

**Before the Planning Commission**

**Planning Department File No. 2023-05-001**

**CONDITIONAL USE APPLICATION  
FOR  
A MINOR HOME OCCUPATION**

Planning Commission Meeting Date: June 22, 2023

1. **APPLICANT:** Randal McLay  
2978 Fairview Drive  
Nyssa, Oregon 97913
2. **OWNER OF RECORD:** David & Carla Robbins & Dona Mathews  
892 Cloverdale Avenue  
Nyssa, Oregon 97913
3. **PROPOSED ACTION:** Conditional Use approval for a minor home occupation to operate a Federal Firearms License.
4. **PROPERTY IDENTIFICATION:** Tax Lot 101, T20S, R46E, Sec. 2; Assessors Map 20S46E02; Malheur County Reference #20185.
5. **PROPERTY LOCATION AND DIRECTIONS:** from Nyssa follow Hwy 201 south to Enterprise Avenue (approximately 3.1 miles). Continue on Enterprise Avenue for 1.1 miles. Turn right onto Fairview Drive for 0.5miles. The property is on the right.
6. **ZONING:** Exclusive Farm Use (C-A1).
7. **PARCEL SIZE:** The parcel is 104.36 acres.
8. **PARCEL USE:** Parcel is currently being used as farmland and has a home site.
9. **SURROUNDING USE:** The adjacent properties are employed in farm.
10. **ACCESS:** Fairview Drive. (See Exhibit 2 – Nyssa Road Assessment District #2 Letter)
11. **SANITATION REQUIREMENTS:** This conditional use will not require an onsite wastewater treatment system.
12. **FIRE PROTECTION:** The parcel is located within the Nyssa Rural Fire Protection District.
13. **NATURAL HAZARDS:** No natural hazards located on the parcel.

**14. WATER RIGHTS:** The property currently has water rights.

**15. SOIL TYPE:** The soils on the property are class III, IV, and VI.

**16. ZONING HISTORY:** In 2007 this parent parcel was granted a non-farm partition as a conditional use permit. A replacement farm dwelling was approved in 2022.

**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 regulates the conditional use process for a minor home occupation.**

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

**Finding: Letter notice was sent to adjoining landowners on June 1, 2023 and published in the Argus Observer on May 31, 2023.**

**No testimony has been received.**

- D. Availability of services and utilities.

**Proposed Findings:**

**ROADS:** There will be no impact on the roads. The current access to Fairview Drive is more than sufficient for the few times per year that the site will be visited.

**FIRE & POLICE PROTECTION:** There will be no impact to fire and police protection.

**SEWER & WATER:** There will be no impact.

**ELECTRICAL & TELEPHONE:** There will be no impact.

**SOLID WASTE DISPOSAL:** There will be little to no impact. This business will generate an insignificant amount of trash and will be handled by the local disposal route.

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

economic characteristics.

**Finding: This business has been around Malheur County for around 39 years. It will provide the opportunity for members of the community to purchase firearms at wholesale prices.**

- 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 business will be ran from within the already existing home. No new structures will be built. Little to no traffic will be generated. Therefore, there will be no interference with any 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 distance from neighboring properties will ensure that none of the adjoining properties are disturbed by noise. Additionally, there will be no retail showroom.**

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

**Finding: The remoteness of the location lends no possible visual benefit to any improvements.**

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 current driveway and access to the property are sufficient for access.**

4. Visual screening of outdoor waste and storage areas.

**Finding: There will be no outdoor waste areas.**

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

**Finding: No outdoor lighting is being installed.**

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 use will have little to no impact on the surrounding agricultural use. Gravel roads already in place will be used for access and the surrounding range and farmlands will not be affected.**

**6-6-8-6: MINOR HOME OCCUPATION:** A minor home occupation shall comply with the following standards:

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

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

2. Scale: A minor home occupation must fit within the dwelling without expanding the structure or within an existing residential garage or accessory building, and must be incidental to the use of the dwelling as a residence and incidental to the original uses of the residential garage or accessory building.

**Finding: This business will be located entirely within the existing dwelling and will be less than 2,500 square feet.**

3. Participants: No persons other than family members living on the property shall be engaged in the minor home occupation.

**Finding: The applicant (and occupant of the home) will be the sole employee.**

4. Character: The property upon which the minor home occupation exists shall be kept in a clean, neat, orderly fashion. There shall be no visible evidence of the conduct of a minor home occupation from outside the property except as otherwise allowed by this section.

**Finding: The house will be unchanged, and will be kept clean and orderly.**

5. Storage: All materials associated with the minor home occupation shall be contained within the allowed dwelling, garage or accessory building.

**Finding: The business and all materials will be solely within the confines of the existing home.**

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

**Finding: The business will be entirely within the existing home and will not have any display of products.**

7. Signs: Notwithstanding chapter 7 of this title, there shall be no signs advertising or identifying the minor home occupation.

**Finding: There will be no signage advertising the business on the property.**

8. Traffic: Customer, client and/or business traffic shall not exceed five (5) 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: In the last 5 years, the applicant has had 23 customers. There will be little to zero additional traffic.**

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

**Finding: There will be no additional vehicles.**

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: Days of operation are Monday through Sunday 8am to 5pm. There is little noise generated by the operation.**

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

**Finding: There are no odors associated with this business.**

- 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: There are no electrical interferences generated by this use.**

## **OTHER FINDINGS OF FACT**

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

## CONDITIONS OF APPROVAL

### 1. PREREQUISITE:

- a. All aspects of the proposed minor home occupation must stay confined within the existing home.

### 2. PERFORMANCE STANDARDS:

- a. Adequate fire standards shall be maintained.
- b. Applicant must use the existing driveway access off Fairview Drive.

## 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 minor home occupation in an exclusive farm use zone.

## ORDER

This application for a conditional use permit for a minor home occupation 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.

  
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Planning Commission Chair  
Kathy Clarich

6-29-2023  
Date