

APPENDIX G

Town of Batavia Agricultural & Farmland Protection Plan

Zoning Audit and Recommended Zoning Changes

ZONING AUDIT

The NYS Agricultural District Law protects farmers in Agricultural Districts from regulations that “unreasonably restrict or regulate farm operations within agricultural districts...unless it can be shown that the public health or safety is threatened.” To accomplish this, the NYS Department of Agriculture & Markets reviews regulations upon complaints from farmers and issues determinations as to whether the regulation is reasonable and/or necessary to protect public health. The Department of Agriculture & Markets has issued several guidance documents that identify specific zoning provisions that have been found to be unreasonable.

An audit of the Town of Batavia zoning law identified several provisions that may unreasonably restrict standard farm practices in some situations, according to the guidance issued by the NYS Department of Agriculture. The following narrative identifies these provisions and recommends revisions. Specific language to amend the zoning regulations is provided at the end of this document.

Animal Waste Storage – Requirement for Special Use Permit

The Town of Batavia’s zoning regulations currently require a special use permit for animal waste storage facilities. The existing provisions state:

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

Guidance provided by the NYS Dept. of Agriculture & Markets states that requiring either a special use permit or site plan review for animal waste storage facilities constitutes an unreasonable restriction on a standard farm practice. Despite this guidance, some communities, concerned that improperly designed facilities may contaminate groundwater and surface drinking water supplies, require farmers to submit plans, signed by SWCD, NRCS or a qualified engineer, to the Planning Board for Site Plan Review. No fee is required and a determination must be issued within 30 days of submittal. These municipalities maintain that the review of a site plan for an animal waste storage facility helps to protect the public health and safety by ensuring that such facilities comply with the requirements established by the USDA NRCS.

Recommendation: Eliminate the provision to require a special use permit for animal waste storage facilities. Specify that such facilities must meet the standards of USDA NRCS.

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Animal Waste Storage – Setback Requirements

The Town of Batavia zoning regulations currently require animal stabling and waste storage facilities to be set back 100 feet from a lot line and 500 feet from an R Residential District. (§ 235-20)

Guidance provided by the NYS Dept. of Ag. & Markets states that setback requirements for animal stables and animal waste storage facilities need to be related to health and safety and consistent with those for septic systems or other types of buildings. For example, setbacks from wells or water bodies are related to public health, whereas setbacks to property lines may be related to the potential for odor or nuisance and may unreasonably restrict a standard farming practice.

Recommendation: Modify setback requirements to specify setbacks from existing dwellings, wells and watercourses and eliminate minimum setback from lot lines and the R Residential District.

Farmworker Housing

The Town's zoning regulations currently do not include any provisions for farmworker housing. While such housing may be considered to be an accessory use to a farm, the Town has no provisions that would specifically permit farmworker housing on a separate lot from the farm. The Town's definition of Agricultural Use should be clarified to include farm worker housing (may be included in "necessary farm structures.")

Recommendations:

- Add "farmworker housing" to the list of uses allowed with a special use permit in the AR and in the proposed new AP zoning districts.
- Incorporate specific criteria for the review and approval of a special use permit for farmworker housing

Farmers markets, farm markets and roadside stands

Direct sales of farm products provide a means for farmers to "avoid the middleman" and sell farm products directly to customers. Farmers markets are typically operated by community organizations and provide a common space, often in the parking lot of another commercial or public use, for farmers to sell goods. Roadside stands typically consist of temporary structures and seasonal operations. Farm markets are typically year-round operations in permanent structures.

The existing zoning regulations do not have explicit regulations for farmers markets, roadside stands or farm markets. Provisions that specifically allow direct farm sales in agricultural zoning districts are needed.

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Recommendations:

1. Modify the definition for “roadside stand.” Incorporate new definitions for “farm market” and “farmers market.”
2. Add “roadside stand” to list of permitted accessory uses in the AR zoning districts.
3. Add “farm market” to the list of permitted principal uses in the AR, PD, C and I districts.
4. Add “farmers market” to the list of permitted uses in the C zoning district. Include a provision stating that site plan review shall not be required.

Definitions

The Town’s existing definition of “agricultural use” is:

AGRICULTURAL USE — Any parcel of land containing at least five acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

- (1) Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.
- (2) Agricultural uses shall exclude the raising of fur-bearing animals, riding academies, public stables or dog kennels.

