

Before the Planning Commission

Planning Department File No. 2023-12-008

**CONDITIONAL USE APPLICATION
FOR
A NON-FARM DWELLING AND A NON-FARM PARTITION**

Planning Commission Meeting Date: January 25, 2024

1. **APPLICANT:** Chris & Allison Paulsen
26511 Peckham Rd
Wilder, ID 83676
2. **PROPERTY OWNER:** Bruce & Patricia Sexton
1247 Cow Hollow Rd
Nyssa, OR 97913
3. **PROPOSED ACTION:** Conditional Use approval for a non-farm dwelling and a non-farm partition. Proposed non-farm partition will be approximately 9.5 acres.
4. **PROPERTY IDENTIFICATION:** Tax Lot 1700, T20S, R45E, Sec. 14; Assessor's Map 20S45E; Malheur County Reference #10116.
5. **PROPERTY LOCATION AND DIRECTIONS:** The property is located about 14 miles southeast of Nyssa, on Mitchell Butte Rd: from Nyssa, head southwest on Hwy 201 for about 4 miles. Turn right onto Grand Ave. Continue for 5 miles. Grand Ave turns left and becomes Norwood Ave; continue for 0.6 miles. Turn right towards Cow Hollow Rd and continue for 2.2 miles. Turn left onto Mitchell Butte Rd. Continue for about ½ mile. The site of the proposed partition will be on the right, past the canal.
6. **ZONING:** Exclusive Farm Use (C-A1) and Exclusive Range Use (C-A2).
7. **PARCEL SIZE:** The property is 97.65 acres.
8. **PARCEL USE:** The property is currently being farmed (corn, wheat and alfalfa). The entire portion of the property that is west of the North Canal, zoned C-A2 is not being farmed.
9. **SURROUNDING USE:** The property is surrounded in entirety by farms with 2 farm dwellings on the properties directly adjacent to the subject parcel.
10. **ACCESS:** The proposed non-farm partition will have direct access off Mitchell Butte Rd.
11. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for the new proposed non-farm dwelling site.

12. FIRE PROTECTION: The site of the proposed non-farm partition is within Nyssa Rural Fire Protection District.

13. NATURAL HAZARDS: None.

14. WATER RIGHTS: The property has 63 acres of water rights. There are no water rights on the site of the proposed non-farm partition. (Map and letter attached – Exhibit #2).

15. SOIL TYPE: The soils on the parent property are predominately of class III and there is a small portion of soils of class IV on the site of the proposed non-farm partition.

The soil types on the portion of the property west of the North Canal have not been surveyed by NRCS (Natural Resources Conservation Service).

16. ZONING HISTORY: There is no 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 5, 2024 and published in the Argus Observer on January 5, 2024. No public comments have been received.

D. Availability of services and utilities.

Finding: The entire parent 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 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 the proposed non-farm partition is on land that historically hadn't been used for farming. The addition of the non-farm dwelling will contribute to the local tax base, and allow for generational property ownership.

- 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 non-farm dwelling is 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 for a non-farm partition and a non-farm dwelling. The nearest home site will be more than 2,000 ft away and there will be no impacts on adjoining properties due to natural barriers.

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

Finding: The proposed new dwelling 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: The proposed non-farm partition will have direct access off Mitchell Butte Rd and there is already an existing approached in place that has been deemed to have adequate visibility in both directions, per Malheur County Roadmaster (Exhibit #3). Per Nyssa Road District, a 12-inch culvert will be required to be put into the approach.

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, as the site of the proposed non-farm dwelling is surrounded by farm ground, the nearest home site being more than 2,000 ft away.

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 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. 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 one new dwelling on the proposed non-farm partition as this site has not been farmed before. The proposed dwelling will have a private driveway, designated to only access the proposed dwelling, so there will be no impact to the Mitchell Butte Rd 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 site of the proposed partition has not historically been farmed. Moreover, the area on the adjacent properties to the north and east, that will share a boundary line with the proposed non-farm partition has not been farmed either and there will be no need to impose a setback to the existing agricultural practices. Therefore, a single-family dwelling on this partition 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 significant development anticipated on the parent parcel. Within the study area, there are 12 parcels larger than the minimum parcel size that may be divided to create new parcel for non-farm dwellings.

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.

Finding: The site of the proposed non-farm partition has not been historically farmed and does not have water rights. The irrigated soils capability on this site is categorized as class III and IV, however, due to the lack of the water rights, the soil capability is downgraded to class VI, which is deemed as non-high-valued farm land and of no significant value to farming productivity.

- 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 non-farm partition, it cannot be reasonably put to farm use in conjunction with other land. From these facts, it is concluded that the proposed single family non-farm dwelling 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 proposed non-farm partition will separate the non-irrigated area from the irrigated and productive farm ground. Due to the geographical condition of this site, sloped and of poor soils quality, it has been chosen as the site of the proposed non-farm partition. 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: The site of the proposed non-farm partition is located on vacant land and is outside of the current farming operations.

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

Finding: The site of the non-farm partition is currently 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 the proposed non-farm partition are categorized as class III and IV, only if irrigated; however, without water rights, the soils capability is only class VI and the site of the proposed non-farm partition has never 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 partition 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: The proposed non-farm partition is for a single-family residence 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 parcel: (Parent parcel is Tax Lot 1700, T20S, R45E; Assessor’s Map 20S45E; Malheur County Reference #10116.)

“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 parcel upon which the dwelling is proposed to be located has 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 the non-farm partition A 12-inch culvert shall be put into the existing approach. The driveway shall be constructed to meet the International/Oregon Fire Code requirements.
4. Any new structure built must meet International/Oregon Fire Code requirements for structure design, considering the minimum fire-flow requirements for structure size and constructions. 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 a non-farm dwelling and a non-farm partition in an exclusive farm use zone.

ORDER

This application for a conditional use permit for a non-farm dwelling and a non-farm partition 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