

**TOWN OF PAVILION
PUBLIC HEARING
June 14, 2023
7:00 PM**

The Town Board of the Town of Pavilion held a Public Hearing on June 14, 2023 at the Town Hall, One Woodrow Drive, Pavilion, New York 14525 at 7:00 p.m. Purpose of the Public Hearing is to hear any person for or against any item contained in the Local Law #2 entitled “Town of Pavilion Zoning Amendment of 2023”.

Present were: Supervisor Robert LaPoint
Councilperson John Rudgers
Councilperson Donald Oberlin
Councilperson James Thater
Councilperson Dean Davis

Others present: Cindy Starr, James Cleveland, Charles Sherman, Don Brooks, Scott Savidge, Bill Fuest, Lisa Schiske, Ray & Kim Butler, Guy Lasser, Mike Fisher, Mike & Tammy Bradley, Tim Welch, Jesse & Jolene Coots, Liz Conway, George Jinks, Jurgen& Jane Liczewsky.

At 7:00 PM Supervisor LaPoint opened Public Hearing regarding Local Law #2 entitled “Town of Pavilion Zoning Amendment of 2023”.

Ray & Kim Butler requested following information be entered into the minutes.

RE: PUBLIC HEARING REGARDING PROPOSED LOCAL LAW UPDATING THE TOWN OF PAVILION ZONING CODE — PUBLIC COMMENTS.

Dear Honorable Town of Pavilion Town Board, Town Supervisor, and Town Councilpersons:

We represent Raymond Butler and Kimala Butler (collectively, the “Butlers”) with respect to the proposed local law updating the Town of Pavilion Zoning Code that is scheduled to be the subject of an open meeting and public hearing before the Town of Pavilion Town Board on or about May 18, 2023 (the “Proposed Local Law”). We have reviewed the Proposed Local Law, the current Town of Pavilion Zoning Code, relevant Town Board and Planning Board meeting minutes, the Town of Pavilion Comprehensive Plan, and other pertinent documents.

We have also reviewed certain materials produced by the Town. In one such email from the Town Planning Board Chairperson to the Town Supervisor dated February 21, 2022, the

Planning Board Chair states, “I believe our Pavilion Zoning Code has not been updated to where it needs to be when dealing with ‘Commercial or Industrial Special Use Permit Applications’ for projects which keep increasing in size and scope in the AgRes Zone.” We agree with that sentiment, and so offer this letter to address some of the concerns articulated by Planning Board Chairperson Fuest.

Code with the Comprehensive Plan and promote the best interest of the community. Specifically, we ask the Town to revise the “Setback Changes” section of the Proposed Local Law as follows:

1. Adding “Campgrounds” to the list of uses in an A&R1 and A&R2 zoning district for which the setback requirements referenced in the Proposed Local Law would apply.

2. Adding “Professional Offices” to the list of uses in an A&R1 and A&R2 zoning district for which the setback requirements referenced in the Proposed Local Law would apply.

3. Adding “Concerts” to the list of uses in an A&R1 and A&R2 zoning district for which the setback requirements referenced in the Proposed Local Law would apply.

In addition thereto — or in the alternative, if the Town Board is unwilling to require these three uses to comply with the new setback requirement in the Proposed Local Law — the Butlers request that the Proposed Local Law be revised to require that any property for which three or more special permits is granted is required to comply with the new setback requirements.

We believe incorporating these additional provisions into the Proposed Local Law will be in the best interests of the community, will promote the goals highlighted in the Town’s Comprehensive Plan, and protect and preserve the character of the area.

Recommended Changes Remedy Inconsistency With the Comprehensive Plan.

Amending the Town Zoning Code in a manner that is inconsistent with the most recently adopted plan presents many dangers. Zoning determinations made without consideration to a well-considered plan closely resemble a Gallup Poll— fickle opinions may guide zoning determinations instead of careful study and consideration. The power to disregard community

It is my understanding that, by email dated June 6, 2021, Planning Board member Patrick Boyd expressed concern about the impact of Campgrounds on nearby residential property uses. Specifically, he stated that large campgrounds could change the character of the neighborhood “from a rural area to a small village [during the summer season]” and so campgrounds and individual campsites “should have longer setbacks possibly 200-300’ from property lines.” The changes requested herein are consistent with Planning Board Member Patrick Boyd’s comments regarding “campground” / “campsite” uses.

