

Before the Planning Commission

Planning Department File No. 2022-04-012

**CONDITIONAL USE APPLICATION
FOR
A HOME BUSINESS**

Planning Commission Meeting Date: May 26, 2022

- 1. APPLICANT:** Randy & Michelle Oldenkamp
473 Jacobsen Gulch Rd
Ontario, Oregon 97914
- 2. OWNER OF RECORD:** Randy & Michelle Oldenkamp
473 Jacobsen Gulch Rd
Ontario, Oregon 97914
- 3. PROPOSED ACTION:** Conditional Use approval for a home business for the purpose of operating an event venue.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 200, T17S, R47E, Sec. 17B; Assessors Map 17S47E17B; Malheur County Reference #6919.
- 5. PROPERTY LOCATION AND DIRECTIONS:** from Ontario head north on Hwy 201 for 3.2 miles. Turn left onto Hyline Rd. Continue for ¼ mile and then slight left onto Jacobsen Gulch Rd. Continue for 0.9 miles. The property is SW of the intersection of Jacobsen Gulch Rd and Power Rd.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The parcel is 29.52 acres.
- 8. PARCEL USE:** Parcel is currently being used as farmland and has a home site. There is a sloped area that is vacant and has not been farmed before.
- 9. SURROUNDING USE:** The adjacent properties are employed in farm use and range use. The smaller properties to the southwest and northeast are only used as single-family dwelling sites.
- 10. ACCESS:** Jacobsen Gulch Rd and Oak Rd. (Letter from Ontario Rural Road District included)
- 11. SANITATION REQUIREMENTS:** An existing DEQ permitted system has been in use for the dwelling. An Authorization Notice will be required from Malheur County Environmental Health to evaluate the system's capacity.
- 12. FIRE PROTECTION:** The parcel is located within the Ontario Rural Fire Protection District (Letter from Ontario Rural Fire District included).

- 13. NATURAL HAZARDS:** No natural hazards have been identified.
- 14. WATER RIGHTS:** The property currently has 20 irrigated acres. The proposed parking area for the venue had 1 acre of water rights, which has been transferred elsewhere on the property.
- 15. SOIL TYPE:** The soils on the property are class III and VI. The majority of the soils of the proposed venue location are class III.
- 16. ZONING HISTORY:** The existing dwelling was built in 1973. In 2008 there was an addition constructed to the existing dwelling. 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 6-6-7 regulates the general criteria to evaluate suitability and MCC 6-6-8-6 (A) regulates the conditional use process for a home business

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

Finding: Letter notice was sent to adjoining landowners on May 6, 2022 and published in the Argus Observer on May 6, 2022. No comments were received.

- D. Availability of services and utilities.

Findings:

ROADS: The plan is to direct traffic to this event venue by way of Jacobsen Gulch Rd, through Hyline Rd to Hwy 201. It is expected that there will be a slight increase in traffic. The approach will have adequate visibility in both directions. The Ontario Rural Road Assessment District has requested that a 10” culvert for drainage on the Oak Rd access point be installed.

FIRE & POLICE PROTECTION: The event venue will be located on the south side of the property in the Ontario Rural Fire Protection District. All driveways and facilities will comply with current fire and safety regulations.

SEWER & WATER: The proposal is for a event venue and portable restroom will be made available for the events. The property currently has a private well.

ELECTRICAL & TELEPHONE: No additional power will be required to support the operation of the venue. At this time, the facility proposes to use an

internet-based telephone provided.

SOLID WASTE DISPOSAL: The property already has existing contracted service provided by Ontario Sanitary.

- E. The effect of the proposed use on the stability of the community's social and economic characteristics.

Finding: The proposal is to operate a registered business, which will act as a regulated tax-paying entity. The operation will increase the County's tax revenue.

- 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 site of event venue 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 event venue site is proposed to be located on the south side of the property. The possibilities of overshadowing the adjoining property will be reduced by the natural tree barrier. There are no new structures being proposed. The noise or lighting nuisances will be limited within the bounds of the dedicated County Code regulation. No odors are expected.

