

Before the Planning Commission
Planning Department File No. 2024-03-007

**CONDITIONAL USE APPLICATION
FOR
A HOME BUSINESS**

Planning Commission Meeting Date: April 25, 2024

- 1. APPLICANT:** Roderick and Dixie Moeller
3651 Alameda Dr
Ontario, Oregon 97914
- 2. OWNER OF RECORD:** Roderick and Dixie Moeller
3651 Alameda Dr
Ontario, Oregon 97914
- 3. PROPOSED ACTION:** Conditional Use approval for a home business for the purpose of operating a venue.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 700, T18S, R47E, Sec. 32; Assessor's Map 18S47E32; Malheur County Reference #9361.
- 5. PROPERTY LOCATION AND DIRECTIONS:** from Ontario, head south for 6 miles on Alameda Dr. The property is located at 3651 Alameda Dr, Ontario, OR.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** The parcel is 5.19 acres.
- 8. PARCEL USE:** The primary use of the property is for a single-family dwelling with a few miscellaneous residential improvements. The site also has a vacant and irrigated field.
- 9. SURROUNDING USE:** All the adjacent properties are being farmed. The property to the north east is a farm with a homesite.
- 10. ACCESS:** Access is directly off Alameda Dr. (Exhibit 2)
- 11. SANITATION REQUIREMENTS:** No sanitation system will be required as only porta potties will be used to provide restroom accommodations.
- 12. FIRE PROTECTION:** The parcel is located within the Nyssa Rural Fire District. (Exhibit 3)

- 13. NATURAL HAZARDS:** No natural hazards have been identified.
- 14. WATER RIGHTS:** The property is within Valley View Irrigation District boundaries.
- 15. SOIL TYPE:** The entire property is covered in soils of class II.
- 16. ZONING HISTORY:** The existing stick-built home was constructed in 1900. The barn was constructed in 1987.
In 2019, the parcel was partitioned off the adjacent farm ground, through a conditional use permit for 2 non-farm dwellings and 2 non-farm partitions (CUP#2019-09-012). 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(C) 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 April 4, 2024 and published in the Argus Observer on April 3, 2024. No comments were received.

- D. Availability of services and utilities.

Findings:

ROADS: The entrance to the property will be off of Alameda Rd. No additional access points will be required.

FIRE & POLICE PROTECTION: The proposed venue site is located in the Nyssa Rural Fire District. All driveways and facilities will comply with current fire and safety regulations. There will be little to no impact on the police protection.

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

ELECTRICAL & TELEPHONE: No additional power will be required to support the operation of the venue.

SOLID WASTE DISPOSAL: Waste will be disposed through Sunrise Septic.

- 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 a regulated tax-paying entity. The operation will increase the County's tax revenue. The venue will also be hosting events which will source local restaurants, bakeries, grocery stores, RV parks and hotels.

- 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 wedding 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 possibilities of overshadowing the adjoining property will be reduced by the natural geographical location – the closest dwelling, beside the owner's dwelling, is more than 900 ft away. The noise or lighting nuisances will be limited within the bounds of the dedicated County Code regulation. Odor will be minimal. The only dwelling located in close proximity of the venue is the one occupied by the venue operators. All other dwellings are more than 900 ft away from the proposed venue site.

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

Finding: Landscaping improvements will include an overall site clean-up, newly-painted buildings and repaired large areas, and planting of grass.

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. The traffic will be directed onto and off the

property in a circular manner, with dedicated and separated entrance and exist. All parking will be contained within the boundaries of the subject property.

4. Visual screening of outdoor waste and storage areas.

Finding: There will be no outdoor waste areas or 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 area only. During non-operating hours, outdoor lighting will be minimal and for security purposes only and will not have any impact beyond the boundaries of the subject property.

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: Adjacent farmland will not be impacted by the development. The property is adjacent to Alameda Dr to the east. Along the property borders, there will be better weed control, which will be beneficial for the neighbor's crops.

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 structures. The proposed business office will be located within the existing home. All office-related activities (scheduling, bookkeeping, organizing, etc.) will be conducted from the office. The venue will be

outside and within the existing barn, which is 2,400 sq. ft. 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: There will be no employees. The sole operators will be Rick and Dixie Moeller – 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 and the property will return to its natural pasture. 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 barn. The office and office equipment will be confined to the existing dwelling. 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 existing accessory structure, which is normally associated with uses in the EFU Zone. This criterion is met.

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

Finding: There will be visual signs to identify the entrance, exit and parking, within the property. 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 a venue able to host events of various party sizes. At this time, there is no anticipation on hosting events every single day of the week or even every weekend of the year. The proposal is for 5-6 parties per year. There will be no parking in the public right-of-way. There will be no delivery vehicles exceeding 11,000 lbs. 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. The pasture will be mowed for events, to provide additional parking. 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, but will be kept to a minimal and non-disruptive to neighbors. No other equipment will be used. The proposed operation hours are from 08:00 a.m. to 10:30 p.m. 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 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 barn and dwelling.

The above described administrative and storage operations are a substantial part of the home business.

The events will be held outside. In addition, Applicant may use the existing barn. 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 Findings of fact in the conditional use application.

CONDITIONS OF APPROVAL

1. PREREQUISITE:

- a. All aspects of the proposed home business (event venue) must stay confined within the boundaries of the subject property.

2. PERFORMANCE STANDARDS:

- a. Adequate fire standards shall be maintained. (Exhibit 3).
- b. Any deviation from this proposal, including but not limited to additions of new structures, shall void this permit and a new permit must be obtained. This permit is not transferable – it is personal to the Applicant and shall not run with the land. New owners of the property will need to obtain a permit.
- c. 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 permanent structure, 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.
- d. The proposed change of use for the existing barn must comply with Malheur County Building Department's and Oregon Building Codes requirements and. **NO OCCUPANCY or USE** of the event center shall be allowed until the certificate of occupancy has been issued.
- e. Lighting shall not project off the property. Use of glaring lighting is prohibited.
- f. 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.

- g. Noise levels must not be unreasonable – ORS 166.025.
- h. Off-site parking is not allowed.

EXHIBITS

- 1. Application
- 2. Letter from Nyssa Fire Department
- 3. Letter from Road Assessment District #2
- 4. Email from Malheur County Building Department

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 home business in an exclusive farm use zone.

ORDER

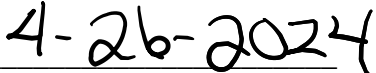
This application for a conditional use permit for a home business is approved.

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