

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

**Report Date:** January 7, 2022

**Hearing Date:** February 7, 2022

**Applicant:** Erin Kristbaum and Ronald Sparks Owners of Backstop 48 Properties

**Requested Action:** Zone Change Request from Residence Zone “R-1” to Neighborhood Business Zone “B-1”.

**Current Use:** Vacant, all residential structures have been recently razed.

**Attached:** Location Map, Application, Warren County GIS Aerial of Parcel, Site Plan that integrates 8144/8166 SR 48 with 8142 SR 48, Clearcreek Township 2005 Master Land Use Plan Maps: 4, 6, 10 and 11, Trustee Resolution 3040.

**Location of Request:**

The parcel is located at 8142 State Route 48, parcel number 05-26-452-009, and account 0112224. The request is located in Section 26, Town 3, and Range 5 in Clearcreek Township. The zoning classification is Residence Zone “R-1”. The parcel is .50 acres in size.

**Applicant’s Reasons for the Application:**

Applicant states: “Requesting rezoning of 8142 Route 48 from R-1 to B-1 to accommodate required parking and enhance green space for new business at adjacent property zoned B-1 at 8166 Route 48. Requested parcel is currently vacant with no structures. The revitalization of the adjacent business will require additional parking per zoning. Requested parcel will not interfere with adjacent residences by implementing proper buffers beyond what is required to include privacy fencing and ample landscaping. The new business plan at adjacent parcel is designed to enhance the community with both beautification and fulfilling current needs.”

**Zoning History:**

- In 1973, the property was classified as Rural Residence Zone “R-1”.
- In 2005, the Rural Residence Zone “R-1” was reclassified as Residence Zone “R-1” to comply with Zoning Resolution updates based upon the Master Land Use Plan.
- On April 27, 2006 via Trustee Resolution 3040 a zone change request from Residence Zone “R-1” to Neighborhood Business with a Planned Unit Development Overlay “B-1PUD” was DENIED.

**Background for the Request:**

This is a straight zoning request. A use is not required. A lot layout is not required. A net density plan is not required. Open space is not required.

The current zoning is Residence Zone “R-1” which establishes the primary use of the parcel to be residential. This classification allows a minimum lot size of one half (½) acre with sanitary sewer, one (1) acre without sanitary sewer and one hundred (100) feet of frontage and width and (fifty (50) feet for cul-de-sac frontage). The parcel is an existing lot of record. As is stands today, if an owner could meet all the minimums for a structure, screening and a leach field, I would issue a zoning permit for a single family dwelling. See Chapter 5.75 Residence Zone “R-1” information below.

The request is to rezone the property to Neighborhood Business Zone “B-1” which would allow the identified commercial uses in Chapter 9 Neighborhood Business Zone “B-1” information below.

The applicant owns the parcel to the north (8144/8166 SR 48), a 1.23 acre parcel that is zoned Neighborhood Business Zone “B-1”. The applicant desires to use the subject parcel for vehicular egress, parking and a partial wiffle ball field to complement the adjacent proposed indoor baseball practice facility and restaurant/coffee shop on 8144/8166 SR 48.

Since commercial vehicular access and parking are prohibited from the residential zone, a zone change is needed to accommodate the proposed uses identified on the supplied site plan. If approved, the two parcels would need to be combined into a single parcel.

**Adjoining Zoning Classifications and Current Uses:**

- North:
  - Neighborhood Business Zone “B-1” (Commercial Building, Legal Non-Conforming Single Family Dwelling)
  - East: Residence Zone “R-1” (Single Family Dwelling)
- South:
  - Residence Zone “R-1” (Single Family Dwelling)
- West:
  - Neighborhood Business Zone Planned Unit Development “B-1PUD” (Nursery and Garden Store)

**2005 Master Land Use Plan Information:**

- Map 4 Identifies the property to be outside of all Sanitary Sewer Service Areas.
- Map 6 Identifies the property to have road frontage with a “Principal Arterial – Urban” designation.
- Map 10 Identifies the property to be located in Planning Area #2.
  - Planning Area #2 – Combined existing development or committed developments represent more than 75% of this area, with medium density (1-3 acre lots) using onsite treatment systems.
- Map 11 Identifies the future land use of the property to be Township Residential.
- Applicable Goals, Objectives & Policies:
  - **Related to Desired Community Character:**
    - GOAL:** Retention of appearance and feel of rural character in Clearcreek Township.
    - Objective:** Modify development regulation and approval process to assure retention of rural character.
    - POLICIES:**
      - Continue to serve as a geographical area of rural relief to the sprawl of the surrounding metropolitan areas.
      - The history of frontage subdivisions has set a character that continues to be desirable, but access to properties needs to be guided by access management plan.

