

**MINUTES**  
**REGULAR/WORKSHOP MEETING OF THE BUTLER PLANNING BOARD**  
**SEPTEMBER 14, 2023**

Chairman Nargiso brought the regular meeting of the Butler Planning Board to order for September 14, 2023. The Chairman stated this meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

**ROLL CALL:**

Present: Donza, Veneziano, Brown, Finelli, Reger, Vath, Roche, Hough, Fox, Martinez, Nargiso

Absent:

Also present: John Barbarula, Board Attorney

**CORRESPONDENCE:**

Letter from Dave Dixon, Esq. advising that Paradise Cannabis tenant relationship has been terminated and the application is being withdrawn.

**CASES TO BE HEARD:**

23-004                      **Paradise Cannabis Dispensary LLC**                      Bifurcated Use  
1455 Route 23  
Block: 54      Lot: 2.05

Motion to dismiss application without prejudice: Brown                      Second: Finelli

Ayes: Donza, Veneziano, Brown, Finelli, Reger, Vath, Hough, Fox, Martinez, Nargiso

Abstain: Roche

Motion to dismiss application without prejudice for Johan Kafil for a minor site plan at 1477 Route:

Motion: Fox                      Second: Finelli

Ayes: Donza, Veneziano, Brown, Finelli, Reger, Vath, Hough, Fox, Roche, Martinez, Nargiso

23-005                      **Expired Robot, Bradley Hatfield**                      Change of Occupancy  
1477 Route 23  
Block: 54      Lot: 1.08

David Dixon, Esq. representing the applicant

At this point the Mayor and Councilman stepped down.

Comic Book store looking to occupy 1,500 square feet, currently vacant. No food, tobacco, cannabis, alcohol sales will be permitted.

Sworn in architect: Abhilafk Christy, Bertin Engineering, Glen Rock, NJ.

Accepted as a professional architect. Motion: Brown                      Second: Fox                      All in favor

Mr. Christy described the building and the existing tenants. There will be no mezzanine in the proposed unit. There will only be one door for the unit. Mr. Hatfield works alone and it would be easier for him to maintain security.

Open to the public. Since no one came forward, motion to close: Brown      Second" Finelli      All in favor

Bradly Hatfield, 25 Kinnelon Road, proprietor of Expired Robot was sworn in.

He sells comic books, Trading Card Games –TCG, trading cards. He also hope to be able to set up tables so the youths can play the games at the store. 15-20 customers max per day. Open Tues—Sat 11am to 7pm

Open to the public. Since no one came forward

Close the Public Portion: Brown      Second: Finelli      All in favor

Motion to grant the Continuing Certificate of Occupancy for 1500 square feet. Included in the motion is that the vacant 697 square feet can only be used for storage by the landlord or to be merged with an adjoining unit.

Motion: Brown      Second: Finelli      All in favor

**RESOLUTIONS:**      None

**APPROVAL OF VOUCHERS** - Voucher 23-09

Motion: Donza      Second: Veneziano

Ayes: Donza, Veneziano, Brown, Reger, Finelli, Vath, Hough, Roche, Fox, Martinez, Nargiso

**APPROVAL OF MINUTES:**      August 17, 2023 Regular Meeting

Motion: Brown      Second: Finelli      All in favor

**APPOINTMENT:**      The Board authorized the Chairman to retain the services of a security expert to be paid through the escrow accounts of the cannabis applications. Mr. Barbarula is aware of the under-sheriffs who are qualified.

**LAND USE ORDINANCE REVIEW:** Attached are the recommendations to amend the Land Use Ordinance that will be forward to the Mayor and Council for review and possible adoption.

**ADJOURNMENT:** 9:30 pm

Motion: Fox      Second: Martinez      All in Favor

**The Regular Meeting scheduled for September 21, 2023 has been cancelled by the Chairman for lack of agenda.**

**Workshop Meeting October 12, 2023 at 7:30 PM**

Next Regular Meeting will be October 19, 2023 at 7:30 PM

  
Chairman

**Proposed Amendments to  
Chapter 143 Land Use Ordinance as  
Recommended by the Butler Planning Board to  
the Mayor and Council**

**September 14, 2023**

Recommend to the Mayor and Council that the Master Plan be amended to remove the “Apartments” use from the Central Business District allowed uses. The Land Use Ordinance no longer permits Apartment in the CBD Zone [§143-118 Schedule “C”].

