

STAFF REPORT

Planning Department File No. 2020-02-018

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

Planning Commission Meeting Date: April 23, 2020

- 1. APPLICANT:** Bryon & Rebecca Clark
44025 Heppner Spray Hwy
Spray, OR 97874
- 2. OWNER OF RECORD:** Bryon & Rebecca Clark
2051 6th Ave W
Vale, OR 97918
- 3. PROPOSED ACTION:** Conditional Use approval for one non-farm partition and one non-farm dwelling.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 200, T17S, R44E, Sec. 27; Assessors Map 17S44E27; Malheur County Reference #13128.
- 5. PROPERTY LOCATION AND DIRECTIONS:** From the intersection of A Street and Main Street in Vale, head North on US Hwy 26 for 6.5 miles; turn left onto 6th Ave West for 1.5 miles; the destination is on the left before S Road E.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The parcel is 154.78 acres.
- 8. PARCEL USE:** Approximately 80% is cultivated and irrigated. Approximately 20% is sage and grass rangeland with low hills.
- 9. SURROUNDING USE:** To the north, west and there are dwellings with farmland. To the south is all farm land.
- 10. ACCESS:** 6th Ave West via US Hwy 20/26. (Letter Attached)
- 11. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.
- 12. FIRE PROTECTION:** The parcel is within the Vale Rural Fire Protection District.

13. NATURAL HAZARDS: None.

14. WATER RIGHTS: The property is within Vale Oregon Irrigation District and does have water rights attached to it. (Letter Attached)

15. SOIL TYPE: The soils on the property are primarily class III, and some class I, II and IV. The soils on the proposed partition are mostly class IV and some class III.

16. ZONING HISTORY: In 2014 there was a zoning permit (#2014-11-006) approved for placement of a 10 KW solar array, placed on NE site of the property.

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 and MCC 6-6-8-2 regulates the conditional use process for a non-farm partition.

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

Proposed Finding: Letter notice was sent to adjoining landowners on March 5, 2020 and published in the Argus Observer on March 6, 2020. No comments were received.

D. Availability of services and utilities.

Proposed Finding: The parcel is located within the Vale Rural Fire Protection 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 partition already has a dwelling on it and it will have no negative 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 dwelling/proposed non-farm partition 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 proposal is to partition the north-west corner of the property with the existing house on this parcel. The existing residence will not overshadow adjoining property. This criterion is met.

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

Proposed Finding: The dwelling will not deteriorate the appearance of the neighborhood. This criterion is met.

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 6th Ave West. No new access must be obtained (see attached letter).

4. Visual screening of outdoor waste and storage areas.

Proposed Finding: The home site had been established. Outdoor waste storage will be minimal. This criterion is met.

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: This home will not have any impact to any current use in the area. No activities will conflict with grazing or farming. The 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.

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 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 and existing home on it, will not interfere with the farming practices on adjacent properties, as in will not take away from any farm ground. There are 11 other non-farm dwellings within the 1 mile study area.

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: The non-resource dwelling will be located on land that has not been farmed due to the lack of water right and it had been a pre-established home site. All the irrigated land will be kept in farm use.

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 northwestern partition is sage and range grass with no distinct topographical features. It has an existing dwelling. There will no net loss of current farmed land and it 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: All the surrounding properties are dedicated to farming or grazing, which will feel no impact due to partitioning off the existing home site.

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

Proposed Finding: The site had already been developed, 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 non-resource 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 proposed partition is on class VI soils, deemed not suitable for row crops; there is an insignificant amount of class

III soils along the eastern boundary with the parent parcel. 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 proposed partition is on class VI soils, deemed not to suitable for row crops. In addition, it has no water rights.

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

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: (Subject parcel is tax lot #200, Section 27, T17S, R44E, Assessor's map 17S44E27. Malheur County Reference #13128)

“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. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
4. An easement for the pipeline that parallels 6th Ave W, must be obtained and signed, from the Vale Oregon Irrigation District, to secure the partition.
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.
6. An additional road dedication may be required per the County Engineer.

EXHIBITS

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