The definition of agriculture established by the NYS Dept. of Agriculture & Markets, which establishes activities that are protected under the Agricultural Districts Law, specifically includes the raising of fur-bearing animals and horse boarding.

Several additional definitions are recommended to provide for ancillary businesses and agri-tourism operations on farms.

Recommendations:

1. **Revise the definition of agriculture in the Town’s zoning regulations to eliminate the exclusion of the raising of fur-bearing animals, riding academies and public stables, consistent with the definition in the NYS Agricultural Districts law.**
2. **Add definitions of “agriculture-related enterprises” and “agricultural recreational events.”**

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Public stables

A public stable, as defined in the Town's zoning regulations, that is located in a County-certified Agricultural District, is considered an agricultural use by NYS Ag. & Markets Law. As such, local regulations should not unreasonably restrict its operation. Ag. & Markets guidance state that requiring a special permit for such operations represents an unreasonable restriction.

Recommendation: Eliminate the requirement for a special permit for a "public stable" when the operation fits the definition of "agricultural use" in NYS Ag. & Markets Law and is located in a certified Agricultural District.

Other provisions

The Town's zoning states that only one principal use is permitted on any parcel, with exceptions for a dwelling as part of a commercial property. (§ 235-12)

Recommendation: Add an exception that permits a single family dwelling on the same lot as a principal agricultural use.

The Town's zoning prohibits farm animals within the R Residential zoning district. A farm located both in the R District and in a County-certified Agricultural District should not be subject to this restriction. Although very little land in Batavia is located in both the R zoning district and a County Agricultural District, the zoning should be modified to exclude such farms from this provision.

Recommendation: Incorporate an exception to the restriction on farm animals for farms located within a County Agricultural District.

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Definitions

AGRICULTURAL USE — Any parcel of land containing at least five acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

The use of land for the production, preparation, marketing and transportation of grain, vegetable, fruit, and other crops, horticultural and floricultural products, animal husbandry, livestock and livestock products, as well as the buildings, structures, equipment, manure processing and handling facilities and associated operations necessary to support such production activities and practices, including a commercial horse boarding operation as defined in NYS Agriculture and Markets Law Article 25-AA, Section 301.

- (1) Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.
- (2) Agricultural uses shall exclude the raising of fur-bearing animals, riding academies, public stables or dog kennels.

AGRICULTURAL ACCESSORY PRODUCTS -- Items, whether natural, processed, or manufactured, which are directly linked to and promote the use and sale of agricultural products such as but not limited to grain, fruit, produce, trees, shrubs, flowers, syrups and honeys, as well as seed, fertilizers, mulch soil amendments, hand implements and like products principally utilized in gardening, animal husbandry, horticulture, floriculture, apiculture and other agricultural pursuits.

AGRICULTURE-RELATED ENTERPRISES -- A retail or wholesale enterprise providing services or products principally utilized in agricultural production, including structures, agricultural equipment and agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer and equipment repairs, or providing for wholesale or retail sale of grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations.

AGRICULTURAL RECREATIONAL EVENTS -- Recreational, educational and entertainment activities operated in conjunction with and as part of an overall direct marketing strategy for an active agricultural operation or farm market that contribute to the production, preparation and marketing of crops, livestock and livestock products, and including activities such as petting zoos, hayrides, corn mazes and other such recreational activities, educational demonstrations, the onsite processing of foodstuffs and sale of prepared foods comprised primarily of ingredients produced on the premises for consumption on site and off site.

AGRICULTURAL WORKER HOUSING — Any area of land and all buildings or other structures pertaining thereto, any part of which may be occupied by persons employed as laborers in farm activities in the Town of Batavia who are provided with sleeping facilities, in whole or in part, by the owner without a stipulated agreement as to the duration of their stay or whether or not they are supplied with meals, but who are supplied with such services or facilities as are necessary for agricultural production in the Town of Batavia.

ANIMAL WASTE STORAGE FACILITY — Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

CLUSTER DEVELOPMENT — A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the

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overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

FARMERS' MARKET – An enterprise or association that consistently occupies a given site on a seasonal basis, operating principally as a common marketplace for the sale of locally grown fresh produce and farm products, where the farm products sold are produced by the participating farmers.

ROADSIDE STAND — A structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

STABLE, PRIVATE — A building in which horses or other livestock are kept for private use and not for hire, remuneration, or sale.

STABLE, PUBLIC — A building in which horses or other livestock are kept for remuneration, hire or sale.

