

**Before the Planning Commission**

**Planning Department File No. 2024-04-018**

**CONDITIONAL USE APPLICATION  
FOR**

**Conditional Use Permit for Commercial Activity in a Rural Service Center Zone**

Planning Commission Meeting Date: May 23, 2024

- 1. OWNER OF RECORD:** **Rock Store Property Holding**  
2499 Hyw 201  
Nyssa, OR 97913
- 2. APPLICANT:** Tyler Simpson, Member of Owner  
2499 Hwy 201  
Nyssa, OR 97913
- 3. PROPOSED ACTION:** Conditional use approval for a commercial activity in the Rural Service Center Zone – Owyhee Corner. The proposed commercial activity consists of a tap house- an eating and drinking establishment with alcohol - beer/and or wine on tap; 2 restrooms and a lottery room. Under MCC 6-3F-3 commercial activities, including but not limited to, eating and drinking establishments, business and professional offices, and retail services including sales and display room and lots are a conditional use in the Rural Service Center Zone. The tap house will be a 2000 square foot (40' x 20') separate building constructed from shipping containers that have been repurposed. Applicant provided engineered plans and illustrations of the building (Exhibit 9). This new use will be near the back patio/ concrete slabs but not attached to any structure that currently exists on the property. A site plan of the property is attached as Exhibit 5.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 101, T20S, R46E, Sec. 35A; Assessors Map 20S4635A; Malheur County Reference #20605.
- 5. PROPERTY LOCATION AND DIRECTIONS:** The property is located southwest of the intersection of Owyhee Ave and Hwy 201 in Nyssa, OR.
- 6. ZONING:** C-RSC (Rural Service Center).
- 7. PARCEL SIZE:** The parcel is 5.14 acres.
- 8. PARCEL USE:** Commercial activity of restaurant and store.
- 9. SURROUNDING USE:** Exclusive Farm Use to the east and west (cattle and onion production). Properties to the north are business and residential – within the rural service center zone.

**10. ACCESS:** Via US Hwy 201 and Owyhee Ave. Both the Nyssa Rural Road Assessment District (Exhibit 3) and ODOT (Exhibit 4) have no objection to the access currently being used. No improvements or permits are needed. Ample parking is available as Applicant added a 10,000 square foot concrete parking area lot; and a 10,000 square foot dirt parking also exists.

**11. SANITATION REQUIREMENTS:** The existing customer restrooms at the Rock Store will be utilized and 2 additional restrooms will be constructed. The restrooms will be connected to an existing 2000 gallon private septic system (Exhibit 6). A DEQ sanitation permit will be required which will assess the capacity of adding the new restrooms to existing septic system. The property has 2 wells for domestic water.

**12. FIRE PROTECTION:** Property is within the Adrian Rural Fire Protection District, which requires a 20' wide all weather road. The fire district supports the project (Exhibit 2). The Oregon State Fire Marshal has additional requirements (Exhibit 8)

**13. NATURAL HAZARDS:** There are no natural fire hazards.

**14. ZONING HISTORY:** The property was built in 1932. In 2015 there was a property line adjustment between Reference number 20605 and Reference number 10456 (#2015-10-010). In 2019 there was an addition to the existing property for storage (#2019-06-008). In 2022 there was an addition for additional storage and accessible restrooms (2022-01-007). Applicant withdrew an application for an RV Park (2021-12-016).

**I. MALHEUR COUNTY CODE 6-3F-3 (F): Commercial Activity in a Rural Service Center Zone**

In all RSC zones the performance standards contained in section 6-3G-4 of this chapter shall apply to all nonresidential and all nonagricultural activities. (Ord. 86, 12-7-1993)

**MCC 6-3G-4: PERFORMANCE STANDARDS**

Each structure of use permitted or conditionally permitted in a commercial zone shall meet the following performance standards: (Ord. 86, 12-7-1993)

- A. Physical Appearance: With the exception of gasoline pumps, all operations other than pick-ups and deliveries shall be carried on within an enclosed building: provided, that new materials or equipment in operable condition may be stored in the open, such as a sales lot. Normal daily wastes may be stored in containers outside of a building when such containers are not readily visible from beyond the property line. The provisions of this subsection shall not be construed to prohibit the display of merchandise or vehicles for sale or rental, or the storage of automobiles, farm machinery, trailers, manufactured dwellings or similar equipment in operable condition when in association with a permitted use. This required yard areas other than driveway openings shall be landscaped. (Ord. 147, 4-14-2004)

**FINDING: The proposal is for a new tap house, 2 restrooms and a lottery room to be enclosed within a building constructed from containers. The structure will not impact**

the surrounding neighborhood. Visually the physical appearance of the building is aesthetically pleasing, replaces an old shed, will have hanging flower baskets in the summer months and will be well kept and maintained. The containers will be welded together and feature glass doors and windows for natural light. Wood and metal fences will be constructed for added visual appearance and visual barriers. There will not be any outdoor storage. Typical trash receptors of a dumpster and trash container with lids will be used. Low glare LED lighting will be used that will be directed inside the property. It will not be directed at the road, off-site or in the neighborhood. This type of lighting improves visual appearance and the low-glare will improve the safety of customers and passing vehicular traffic.

- B. Hazard: No operation shall be established which fails to meet the state fire and electrical codes and any other applicable state or federal codes related to safety. This provision shall not be construed to prohibit the use of normal heating fuels, and other volatile materials when handled in accordance with applicable codes.