It is my understanding that, at the Planning Board’s September 21, 2022 meeting, Planning Board Chairman Bill Feust expressed that Professional Offices should be included in the list of uses in the Proposed Local Law for which an increased setback requirement applies. The changes requested herein are consistent with the Planning Board Chairman’s comments regarding “Professional Office” uses. plans would therefore embolden decisionmakers to engage in the “special interest, irrational ad hocery” that the

Court of Appeals warns about in *Town of Bedford v. Vil. of Mt. Kisco*. 33 N.Y.2d 178 at 188 (1973).

Here, the Proposed Local Law would allow multiple uses with a special use permit in an A&R1 zoning district, but subjects some but not all special uses in such district to an additional setback requirement.

Notably, the Proposed Local Law does not include (1) Campgrounds³ ; (2) Professional Offices⁴ ; or (3) Concerts, among the uses that are subject to the additional setback requirements. For the reasons stated below, we request that the Town Board include these three uses among the list of uses in the Proposed Local Law for which the additional setback requirement applies. •

The Comprehensive Plan indicates that these uses are more appropriate in zoning districts other than an A&R-1 or A&R-2 district, such as the Commercial District — C , or should be subject to subject to conditions that limit their adverse impacts. Consider the following: “It is the policy of the town to be a rural community that values and protects its farmland, open space, and agricultural heritage.” Comp. Plan at pg. 21.

o Imposing the additional setback requirement for (1) Campgrounds; (2) Professional Offices, and (3) Concerts would promote the Town policy of protecting farmland, open space, and agricultural heritage in the Town’s A&R-1 and A&R-2 districts by further buffering such uses from the primary agricultural and residential purposes for which those districts were created.

• “It is the policy of the town to accept commercial and industrial development that enriches our residents lives through new employment opportunity and services. All such development must respect our rural aesthetic as well as existing residents and property owners. New growth must not come at the expense of the way of life, land, and people in our community.” Comp Plan at pg. 21.

o Imposing the additional setback requirement for (1) Campgrounds; (2)

3 “Campgrounds” are not permitted as of right in any zoning district; rather, they are only permitted in an A-R District upon issuance of a Special Permit under Town Code §611(B)(1). Similarly, “Mobile Home Parks” are not permitted as-of-right in any zoning district, but are permitted in an A&R-1 District with a special permit under Town Code §501(B)(19) and Town Code §702.

4 “Professional Office” uses are permitted as-of-right only in a commercial zoning district within the Town. Town Code ¶504(A)(4). By contrast, “Professional Office” uses are only allowed by special use permit in an AR-1 Zoning District (Town Code §501(B)(11)) and Residential Zoning District (Town Code §503(B)(5)

Professional Offices, and (3) Concerts would promote the Town policy of respecting the Town’s rural aesthetic as well as existing residents and property owners while allowing reasonable new development through the special use permitting process. This would help ensure that new growth is achieved properly, in the right manner, in the right location, with the right buffers, and therefore does not come at the expense of the way of life, land, and people in the community.

• “The Rural Agricultural designation occupies the largest portion of Pavilion. ... High quality farmland is the Town of Pavilion’s greatest asset and must therefore be protected.” Comp. Plan at pg. 22.

o Imposing the additional setback requirement for (1) Campgrounds; (2) Professional Offices, and (3) Concerts would help ensure that high quality farmland in the Town is protected

by creating more substantial buffers between the Town's greatest asset (high quality farmland) and the more intensive special uses (i.e., Campgrounds, Professional offices, and Concerts).

- “There have been several commercial establishments operating within this [Rural Agriculture] designation which have been ‘grandfathered’ into their status. While it is not the intention of this plan to promote new development in this area which does not conform to the uses set forth [in the Comprehensive Plan] ... it is sometimes in the best interest of the town to allow uses which do not conform. ... Such developments should only be allowed if they provide a suitable benefit to the community and are not disruptive to nearby residences or farming operations.” Comp Plan. at pg. 22 (emphasis added).