- Maintain rural lot size in the Township which contributes to the quality of life for property owners, neighbors as well as drivers, through an establishment or perpetuation of rural icons (homes surrounded by open space, barns, fence rows, vegetation).
- **Related to the Man-Made Environment:**  
 GOAL: A pattern of land use capable of serving and meeting the social, economic and environmental needs of the residents of the Township, now and in the future.  
 OBJECTIVE: Encourage the prudent development of residential areas with housing types and densities to meet the needs of Township residents, ensuring that a healthy, safe and attractive environment is maintained.
- **POLICIES:**
  - Encourage a logical pattern of residential development outside of the Urban Service Areas that is a rural density.  
 OBJECTIVE: Establish areas of commercial activity, ensuring a convenient, safe and pleasant environment in meeting the retail and business needs of Township residents.
- **POLICIES:**
  - Perpetuate rural living by encouraging development only on a neighborhood-oriented basis. Commercial development should be either nestled in the interior of a Planned Unit Development along a collector road or along an arterial road network that has a design suitable for the intensity of use. An access management plan should be imposed.
  - Encourage commercial growth equal to what the market will bear. Over-commercialization should be avoided.
  - Encourage cluster-type development for commercial areas. Establish an overlay for these clusters to further encourage use, scale and materials.
  - Avoid strip commercial development and "spot zoning."

**Zoning Information for Current and Requested Zoning Classifications:**

**CHAPTER 5.75: RESIDECE ZONE “R-1” REGULATIONS**

**SEC. 5.751** The regulations set forth in this chapter, or set forth elsewhere in the Zoning Code are the zoning regulations for Residence "R-1".

**SEC. 5.752 PERMITTED USES:** A building or lot shall be used only for the following purposes:

- A.** Single family dwellings
- B.** Home occupation, subject to the following conditions in addition to any other applicable standards of use of the applicable zoning district not otherwise permitted herein:
  1. Telework or telecommute-based activity shall not be considered as the operation of a home occupation subject to these standards.
  2. Home occupations shall be clearly incidental and subordinate to the principal residential use of the property.
  3. The use is compatible with other uses, maintains and preserves the character of the neighborhood and does not create a nuisance or detract from the residential function and tranquility.

4. The home occupation shall be conducted within the dwelling.
5. No commercial display of materials, merchandise, or goods shall be allowed to be stored outside of the primary residence.
6. The external appearance and/or use of the structure(s) or lot in which the home occupation is conducted shall not be altered to indicate the presence of the home occupation.
7. No expansion of existing off-street parking shall be permitted. Furthermore, no additional parking burden, due to the home occupation, shall be created.
8. The use does not produce offensive noise, vibration, smoke, dust, odors, lighting, electrical interference, radioactive emission, environmental pollution, or other nuisances.
9. Mechanical and electrical equipment used shall be only that normally used or found in a single-family dwelling; and, when performance rated shall be limited to normally domestic ratings rather than commercial or industrial.
10. Not more than one person, who is not a resident of the premises, may participate in the home occupation as an employee or volunteer.
11. The home occupation shall not serve as a location where multiple employees routinely meet or park prior to going to work off-site. Vehicle and equipment parking shall comply with Section 5.15 of the Clearcreek Township Zoning Resolution.
12. Products from internet based home occupations may be stored temporarily as inventory on the premises, during the normal course of said activity, inside the primary residence.
13. Delivery of materials necessary for a home occupation shall be limited to automobiles, light duty trucks (e.g. typical Fedex or UPS home delivery vans and trucks) or vans. Deliveries by heavy trucks shall be limited to two times per week.
14. Traffic generated by a home occupation shall not exceed the average daily volume normally expected for a residence in a residentially zoned neighborhood, which for the purpose of this section, equals up to ten (10) round trips per day.
15. Certain uses by their very nature, have a pronounced tendency to increase in intensity beyond the limits permitted for home occupations, thereby impairing the reasonable use and value of surrounding residential properties. Therefore, the following are prohibited uses or activities as home occupations:
  - a. Adult entertainment or sexually oriented business.
  - b. Ambulance service.
  - c. Day care (excludes plan “a” as defined in the Ohio Revised Code).
  - d. Health salon, gym or aerobic exercise studio.
  - e. Machine shop.
  - f. Medical and dental clinics and hospitals.

