

**Before the Planning Commission**

**Planning Department File No. 2021-06-001**

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

Planning Commission Meeting Date: July 22, 2021

- 1. APPLICANT:** Jarom Wagoner, JP Wagoner Planning  
11846 Linden Rd  
Caldwell ID 83605
- 2. OWNER OF RECORD:** Jerry Nagaki  
5020 Pioneer Rd  
Ontario, OR 97914
- 3. PROPOSED ACTION:** Conditional Use approval for one non-farm partition and one non-farm dwelling.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 10100, T16S, R47E, Sec. 23 & 26; Assessors Map 16S47E; Malheur County Reference #6327.
- 5. PROPERTY LOCATION AND DIRECTIONS:** From Ontario, head North on Hwy 201 for 8.5 miles; turn right on Holly Rd. Continue for ½ mile, turn left at the 1<sup>st</sup> cross street onto Cherry Rd. The destination is on the right.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The parcel is 95.20 acres.
- 8. PARCEL USE:** With the exception of the existing home site and location of the proposed non-farm partition, the entire rest of the property is currently being farmed.
- 9. SURROUNDING USE:** All surrounding properties are being farmed.
- 10. ACCESS:** Cherry Rd and Holly Rd.
- 11. SANITATION REQUIREMENTS:** A DEQ approved sanitation system has been approved for the existing house on 10/13/1982.
- 12. FIRE PROTECTION:** The parcel is within the Payette Rural Fire Protection District. (Email attached).

**13. NATURAL HAZARDS:** None.

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

**15. SOIL TYPE:** The entire property is covered in soils class I.

**16. ZONING HISTORY:** The existing home was built in 1982. There is no other known zoning history.

**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

**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.

**Finding: Letter notice was sent to adjoining landowners on July 2, 2021 and published in the Argus Observer on July 2, 2021. No comments were received.**

D. Availability of services and utilities.

**Finding: The parcel is located within the Payette 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.

**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.

**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.

**Finding: The proposal is to partition the south-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.

**Finding: As the dwelling is already existing, it 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.

**Finding: The subject parcel has an existing access and driveway from Holly Rd. No new access must be obtained.**

4. Visual screening of outdoor waste and storage areas.

**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.

**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)

**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

**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

**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 at least 7 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.

**Finding: The non-resource dwelling will be located on land that has not been farmed since 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;

**Finding: This site of the proposed partition 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?

**Finding: All the surrounding properties are dedicated to farming, 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?

**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.

**Finding: The entire proposed partition is on class I soils, however, the current home had been on site since 1982 and no new development is proposed at this time. The size of the proposed partition is 2.02 ac, just large enough to encase the current residence and maintain the minimum lot size as required per DEQ standards. In addition, since the remainder of the parent parcel is smaller than 160 ac, it will not be suitable for a future farm dwelling, based on size alone.**

- 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?

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?

**Finding: The parent parcel is covered in soils of class I. The proposed non-farm partition has a pre-established dwelling on it and will have no 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.**

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)?

**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).

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

## OTHER FINDINGS OF FACT

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

## 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 #10100, Section 23, T16S, R47E, Assessor's map 16S47E. Malheur County Reference #6327)

“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. Separate measuring devices for the water rights will be required for each new resulting parcel, if there will be any water rights transferred from the parent parcel to the newly created 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. The size of the proposed partition can be 1 (one) acre minimum and up to the original proposed partition size.

### CONCLUSION

Based upon the foregoing finding of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a non-farm dwelling and non-farm partition in an exclusive farm use zone.

### ORDER

This application for a conditional use permit is approved.

### APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department not later than 5:00pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission.

Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.



\_\_\_\_\_  
Planning Commission Chair  
Kathy Clarich



\_\_\_\_\_  
Date