- o Imposing the additional setback requirement for (1) Campgrounds; (2) Professional Offices, and (3) Concerts would help serve the twin goal of (a) allowing nonconforming development in rural agricultural zoning districts through the special use permit process while simultaneously (b) ensuring that such intensive, commercial uses are not disruptive to nearby residences or farming operations. Concerts would be especially disruptive to farming operations that include animals. Noise and vibration from live and/or amplified music, as well as the crowds and secondary impacts caused therefrom, would risk surprising, annoying, and disturbing livestock/farm animals, and therefore disrupting farming operations and residences.

- The Comprehensive Plan calls for future uses in rural agricultural districts to “avoid placement of harmful activities or development in or near environmentally sensitive areas.” Comp Plan at pg. 24.

- o This suggests that more intensive uses should not be located in R&A-1 or R&A-2 zoning districts where the DEC environmental mapper shows a significant concentration of environmentally sensitive areas. Indeed, the Comprehensive Plan indicates that the Town should avoid siting more intensive uses in or near environmentally sensitive areas. Imposing the additional setback requirement for (1) Campgrounds; (2) Professional Offices, and (3) Concerts would promote the Town policy of avoiding placement of harmful activities or development in or near environmentally sensitive areas.

- The Comprehensive Plan calls for the siting of commercial uses within the Hamlet of Pavilion on Route 63 (Big Tree Road) west of the intersection with Perry Road and Route 246 (the “Hamlet”). Comp Plan at pg. 26.

- o Imposing the additional setback requirement for (1) Campgrounds; (2) Professional Offices, and (3) Concerts would serve the twin goal of (a) allowing nonconforming development in rural agricultural zoning districts through the special use permit process while simultaneously (b) ensuring that such intensive, commercial uses are not disruptive to nearby residences or farming operations. The additional setback requirements would further encourage such intensive uses to locate in the Hamlet, where the Comprehensive Plan calls for the siting of such commercial uses, such as on Route 63 (Big Tree Road) west of the intersection with Perry Road and Route 246, rather than in A&R districts which are less suitable for intensive or commercial uses.

- The Comprehensive Plan recommends that the Town of Pavilion adopt measures for the mixed-use land area in the Hamlet and should maintain and expand commercial/retail opportunities in the Hamlet. Comp Plan at pg. 29. The Comprehensive Plan also specifies that the Town should adopt measures for the Hamlet's commercial land areas, such as expanding commercial development within the Hamlet to supplement existing service and retail opportunities. Comp Plan at pg. 36.

o Imposing the additional setback requirement for Professional Offices and Concerts in A&R-1 and A&R-2 zoning districts would encourage the siting of such uses in in the Town’s mixed-use or commercial areas in the Hamlet, consistent with the Comprehensive Plan, as opposed to in an A&R district. And, in the event that such uses, or campground uses, are allowed by special permit in an A&R district, requiring all such uses to comply with the additional setback requirements in the Proposed Local Law would better protect the intended agricultural and residential uses in such districts from the more intense commercial uses of concerts, campgrounds, and professional offices.

• With respect to future commercial uses, the Comprehensive Plan identifies specific commercial land within the Hamlet around the intersections of Route 20 and Route 19 (the Clover Leaf) and Route 20 and Linewood Road. It states that these intersections “present a good opportunity for commercial establishments. In the case of the Route 20 and 19 intersection most available land is already being used for commercial purposes. While this doesn’t allow for much growth it is the intention of the town for this land use pattern to continue. ... The Linwood Road and Route 20 intersection currently has several commercial buildings that are no longer being used for commercial purposes. New Development or reuse of existing buildings for commercial purposes at this intersection is highly desirable. ... Businesses that can make use of the are a great fit for the Commercial (Existing) area.” Comp Plan at pg. 38. The Comprehensive Plan also states that the Town should adopt measures for the commercial district that promotes the continued use of commercial buildings and infrastructure in the Commercial District to avoid abandoned structures and protect all current uses according to the Current Use section of the plan.

o Imposing the additional setback requirement for Professional Offices and Concerts in A&R-1 and A&R-2 zoning districts would encourage the siting of such uses in in the Town’s commercial areas and districts, thereby incentivizing the use of existing commercial buildings and infrastructure, thereby avoiding the proliferation of abandoned structures, and protecting the primary permitted uses in other zoning districts.