There has been discussion by some members that possibly the second floor apartments be restored to the ordinance, which use was removed in September 2006.

- A. The Board can either request the Council to remove the word “Apartments” from the CBD Zone, or
- B. Request that Second floor apartments be allowed in the CBD Zone.

**Board’s recommendation: “B” It is the Board’s determination that the second floor apartments should continue to be not permitted because of issues such as parking, garbage disposal, stacking.**

In 2002 the Council created a new zone—RD Zone, which is a Redevelopment Zone [§143-123.4] located on River Place. This zone allows for mixed uses within a single structure along Main Street, including residential uses over first floor mixed retail/office use. The Board can recommend the expansion of the RD in place of the current CBD Zone. A possibly more practical approach would be to create an overlay RD Zone over the CBD Zone. This would allow the current standards to remain in place while at the same time encouraging an upgraded development along Main Street.

**Board’s recommendation: No change in the zone. The overlay zone can be created once the Borough is approached by prospective developers who would be willing to undertake such a project.**

Section §143-86F change “Garden Apartments” to just “Apartments” since garden apartments appear to be too restrictive. Also, in §143-119F the word “garden” should be removed from the type of apartments allowed in the R-6 Zone.

**Board’s recommendation: Remove the word “Garden” from the R-6 Zone.**

**On Schedule B under the heading “Multifamily Dwellings the word “Garden” should be removed.**

**Apartment regulations in the R-6 Residence District. §143-121A(1)(a) remove the word “Garden”.**

§143-118 Schedule “B” Off-Street Parking Requirements. Establish the requirements for Hair/Nail Salon and Barber Shops to One Space for every 150 square feet.

**Board’s recommendation: One Space for every 150 square feet**

§143-157.1 Expansion of existing non-conforming residences. Currently it reads: *In all existing residences which encroach upon minimum setback requirements, additions shall be allowed as a matter of right; provided, however, that such additions shall not increase the degree or extent of nonconformity beyond the existing nonconformity limits or dimensions. In addition, such expansion shall not increase the total building area by more than 33%.*

**Board’s recommendation: The *italicized* words to be replaced with: In all existing residences which encroach upon minimum setback requirements for side and rear yards, second story additions shall be allowed if those setback requirements are not more than 30% from the requirements in Schedule “D”. In addition, such expansions shall not exceed the square feet of the first floor.**

§143-118 Schedule D for Zone R-5 Two Family Zone currently provides a Minimum Floor Area in Square Feet for 2 Family Dwellings: First Floor 600 sq ft and Multi-Story Gross 900 sq ft. Recommendation for the First Floor 750 sq ft and the Multi-Story Gross 1500 sq ft.

**Board's recommendation: Change the requirements for 2 Family Dwellings:**

**One Story 1,500 square feet**

**First Floor 750 square feet**

**Multi-Story Gross 1,500 square feet.**

§143-130 Yards. Every lot must provide front, rear and side yards as required by its zone district. All front yards must face upon a dedicated public street or a private street approved by the Planning Board. ~~On streets with rights of way of less than 50 feet in width, the required front yard shall be increased by 1/2 the difference between the width of the right of way and 50 feet. If a right of way greater than 50 feet is shown on an adopted Master Plan or official map, the required front yard shall be increased by 1/2 the difference between the right of way and said greater width. [Since the town is just about built out this condition is impractical and has never been used for the past 20 years. Would prefer that it be removed.]~~