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

Finding: The proposal is for a home business within the boundaries of the pasture on the parent parcel. A portion of the pasture will be dedicated for parking. There are no other landscaping improvements proposed at this time.

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 access points are existing. No new access points are being proposed for this development. A potential access-point off of Oak Rd is not yet developed.

4. Visual screening of outdoor waste and storage areas.

Finding: There will be no outdoor waste areas. The existing 30' x 50' shop will be used for additional storage.

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

Finding: All lighting will be limited to the proposed event venue area only. During non-operating hours, outdoor lighting will be minimal and for security purposes only.

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: All of the farm ground that is located on the parcel will continue to be farmed and will not be impacted by the operation of this home business.

6-6-8-6: HOME BUSINESS: A home business shall comply with the following standards:

1. Location: Any zone, not excluded below, in which a home business is a conditional use.

Finding: The subject property in zoned C-A1 (Exclusive Farm Use) and a home business is subject to the conditional use MCC 6-3A-3 (L). This criterion is met.

2. Scale: A home business must fit within the dwelling and must be incidental to the use of the dwelling as a residence. If there is no existing accessory building, one may be built, provided the side walls are no higher than ten feet (10') from the elevation of the floor and the building covers no more than two thousand five hundred (2,500) square feet in area.

Finding: There are no proposed new permanent structures. The venue will be, in part, outdoors and will use existing structures as well as temporary structures which are normally associated with the property's use in the EFU Zone. This criterion is met.

3. Participants: Family members living on the property and a combination of no more than ten (10) full time employees are the only persons that may be employed in a home business.

Finding: The sole operators will be Randy and Michelle Oldenkamp – the owners of record. This criterion is met.

4. Character: The property upon which a home business exists shall be and kept in a clean, neat, orderly fashion.

Finding: The home business will have no effect on the character or visual appearance of the property. Clean up will be conducted after each event. This criterion is met.

5. Storage: All materials associated with home business shall be screened from view or contained within the allowed dwelling or accessory structures of the home business.

Finding: All materials associated with the home business will be contained within the existing 30' x 50' shop/structure. This criterion is met.

6. Display: There shall be no display of products visible from outside the allowed dwelling or accessory structures of the home business.

Finding: The proposal is for an outdoor event venue along with the use of temporary structures which are normally associated with uses in the EFU Zone. The existing shop will be used to store any additional resources for the business. This criterion is met.

7. Signs: A home business must comply with chapter 7 of this title.

Finding: A 12 sq. ft. sign will be placed on the property to welcome guests. The sign would be a permanent fixture and nonlighted. The sign is consistent to MCC 6-7-2(D). This criterion is met.

8. Traffic: Customer, client and/or business traffic shall not exceed fifteen (15) trips per day. Business delivery vehicles shall not exceed gross vehicle weight of eleven thousand (11,000) pounds. U.S. postal service deliveries are exempt from this requirement.

Finding: The proposal is for an event venue to host up to 250 guests, per scheduled event. On average, the number of trips per event will be at or below 100 (this all depends on the size of the event in addition to how many people travel in each vehicle). This will not exceed fifteen (15) trips per day on average. This criterion is met.

9. Parking: Vehicles owned, leased or operated by the participants of a home business shall not be parked or stored on the street or in the public right of way.

Finding: There will be dedicated parking space allotted on the property. There will be no offsite parking beyond the boundaries of the subject property. This criterion is met.

10. Noise And Other Nuisance Factors:

- a. Noise: Noise shall be kept to a minimum at all times, especially between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M. Equipment that creates a shrill or penetrating sound shall, at all times, be operated only within an enclosure that effectively prevents noise measured at the nearest dwelling exceeding the otherwise ambient noise level of the neighborhood. Where a question arises regarding noise levels, the planning director's determination shall be final.

Finding: The proposal is for an event venue. There will be music playing during some events. No other equipment will be used. The proposed operation hours are from 08:00 a.m. to 10:00 p.m., Sunday-Saturday. This criterion is met.

- b. Odors: Odors shall not be detectable from any boundary of a home business property at any time.

Finding: No odors will be generated by the business. This criterion is met.

