

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

**Report Date:** November 3, 2023

**Hearing Date:** December 4, 2023

**Applicant:** George E. Reinke Sr. of the Reinke Group Inc agent for San Juan LLC

**Requested Action:** Zone Change Request from Open Space Rural Residence Zone “OSR-1” to General Business Zone “B-2” for 5.00 acre of the 10.00 acre parcel.

**Current Use:** Vacant land

**Attached:** Location Map, Application, Clearcreek Township 2005 Master Land Use Plan Maps: 4, 6, 10 and 11.

**Location of Request:**

The overall parcel is identified as 2094 Old Route 122, parcel number 09-22-351-013 and account 0141543. The property is located in Section 22, Town 4, and Range 4 in Clearcreek Township.

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

Applicant states: “San Juan LLC purchased the subject 10.0 acre parcel in July 2023 for the purpose of building their home and a small warehouse for operating their family owned business. The owners, Leonardo and Alissa Castaneda, began their business 14 years ago in Kentucky and want to relocate to Clearcreek Township to raise their children. The business structure, planned for 10,000 SF or less, must be located in a "B-2", General Business District, which would be the South half of the 10 acre site that fronts on Old Rte 122. The rear of the property is to remain OR-1, which allows a single family residence. The business distributes packaged food items to area groceries and carry out stores. The products cater to the hispanic community with items such as tortillas, taco shells, corn chips, etc. There will be a small daily staff of about 4 persons, including the owner. They will receive products via 3-4 semi trucks per month and make deliveries from 2-3 box trucks. The home will likely access to Utica Road through a narrow parcel acquired as part of the purchase.”

**Zoning History:**

- In 1973, the property was classified as Rural Residence Zone “R-1”.
- In 2005, the property was rezoned to Open Space Rural Residence Zone “OSR-1” to comply with update to the Master Land Use Plan.

**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 request area is a total of 5.00 gross acres of the 10.00 gross acre parcel. On the location map the request area is labeled “A”. Please see accompanying legal description and drawing for a better understanding of the rezoning request area. If the rezoning of Tract I Parcel A is successful, then the parcel would be subdivided coincident with the approved boundary lines of the General Business Zone “B-2”.

### **Adjoining Zoning Classifications and Current Uses:**

- North:
  - Open Space Rural Residence Zone “OSR-1” (Vacant Land).
- East:
  - Open Space Rural Residence Zone “OSR-1” (Vacant Land owned by Duke Energy).
- South:
  - Open Space Rural Residence Zone “OSR-1” (Single-Family Dwelling).
  - Residence Zone “R-1” (Single-Family Dwelling).
- West:
  - Residence Zone “R-1” (Single-Family Dwellings).

### **2005 Master Land Use Plan Information:**

- Map 4 - Identifies the property to be outside a future Sewer Service Area.
- Map 6 – Identifies the road as a Rural Collector.
- Map 10 Identifies the property in Planning Area #7.
  - Planning Area #7 Southeastern Agricultural Lands Existing Character- Large tracts of agricultural land, some frontage residential development found but still less than 30% built out.
- Map 11 Identifies the future land use of the property to be Rural Residential.
- Applicable Goals and Objectives:
  - **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.
        - Seek to encourage residential development types which incorporate preservation of private and public open space (conservation design subdivisions, large lot zoning classifications).
        - 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.
- Place a stronger emphasis on establishing open space/green belt areas, separating developing residential areas from incompatible uses.

**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 5.5**

**OPEN SPACE RURAL RESIDENCE ZONE "OSR-1" REGULATIONS**

**SEC. 5.51** The regulations set forth in this chapter, or set forth elsewhere in the Zoning Code are the zoning regulations for Open Space Rural Residence "OSR-1".

**SEC. 5.52 PERMITTED USES:** A building or lot shall be used only for the following purposes:

- A.** Single family dwellings.
- B.** Home occupation as described in Section 5.752 (B).
- C.** Community fire house as described in section 5.752 (C).
- 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 as described in Section 5.752 (H).
- 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. 5.524 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. 5.53 HEIGHT REGULATIONS:** No building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.

**SEC. 5.54 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:**

- A. There shall be a front yard having a depth of not less than one hundred (100) feet except for Open Space Dedication Option Development (OSDOD) lots which shall have a minimum front yard of fifty (50) feet.
- 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 twenty-five (25) feet minimum on each side, except for Open Space Dedication Option Development (OSDOD) lots which shall have a minimum side yard of ten (10) feet on each side.
- 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 twenty-five (25) feet.

