

MINUTES
REGULAR MEETING OF THE BUTLER PLANNING BOARD
APRIL 11, 2024

Chairman Nargiso brought the regular meeting of the Butler Planning Board to order for April 11, 2024. 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, Roche, Brown, Finelli, Vath, Hough, Piccirillo, Nargiso

Absent: Nargiso, Matinez (both excused)

Also present: John Barbarula, Attorney; Tom Boorady, Engineer

CORRESPONDENCE: None

RESOLUTIONS: None

Discussion regarding the proposed amendments to the Land Use Ordinance.
See attached.

ADJOURNMENT: 8:28 pm.

Motion: Reger

Second: Veneziano

All in favor

Regular Meeting April 18, 2024 at 7:30 PM

BOROUGH OF BUTLER

ORDINANCE NO. 2024 –

AN ORDINANCE TO AMEND AND SUPPLEMENT VARIOUS PROVISIONS OF CHAPTER 143 (“LAND USE”) OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BUTLER

BE IT ORDAINED by the Mayor and Council of the Borough of Butler, County of Morris,

Section 1. Chapter 143, Schedule B entitled “Off-Street Parking Space Requirements,” shall be amended to change “Garden apartments” to “Apartments” and add the following additional use:

<u>Use</u>	<u>Required Parking Space</u>
Hair/Nail Salon and Barber Shops	One for every 150 square feet GFA

Section 2. Chapter 143, Section 143-157.1, “Expansion of existing nonconforming residences,” shall be amended to read in its entirety as follows:

§143-157.1. Expansion of existing nonconforming residences. 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.

Section 3. Chapter 143, Schedule D, shall be amended to delete “garden apartments” and shall be amended as follows:

Two Family Dwelling. Minimum Floor Area

	<u>One Story</u>	<u>Multi Story</u> <u>First Floor</u>	<u>Gross</u>
	1,500	750	1,500

Section 4. Chapter 143, Section 143-130, “Yards,” shall be amended to read in its entirety as follows:

§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.

Section 5. Chapter 143, Section 143-139, “Private storage sheds”, Subsection B, shall be amended to read in its entirety as follows:

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 shed must meet the design criteria of the principle use and may not be constructed of cloth, canvas, or similar type material.

Section 6. Chapter 143, Section 143-139, “Private storage sheds”, Subsection C, shall be amended to read in its entirety as follows:

C. Storage sheds shall be firmly anchored to the ground to insure stability.

Section 7. Chapter 143, Section 143-135.1, “Decks and Patios”, shall be amended to read in its entirety as follows:
§143-135.1 Decks and Patios.

A. Within all one and two family residential zones, decks and platforms, whether freestanding or attached to a building shall meet the following yard setback requirements as follows: The setbacks for decks and platforms may be reduced by 25% from the requirements in Schedule "D".

B. Within all multifamily residential and nonresidential zones, decks and platforms, whether freestanding or attached to a building, shall meet the side and rear yard setback requirements for the particular zone.

C. Decks and platforms, whether freestanding or attached to a building are prohibited within the front yard.

D. Porches, as defined herein are permitted within the front yard but must meet the front yard setback requirements for principal buildings in that zone provided however, they are attached to principal building by a common wall.

Section 8. Chapter 143, Section 143-141, “Fences and walls”, Subsection A, shall be amended to read in its entirety as follows:

- 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. Dog Houses must first be approved by the Animal Control Officer to assure that it is in compliance with the State Code.

Section 9. Chapter 143, Section 143-43, “Technical review escrow deposits”, Subparagraph (3), “variances”, shall be amended to read in its entirety as follows:

143-43 (3) “Variances” amend (a) Variances pursuant to N.J.S.A. 40:55D-70c: \$2,500. (b) Variances pursuant to N.J.S.A. 40:55D-70D: \$3,500.

Section 10. Chapter 143, Section 143-42, “Application fees”, shall be amended to read in its entirety as follows:

§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. Proposals involving more than one use shall pay a fee equaling the sum of the fees for the component 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.

