

Case Number: 24-BZA-006

Request: Agritourism Site Plan Review

Applicant: Endurance Farm Partners agent for Hidden Valley Orchard/Lane5 LLC, Randal Lane

Staff Report: Completed by Jeff Palmer, Director of Planning & Zoning

Hearing Date: September 10, 2024

Report Date: August 27, 2024

Current Zoning of Properties: Neighborhood Business Zone “B-1” & Open Space Rural Residence Zone “OSR-1”, Open Space Rural Residence Zone “OSR-1”, Residence Zone “R-1”

Description of Properties:

1. 5474 N SR 48 (Parcel Id 09-35-400-024) is 5.01 acres in size. The parcel is zoned Neighborhood Business Zone “B-1” & Open Space Rural Residence Zone “OSR-1”.
2. 5460 N SR 48 (Parcel Id 09-35-400-023) is 30.6058 acres in size. The parcel is zoned Open Space Rural Residence Zone “OSR-1”.
3. N SR 48 (Parcel Id 09-35-400-022) is 28.3893 acres in size. The parcel is zoned Open Space Rural Residence Zone “OSR-1”.
4. Applewood LN (Parcel 09-29-315-005) is 1.1404 acres in size. The parcel is zoned Residence Zone “R-1”.

(See Exhibits: Location Map, 1B, 2B, 3B, 4B)

Background on the Nature of the Request

Staff Comments:

The submittal is for an Agritourism Site Plan Review per Section 21.01 (G) of the Clearcreek Township Zoning Resolution. This section outlines the minimums for submittal and review of an Agritourism Site Plan. An additional application form has not been required to be submitted for this type of request.

The applicant has provided a purpose statement in Exhibit 5B. The applicant has provided an Agricultural Plan in Exhibit 5D.

The Ohio Revised Code (ORC) Section 519.1(C)(4) provides the regulatory parameters for the term Agritourism. “However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to agritourism, except farm markets as described in division (C)(1) of this section, as size of a structure used primarily for agritourism, size of parking areas that may be required, setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect public health and safety.

Nothing in division (C)(4) of this section confers power on a township zoning commission, board of township trustees, or board of zoning appeals to require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement.” (See Exhibits: 13A-D)

ORC Section 901.80 defines Agritourism: “means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity.” (See Exhibits: 14A-C)

Clearcreek Township Trustee Resolution 3480 was approved on December 10, 2008 and established the term agritourism for the first time in the Zoning Resolution. Clearcreek Township Trustee Resolution 5050 was approved on September 11, 2017. This update reclassified the uses that were previously considered Agritourism to Farm Based Tourism. This update also defined Agritourism to mimic the Ohio Revised Code with an additional sentence: “Activities shall be

connected with agricultural production and/or processing.” This text amendment also provided guidelines for Agritourism Site Plan Review. (See Exhibits: 11A-12F)

In order to determine if the proposed uses for this request met the definition of Agritourism and or if the use(s) met the definition of Farm Based Tourism, I requested in addition to the site plan, a list of uses and an explanation of how each was connected with Agriculture. I used Clearcreek Township Zoning Resolution Section 3.027 and the governing law “fact test”: “In order to qualify as an agricultural use or incident to an agricultural use there must be sufficient evidence that the structure-use is directly and immediately related to agricultural use. It must be either usually or naturally and inseparably dependent upon agricultural use.”

The following listed uses fail to meet the review criteria to be Agritourism and are more appropriately classified as Farm Based Tourism or confined to the Neighborhood Business Zone “B-1”: Live Music, Corporate Events and Weddings, Bingo and Trivia Nights, Tractor Painting, Mining Station, Pedal Carts, Barnyard Bounce, Ohio Tiny Town, Hillside Slides, Fire Pits. The applicant was notified of my interpretation prior to their updated submittal. (See Exhibits: 5J , 5W, 5X)

My review excludes the above list from consideration. Several options exist regarding these uses if the applicant desires the use(s) for the site: 1. The applicant can appeal my determination with the Board of Zoning Appeals through an Administrative Appeal. 2. The applicant can apply for a Farm Based Tourism Conditional Use Permit that requests the use(s), 3. The applicant can discontinue these uses on the property zoned Open Space Rural Residence Zone “OSR-1” and/or Residence Zone “R-1”. 4. The use(s) could be confined to the Neighborhood Business Zone “B-1” provided the use is a listed permitted use. 5. Uses found on the parcels that fail to meet the definition of agriculture, agritourism, an approved Conditional Use Permit for Farm Based Tourism or a permitted use in the Neighborhood Business Zone “B-1” will be pursued as zoning violations.