- c. Electrical Interference: A home business shall not create visual or audible electrical interference in any radio, television, or other electrical device off the subject property or cause fluctuations in line voltage off the subject property.

Finding: The proposal is for an event venue. There is no anticipated visual or audible electrical interference. This criterion is met.

OREGON REVISED STATUTE 215.448: Home occupations:

- 1. The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation.

- a. It shall be operated by a resident or employee of a resident of the property on which the business is located;

Finding: The event venue will be solely operated by the owners of the property. This criterion is met.

- b. It shall employ on the site no more than five full-time or part-time persons;

Finding: The sole employees will be the two owners. There are no other employees proposed at this time. This criterion is met.

- c. It shall be operated substantially in:

- A. The dwelling; or

- B. Other buildings normally associated with uses permitted in the zone in which the property is located; and

Finding: All administrative business operations including the accounting, booking, and any other office related business will be conducted within the dwelling. Storage of any materials associated with the home business will occur within the existing shop and dwelling.

The planning and zoning commission finds that the above described administrative and storage operations are a substantial part of the home business.

The events will be held, in part, outside. In addition, Applicants may use temporary buildings or structures. Applicable case law regarding the implications of “other buildings normally associated with uses permitted in the zone in which the property is located” as set out in ORS 215.448(1)(c) can be found in Green v. Douglas County, 245 Or. App 430 (Oregon Court of Appeals 2011).

The Court of Appeals found that any legislative intent to narrow the meaning of ‘building’ is not apparent from the relation of ORS 215.448(1)(c) to the other factors in the definition. As such, “building” is not confined to walled structures. The Court concluded, for example, that, “if gazebos and pavilions are normally associated with farm dwellings or other agricultural uses permitted by the applicable zoning district, then they are the type of buildings for housing a home occupation under ORS 215.448(1)(c).”

Malheur County Code defines ‘building’ as, “Any temporary or permanent structure built and maintained for the support, shelter or enclosure of people, motor vehicles, animals or personal or real property of any kind.”

The planning commission concludes the use of any temporary or permanent structure built and maintained for the support, shelter or enclosure of people, motor vehicles, animal or personal or real property of any kind, which is normally associated with farm dwellings or other agricultural uses permitted by the applicable zoning district (EFU) will meet the criteria of ORS 215.448(1)(c) and can be used by Applicants for the venue. This may include large tents, canopies, stands, barn etc.

- d. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located; and

Finding: Based upon the above findings, this use will not unreasonably interfere with other uses permitted in this zone. This criterion is met.

2. The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section. Conditions of approval are set out below.
3. Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.
4. The existence of home occupations shall not be used as justification for a zone change

OTHER FINDINGS OF FACT

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

CONDITIONS OF APPROVAL

1. PERFORMANCE STANDARDS:

- a. Adequate fire standards shall be maintained. (Exhibit 3).

- b. All aspects of the proposed home business (event venue) must stay confined within the boundaries of the subject property.
- c. All events at the venue shall be limited to a maximum of 250 guests.
- d. For additional access off Oak Rd, a 10” culvert for drainage shall be installed. (Exhibit 2).
- e. Any deviation from this proposal, including but not limited to additions of new permanent structures, shall void this permit and a new permit must be obtained. This permit is not transferable- it is personal to the Applicants and shall not run with the land. New owners of the property will need to obtain a permit.
- f. The home business must be operated substantially in the dwelling or a building that is associated with the farm or farm dwelling. The use of any temporary or permanent structure built and maintained for the support, shelter or enclosure of people, motor vehicles, animal or personal or real property of any kind, which is normally associated with farm dwellings or other agricultural uses permitted in the EFU zone may be used. No event shall take place outside the hours of 8:00 a.m. – 10:00 p.m.
- g. Lighting shall not project off the property. Use of glaring lighting is prohibited.
- h. Events shall comply with all requirements of the Oregon Liquor Control Commission (OLCC) and caterers must be licensed through the Malheur County Environmental Health Department.
- i. Noise levels must not be unreasonable – ORS 166.025.
- j. Off-site parking is not allowed.

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 wedding venue, in an exclusive farm use zone.

ORDER

This application for conditional use permit for a home business (event venue) referenced above 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



Date