- g. Motor vehicle towing, storage, and/or salvage business.
  - h. Nursing homes.
  - i. On-site, store front retail as a primary use.
  - j. Parking on, or dispatching from the site, any vehicle used in conjunction with the home occupation not complying with Section 5.15 of the Clearcreek Township Zoning Resolution.
  - k. Printing shop.
  - l. Restaurants or any other eating and/or drinking establishment.
  - m. Tourist home, bed & breakfast, motel, hotel, inn.
  - n. Trucking, hauling, moving, tow truck service, hearse service, limousine, and cab service.
  - o. Undertaking and funeral parlor.
  - p. Uses that require explosives or highly combustible or toxic materials.
  - q. Uses that require fire safety inspections, precautions or permits or other regulatory inspections or permits involving public health and safety.
  - r. Vehicle: sale, service, repair, body work, painting, detailing, upholstery and/or washing.
  - s. Veterinarian with boarding and/or surgical services, or
  - t. Uses similar to the above listed use which would, at the discretion of the zoning inspector, result in nuisance factors as defined by this section. In those instances when the zoning inspector denies an application, or if the zoning inspector is uncertain of the appropriateness of a proposed home occupation, the matter may be appealed to the Board of Zoning Appeals (BZA) for interpretation.
- C.** Community fire house, provided.
- 1. Front yard, side yard and rear yard requirements for zone are met.
  - 2. Main building shall be at least minimum residential size.
  - 3. Enough area is set aside for future parking spaces, for a minimum of forty (40) cars, with a parking space provided at any given time for each member of the fire company. If an assembly hall is included in the building, additional parking spaces shall be provided in accordance with **Chapter 16, Zoning Code**.
- D.** The sale of household goods, furnishings, clothing, toys, tools and books that have been used by members of the family occupying the premises may be advertised and sold on the premises, provided such sale is not held oftener than every six (6) months, for a period of three (3) days each sale; the items sold were not acquired for the sale.
- E.** Publicly owned or operated properties including parks, playgrounds and community centers.
- F.** Public forests and nature reserves including the usual buildings therefore.
- G.** Private forests and nature reserves, including the usual buildings therefore where parking spaces are limited to ten (10) vehicles.

- H. Model homes: 1. Shall exist within a subdivision. 2. Shall be located along the primary ingress and egress to the subdivision. 3. Shall be declared to the Clearcreek Township Zoning Department prior to the use being established. 4. Shall be eliminated after ninety (90) percent of the parcels within that subdivision are under construction.
- I. A temporary or permanent building for protection from the weather elements shall be required for animals other than for two (2) dogs, which reside on parcels less than five (5) acres. This building shall be established as an accessory, and located in the rear yard and at least eighty-five (85) feet from every property line.
- J. Roadside Farm Market, offering for sale agricultural products of which at least fifty percent (50%) of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. Ample off-street or off-road parking space shall be provided to take care of all vehicles visiting the roadside farm market. Parking spaces are limited to ten (10) vehicles. See Chapter 16 and 28.
- K. Accessory buildings defined as either temporary or permanent and uses customarily incidental to any permitted uses, provided the primary use or structure has been established or constructed on the same lot.
- L. Signage in accordance with Chapter 28.

**SEC. 5.7524 CONDITIONAL USES:** The following uses require a conditional use permit (CUP) pursuant to **Section 21.01(F)** of this Resolution.

