

## STAFF REPORT

Planning Department File No. 2019-10-006

### CONDITIONAL USE APPLICATION FOR TWO NON-FARM DWELLINGS and TWO NON-FARM PARTITIONS

Planning Commission Meeting Date: November 19, 2019

1. **APPLICANT:** Harold and Deborah Bruning  
1113 Stateline Rd  
Adrian, OR 97901
2. **PROPOSED ACTION:** Conditional Use approval for two non-farm partitions and two non-farm dwellings.
3. **PROPERTY IDENTIFICATION:** Tax Lot 200, T23S, R47E, Sec. 6; Assessors Map 23S47E; Malheur County Reference #11043.
4. **PROPERTY LOCATION AND DIRECTIONS:** Directly west of the intersection of Succor Creek Rd and Stateline Rd in Adrian, OR.
5. **ZONING:** Exclusive Farm Use (C-A1).
6. **PARCEL SIZE:** The parcel is 142.68 acres.
7. **PARCEL USE:** Agricultural farming: production of organic alfalfa and grass hay for sale.
8. **SURROUNDING USE:** The eastern property line borders the State of Idaho. All the rest of the adjacent properties are in Exclusive Farm Use.
9. **ACCESS:** Desert Glen Rd and Stateline Rd.
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for future developments; the existing home has a working private septic system.
11. **FIRE PROTECTION:** The parcel is within the Adrian Rural Fire District. (Exhibit 2).
12. **NATURAL HAZARDS:** None.
13. **WATER RIGHTS:** The property has water rights through Ridgeview Irrigation District (38 acres) and a surface water registration (SWR-45) with the State of Oregon (49.6 acres). See Exhibit 4.

**14. ZONING HISTORY:** The current home was built in 1952. Additional accessory buildings were added in 2005 and 2006.

**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 farm 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 November 1, 2019. No comments were received.**

- D. Availability of services and utilities.

**Proposed Finding: The parcel is located within the Adrian Rural Fire 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 fact that the proposed partition is on fallow ground unsuitable for farming. This area hasn't been farmed in at least 14 years. All the existing farm ground will remain unchanged.**

- 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 is no identified critical 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 well off the property lines. Out of the adjacent properties, there is one dwelling approximately ¼ mile from the proposed home site therefore, there will be no impacts on adjoining property.**

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 approach to Desert Glen Rd, by County Roadmaster. (Exhibit 3).**

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 zoned exclusive farm use devoted to pastures, range and irrigated crops. The parcels that are**

**zoned exclusive farm use are across Desert Glen Rd 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 Desert Glen 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: The current farming of certified organic alfalfa will continue. All existing farm ground in this proposal will remain unchanged. 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 proposed partition to the south is not currently being farmed and the adjacent property is only used for cattle grazing. Therefore, a single-family dwelling on this partition will not interfere with adjacent farm practices. The other proposed partition has an existing home on it.**

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 inexistence of the water rights and adverse condition of the soils (class VI) on the subject parcel, it cannot be reasonably put to farm use in conjunction with other land. The parcel hasn't been farmed in at least 14 years. 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 of the southern partition is flat to slightly hilly and has no water rights. It has an existing shop and the home site will cover a small portion of the 27 acres lot. The other partition has an existing home with no immediate proposed development. The current farmed land will not be impacted and will continue to be irrigated and farmed.**

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: Approximately 90% of the surrounding properties are dedicated to cattle grazing. Pastures are irrigated and cattle are left to graze. The property to the south has about 120 acres of corn and alfalfa. 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 bare land, currently undeveloped, not suitable for farming.**

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 southern proposed partition is on class VI soils, deemed not suitable for row crops. In addition, it has no water rights.**

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 parent parcel has a variety of soils ranging from class I to class IV soils. The entire southern proposed partition is on class VI soils, deemed not to suitable for row crops. In addition, it has no water rights. The other proposed partition has an existing dwelling on it.**

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.**

## **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 #200, Section 6, T23S, R47E, Assessor's map 23S47E. Malheur County Reference #11043)

“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. The applicant must submit a “Transfer of Water Rights” request to the State of Oregon Water Resources Department and secure the State of Oregon water right certificate SWR-45 in their name.
6. 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. Letter from Ridgeview Irrigation District
2. Letter from Adrian Fire Department
3. Letter from County Roadmaster
4. Letter from State Watermaster