**FINDING: No hazardous or noxious materials will be used or stored on the premises. An occupancy and electrical permit meeting state and electrical codes for fire and safety will be issued through the Malheur County Building Department. Heating fuels will not be used.**

- C. Noise: No operation shall be carried on which creates noise in excess of the normal traffic noise of the adjacent street at the time of daily peak hour traffic volume. Noise volume generated by the use shall be measured at any property line. The comparable traffic noise shall be measured at the property line adjacent to the street. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

**FINDING: : The tap house and lottery room will operate during current normal business hours of the store and restaurant. Hours of operation will be Monday – Saturday 7:00 a.m. to 8:00 p.m.; and Sunday 8 a.m. to 7:00 p.m. Noise levels not increase with the new use.**

- D. Sewage And Liquid Waste: All operations shall comply with any applicable regulations of the county, state or federal agencies responsible for pollution control. NO wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.

**FINDING: : The proposal will use the existing 2000 gallon septic system. A DEQ permit will be required to ensure that the addition of the 2 new restrooms will fit within this capacity. Liquid waste will not be stored on the property. The proposed use will not create pollution.**

- E. Smoke, Particulate Matter And Gases: No use shall be established which fails to meet the air quality regulations of the Oregon department of environmental quality pertaining to emissions of smoke, particulate matter, fugitive dust, gases and other air contaminants.

**FINDING: Air quality should not be impacted. The use will not emit smoke, matter, dust, gas or other air contaminants.**

- F. Odor: The emission odors that are generally agreed to be obnoxious to any considerable number of persons is prohibited. Observations shall be made at the property line of the establishment generating the odor. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes are objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious.

**FINDING: No objectionable odor will be created, other than the odor of food items being prepared in the restaurant facility. Hood vents are also used in the restaurant to disperse odors. They are cleaned regularly.**

- G. Vibration: All machines shall be mounted so as to minimize vibration and in no case shall such vibration be perceptible, without the use of instruments, at the property line.

**FINDING: Vibration will not be created. Machinery is not used.**

- H. Glare And Heat: Any glare producing operations, such as welding arcs, shall be shielded so that they are not visible from the property line. Surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line.

**FINDING: Neither glare nor heat producing operations will exist from the operation of the proposed tap house and lottery room. Low glare LED lighting will used on the parameters.**

- I. Dust: All surfaces used in the operation of the use shall be graveled or paved with a dust free surface. Gravel surfaces shall be watered down when conditions of use or weather cause dust to travel toward structures on adjacent properties.

**FINDING: The area surrounding the building in the northeast direction is covered in a concrete slab. The remaining area is covered in dirt/gravel parking lots that have water systems in place.**

- J. Interpretation: Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments. Until such evidence or engineering data is supplied and proves to be convincing, the judgment of the planning director shall be the determining factor. (Ord. 86, 12-7-1993)

**FINDING: Applicant stated a clear understanding of the standard requirements and adherence to codes. The building has been professionally engineered, permits will be**

**obtained and Applicant agrees with all conditions of approval set out below.**

**6-3F-6: FENCING REQUIREMENTS:** Fencing may be required between an RSC Zone (except Jamieson) and adjoining EFU, EFFU or ERU property upon a finding by the planning commission that a problem exists that can be alleviated by adequate fencing. Upon a complaint filed by adjoining property owners, a public hearing will be held to determine if fencing will be required.

**PROPOSED FINDING: All fencing requirements have been met and no additional fencing is needed.**

**6-3F-7 DIMENSIONAL STANDARDS:** The following dimensional standards shall apply in all RSC zones:

A. Lot area. The minimum lot area shall be one acre or a larger area determined to be in compliance with the applicable department of environmental quality rules and regulations regarding sewage disposal and water supplies, provide that:

1. All septic tanks, drainfields and wells shall be located on the same lot with the facility that is being served.
2. A department of environmental quality evaluation report from the authorized DEQ representative shall be required.

**PROPOSED FINDING: The dimensional standards at the site are met. The septic system, drainfields and wells are on the same property with adequate distances between the septic system and wells. The County Environmental Health Office (DEQ representative) will evaluate the addition of the 2 new restrooms being connected into the existing system.**

B. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities shall be closer than forty feet (40') from a street or road right of way line, fifteen feet (15') from any other property line, twenty feet (20') from any major irrigation canal right of way. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback shrubbery other than trees shall be maintained at heights not exceeding three feet (3').

**PROPOSED FINDING: All setbacks will be met.**

### **PROPOSED CONDITIONS OF APPROVAL**

1. The conditional use permit granted by the County is valid for a period of two years from the date the permit becomes effective, which is 10 days after the notice of decision is

- sent provided there is no appeal.
2. A DEQ septic permit must be obtained to be able to use the existing septic system on site.
  3. An operating license for the tap house may need be obtained from the Oregon Department of Agriculture or Oregon Health Authority.
  4. A liquor license must be obtained from the Oregon Liquor and Cannabis Commission.
  5. The State Lottery Commission must approve the lottery room.
  6. Construction and structures must meet Building Code requirements. See Exhibit 7
  7. Fire code must be met per Oregon State Fire Marshall. See Exhibit 8
  8. Extended hours on Friday and Saturday to 9pm.

## **EXHIBITS**

1. Application
2. Letter from Adrian Rural Fire Protection District
3. Letter from Nyssa Rural Road Assessment District #2
4. Letter from ODOT
5. Site plan.
6. Septic system information.
7. Letter from Malheur County Building Department
8. Letter from Oregon State Fire Marshall
9. Illustration of container building.

## **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**

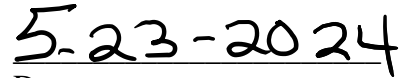
This application for a conditional use permit is approved.

## **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

  
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Date