A building and ancillary facilities such as paddocks, indoor and outdoor riding rinks and pastures that provide care, housing, training and health-related services to horses kept on the premises or on other properties owned or leased by the stable operator, including horses boarded on the premises by others, and which may include activities such as the sale of horses to the general public, the hiring of horses and horse drawn vehicles to the general public, and riding academy providing lessons in horseback riding and other equestrian skills or sports.

STABLING OF AGRICULTURAL ANIMALS — A concentration of animals, permitted under agricultural use, private stable and public stable, within a building, structure or other defined area for the purpose of housing or feeding.

§ 235-12. Buildings, uses and lots.

- A. One principal building and use per lot. There shall not be more than one principal building and one principal use on any one lot in the Agricultural (AG), Agricultural-Residential (AG-R), and the Residential (R) Districts except as provided for in the following:
- (1) An approved multifamily dwelling project;
 - (2) A single-family dwelling accompanying a nonresidential use, or uses, permitted on a lot in Agricultural (AG), Agricultural-Residential (AG-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot; or
 - (3) A single-family dwelling accompanying a nonresidential use, or uses, requiring a special use permit in Agricultural (AG), Agricultural Residential (AG-R) and Residential (R) Districts, if approved by the Planning Board as part of the special use permit application process, provided there is only one use of a commercial nature on the lot.
 - (4) A single family dwelling on the same lot as an agricultural use.

§ 235-20. Stabling agricultural animals.

There shall be no stabling of animals or storage of manure, fertilizer, or similar odor- or dust-producing substance within the R District, except in conjunction with an agricultural use located within a County-

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certified Agricultural District. Such stabling or storage shall be permitted in the AG, AG-R, I, IP or C Districts provided the following restrictions are observed:

- A. No such stabling or storage shall take place within ~~500~~ **100** feet of an **existing dwelling, water supply well or watercourse** ~~R-District.~~
- B. No such stabling or storage shall take place within 100 feet of a lot line.

§ 235-46. Animal waste storage facilities.

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. ~~If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.~~

§ 235-45. Roadside stands.

- A. Roadside stands may be located in any district.
- B. ~~Goods sold shall primarily be home grown.~~ Sales shall be limited to: vegetables, fruits, herbs, flowers, plants and other farm products; handcrafts produced as part of a home occupation; and syrups, jams and jellies, juices, honey, baked goods and other foodstuffs grown or produced as part of a home occupation, however in no case shall the sale of goods requiring refrigeration or freezing be permitted.
- C. ~~There shall be a front yard setback of at least 20 feet and side yard setbacks of at least 25 feet each.~~ Any structure or ground display shall be located outside of the road right-of-way and shall be set back a minimum of 25 feet from the edge of pavement of the adjacent public road and a minimum of 20 feet from the side lot line.
- D. Stands shall be **limited to 150 square feet in size.** ~~of a portable nature and must be removed when not in use.~~ **During those times or seasons of the year when such farm stand is not operational it shall be either dismantled or removed from the location to an area or a building upon the lands of the proprietor where such structure would be permitted, or secured in place by shutters or other such means to prevent unauthorized access or vandalism. At all times of the year however roadside stands visible from the public rights-of-way shall be maintained in a safe and attractive manner.**
- E. Off-street parking shall be provided for a minimum of three vehicles with additional provisions if traffic warrants.
- F. Two signs of not more than 12 square feet each may be permitted, located not less than 10 feet from a lot line.
- G. **No roadside stand shall be placed in a manner that limits the sight distance available to the motoring public or that in any other way obstructs their vision while driving, and furthermore, adequate space for customers to be able to park outside the outer edge of the road or highway shoulder shall be provided. Said space shall consist of an all weather surface.**

§ 235-45A. Farm Markets

- A. No farm market, whether in a shared structure or freestanding structure, shall have more than **1,500 square feet of retail sales and display area, including any areas under porch roofs or other structures with roofs. Greenhouses and other structures utilized for production of plants but which may still be open to the public, or areas under cultivation open to the public such as "U-Pick" operations, are excluded from the limitation on size of retail sales and display area.**