Clearcreek Township Zoning Resolution 21.01(G):

AGRITOURISM SITE PLAN REVIEW:

1. The parcel, on which the Agritourism use is proposed, must be enrolled in the current agricultural use value (CAUV) system through the warren county auditor’s office.
2. The site plan shall contain the following information for the proposed/existing Agritourism use(s):
 - A. Location from all property lines for all Agritourism structures.
 - B. Size dimensions (length & width) of all Agritourism structures.
 - C. Location and size dimensions (length & width) of Agritourism parking areas.
 - D. Location and size dimensions (length & width) of existing and proposed driveways utilized for the Agritourism use.
3. **STANDARDS FOR AGRITOURISM SITE PLAN REVIEW:**

Standards should ensure that the use: is compatible with the area in form and function, will not endanger public health or safety, is designed in such a way to mitigate potential conflicts with adjacent and nearby land uses and that:

 - A. The proposed use shall be physically suitable for the parcel on which it is proposed.
 - B. The proposed use shall locate structures in an area that limits the impact to adjoining properties.
 - C. The proposed use shall provide for access by public emergency equipment such as: fire, ambulance and police vehicles.

- D. The proposed use shall provide for adequate pedestrian circulation, vehicular traffic movement and off-street parking.

Clearcreek Township Zoning Resolution, CHAPTER 3, DEFINITIONS

- SEC. 3.027** **Agriculture**: The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry and accessory uses such as packing, treating, storing or selling produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.
- SEC. 3.028** **Agritourism**: Agriculturally related educational, entertainment, historical, cultural or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in or enjoy that activity. Activities shall be connected with agricultural production and/or processing.
- SEC. 3.07** **Assembly Area**: A definable open area, a partially enclosed structure or a fully enclosed structure used or intended to be used primarily for entertainment events, expositions and other public gatherings.
- SEC. 3.3101** **Farm**: A parcel of five or more contiguous acres that is used for the production of agricultural products, including related structures thereon. The parcel shall be enrolled in the current agricultural use value (CAUV) system through the Warren County Auditor's Office.
- SEC. 3.3102** **Farm Based Tourism**: Activities conducted on a farm and offered to the public or to invited groups for the purpose of recreation, entertainment, hospitality, or unable to be classified as agritourism. The activities shall co-exist with the operation of the farm and may include the following:
1. Recreation: (fishing, wildlife study, horseback riding, sleigh/carriage/wagon rides, stargazing, hiking, community gardens).
 2. Entertainment: (concerts, barn dances, haunted house, haunted hayride, miniature golf, toddler rides, play ground areas, scavenger hunts, craft fair, antique shows, art shows).
 3. Hospitality services: (bed & breakfast, retreat center, assembly area, country weddings, party receptions, picnic, campfires, family reunions, catering, country store, gift shop, fair food, camping).
 4. Other uses as determined appropriate by the board of zoning appeals.
- SEC. 3.57** **Parking Lot**: An area of land devoted to unenclosed parking spaces, either permanent or temporary agritourism in design materials.
- SEC. 3.58** **Parking Space, Permanent**: A surfaced area of not less than one hundred eighty (180) square feet, either within a structure or in the open, exclusive of driveways and access drives, reserved for the parking of a motor vehicle.

SEC. 3.5801 Parking Space, Temporary Agritourism: A permeable area reserved for the placement of vehicles designated by the operator of the event.

SEC. 3.69 Structure: Anything constructed or erected, the use of which requires fixed location on the ground or attached to something having a fixed location on the ground, including permanent buildings, signs, pergolas, swimming pools and telecommunication towers.

Clearcreek Township Zoning Resolution, CHAPTER 5, GENERAL PROVISIONS

SEC. 5.08 Nothing contained in this Code shall prohibit the use of any land for agricultural purposes or the construction or use of any building or structure incidental to such agricultural use, and no zoning certificate shall be required for any such agricultural use, building or structure.

SEC. 5.09 Agritourism shall be subject to site plan review by the Board of Zoning Appeals.

Review of Site Plan and Submitted Information:

1. The parcel, on which the Agritourism use is proposed, must be enrolled in the current agricultural use value (CAUV) system through the warren county auditor's office.

The applicant states: "Yes, shown in tax records in appendix." (See Exhibits:5AG-5AJ)

Staff Comments: The four (4) properties are currently enrolled in the CAUV program. (See Exhibits: 1B, 2B, 3B, 4B, 5AG-5AJ)

2. The site plan shall contain the following information for the proposed/existing Agritourism use(s):
 - A. Location from all property lines for all Agritourism structures.