A. SUBDIVISIONS

- (1) Concept Plan - \$150
- (2) Minor Subdivision - \$450
- (3) Major Subdivision, Preliminary Plat - \$450 + \$150 per lot
- (4) Amendment to approved Preliminary Plat - 50% of original fee
- (5) Major Subdivision, Final Plat - \$300 + \$75 per lot

B. SITE PLANS

- (1) Concept Plan - \$200
- (2) Minor Site Plan - \$600
- (3) Preliminary Site Plan
 - (a) Multi-Family Residential - \$450 + \$150 per dwelling
 - (b) Conventional - . \$800 + \$0.20 per square foot + \$0.02 per s.f. of lot area
- (4) Amendment to approved Preliminary Site Plan - 50% of original fee
- (5) Final
 - (a) Multi-Family Residential - \$250 + \$75 per dwelling
 - (b) Conventional - \$300 + \$0.10 per s.f. of building + \$0.01 per s.f. lot area
- (6) Freestanding and wall-mounted signs not included in site plan applications \$300

C. VARIANCES

- (1) To hear and decide appeals from the decision of the Zoning Officer \$600
- (2) Interpretation of Zoning Map \$300

- | | | |
|-----|---|-------|
| (4) | Variances related to signs | \$300 |
| (5) | All other use, yard and bulk variances: | |
| | (a) One- and two-family dwellings - | \$300 |
| | (b) Multi-Family Residential - | \$400 |
| | (c.) All other uses - \$0.10 per s.f. of building + \$0.02 per s.f. of lot area with a minimum of \$700 | |

D. CONDITIONAL USES - \$800

Section 11. Chapter 143, Section 143-150, "Lot grading", shall be amended to read in its entirety as follows:

§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.

Section 12. Chapter 143, Section 143-5, "Definitions", shall be amended to add the following definitions:

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 prepackaged 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, bongs, 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.

Electronic Smoking Device, an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

Retail Vaping and Smoking Establishment, a location at which a business entity has been licensed to sell smoking devices and paraphernalia as an ancillary sale.

Sale, every delivery of smoking devices and paraphernalia, whether the same is by direct sale or the solicitation or acceptance of an order, including the exchange, barter, traffic in, keeping and exposing for sale, displaying for sale, delivering for value, peddling and possessing with intent to sell.

Smoking Device Paraphernalia, cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, bongs, pipes, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices. This definition does not apply to tobacco products and products intended for use with tobacco such as rolling papers.

Vape Shop, any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing, or marketing of electronic smoking devices, liquid nicotine containers or vapor product as defined by N.J.S.A. 26:3D-57, N.J.S.A. 2A:170-51.9(a)(2), N.J.S.A. 2A:170-51.9(a)(3) and N.J.S.A. 2A:170-51.9(a)(4), including an area for vaping. An "area for vaping" shall mean inhaling or exhaling smoke or vapor from any electronic smoking device.

Vapor Business, a retail business that derives more than 50% of its sales from electronic smoking devices, related accessories, and liquid nicotine.

Container e-liquid, a container of liquid nicotine (i.e., e-liquid bottle) or other liquid sold, marketed, or intended for use to fill or refill an electronic smoking device. Does not apply to prefilled cartridges or other canisters sold, marketed, or intended for use as part of electronic smoking device.

Vehicle, Recreational, A vehicular type of portable structure which may be towed, hauled or driven and which is primarily designed as a temporary living accommodation for recreational camping and travel, including, but not limited

to travel trailers, truck campers, camping trailers and self-propelled motor homes. For purposes of regulating boats, ATV'S, snow mobiles, and similar equipment, including the trailers used to transport the same shall also be included. Recreational vehicles shall not exceed a bumper-to-bumper length of 36 feet (including trailer) or a height (including trailer) of 10 feet measured to the top of the roof.

Section 14. Chapter 143, Section 143-117, "Schedule of permitted uses", Schedule D shall be amended by the inclusion of the following principle use in the HC Zone:

Principle Use in the HC Zone - Head/Smoke/Vape Shops

Section 15. Chapter 143, Section 143-141, "Fences and walls", Subsections F, K, and P shall be amended to read, in their entirety, as follows:

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 euonymus, 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.

P. 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.

Section 16. Chapter 143, Section 143-141, "Fences and Walls", Subsection M shall be amended by the inclusion of additional Subsection (10) to read, in its entirety, as follows:

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

Section 17. Chapter 143, Section 143-141 "Parking and storage of vehicles on residential lots", Paragraph A shall be amended to read, in its entirety, as follows:

A. 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. Commercial automobiles, station wagons, vans, and pickup trucks may be kept overnight on a single-family lot, provided such commercial vehicle does not exceed 10,000 pounds gross vehicle weight, exceed 22 feet in length, and have more than two axles.

Section 18. Chapter 143, Section 143-143, "Parking and storage of vehicles on residential lots", Paragraph E shall be amended to read, in its entirety, as follows:

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.

Section 19. Chapter 143, Attachment 6, Checklist No. 2, shall be renamed "Checklist for Determining Completeness of Non-Residential Use Variance or Appeal".

