

STAFF REPORT

Planning Department File No. 2019-09-015

**CONDITIONAL USE APPLICATION
FOR
ONE NON-FARM PARTITION &
ONE NON-FARM DWELLING**

Planning Commission Meeting Date: October 24, 2019

- 1. APPLICANT:** Justin & Heather Johnson
2775 Copeland Road
Harper, OR 97906
- OWNER OF RECORD:** Justin & Heather Johnson
2775 Copeland Road
Harper, OR 97906
- 2. PROPOSED ACTION:** Conditional Use approval for one non-farm partition and one non-farm dwelling.
- 3. PROPERTY IDENTIFICATION:** Tax Lot 2900, T20S, R41E, Sec. 13; Assessors Map 20S41E; Malheur County Reference #8808.
- 4. PROPERTY LOCATION AND DIRECTIONS:** From Vale take Hwy 20 to Harper Junction; Left on Copeland Road; Travel 2.5 miles to 2275 Copeland Road; Proposed site is approximately 300 yards to the northwest.
- 5. ZONING:** Parcel is composed of both Exclusive Farm Use (C-A1) and Exclusive Range Use (C-A2).
- 6. PARCEL SIZE:** The parcel is 159.97 acres.
- 7. PARCEL USE:** The proposed site lies feral, with no water rights currently.
- 8. SURROUNDING USE:** There are corrals approximately 600 feet from the proposed site, a house and shop approximately 900 ft away and an additional shop 1200-1500 feet away. There is irrigated farm ground and dry rangeland adjacent to the proposed parcel.
- 9. ACCESS:** Copeland Road (see attached letter).
- 10. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.

11. **FIRE PROTECTION:** The parcel is not located within a Fire District.
12. **NATURAL HAZARDS:** No natural hazards have been identified.
13. **WATER RIGHTS:** The property does have water rights attached to it, but not on the proposed parcel (see attached map).
14. **SOIL TYPE:** The soils on the proposed parcel are class VI according to the NRCS. The Malheur County Assessor's Office has designated the land classification as class VII.
15. **ZONING HISTORY:** A resource dwelling was built on the property in 1960. No current zoning history was found.

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.

- 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 October 6, 2019. No comments were received.

- D. Availability of services and utilities.

Proposed Finding: The parcel is not located within any fire district. All services and utilities are available.

- 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.

- 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 not located in an area that contains fish or wildlife deemed critical or sensitive, and will 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 parent parcel is almost 160 acres and the adjacent homes are no closer than 900 feet to the proposed dwelling. No increased setbacks are recommended at this time.

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

Proposed Finding: No proposed landscaping improvements are recommended.

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 subject parcel has access from Copeland Road. A new approach will be required (see attached).

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 current land is not used for any current or future farm use, as it currently has no water rights. The parceling off would not cause a significant change to farming practices.

SPECIFIC CONDITIONAL USE CRITERIA

MMC 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 subject parcel has a very rocky soil that is shallow. If water rights could be obtained, it would not be cost effective to irrigate this land. It also does not produce feed to run cattle on. Therefore, the proposed use is not compatible with farm use.

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

Proposed Finding: The current land is not used for any current or future farm use, as it currently has not water rights. The parceling off would not cause a significant change to farming practices. The new dwelling will also not impact the ability for farms/ranches in the area to expand operations. It has no impact on the operations other than increasing the potential number of people to the area to help with work.

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

Proposed Finding: The area has seen little to no growth in recent history. One new dwelling has been added. The addition of a single dwelling will have little to no impact on the overall land use pattern of the area.

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: The proposed parcel consists of class 6 soils and a class 7 land use classification. It does not have water rights attached. Little to no development has occurred in recent years to the surrounding area. The new parcel is generally considered unsuitable for farm use.

OTHER PROPOSED FINDINGS OF FACT

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-resource dwelling parcel: (Subject parcel is tax lot #2900, Section 13, T20S, R41E, Assessor's map 20S41E. Malheur County Reference #8808)

“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. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
3. 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