The applicant states: "Shown in Exhibit A attached." (See Exhibit: 6)

Staff Comments:

1. *The setbacks and uses for the existing structures haven't been specified. (See Exhibits: 1C, 5AG, 5AH, 5AI, 6)*
2. *The setbacks for the proposed structures have been provided. (See Exhibits: 5K, 6, 8B-8K)*
 - a. *The closest proposed Agritourism Structure to the northern property line is the Farm Kitchen, 169' setback. (See Exhbits:5K, 6, 8B, 8H)*
 - b. *The closest proposed Agritourism Structure to the eastern property line is the Cidery, 580' setback. (See Exhibits: 5K, 6)*
 - c. *The closest proposed Agritourism Structure to the southern property line is the Education and Craft Barn, 275' setback. (See Exhibits: 5K, 6, 8B, 8C)*
 - d. *The closest proposed Agritourism Structure to the western property line is the Apple Barn, 826'5". (See Exhibits: 5K, 6)*

B. Size dimensions (length & width) of all Agritourism structures.

The applicant states: “Shown in Exhibits A & B attached.” (See Exhibits: 6, 8B)

Staff Comments:

1. *The size of the existing structures have been specified from the Warren County Auditor’s Office Website print outs, but not on the site plan. (See Exhibits: 1B-C, 2B, 5K, 5AG, 5AH, 5AI, 5AJ, 6)*
2. *Staff calculated the existing structures to total 25,501 sq. ft. (See Exhibits: (See Exhibit: 1B-C, 2B, 5K, 5T-U, 5AG, 5AH, 5AI, 5AJ, 6)*
3. *Staff calculated the proposed Agritourism Structures to total 16,800 sq. ft. (See Exhibits: 5T-U, 8B)*
4. *Staff calculated the proposed Agricultural Structures to total 6,400 sq. ft. (See Exhibits: 5T-U, 8B)*
5. *The former list totals to 48,701 sq. ft (Existing Agricultural Structures, Commercial Structure, Proposed Agritourism Structures, Proposed Agricultural Structures). (See Exhibit: 1B-C, 2B, 5K, 5T-U, 5AG, 5AH, 5AI, 5AJ, 6, 8B)*

C. Location and size dimensions (length & width) of Agritourism parking areas.

The applicant states: “Shown in Exhibit C attached.” (See Exhibits: 6, 7C, 7D, 7G)

Staff Comments:

1. *The Agritourism Parking has been located south of the existing asphalt pavement and gravel parking, perpendicular to State Route 48. (See Exhibits: 5K, 5M-N, 6, 7B-D, 7G)*
2. *For the Commercial section of the site: (See Exhibit: 1D)*
 - a. *Staff counted 31 existing asphalt parking spaces.*
 - b. *Staff counted 41 existing gravel parking spaces.*
 - c. *This totals 72 existing parking spaces.*
 - d. *Based upon the 7,997 sq. ft. structure: (See Exhibit: 1C)*
 - i. *Per Section 16.02 of the Clearcreek Township Zoning Resolution, a minimum of 40 parking spaces are required for retail uses.*
 - ii. *Per Section 16.02 of the Clearcreek Township Zoning Resolution, a minimum of 80 parking spaces are required for a restaurant.*
3. *Proposed gravel/grass parking for Agritourism:*
 - a. *The site plan depicts 761 parking spaces for the entire site (73 paved spaces and 688 overflow spaces). (See Exhibits: 5M-N, 7C-D)*
 - b. *A typical parking space is 12’x20’ or 240 sq. ft. (See Exhibits: 5M-N, 7C-D)*
 - i. *Per Section 3.58 of the Clearcreek Township Zoning Resolution, permanent parking spaces are required to be a minimum of 180 sq. ft.*
 - ii. *The proposed sizes exceed the requirements of the Zoning Resolution.*

- c. *The Parking Plan expects 3.5 people to arrive per car (this calculates to 2,663 people on the site at one time). (See Exhibits: 5M-N, 7C-D)*
- d. *The plan doesn't specify a separate location for employees to park. (See Exhibits: 5M-N, 7C-D)*

D. Location and size dimensions (length & width) of existing and proposed driveways utilized for the Agritourism use.

The applicant states: "Shown in Exhibit A & C." (See Exhibit: 6, 7C, 7D, 7G, 8C, 8D, 8E, 8G, 8I, 8J, 8K)

Staff Comments:

- 1. *The widths of driveways range from 10' in width to 25' in width. (See Exhibits: 5K, 5O, 6, 8K)*

The Board of Zoning Appeals will consider the below standards to ensure that the use: is compatible with the area in form and function, will not endanger public health or safety, is designed in such a way to mitigate potential conflicts with adjacent and nearby land uses. The Board of Zoning Appeals will determine whether or not the Agritourism Site Plan is approved or denied.

