

Before the Planning Commission

Planning Department File No. 2021-12-018

**CONDITIONAL USE APPLICATION
FOR
TWO NON-FARM DWELLINGS AND TWO NON-FARM PARTITIONS**

Planning Commission Meeting Date: January 27, 2022

1. **APPLICANT:** Stoney B Schulties
738 Enterprise Avenue
Nyssa, OR 97913
2. **PROPOSED ACTION:** Conditional Use approval for two non-farm dwellings and two non-farm partitions.
3. **PROPERTY IDENTIFICATION:** Tax Lot 1000, T20S, R46E, Sec. 2; Assessors Map 20S46E2; Malheur County Reference #9973.
4. **PROPERTY LOCATION AND DIRECTIONS:** Property is located at 738 Enterprise Avenue, Nyssa.
5. **ZONING:** Exclusive Farm Use (C-A1).
6. **PARCEL SIZE:** The parcel is 158.04 acres.
7. **PARCEL USE:** The property is currently being farmed. The new parcels will have no water rights.
8. **SURROUNDING USE:** The parcel is surrounded in entirety by farmland.
9. **ACCESS:** The new parcels will be accessible from an existing approach from Fairview Road.
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for both of the proposed dwelling.
11. **FIRE PROTECTION:** The sites of the proposed non-farm partitions are within the Nyssa Rural Fire District. (Letter attached).
12. **NATURAL HAZARDS:** Although wetlands have been identified on the property (See attached), there will be no disturbance of these wetlands.
13. **WATER RIGHTS:** There will be no water right on the new parcels. Any water rights in

the location will be transferred with the construction of the pivot.

14. SOIL TYPE: I, III, IV, VI, and VIII.

15. ZONING HISTORY: In 2020 a property line adjustment was completed in order to transfer a property to a different location. This property line adjustment did not have the affect to qualify the parcel for the siting of a dwelling. The parcel previously had this right.

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 regulated 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 January 7, 2022 and published in the Argus Observer on January 5, 2022. No comments were received.

D. Availability of services and utilities.

Finding: The entire parent parcel is located within the Nyssa Rural 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.

Finding: The proposed dwellings 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 both the proposed partitions are on ground unsuitable for farming and would add to the economic stability by providing much needed housing.

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: There are no known fish and wildlife critical habitats on the subject parcel.

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

Finding: There will be no increase of activities or operation beyond the minimal use of a family farm dwelling and parcel. The new vacant parcels will be out of sight from the main county road. Additionally, the closest existing dwellings are about ¼-mile away from the new proposed home sites and there are no other existing dwelling within the immediate proximity to be overshadowed.

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

Finding: There will be typical small residential landscaping not to exceed 0.5 acres surrounding the home and would not be easily visible.

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 new vacant parcel will be accessed from existing County road, Fairview Road, which is a minor collector. The landowner and or successors will abide by the recommendations from the County Road Department and Rural Fire Department.

4. Visual screening of outdoor waste and storage areas.

Finding: The new vacant parcels will be out of sight from the main traveled county roadway. The new development is for a single-family dwelling and outdoor waste would be minimal.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

Finding: Control of outdoor lighting will not be necessary. Potential home site would be out of sight from the main county road.

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: The proposed non-resource dwellings 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 new potential dwellings will be constructed on land with no water rights, and

will be beyond 0.25 miles from the main county road and out of sight.

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

Finding: One of the new parcels has had the water rights transferred and is no longer desirable production ground. Water rights and irrigation plans are changings to a pivot. The other new parcel is non-productive ground.

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

Finding: The new vacant parcel and proposed dwelling is no longer a desirable production ground because water rights and irrigation plans have changed. Any existing farm ground will be transferred to other desirable production ground.

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

Finding: The new vacant parcel and proposed dwelling is no longer a desirable production ground because water rights and irrigation plans have changed. Any existing farm ground will be transferred to other desirable production ground.

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 impact 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 parcels: (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: Most existing dwelling are zoned agriculture use only on parcels below the minimum parcel size. The surrounding area is largely used for farming. Building permits in the area have been little to none.

Current land use is focused on agricultural production with row crops and grazing with minimal house and development. Current houses are owned/occupied by owners/operators of surrounding production ground.

This development would have minimal impact on production ground as potential homes sites would presumably be placed on areas that have no production. Additionally, there should not be any net loss of land currently farmed.

Due to the inexistence of the water rights and adverse condition of the soils on the proposed partitions, it cannot be reasonably put to farm use in conjunction with other land. From these facts, it is concluded that the proposed dwellings will be generally placed on 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;

Finding: The new vacant parcel and proposed dwelling is no longer a desirable production ground because water rights and irrigation plans have changed. Any existing farm ground will be transferred to other desirable production ground.

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: The new vacant parcel and proposed dwelling is no longer a desirable production ground because water rights and irrigation plans have changed. Any existing farm ground will be transferred to other desirable production ground.

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

Finding: The sites of both partitions are 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?

Finding: The new vacant parcel and proposed dwelling is no longer a desirable production ground because water rights and irrigation plans have changed. Any existing farm ground will be transferred to other desirable production ground.

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 natural landscaping will be used to minimize the impact and conflict with the farm. The watershed from the proposed non-farm partitions will be generally contained onsite. The proposed development will meet environmental standards for air and water quality.

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: Both the proposed partitions are for single-family residences that fit 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.

PROPOSED CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcels: (Parent parcel is tax lot #3700, Section 7, T18S, R44E, Assessor's map 18S44E. Malheur County Reference #13347)

"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 access shall be secured for each individual partition. The approach for the sites shall meet all the requirements of the Nyssa Rural Fire District (See attached).
3. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
4. 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.
5. A road maintenance agreement must be filed with the Malheur County Clerk’s Office.

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 2 non-farm dwellings and 2 non-farm partitions in an exclusive farm use zone.

ORDER

This application for a conditional use permit for 2 non-farm dwelling and 2 non-farm partitions 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.

Kathy Clarich
Planning Commission Chair
Kathy Clarich

1-27-2022
Date