Section 20. Chapter 143 shall be amended by the inclusion of new "Attachment 7, Checklist No.3," "Checklist for Single-Family or Two-Family Residential Bulk Variances" which shall be in the form attached hereto.

Section 21. Chapter 143, Schedule "D" (Attachment 4) shall be amended to change the "Maximum Accessory Building Coverage" to 6% in all residential zones R-1 through R-7.

Section 22. Chapter 143, Section 143-173, "Cannabis Retail and Medical Cannabis Dispensary Establishment," shall be amended to read, in its entirety, as follows:

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.

Section 23. Chapter 143, Section 143-175, "Permitted Signs", shall be amended by the addition of new Subparagraph (c) under Paragraph 1 in Subsection K which shall read as follows:

K1(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.

Section 24. Chapter 143, Section 143-143, "Parking and storage of vehicles on residential lots," shall be amended by the following amendment to Section H which shall read, in its entirety, as follows:

- H. A total of two recreation vehicles (including any permitted commercial vehicles), as defined herein may be stored or parked within a residential district provided that the following requirements are met:
 - (1) Such recreational vehicles shall be parked, stored within the side or rear yard (and on a corner lot the non-address side shall be considered a side yard for purposes of this Section) only of the subject premises, when possible, upon which the owner of said vehicle(s) resides. Only one such vehicle may be parked in the front yard when necessary and it cannot exceed 22 feet in length. A total of two recreation vehicles, as defined herein may be stored or parked within a residential district provided that the following requirements are met:
 - (2) Recreational vehicles as defined herein must be kept licensed, registered and in proper repair and may not be used for living purposes, or for storage of materials other than those which are customarily used in conjunction with said vehicle.
 - (3) Commercial vehicles, except for those identified in §143-143A, as defined by this chapter are prohibited from being stored within a residential district.
 - (4) Storage and/or parking of recreational vehicles shall be on an asphalt paved, concrete or concrete paver surface and must meet the minimum required setbacks for accessory structure per the particular residential zone, but in no case shall it be less than 10 feet when stored or parked in the side yard.
 - (5) Only one self-propelled motor home is allowed which shall not exceed a bumper-to-bumper length of 36 feet (including trailer) or a height of 10 feet measured to the top of the roof.

Section 25. Chapter 143, Section 143-173.1B, “Head, Smoke and Vape Shops,” shall be included to read, in its entirety, as follows:

- A. Head Shops, Smoke Shops and Vape Shops shall only be permitted in the HC Zone-Highway Commercial District as the principle use. Limit to three (3) approvals
- 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 a Head/Smoke/ or a Vape Shop allowed on the premises as defined in §143-5.
- F. No Head/Smoke/Vape Shop shall be located within 1,000 linear feet in any direction of another Head/Smoke/Vape Shop as measured from the property lines.
- G. No Head/Smoke/Vape Shop 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.
- I. No food sales or eating establishments permitted on the same premises.
- J. Residential use not permitted on the same premises.
- K. The Certificate of Continuing Occupancy must be renewed on an annual basis no later than January 15. Pre-existing shops with a valid CCO will be required to renew on an annual basis.
- L. Continuing Certificate of Occupancy and Fees for Head/Smoke/Vape Shops:
 - 1. No person or entity shall conduct maintain or operate a Head/Smoke/Vape Shop without first applying for and receiving an approved Continuing Certificate of Occupancy. No more than three (3) CCOs may be issued in any year. Applications are available from the Borough.
 - 2. Annual fees associated with the Continuing Certificate of Occupancy requirement for Head/Smoke/Vape Shops will be \$200/
 - 3. All Continuing Certificates of Occupancy for Head/Smoke/Vape Shops shall be for one calendar year, beginning January 1 and expiring on December 31.

Section 26. Chapter 101, Section 3, “Fee Schedule”, the amending Subsection M which shall read as follows:

- | | | |
|------------|--|-------|
| §101-3M(4) | Minor alterations to non-residential structures [Sign, Awnings]: | \$50 |
| (5) | Alterations to non-residential structures, new accessory buildings: | \$200 |
| (6) | New nonresidential structure construction, or addition to existing structure: | \$300 |
| (7) | Change of Occupancy. | |
| (a) | Nonresidential: \$200. Late fee if application not received within thirty days of occupancy: \$25 | |
| (b) | Residential, per dwelling unit: \$200. Re-inspection fee due to inspection failure: \$25 for each re-inspection. | |

Borough of Butler Planning Board
CHECKLIST NO.3
BOROUGH CODE CHAPTER 143-ATTACHMENT 7

**Planning Board Application for
Owner Occupied One Family or Two Family
Residential Bulk Variances**

Name of Applicant: _____

Mailing Address: _____

Phone #: _____ Email: _____

Project Location: _____ Block: _____ Lot: _____

Applicant shall provide all checklist items listed below. Provide fifteen (15) copies of all required information listed below, including all application forms, plans and any other supporting documents. Please provide just two (2) copies of this checklist.