- A. The proposed use shall be physically suitable for the parcel on which it is proposed.

The applicant states: "70-acre working farm with 25 acres actively cultivated." (See Exhibit: 5G)

Staff Comments:

- 1. *Per the Warren County Auditor's Website and the applicant's submittal the combined parcels total 65.1455 gross acres. (See Exhibits: 1B, 2B, 3B, 4B, 5AG-5AJ)*
- 2. *Exhibits 5I-K and 6 show the uses for the site. See above for Staff's determination on what uses have been excluded from this review because each fail to meet the definition of Agritourism.*
- 3. *Staff calculated the structures to be 48,701 sq. ft or 1.12 acres in size (Existing Agricultural Structures, Commercial Structure, Proposed Agritourism Structures, Proposed Agricultural Structures). (See Exhibit: 1B-C, 2B, 5K, 5AG, 5AH, 5AI, 5AJ, 6, 8B)*
 - a. *These uses calculate to 1.7 percent of the total acreage.*
- 4. *In addition to the Agritourism Structures, outdoor/assembly areas will be used for Agritourism:*
 - a. *Farm Experience & Education Area, Children's Education & Activity Area, Great Lawn are specified to total 6.5 acres. (See Exhibit: 5L, 5W-X, 5AA)*
 - i. *These uses calculate to 9.98 percent of the total acreage.*

- b. *These areas have not been specified with a setback on the Site Plan. (See Exhibits: 5K, 6)*
 - 5. *Staff calculated the existing paved parking and gravel parking to be approximately .64 acres in size. (See Exhibit 1D)*
 - a. *This use calculates to .98 percent of the total acreage.*
 - 6. *Staff calculated the proposed overflow gravel and grass parking to be approximately 5.61 acres. (See Exhibits: 5K, 5M-N, 6, 7B-D, 7G)*
 - a. *This use calculates to 8.61 percent of the total acreage.*
 - 7. *The applicant specified Rotational Crops and Apple Orchards to consume up to 30 acres. (See Exhibit: 5L)*
 - a. *These uses calculate to 46.05 percent of the total acreage.*
 - 8. *Structures, outdoor assembly areas, parking and area for cultivation calculate to 43.88 acres. After this sum is subtracted from the starting size of 65.1455 acres, 21.27 acres remains. The applicant has not specified what activities will consume the remaining 21.27 acres of the site. (See Above)*
- B. The proposed use shall locate structures in an area that limits the impact to adjoining properties.

The applicant states: “The majority of agritourism activities and offerings are located at a buffer of ~300’ to the property lines.” (See Exhibit: 5G)

Staff Comments:

- 1. *The setbacks and uses for the existing structures haven’t been specified. (See Exhibits: 1C, 5AG, 5AH, 5AI, 6)*
 - 2. *The setbacks for the proposed Agritourism Structures have been provided. (See Exhibits: 5K, 6, 8B-8K)*
 - a. *The closest proposed Agritourism Structure to the northern property line is the Farm Kitchen, 169’ setback. (See Exhibits:5K, 6, 8B, 8H)*
 - b. *The structures of the Children’s Education and Activity Area have not been specified. (See Exhibits: 6, 8J)*
- C. The proposed use shall provide for access by public emergency equipment such as: fire, ambulance and police vehicles.

The applicant states: “Hardscaped access roads run through the property. Sufficient open turn areas and/or radius to be provided.” (See Exhibit: 5G)

The following issues need to be considered:

- 1. *The widths of the accesses and the internal road network have been specified. The ability to comply with Section 503 of the Ohio Fire Code have not been addressed. (See Exhibits:5K, 5M-O, 6, 7B-D, 7G, 8C-K, 10A-C)*

- D. The proposed use shall provide for adequate pedestrian circulation, vehicular traffic movement and off-street parking.