**Board's recommendation: Retain the first two sentences and remove the sentences that have been struck through.**

§143-139 B. Storage sheds shall meet the maximum lot coverage for accessory buildings as specified for each particular zoning district in Schedule D and no individual storage shed shall exceed an area of 200 square feet. Storage sheds must meet the design criteria of the principle use and may not be constructed of cloth, canvas, or any similar type material. ~~Any structure used as a storage shed greater than 200 square feet shall require a permanent foundation and require site plan approval by the Board. Any such storage shed shall have a sloping roof and shall be designed so as to be compatible with the residential surroundings. [Storage sheds are not to be greater than 200 square feet, which is why this part of the section is being removed.]~~

**Board's recommendation: The wording as stated above with the underlined sentence added and remove the sentences that are struck through.**

§142-139 C. Storage sheds shall be firmly anchored to the ground to insure stability. ~~All sheds having an area of 100 square feet or more shall be placed on a concrete slab approved by the Construction Department. [This no longer conforms to the construction code, which is why it should be removed.]~~

**Board's recommendation: Keep the first sentence and remove the second sentence.**

§143-135.1 Decks and Patio

- A. Within all one and two family residential zones, decks and platforms, whether freestanding or attached to a building, ~~when in a rear or side yard,~~ shall meet the following yard setback requirements.
- C. Decks and platforms, whether freestanding or attached to a building are prohibited within the front yard ~~and the side yards.~~

**Board's recommendation: Remove the words that have been struck through**

§143-141 A. Dog Runs shall be located in rear yard areas only and shall be set back from any lot line at least 10 feet. Dog Houses must first be approved by the Animal Control Officer to assure that it is in compliance with the State Code.

**Board's recommendation: add the underlined sentence.**

§ 143-141. Fences and walls.

A. Dog runs shall be located in rear yard areas only and shall be set back from any lot line at least 10 feet. A dog run shall not exceed 200 square feet and will be counted as one of two sheds allowed under 143-139D

**Board's recommendation: add the underlined sentence.**

Fee changes recommended by Tom Boorady:

§143-42 C. **Variances**

~~———— (3) Residential yard and bulk variances: \$125~~

(4) Variances related to signs - \$100

(5) All other use, yard and bulk variances:

(a) One- and two-family dwellings: \$250

**Board's recommendation: eliminate (3); change number (4) and (5) to (3) and (4), respectively**

### §143-143. TECHNICAL REVIEW ESCROW DEPOSITS

§143-43 (3) Variances:

(a) Variances pursuant to N.J.S.A. 40:55D-70c: ~~\$500~~ \$1,500

(B) Variances pursuant to N.J.S.A. 40:55d-70D: ~~\$1,000~~ \$2,000

**Board's recommendation: Change the fee from \$500 to \$1,500**

**Change the fee from \$1,000 to \$2,500**

§143-42. Application Fees.

The developer shall, at the time of filing a submission, pay the following nonrefundable fee to the Clerk of the municipal agency ~~by certified check or bank money order.~~ Proposals involving more than one use shall pay a fee equaling the sum of the fees for the components elements of the development proposal. Proposals requiring a combination of approvals, such as subdivision, site plan and/or a variance, shall pay a fee equal to the sum of the fee for each element. Upon submission of the application a \$1,000 escrow deposit is required. This will be credited to the total escrow requirements. The board engineer will review the application and determine the fee and the escrow requirements. The applicant will then be advised of the amounts owed.

**Board's recommendation: Eliminate the words that are struck through and add the underlined sentences.**

*§143-150 Lot Grading.*

*Prior to the issuance of a construction permit, including a construction permit for an in-ground swimming pool or outdoor tennis courts, and prior to the alteration of any site elevations in excess of one foot where a construction permit is not required, a lot grading plan shall be submitted to the Construction Official and approved by the Borough Engineer in accordance with §143-75E [Design and Construction Standards for Subdivisions. Lots]. The requirement for a lot grading plan may be waived by the Borough Engineer if in his opinion, the proposed installation or land disturbance will not present any risks or problems of soil erosion, drainage or other hazards*

Modify the above section to simply read:

§143-150 Lot Grading.

