties, there are dwellings on only 2 of them: 1 approximately 200 yards from the proposed property line and the other is located about ½ mile away, therefor, there will be no impacts on adjoining properties.**

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: The applicant was granted access via proposed driveway to Sand Hollow Rd, by County Roadmaster.**

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 property that is either zoned exclusive farm use or exclusive range use or is steep and is not devoted to farm use.**

**The parcels that are zoned exclusive farm use are across Sand Hollow Rd and will not be impacted by the placement of the dwelling on the proposed parcel. The proposed dwelling has a private driveway, designated to only access the proposed dwelling, so there will be not impact to the Sand Hollow Rd traffic.**

#### **SPECIFIC CONDITIONAL USE CRITERIA**

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

**A. The use:**

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

**Proposed Finding: There is flood irrigated row crop ground, across from Sand Hollow Rd, that the dwelling will have no effect on. Grazing on adjacent properties will also feel no impact. On the proposed parcel, there is an insignificant amount of native grass, which may be used for grazing. The small portion of the proposed home site will cover a portion sufficient to maybe feed one cow for a few days. The granting of this application will not result in loss of natural resources, and the amount of open land used for agriculture use will not change. 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 Sand Hollow Rd and a steep slope. 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 surrounded by 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 on a hill top that has no water rights. There is a small amount of native grass that can be used for grazing, but the existing shop and home site cover a small portion of the ground. The ground affected would maybe feed one cow for a few days.**

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 is flood irrigated row crop ground across Sand Hollow Rd that the dwelling will have no effect on. Grazing on adjacent properties will also feel no impact.**

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 used for grazing only.**

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 entire parent parcel is on class VII land, determined as average, un-cleared range, sparse ground cover and poor grazing. This land, currently, that has not been inventoried by Natural Resources Conservation Service. In addition, it sits on a steep slope with rocky terrain.**

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 VII land, determined as average, un-cleared range, sparse ground cover and poor grazing. This land, currently, that has not been inventoried by Natural Resources Conservation Service. In addition, it sits on a steep slope with rocky terrain.**

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.”

**Proposed Finding: Although a property line adjustment was approved in 2015 that reconfigured the parcel, the effect of which did NOT qualify the lot, parcel or tract for the siting of a dwelling. The parcel would have qualified for a non-resource dwelling prior to the property line adjustment.**

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 #1400, Section 1, T19S, R45E, Assessor's map 19S45ED001. Malheur County Reference #14516)  
  
"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 apply for and be granted a road approach from 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