- A. Schools, public and private, from nursery schools through colleges having curriculum equivalent to public school curricula.
- B. Religious institution, provided buildings shall be at least a minimum residential size.
- C. Hospital and institutions of an educational, religious, charitable or philanthropic nature, provided the site upon which such uses are located shall contain at least five (5) acres and that such buildings shall not occupy over ten percent (10%) of the total site area.
- D. Rest home, nursing home or convalescent home, provided that such buildings shall be located upon a site of five (5) acres or more and shall not occupy more than ten percent (10%) of the total site area.
- E. Cemeteries, provided that any cemetery shall contain an area of twenty (20) acres or more.
- F. Telecommunication tower: In those instances where a telecommunication tower is made subject to this resolution pursuant to section 519.211 Ohio Revised Code (ORC) and as the same may, from time to time, be amended, said

telecommunication tower shall be located, erected, constructed, reconstructed, changed, altered, or enlarged in accordance with Section 21.01(F)(2) & Section 22.05 of the zoning resolution.

- G. Farm Based Tourism
- H. Clubs, including country clubs, swimming and tennis clubs, provided that any structures, except fences, shall be at least fifty (50) feet from property lines, and any parking areas necessary to the operation shall be at least two hundred (200) feet from any adjoining residential zone; the setback from street or streets shall be the same as for residences.
- I. Recreation area, not for profit, private or charitable, provided a minimum of thirty (30) acres is used and fenced on all sides.
- J. Private forests and nature reserves, including the usual buildings therefore with parking spaces for more than ten (10) vehicles.
- K. Signage in accordance with Chapter 28.

**SEC. 5.753 HEIGHT REGULATIONS:** No building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.

**SEC. 5.754 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:**

- A. There shall be front yard having a depth of not less than fifty (50) feet, provided, however, no front yard depth shall be required to exceed the average of the minimum depths of the existing front yards on the lots adjacent on each side, if each of such lots are within the same block and within one hundred (100) feet of a the building under consideration. If an average can not be mathematically determined based upon the above process, then the zoning inspector shall expand the area under review. The expanded area shall include the front yard setbacks of the building(s) across the street and within one hundred (100) feet of the building under consideration.
- B. For a lot that has frontage on more than one street, the required front yard shall be provided on all streets.
- C. Side yard: There shall be a side yard of ten (10) feet minimum on each side, except for lots with more than one (1) front yard, in which case the minimum side yard shall be ten (10) feet on the side, if any, not fronting on a street.
- D. Rear yard: There shall be a rear yard having a depth of not less than forty (40) feet, except for lots with three (3) front yards, in which case the minimum rear yard shall be ten (10) feet.

**SEC. 5.7545 ACCESSORY STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:**

- A. Front yard shall conform to 5.754 (A) and 5.754 (B).
- B. Side yard shall conform to 5.754 (C).
- C. Rear yard shall be a minimum of ten (10) feet.

**SEC. 5.755 INTENSITY OF USE:** Every lot or tract, except a panhandle lot, shall have a minimum continuous frontage and width of not less than one hundred (100) feet at any point, except on a cul-de-sac, in which case it shall have a minimum continuous frontage and width at any point of at least fifty (50) feet, and a minimum width of one hundred (100) feet at the minimum building setback line and:

- A.** Lots or parcels proposed as building sites that are connected to a central sanitary sewage system approved by the Warren County Sanitary Engineer and the Ohio Environmental Protection Agency shall contain not less than one half (1/2) acre exclusive of: any road or street right-of-way as shown on the Warren County, Ohio, Official Thoroughfare Plan, waterways, wetlands, one hundred (100) year flood plain, drainage easements other than the required side and rear lot line drainage easements required in the Warren County Subdivision Regulations for a plat, high pressure gas pipeline easements and railroad easements.
- B.** Lots or parcels proposed as building sites that are not connected to a central sanitary sewage system and are otherwise approved by the Warren County Combined Health District and/or the Ohio Environmental Protection Agency for individual onsite wastewater disposal system shall contain not less than one (1) acre exclusive of: any road or street right-of-way as shown on the Warren County, Ohio, Official Thoroughfare Plan, waterways, wetlands, one hundred (100) year flood plain, drainage easements other than the required side and rear lot line drainage easements required in the Warren County Subdivision Regulations for a plat, high pressure gas pipeline easements, and railroad easements.
- C.** If a preliminary plat was approved with more restrictive zoning regulations than those in place at the time of the final plat submittal, the least restrictive regulations will be applied at the time of zoning review.
- D.** The maximum lot depth to width ratio shall be 5:1. This requirement applies to lots less than five acres in size. Panhandle lots regardless of size are exempt.  
**ADVISORY NOTE:** For the residential lots utilizing on-site sewage disposal systems, lots larger than the Zoning Code minimum of one (1) acre may be required by the Warren County Combined Health District contingent on the suitability of soils present on the lot.