Prior to the alteration of any site elevations in excess of one foot a lot grading plan shall be submitted to the Construction Official and approved by the Borough Engineer. The requirement for a lot grading plan may be waived by the Borough Engineer if, in his opinion, the proposed land disturbance will not present any risks or problems of soil erosion, drainage or other hazards..

**Board's recommendation: Replace with the *italicized words* with the underlined sentence.**

There is the R-1 Zone on Route 23 at Butler's border with Kinnelon and West Milford. We may want to consider rezoning these properties as Highway Commercial to encourage proper development along the highway. The Planner would need to get involved with this. The lots are Block 205 Lots 2, 3, 4, 5, 7. On the other side of the highway Block 102 Lots 2, 2.01, 2.02, 2.05.

**Board's recommendation: Recommend the above named lots be changed to HC**

§143-5 Definitions

In 2011 §143-160.1 "Limited service stations with convenience center" was added under Conditional Uses. It would be prudent to define Convenience Center. The proposed definition was pieced together from the National Association of Convenience Stores and other sources, tailoring it for Butler's purposes.

**Convenience Center.** This applies to those non-age restricted convenience stores that are part of the "Limited service state with convenience center" use. Grocery selection is minimal and foodservice is typically pre-packaged sandwiches. Additional items offered for sale are milk, coffee, soft drinks, bread, snacks ice cream, candy, gum, cigarettes, magazines, newspapers, paper products, ATM, state lottery tickets, and similar type items.

**Head Shop** is a retailer specializing in paraphernalia used for consumption of cannabis and tobacco and items related to cannabis culture and related countercultures. Products sold may include magazines, clothing, posters, wall hangings, hashish pipes, bong, roach clips, rolling papers. Cannot be combined with a Smoke Shop.

**Smoke Shop,** also called a tobacco shop or a tobacconist, is a retailer of tobacco products in various forms and the related accoutrements, such as pipes, lighters, matches, pipe cleaners, pipe tampers. More specialized retailers might sell: ashtrays, humidification devices, hygrometers, humidors, cigar cutters. Cannot be combined with a Head Shop.

**Board's recommendation: All three to be added to §143-5 Definitions**

**The Head Shop and Smoke Shop should also be added to §143-117 Schedule D as a Principle Uses under HC.**

Digital signs Underlined sections are proposed amendments

§ 143-175 BUTLER CODE § 143-175 P. Electronic Signs [Added 10-16-2018 by Ord. No. 2018-15]

(1) Definitions

(a) Static Sign - A sign which does not change its message or copy automatically by electronic or mechanical means.

(b) Digital Sign - A sign which changes message or copy electronically. The term “digital” is intended to encompass all electronic message signs, including L.E.D. and similar lighting technology.

(c) Such signs are accessory uses to a related principle use on the site.

(2) Location

(a) Static signs shall be permitted in the CBD, LI, LI/CBD and the HC zones.

(b) Digital signs shall be permitted in the HC zone only.

(c) Static signs shall maintain a minimum distance of 150 feet from the closest residential zone boundary.

(d) Digital signs shall maintain a minimum distance of 200 feet from the closest residential zone boundary. The required distance from the closest residential zone boundary up to fifty percent where it can be demonstrated that the sign face of the sign will not be visible to the adjacent residential zone district.

(3) Standards

(a) Multiple message signs shall contain a default design that will either freeze the sign in one position or cause the sign area to go blank if a malfunction occurs.

(b) The change from one display to the next shall be completely accomplished within one second or less.

(c) All displays shall remain fixed for an interval of at least eight seconds.

(d) Multiple message signs shall not display any image that is flashing, animated, moves, or appears to move. No multiple message sign shall be illuminated by intermittent or moving light.

(e) Maximum brightness levels shall not exceed 0.2 foot candles over ambient light levels as measured within 150 feet of the sign. Certification from a qualified expert shall be provided to demonstrate the sign is designed to automatically adjust the brightness so as to not exceed these levels.

(f) No more than thirty percent (30%) of the multiple message sign displays shall be for off-site advertising, municipal public service announcements notwithstanding.

