

Before the Planning Commission

Planning Department File No. 2022-12-009

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

Planning Commission Meeting Date: January 26, 2023

- 1. APPLICANT:** Larry Wilson
3573 Hwy 201
Ontario, OR 97914
- 2. PROPERTY OWNER:** Michael A. Kurtz
776 Cloverdale Ave
Nyssa, OR 97913
- 3. PROPOSED ACTION:** Conditional Use approval for two non-farm dwellings and two non-farm partitions (2-acres each).
- 4. PROPERTY IDENTIFICATION:** Tax Lot 900, T19S, R46E, Sec. 34; Assessor's Map 19S46E34; Malheur County Reference #9575 and tax lot 300, T.20S, R46E, Sec.2; Assessor's Map 20S46E02; Malheur County Reference #9969. The tax lots make up one single unit of land, split across 2 maps.
- 5. PROPERTY LOCATION AND DIRECTIONS:** From Nyssa, head west on Park Ave; continue for 1.9 miles. Continue straight onto Alberta Ave for another 1.3 miles. Turn left onto Grey Blvd. Continue south for 1 mile. Turn right onto Cloverdale Ave. The destination will be 200 ft to the west.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The property is 139.65 acres.
- 8. PARCEL USE:** The property is currently being farmed (row crops). There is also a residence on tax lot 900.
- 9. SURROUNDING USE:** The property is surrounded in entirety by farmland.
- 10. ACCESS:** The proposed non-farm partitions will have a shared access off Cloverdale Ave, through a 30 ft. easement (Letter attached).
- 11. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for each proposed non-farm dwelling site.

12. FIRE PROTECTION: The sites of the proposed non-farm partitions are within Nyssa Rural Fire Protection District. (Letter attached).

13. NATURAL HAZARDS: None.

14. WATER RIGHTS: The property has water rights. There is a 1.7-acre irrigated area directly south of Cloverdale Ave. There are no water rights on the site of the proposed non-farm partitions. (Map attached).

15. SOIL TYPE: The soils on the parent property are a mix of class III, VI and VIII. The site of the proposed partitions is covered in soils of class VI and VIII and a small portion of class III.

16. ZONING HISTORY: The dwelling on tax lot 900 was constructed in 1940 and a machine shed was added in 1999. There are no constructions on tax lot 300. In 2009, there was a conditional use permit for 2 non-farm partitions and 2 non-farm dwellings previously approved. The permit expired in 2013 and it was not executed. 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 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 4, 2023 and published in the Argus Observer on January 4, 2023. 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 unirrigated land, and hadn't been used for farming.

- 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 dwellings are outside the sage grouse habitat. There is no identified critical fish habitat. Because of those findings, the proposed structure would 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 2 non-farm partitions and 2 non-farm dwellings. The nearest home site will be at least 350 ft away and there will be no impacts on adjoining properties.

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

Finding: The proposed dwellings would benefit the appearance of the neighborhood and County.

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

Finding: Each of the proposed non-farm partitions will have access off Cloverdale Ave. The access would have to across the existing driveway, used for accessing the dwelling at 776 Cloverdale Ave, as indicated by Nyssa Road District Supervisor.

4. Visual screening of outdoor waste and storage areas.

Finding: The proposed development is for dwellings. Outdoor waste storage will 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.

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. There will no net loss of the farmed ground on the parent parcel. The parent parcel is surrounded by properties that are zoned exclusive farm use. These properties will not be impacted by the placement of two new dwellings on the proposed non-farm partitions. The proposed dwellings will have private driveways, designated to only access the proposed dwellings, so there will be no impact to the Cloverdale Ave traffic.

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: The current farming will continue. All existing farm ground in this proposal will remain unchanged. 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 sites of both the proposed partitions are not currently being farmed. Therefore, a single-family dwelling on these partitions will not interfere with adjacent farm practices.

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

Finding: Due to the condition of the soils and zoning history of the parcel, there is no other further development anticipated within the study area.

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 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: Due to the inexistence of the water 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: Each of the proposed non-farm partition will be 2 acres, enough to reasonably accommodate the placement of a home with landscape. Neither one of the proposed partitions sites currently have water rights. The remaining farm land will not be impacted.

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: Both proposed partitions are located on vacant land and both partitions are outside of farm operations.

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 soils on both proposed partitions are categorized as class VIII, VI and a small portion of soils class III, however there are no water rights on these sites and they never have been farmed.

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.

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 900, T19S, R46E, Sec. 34; Assessor's Map 19S46E34; Malheur County Reference #9575 together with the tax lot 300, T.20S, R46E, Sec.2; Assessor's Map 20S46E02; Malheur County Reference #9969.)

“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 parcels upon which the dwellings are proposed to be located have 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 access shall be secured for each individual partition, by dedicated easement, across from the existing driveway to 776 Cloverdale Ave, as indicated in Nyssa Road District's letter (Exhibit #4) and shall be constructed to meet the Nyssa Rural Fire District's requirements and International Fire Code standards.
4. Adequate firebreaks shall be constructed and maintained to minimize danger from potential

wildfire.

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.

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 5:00 pm 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