Consequently, the additional setback requirements in the proposed local law should also apply to (1) Campgrounds; (2) Professional Offices, and (3) Concerts.

Recommended Changes Are More Consistent With the Structure of the Existing Zoning Code.

Under the current Zoning Code, the “Commercial District is designed to accommodate commercial, service, and light industrial uses” (Town Code §504), and allows as-of-right uses, including professional offices, motel, restaurant, retail and service. Town Code §504(A).

There is no genuine dispute that professional offices and concerts are much more intensive uses that generate more traffic and adverse impacts than residential and agricultural uses. They also are uses that are permitted as-of-right in a Commercial District (under Town Code §504(A)) and are consistent with the purpose for which the Commercial District was established.

By contrast, the Town’s “Agricultural & Residential-1 District is designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein.” In A&R-1 Districts, only the following uses are permitted as-of-right under §501(A) of the Town Code:

1. Farm and all usual agricultural operations including stabling of farm animals (see Section 409);
2. One (1) and two (2) family dwelling;

3. Mobile home (see Sections 406 and 701);
4. Home occupation;
5. Church and other places of worship, parish house, convent, rectory and parsonage;
6. School, public park, playground, library, municipal building and water system and similar public uses;
7. Farm water supply, conservancy and fire protection pond located not less than one hundred (100) feet from any street or property lines;
8. Private stable; and
9. Accessory use and building.

Town Code §501(A). Notably, neither Campgrounds nor Professional Offices are permitted as-of-right in this district.

In an A&R-1 zoning district, the Town Code only authorizes Professional Offices and Campgrounds by special use permit because they are more intensive uses than agricultural or residential uses. They are also inconsistent with the A&R-1 District’s stated purpose of preserving the Town’s agricultural base and rural nature and allowing residential uses. Thus, to the extent that Professional Offices and Campgrounds are allowed in an A&R-1 district by special use permit, the Town should protect the primary permitted as-of-right uses from the more intense special permit uses by subjecting such Professional Office and Campgrounds uses to the new setback requirements imposed by the Proposed Local Law.

Moreover, concerts are not expressly permitted as-of-right nor with a special use permit in an A&R-1 zoning district. Instead, because Concerts are a form of entertainment for which tickets are sold, they therefore constitute a commercial use and so should be sited exclusively in commercial districts. If the Town Board elects to allow concert uses in other districts, such as an A&R-1 district by special use permit, it should protect the primary permitted as-of-right uses from the more intense concert use (and the adverse impacts therefrom) by including concerts in the list of uses for which the new setback requirements apply in the Proposed Local Law.⁵

For these reasons, we urge the Town Board to revise the Proposed Local Law Section concerning “Setback Changes” to add (1) Campgrounds; (2) Professional Offices, and (3) Concerts to the list of uses in an A&R-1 zoning district for which the new setback requirement applies. In addition — or in the alternative, if the Town Board is unwilling to require these three uses to comply with the new setback requirement in the Proposed Local Law — the Butlers request that the Proposed Local Law be revised to require any property for which three or more special 5 Concerts are an especially intensive use as the generate noise, vibration, traffic, crowds, adverse environmental impacts, and harmful secondary impacts.

permits are granted to comply with the new setback requirements. Please make this letter a part of the public record concerning the Proposed Local Law, and please provide a copy to the Town Supervisor, Town Clerk, and all Town Councilpersons.

Thank you for your time and attention to this matter.

Sincerely,
Jacob H. Zoghlin

Supervisor LaPoint opened the floor for any questions or discussion.

At 8:00PMPM a motion by Supervisor LaPoint???, second by Councilperson Rudgers close public hearing and returned to regular meeting.

Respectfully submitted,

Lucinda Starr, Town Clerk