**Board’s recommendation: No changes to the ordinance to be made. No Off-site advertising permitted on digital signs. (f) not to be included in the ordinance.**

§143-141. Fences and walls.

F. (1) In any residential or mixed-use district, fences within a required front yard shall consist of no more than 50% solid material and shall be equally distributed throughout the entire length of fence. The ordinance requires solid fences in the front yard to be setback at least four feet from the front property line and a landscape buffer must be planted in front of the fence. The buffer should consist of plants such as compact juniper, forsythia, compact euonymous or an approved equal. The plants are to be installed three feet on center and at a minimum height of 24 inches. A fence that is 50% open (such as picket or cyclone) can be installed at the front property line without a landscape buffer.

K. Hedge rows, or similar vegetation planted for purposes of creating a full or partial barrier shall not exceed four feet in height where located within 15 feet of the street right-of-way, nor three feet in height where such plantings are located within a designated sight easement/triangle or within 25 feet of a street intersection. Vegetation shall be planted no closer than four feet to the property line and shall not encroach over a sidewalk or beyond a property line, and shall be maintained in a neatly trimmed condition.

**Board’s recommendation: insert underlined words and sentences**

M. The following fences/walls and fencing/wall materials are specifically prohibited: **Proposed**

(10) Concrete blocks larger than the *Standard Cored Concrete Block* which is 12”wide x 8” high x 16” long.



P. All fences/walls shall conform to residential standards.

**Board's recommendation: Modify "P" with:** All fences/walls shall conform to residential standards. All fences and walls shall be uniform in construction and appearance and shall be properly maintained so as not to be unsightly or in any way offensive or detrimental to adjoining or nearby properties and property owners. Walls may be constructed out of brick or stone or other maintenance-free material, subject to review and approval by the zoning officer. Concrete block, painted or unpainted, shall not be permitted, unless treated with facing such as stucco.

§143-143. Parking and storage of vehicles on residential lots.

E. All parking and storage shall be located at least five feet from a property line, except when on a driveway on a residential property.

**Board's recommendation: add the underlined sentence.**

§143-173.3. Keeping of animals. *Attached is a sample ordinance from Oakland.*

A. The keeping of animals, both domestic and livestock, shall be permitted in all residential districts as an accessory use....

Cities in New Jersey that Allow the Keeping of Chickens

- Clifton – no maximum number, roosters allowed, permit required.
- Elizabeth – no maximum number.
- Jersey City – maximum 50 hens, permit required.
- Lacey Township – no maximum number, roosters allowed.
- Manalapan – no maximum number, roosters allowed.
- Monroe Township – 32 birds per acre, roosters allowed.
- Newark – no maximum number, permit required.
- Newton – no maximum number, roosters allowed.
- Old Bridge – no number limits, but plots must exceed 5 acres, roosters allowed.
- Redbank – maximum 12 birds, roosters allowed.
- A. Sparta – maximum 10 birds, roosters allowed.

**Board's recommendation: No change in ordinance recommended**

Checklist No. 2

*Checklist for Determining Completeness of Variance or Appeal.*

Board Engineer Tom Boorady would like to see this changed to:

**Checklist for Determining Completeness of Non-Residential Use Variance or Appeal.**

**Board's recommendation: Change the name of Checklist No. 2 to the underlined sentence.**

Checklist No. 3 for Single-Family or Two-Family Residential Bulk Variances

**Board's recommendation: Add the Checklist No. 3 to the Ordinance**

## ARTICLE XVII Special District Regulations

§143-120. Townhouse regulations in the R-2 and R-3 Districts.

This section allows townhouses in these two zones provided the minimum lot area is 5 acres. I doubt there are any undeveloped lots consisting of 5 acres in either of these two zones.

The R-2 has the second least density in all the residential zones. Encouraging townhouses at this point in time appears contradictory.

**Board's recommendation: Take the townhouse provisions out of Zones R-2 and R-3.**

§143-118 Schedule "D"

Maximum Building Coverage for residential zones. Currently it is 4%. Would the Board be willing to consider raising that to 6%?