**SEC. 5.545 ACCESSORY STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:**

- A. Front yard shall conform to 5.54 (A) and 5.54 (B).
- B. Side yard shall conform to 5.54 (C).
- C. Rear yard shall be a minimum of twenty-five (25) feet.

**SEC. 5.55 INTENSITY OF USE:** Every lot or tract, except Open Space Dedication Option Development (OSDOD) and a panhandle lot, shall have a minimum continuous frontage and width of not less than one hundred forty (140) 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 seventy (70) feet, and a minimum width of one hundred forty (140) feet at the minimum building setback line and:

- A. **Every lot or tract, except Open Space Dedication Option Development (OSDOD)** 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 two (2) acres 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. OPEN SPACE DEDICATION OPTION DEVELOPMENT (OSDOD) IS PERMITTED IN ACCORDANCE WITH THE FOLLOWING REGULATIONS:**

1. Subject to the following subparagraphs; Open Space Dedication Option Development (OSDOD) need not meet the minimum lot area and lot width requirements set forth in Chapter 5.5 (Open Space Rural Residence Zone “OSR-1” Regulations).
2. Gross density is .50 dwelling units per acre. Dwelling units are rounded up to the nearest whole number.
3. A minimum of thirty (30) percent of the total project area shall be dedicated as open space.
4. Required open space shall be established using one of the following techniques:
  - a. Conveyed to a legally established homeowners association.
    - i. Identified as a parcel or parcels on the final plat.
    - ii. The open space shall be for the exclusive use of the occupants of said development, unless specified otherwise in the form of a deed restriction.
  - b. Recorded as an open space/limited agricultural easement.
    - i. Shall be privately owned, subject to an open space/limited agricultural easement conveyed to Clearcreek Township.
    - ii. Identified as a parcel or parcels on the final plat.
    - iii. Easements shall comply with the form established by Clearcreek Township Resolution 3043, as currently amended.
    - iv. Easements shall be accepted by Clearcreek Township in the form of a resolution of acceptance prior to approval of a final plat.
    - v. A fee shall be required for the annual inspection of compliance in accordance with chapter 18.06 of the Clearcreek Township Zoning Resolution.
5. Open space shall be prohibited from further subdivision.
6. Open space shall only be credited once and shall be associated with a single subdivision.
7. Buffer Standards For Open Space Dedication Option Development (OSDOD) Subdivisions: Along collector and/or arterial street networks, a buffer shall be required to separate OSDOD dwelling lot(s) from the road right-of-way.
  - a. Required trees shall be arranged parallel to the road right-of-way to provide the maximum screening effect.
  - b. Required berms shall have a slope that does not exceed a one (1) foot of rise per every (3) feet of linear distance.
  - c. Final height of required berms shall be taken from the final grade of the pavement of the existing collector and/or arterial to account for topographical differences between the road right-of-way and the subject property.

- d. Required minimum size of a deciduous tree is one and one half (1 ½) inch caliper at the time of planting.
  - e. Required minimum size of an evergreen tree is five (5) feet in height at the time of planting.
  - f. The buffer shall be located on ground owned and maintained by the homeowners association.
  - g. The buffer shall be installed by the developer and documented by the Clearcreek Township Zoning department prior to the issuance of a single-family zoning permit for the development.
8. Location Options For Buffers For Open Space Dedication Option Development (OSDOD) Subdivisions:
- a. Option 1: Minimum depth of separation between OSDOD dwelling lot(s) and the arterial and/or collector road right-of-way is less than one hundred (100) feet.
    - i. An earth berm a minimum of seven (7) feet in height shall be required.
    - ii. The berm shall be located adjacent to the road right-of-way and out of all recorded easements or adjacent to the arterial and/or collector street side of the OSDOD dwelling lot(s).
    - iii. A minimum of fourteen (14) trees per every one hundred (100) feet of property width shall be required and shall be located on the earth berm.
  - b. Option 2: Minimum depth of separation between OSDOD dwelling lot(s) and the arterial and/or collector road right-of-way is equal to or greater than one hundred (100) feet and less than three (300) feet.
    - i. An earth berm a minimum of four (4) feet in height shall be required.
    - ii. The berm shall be located adjacent to the arterial and/or collector street side of the OSDOD dwelling lot(s).
    - iii. A minimum of nine (9) trees per every one hundred (100) feet of property width shall be required located on the earth berm.
  - c. Option 3: Minimum depth of separation between OSDOD dwelling lot(s) and the arterial and/or collector road right-of-way is equal to or greater than three hundred (300) feet.
    - i. A minimum of four (4) trees per every one hundred (100) feet of property width shall be required.
    - ii. The buffer shall be located adjacent to the arterial and/or collector street side of the OSDOD dwelling lot(s).
9. Minimum lot size shall be 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.
10. Each lot shall have a minimum frontage and width of not less than one hundred (100) feet, except on a cul-de-sac, in which case it shall have a minimum