The applicant states: “Exhibit C, 761 max total parking spaces as designed is 3X more than max 4-hour window of arrivals we expect on our busiest day” (See Exhibit: 5G)

Staff Comments:

1. *Prior the submittal the applicant virtually met with The Township Administrator, Police Chief, Fire Chief and myself. Significant discussion occurred regarding the need to improve ingress and egress for the site.*
2. *The applicant represented that ODOT did not require any road improvements or modifications to the existing three (3) access points along SR 48.*
 - a. *The applicant has provided Traffic Count Data from CoStar that represents traffic as a number of trips per day in a given year. (See Exhibit 5AL)*
 - b. *The applicant has provided ODOT Traffic Count data that depicts information only as the number of trips per day in a given year. (See Exhibit 5AM)*
 - i. *I have reached out to ODOT, but at the time of this report have not received confirmation from ODOT as to the discussion or representation regarding the submitted plan.*
 - ii. *Traffic patterns differ by time of day and day of the week. I have reached out to the Warren County Engineer to see if traffic counts exist for the County and Township road intersections north and south of the site.*
3. *Regarding traffic, the applicant has represented that they don't expect significant increase over existing site operations. The busiest days are weekends with regular traffic is lightest on N SR 48. (See Exhibit: 5AF)*
4. *The submittal represents a Parking Plan that allows the northern two (2) accesses along SR 48 of the site to remain with unrestricted ingress and egress movement. The southern access to SR 48 would be an exit only. (See Exhibits: 5M-N, 5P, 7B-D, 7G)*
5. *The submittal represents that the northern two (2) accesses off SR 48 would only be restricted during the busy weekend days. (See Exhibits:5N)*
 - a. *Police Chief John Terrill re-affirmed in his email, it was his direction to use the southern access as the primary point of ingress and egress. The northern access points should be configured for emergency only access or eliminated from the site. (See Exhibit: 9)*
 - b. *The southern access has 40' width at the pavement, but only a 15' access width for the internal road. ODOT would need to be contacted to see if a wider entrance would be required for this access. The road would need to be increased in width to allow two-way traffic from the road right-of-way to the parking lot area. (See Exhibits: 6, 7B-D, 7G)*

6. *The access point from Applewood Lane has not been labeled for intended users. It is unclear if it is to be an emergency only access point, a public access point or a farm use access point or a combination of the former. (See Exhibits: 5K, 6, 8I)*
 - a. *The Fire District indicated that the road needs to be usable as a secondary access point due on the East side of the covered bridge over the creek for the proposed apple barn. Access road will need to meet the requirements for fire apparatus access roads as specified in section 503 of the Ohio Fire Code. (See Exhibits: 10 A-C)*
7. *Internal circulation for pedestrians:*
 - a. *The Parking Plan specifies a separate pedestrian pathway to help reduce conflict with vehicles. (See Exhibits: 5M-N, 7B-D, 7G)*
 - b. *If the northern access points were redesigned for emergency access or eliminated, the pedestrian flow around the existing buildings would be improved.*
8. *Internal circulation for vehicles:*
 - a. *Applicant has specified that they will work with Police and Fire to ensure access roads provide appropriate turning radius for emergency vehicles. (See Exhibit: 5O-P)*
 - b. *The Fire District indicated that the road shown on the plan will need to be usable for emergency vehicles (fire and medic). The roads on the plan are useable but may need to be widened in spots to be determined as the project moves forward. (See Exhibits: 10 A-C)*

Staff recommends Case 24-BZA-006 be DENIED as submitted. Staff's rationale is outlined below:

Review of Site Plan and Submitted Information:

- A. The proposed use shall be physically suitable for the parcel on which it is proposed.
The Agritourism uses appear to be physically suitable for the parcels as proposed.
- B. The proposed use shall locate structures in an area that limits the impact to adjoining properties.
The existing structures and the structures associated with the Children's Education Activity Area have not been specified on the Site Plan or in the submittal. Until all information has been provided, the impact to the adjoining properties can't be determined.
- C. The proposed use shall provide for access by public emergency equipment such as: fire, ambulance and police vehicles.
The submittal did not take into consideration the request from the Police Department to eliminate or reclassify the two (2) northern access points to emergency access only. The topography of State Route 48 limits the view of vehicles turning into or exiting from these two (2) access points. Relocating the only access to the southern access point allows the vehicle exiting the site to have an increased view of traffic on SR 48 (both north and south of

the access point) and for vehicles turning into the site, traffic along SR 48 has a longer unhampered view because the dip and hill have been eliminated from the view of travel. The Applecreek Drive access has not been clarified as to user type. The internal access roads have not been verified to meet Section 503 of the Ohio Fire Code.

- D. The proposed use shall provide for adequate pedestrian circulation, vehicular traffic movement and off-street parking.

Pedestrian circulation will be improved around the existing structures if the northern two (2) access points are eliminated or reclassified to be emergency access only. Parking spaces exceed the size required by the Zoning Resolution. The quantity was determined by the applicant's study. The southern access has 40' width at the pavement, but only a 15' access width for the internal road. ODOT would need to be contacted to see if a wider entrance would be required for this access. The road would need to be increased in width to allow two-way traffic from the road right-of-way to the parking lot area.