As an example, a 10,000 square foot lot has a maximum accessory building coverage of 400 square feet. The calculation includes a garage, sheds, gazebos, playsets, gym and swing sets. [§143-137F]

The minimum lot size in the R-4 and R-5 districts is 6,250 square feet, which allows 250 square feet for all accessory buildings. That will allow for only one small garage and not even a swing set.

**Board's recommendation: change the Maximum Accessory Building Coverage to 6% in all residential zones R-1 through R-7.**

### §143-173. Cannabis Retail and Medical Cannabis Dispensary Establishment.

[Amended 7-20-2021 by Ord. No. 2021-16]

A. Cannabis Retail Establishments and Medical Cannabis Dispensaries shall only be permitted in the HC Zone—Highway Commercial District as the principle use.

B. Minimum setback and bulk requirements shall be as set forth in §143-118 Schedule D, except as to existing structures.

C. No drive-through window shall be permitted.

D. Minimum useable floor area of 1,500 square feet.

E. No use other than cannabis retail or cannabis medical dispensary allowed on the premises as defined in §143-5

F. No Cannabis Retail Establishment or medical cannabis dispensary shall be located within 2,000 linear feet in any direction of another Cannabis Retail Establishment or medical cannabis dispensary as measured from the property lines.

G. No Cannabis Retail Establishment or medical cannabis dispensary shall be located within 1,000 linear feet in any direction of a school, licensed daycare facility, church, synagogue, or religious worship center, public park, library or a licensed substance abuse disorder clinic or facility, as measured from the property lines.

H. Hours of operation shall be limited to 7 a.m. through 11 p.m. daily.

**Board's recommendation: Include the underlined words**

§143-143H(1) Such recreational vehicles shall be parked, stored within the side or rear yard only of the subject premises upon which the owner of said vehicle(s) reside.

(4) the parking of such vehicles shall be no less than ten feet from the property line when stored in the side yard.

*[There are so many residences with recreational vehicles or trailers that by necessity are parked in the driveway either totally in the front yard area or partially in the front and side yards. Many driveways are very close to the property line and the vehicles are parked closer than ten feet. Under this ordinance I would be sending violation notices to numerous residents. Probably more are in violation than in compliance. Strict enforcement of this provision would cause a hardship to many residents. Would the Board be interested in amending this section of the ordinance or shall I indiscriminately enforce it?]*

**Board's recommendation: No Change, leave as currently written.**

Another provision in this section seems to be in conflict.

§143-143A. All vehicles must be owned or used by a resident of the premises. Only one vehicle used for commercial purposes, such as pick-up trucks and small vans, may be parked on a property.

And then:

§143-143H(3). Commercial vehicles as defined by this chapter are prohibited from being stored within a residential district.

Definition:

§143-5 VEHICLE, COMMERCIAL - Any vehicle used or designed to be used for commercial purposes on the highways, roadways or in construction, whether or not said vehicle is registered as, or bears commercial-type license plates.

*[I have never issued a violation to a resident with a pick-up truck or van with or without commercial plates and his name on the truck. I have always signed off on limo drivers parking their cars in the driveway. Without that sign off they are not eligible to get limo plates, forcing them to rent an office somewhere else. I have used Section A to justify these actions. However, it appears to be in conflict with Section H(3) and should be clarified to allow consistent and equal enforcement.]*

**Board's recommendation: Add the underlined words.**

Signs

§143-175K1 Retail sale of goods and services (other than CBD)

Free-standing retail establishments are usually looking for signs on the side of their buildings, especially that side of the building that faces the oncoming traffic. It does appear that when appearing before the Board for site plan approval, sign variances are often given for such signs. Would the Board be willing to allow such signs under these circumstances?

**Board's recommendation: Add section c.**

§143-175K1(c). For one use on a single property. Attached to the front of the building a sign not exceeding an area equivalent to 5% of the building front or 50 square feet, whichever is smaller. An identical size sign may be attached to the side of the building facing the oncoming traffic on Route 23.