

**Before the Planning Commission**

**Planning Department File No. 2022-05-021**

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

Planning Commission Meeting Date: June 23, 2022

- 1. APPLICANT:** Ryan & Becca Maag  
3663 Lincoln Dr  
Ontario OR 97914
- 2. OWNER OF RECORD:** Ryan & Becca Maag  
3663 Lincoln Dr  
Ontario OR 97914
- 3. PROPOSED ACTION:** Conditional Use approval for one non-farm dwelling.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 300, T19S, R47E, Sec. 7; Assessors Map 19S47E07; Malheur County Reference #9616.
- 5. PROPERTY LOCATION AND DIRECTIONS:** from Nyssa, head north on Hwy 26 for 3.5 miles. Turn left on Gem Ave. Continue for ¼ mile. The property is north of Gem Ave, on the right-hand side.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The parcel is 5.00 acres.
- 8. PARCEL USE:** Vacant, with some irrigated land being used for row crops.
- 9. SURROUNDING USE:** All the surrounding properties are employed in farm use, except for the adjoining parcel directly south, which is the site of an old gravel pit.
- 10. ACCESS:** Gem Ave. (Letter Attached)
- 11. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.
- 12. FIRE PROTECTION:** The parcel is within the Nyssa Rural Fire Protection District. (Letter Attached).
- 13. NATURAL HAZARDS:** None.

- 14. WATER RIGHTS:** The property currently has some water rights; however, the site of the proposed non-farm dwelling will be on the non-irrigated portion of the parcel.
- 15. SOIL TYPE:** The majority of the soils on the property are predominately class III, with a very insignificant amount of soils class I. The site of the proposed dwelling is non-irrigated and is covered in soils of class III.
- 16. ZONING HISTORY:** The subject parcel was partitioned off the farm ground through a conditional use permit for a non-farm partition and a non-farm dwelling, in 2006. (CUP#2006-05-007). The partition plat was recorded 12/05/2006 through the instrument #2006-8802 (Exhibit 5).

The farm use statement had been entered into the chain of title (recorded instrument #2007-5666, Exhibit 6) as a condition of approval of the CUP and the parcel has been permanently disqualified from the farm use special assessment for tax purposes, as of 2007.

The conditional use permit has been expired since 2010. There was a 2-year extension granted in 2010, extending the approval through 2012. No non-farm dwelling was built.

#### **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.**

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

**Finding: Letter notice was sent to adjoining landowners on June, 7<sup>th</sup> 2022 and published in the Argus Observer on June, 3<sup>rd</sup> 2022. No comments were received.**

- D. Availability of services and utilities.

**Finding: The parcel is located within the Nyssa 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 dwelling 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 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.

**Finding: The proposal is to build a house on this parcel. The proposed 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: The proposed 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.

**Finding: The subject parcel has direct access from Gem Ave. No new access must be obtained (see attached letter).**

4. Visual screening of outdoor waste and storage areas.

**Finding: The proposed development is for a dwelling. 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. The applicants will continue to farm the irrigated acreage. The proposed 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 proposal is for a non-farm dwelling along with row crops – an approved farm use. Due to the location of the proposed building site and the distance to other existing developments, this will not interfere seriously with the accepted farming practices on adjacent land.**

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 farm statement was previously introduced into the chain of title through the recorded instrument #2007-5666, Exhibit 6.**

## **OTHER FINDINGS OF FACT**

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

## **CONDITIONS OF APPROVAL**

1. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
2. The existing access road must be built in accordance with the International Fire Code, as prescribed by the Nyssa Rural Fire. The driveway shall be a 20-foot wide all-weather road with adequate all-weather turnaround space at the end supporting at least 60,000 lbs. An unobstructed height of 14 feet and grade should not exceed 10%.
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**

Exhibit 1: Conditional Use Permit Application

Exhibit 2: Letter from Nyssa Rural Fire Department

Exhibit 3: Letter from Nyssa Rural Road Assessment District #2

Exhibit 4: Letter from Owyhee Irrigation District

Exhibit 5: Partition Plat No. 06-27, recorded instrument no. 2006-8802

Exhibit 6: Farm use statement, recorded instrument #2007-5666

## **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 in an exclusive farm use zone.

## **ORDER**

This application for a conditional use permit for a non-farm dwelling 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  
Edward Anthony

7-23-22  
Date