**SEC. 5.756 MINIMUM SIZE:** The minimum size of any single family dwelling, exclusive of porches, garages and breezeways, shall be one thousand two hundred fifty (1250) square feet of floor space.

**SEC. 5.757 PANHANDLE LOTS** are permitted subject to the following regulations:

- A.** Panhandle lots shall not be "stacked" one behind the other relative to a street or road.
- B.** The panhandle portion of the lots shall have a minimum frontage and continuous width of twenty (20) feet and a maximum frontage and width of forty (40) feet.
- C.** The panhandle portion of the lots shall have a maximum length of five hundred (500) feet.
- D.** The body of the lot shall have a minimum area of one and one-half (1 1/2) acre exclusive of the panhandle portion of the lot, any road or street right-



of-way as shown on the Warren County, Ohio, Official Thoroughfare Plan, waterways, wetlands, one hundred (100) year flood plain, drainage easements, high pressure gas pipeline easements and railroad easements.

- E. The body of the lot shall have a minimum width of one hundred twenty five (125) feet and a minimum depth of two hundred (200) feet.
- F. All structures shall be built within the body of the panhandle lot.
- G. The principal structure shall have a minimum front yard of fifty (50) feet, rear yard of fifty (50) feet and a side yard of twenty (20) feet minimum each side.
- H. Any accessory structure shall have a minimum front yard of fifty (50) feet, rear yard of twenty (20) feet and a side yard of twenty (20) feet minimum each side.

### **CHAPTER 9: NEIGHBORHOOD BUSINESS ZONE "B-1" REGULATIONS**

**SEC. 9.01** The regulations set forth in this chapter, or set forth elsewhere in the Zoning Code, are the zoning regulations for Business Zone "B-1".

**SEC. 9.02** Permitted Uses: A building or a lot shall be used only for the following purposes, provided the lot and whatever structures used for human occupancy thereon are either connected to a central sewage system that will be upon the start of operation turned over to the appropriate county department for maintenance and operation or utilize an on site disposal system approved by the Ohio Environmental Protection Agency.

- A. Any non-residential use permitted in zones "R-1", "R-2" and "R-3".
- B. Standards for districts zones for retail business known as Zone "B-1" Neighborhood Business District. Principal permitted uses within a minor "B-1" district which is entirely surrounded by "R" districts:
  - 1. Any local retail business or service establishment such as grocer, fruit or vegetable store, meat market, drugstore, shoe repair shop, hardware store, barber shop, clothes cleaning and laundry pick-up station, business or professional office or the like, supplying commodities or performing services primarily for residences of the neighborhood.
  - 2. Sit-Down Restaurant, Fast Food Restaurant, Outdoor Dining Restaurant
  - 3. Automobile service stations (filling stations). Minor repair and storage garages, parking lots for passenger vehicles.
  - 4. Bakery
  - 5. Funeral homes
  - 6. Antique Business
  - 7. Second hand store - inside display only
- C. Signage in accordance with Chapter 28.

**SEC. 9.025 CONDITIONAL USES:** The following uses require a conditional use permit (CUP) pursuant to **Section 21.01(F)** of this resolution.

- A. Drive Through facility.

**SEC. 9.03** The height regulations are the same as for Zone "R-1".

- SEC. 9.04** Yards:
- A.** Front yard: The front yard regulations are the same as for Zone "R-1".
  - B.** Side yard:
    - 1.** If the lot adjoins a residence zone the side yard shall be twenty-five (25) feet minimum.
    - 2.** If the lot adjoins a non-residence zone, the side yard shall be fifteen (15) feet minimum.
  - C.** Rear yard: If the rear yard adjoins a residence zone it shall be a minimum of twenty five (25) feet.
  - D.** If the rear yard adjoins a non-residence zone it shall have a minimum of fifteen (15) feet.

**SEC. 9.05** Lot size: The minimum lot size shall be the same as for Zone "R-1".