frontage of at least fifty (50) feet, and a width of at least one hundred (100) feet at the minimum building setback line.

- C. 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 may be required by the Warren County Combined Health District contingent on the suitability of soils present on the lot.

**SEC. 5.56 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. 5.57 FOR LOTS OTHER THAN OSDOD, 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 twelve hundred (1200) feet.
- D. The body of the lot shall have a minimum area that meets or exceeds the minimum lot size established in Section 5.55 (A) and is exclusive of the panhandle portion of the lot.
- E. The body of the lot shall have a minimum width of two hundred ten (210) 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 one hundred (100) 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 one hundred (100) feet, rear yard of twenty (20) feet and a side yard of twenty (20) feet minimum each side.

**SEC. 5.575 REGULATIONS FOR OSDOD, 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 that meets the minimum lot size established in Section 5.55 (B) and is exclusive of the panhandle portion of the lot.
- E. The body 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 only 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 10: GENERAL BUSINESS ZONE "B-2" REGULATIONS**

**SEC. 10.01** The regulations set forth in this chapter, or set forth elsewhere in the Zoning Code, are the zoning regulations for General Business Zone "B-2".

**SEC. 10.02** 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 any residence zone or Neighborhood Business Zone "B-1".
- B. General automobile repair, provided all vehicles and vehicle parts are kept inside a completely enclosed building, or the vehicles are located in an impound lot. An impound lot is permitted on part of a property, which is completely contained within an area which is surrounded by a solid fence or wall. The fence or wall shall be a minimum of six feet in height. The location of this fence or wall shall take the topography of the site into consideration to maximize the screening effect to other properties and/or the public right-of-way. The uses permitted in a junkyard shall be prohibited in an impound lot.
- C. Warehouse, farm implement and auto sales, animal hospital, vet clinic, laundries, plumbing and heating, printing shop, lumber yard and building materials, paint shop, carpenter shop, sheet metal, wholesale business and bakery. All machinery shall be enclosed within a building. Commercial and vet clinic kennels provided all animals are kept inside buildings with outside walls and roof equivalent in sound reduction to an eight (8) inch concrete block wall.
- D. Bar, Brewpub, Drive-In Restaurant.
- E. Hotels and motels, theaters and drive-in movie theaters: for a drive-in theater the screen shall be so located as not to be visible from the road or street and shall be set back at a distance of not less than two hundred (200) feet from the established right-of-way of any highway and a distance of at least two hundred (200) feet from the property line and loudspeakers shall be permitted only for the occupants of the theater and if they do not create a nuisance or disturb the peace.

- F. Commercial baseball fields, golf, tennis, skeet, trapshoot, commercial fishing lakes, bowling alleys, swimming pools, skating rinks or similar recreational uses and facilities: Buildings, pools and other enclosures shall be one hundred (100) feet from any Residence Zone.
- G. Any other business use which is of a general character of the classes of business permitted above, as determined by the Clearcreek Township Zoning Inspector.
- H. Those businesses expressly prohibited in Zone "M-1" and "M-2" are prohibited in Zone "B-2".
- I. Signage in accordance with Chapter 28.

**SEC. 10.025 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. 10.03** Height: unlimited, except for each foot over forty-five (45) feet, the front, side and rear yard shall be increased by one (1) foot, and there shall be adequate fire extinguishing facilities as approved by the fire organization.

**SEC. 10.04** Yards: The minimum lot size is the same as for Residence Zone "R-1":

**A.** Front yard: The front yard shall be the same as required for Zone "B-1".

**B.** Side yard: The side yard shall be the same as required for Zone "B-1".

**C.** Rear yard: The rear yard shall be the same as required for Zone "B-1".