				Checklist Requirements
	Submitted	Not Applicable	Waiver Requested	
1.				Fifteen Copies (15) of completed Application and 2 copies of this Checklist bearing the original signatures of the Applicant/Homeowner
2.				<u>Application & Escrow Fees</u> : Payment of the Application Fee in the amount of \$250 for Residential Bulk Variances per §143-42 and Payment of Initial Escrow Deposit in the amount of \$1,500 per §143-43C(3). If Applicant is required to submit revisions the applicant may be required to deposit additional escrow as permitted by §143-43B.
3.				<u>Proof of Ownership</u> : Proof the Applicant is the owner of the subject property. If not the owner, then provide notarized consent from the property owner to submit application. [Tax bill will suffice].
4.				<u>Photographs</u> : Provide sufficient photographs of current property conditions showing all structures and areas of the property proposed to be modified, as well as the opposite side of the street.
5.				<u>Easements, Licenses & Deed Restrictions</u> : Copies of any existing or proposed protective or restrictive covenants, deed restrictions, use licenses, and easements, whether public or private.
6.				<u>Building Drawings</u> : Foundation plans, first floor plans, second floor plans, and exterior elevation plans showing all sides of the existing and proposed structure(s). Plans shall identify all exterior siding material types for all proposed structures. All plans shall be drawn and printed in units of feet-inches. Fifteen (15) sets of building plans, either bearing the seal of a licensed architect in the State of New Jersey, or certified as having been prepared by the homeowner for his own use and occupancy. All two family dwellings require an architect's certification.
7.				<u>Certification Block</u> : Variance Maps and Architectural Plans shall contain a Certification Block on the cover sheet to indicate the Butler Planning Board Application# and three (3) approval signature/date lines for the Board Chairperson, Board Secretary and Board Engineer.

Borough of Butler Planning Board

CHECKLIST NO. 3 FOR SINGLE-FAMILY OR TWO-FAMILY RESIDENTIAL BULK VARIANCES – CONTINUED

	Submitted	Not Applicable	Waiver Requested	Checklist Requirements
8.				<p><u>Survey</u>: A boundary and location survey bearing the original signature and raised seal of a professional land surveyor licensed in the State of New Jersey. Surveys shall be representative of current site conditions. Survey data shall include a showing of the property boundaries, building setback lines, easements, areas dedicated to public use including grants, sight triangles, restrictions and rights-of-way. If applicable, the survey shall show the vertical and horizontal data necessary to confirm the areas of the FEMA floodplain and NJDEP and a copy of the Letter of Interpretation. If the subject property has steep slopes (slopes greater than 15%), then the topographic information, including contours and spot elevations as prepared by a licensed professional land surveyor using a recognized datum may be required.</p>
9.				<p><u>Variance Map</u>: Using the latest revised survey as a base map, showing the location, ground surface dimensions, and property setback distances for all proposed improvements. The Variance Map shall be drawn to scale, and printed to a scale of not less than one inch = thirty feet. Structures to remain shall be indicated by solid lines. A variance map can be prepared by the homeowner provided it is based upon the latest survey, drawn/printed to an accepted engineering scale and contains complete zoning information including coverage calculations.</p>
10.				<p><u>Stormwater Management</u>: The applicant shall document the proposed work would have no adverse impact on neighboring properties or public roads. Provide sufficient documentation of all existing and proposed stormwater management facilities, including a showing of the downspout locations on the architectural plans, variance maps and survey as necessary. Where additional stormwater management facilities are found to be necessary by the Board Members and/or their professionals, supporting calculations and details shall be prepared by a professional engineer, licensed in the State of New Jersey. See Borough Code §143-188 through 143-190 for standards.</p>
11.				<p><u>Building Coverage</u>: Variance map shall include an itemized schedule listing all existing and proposed building coverages. Building coverage is defined as: The square footage as measured on a horizontal plane around the periphery of the drip line, and including the area under the roof of any structure supported by columns, but not having walls, as measured around the outside of the outermost extremities of the rood drip line above the columns. The coverage for the principal dwelling structures shall be calculated separately from accessory structures.</p>
12.				<p><u>Digital Copies</u>: Digital files of all items required by this checklist and any other supplemental information. Files formats are preferred to be in PDF, although Word doc files may also be accepted when appropriate.</p>