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- B. No farm market structure or associated parking areas shall be located within any front, side or rear yard setback areas of the property.
- C. Except for products on display under porches or other structures with roofs, or in greenhouses and open fields or gardens, no more than 1,500 square feet of outdoor or ground display of products shall be permitted. Furthermore no more than 200 square feet of the above 1500 square feet of outdoor or ground display shall be permitted within any front, side or rear yard areas of the property. No outdoor or ground display of products shall be permitted within any public right-of-way.
- D. Paved, gravel or other all-weather surface off-street parking facilities shall be provided. A minimum of one parking space for each 300 square feet of indoor and outdoor retail display area shall be provided. No parking shall be permitted within any front, side or rear yard areas of the property. No single dimension of the parking area shall exceed 150 linear feet.
- E. Display of Products.
No more than 20 percent of the bulk or volume of the products or wares displayed for sale at any farm market shall be agricultural accessory products as defined in this chapter. For the purpose of this section greenhouses and other structures utilized for production of plants but which may still be open to the public, or areas under cultivation open to the public such as "U-Pick" operations, are excluded from the calculation of the size of retail sales and display area.

§ 235-25. Agricultural-Residential District (AG-R).

The Agricultural-Residential (AG-R) District is designed primarily to preserve farmland and secondarily to preserve the rural nature of the town. Agricultural and residential uses have a number of inherent conflicts between them. The purpose of this district is to minimize these conflicts by separating the uses by providing an area where agricultural uses are the primary use and low-density residential development is a secondary use.

A. Permitted uses. The following uses are permitted in the Agricultural-Residential District:

- (1) Agricultural uses.
- (2) One- and two-family dwellings.
- (3) Mobile homes (see § 235-54).
- (4) Religious institutions.
- (5) Public parks, public playgrounds, and municipal uses.
- (6) Private stable.
- (7) Schools.
- (8) Home Occupation I (see § 235-44).

(9) Farm Market

(9)(10) Accessory buildings, structures and uses.

B. Uses requiring special use permit. The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit:

- (1) Multifamily dwellings.
- (2) Home Occupation II (§ 235-44).

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- (3) Wind energy conversion systems, production model.
 - (4) Outdoor recreation facility.
 - (5) Club.
 - (6) Airport landing strip.
 - (7) Kennel.
 - (8) Community center.
 - (9) Public utility (see § 235-38).
 - (10) Public stable, except that a special use permit shall not be required if the operation is an agricultural use within a County-certified Agricultural District.
 - (11) Commercial greenhouse.
 - (12) Commercial excavation (see § 235-40).
 - (13) Cemetery.
 - (14) Campground (see § 235-43).
 - (15) Animal hospital.
 - (16) Residential care facility.
 - (17) Cluster residential development (see § 235-41).
 - (18) Day-care center.
 - (19) Bed-and-breakfast.
 - (20) Boardinghouse.
 - (21) Animal waste storage facilities (see § 235-46).
 - (22) Animal shelter.
 - (23) Pond (see § 235-48).
 - (24) Farm equipment sales, service and repair (see § 235-37).
 - (25) Skilled trade shop (see § 235-47).
 - (26) ECHO unit (see § 235-51).
 - (27) Self-service storage facility.
 - (28) Commercial communication tower (see § 235-52).
 - (29) Landscaping contractor's yard (see § 235-53).
 - (30) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).
- C. Uses requiring special use permit on arterial highways. The following uses are permitted in the Agricultural-Residential District upon the issuance of a special use permit, provided the affected lot and proposed use front directly upon an arterial highway and the lot involved is not located within 300 feet of a lot with an existing residential use (other than residential uses located on the involved lot) (such measurements shall be made between the nearest respective lot lines):
- (1) Hotel/motel.
 - (2) Motor vehicle repair shop (see § 235-37).
 - (3) Hospital.

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- (4) Indoor recreation facility.
- (5) Accessory buildings, structures and uses related to those uses allowed by special use permit (only site plan review is required for approval).

D. Area regulations. See Zoning Schedule A.

§ 235-26. Residential District (R).

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 16,000 square feet (provided public water or sewer is available) or 20,000 square feet (no public water or sewer available). The purpose of this district is to encourage residential growth in areas of the town which have existing concentrations of residential uses. The Residential District will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted uses. The following uses are permitted in the Residential District:

- (1) One- and two-family dwellings.
- (2) Religious institutions.
- (3) Public parks, public playgrounds, and municipal uses.
- (4) Agricultural uses, excluding the stabling of animals or the storage of manure, fertilizer, or similar odor- or dust-producing substances, unless such stabling or storage is integral to an agricultural use located in a County-certified Agricultural District.
- (5) Schools.
- (6) Accessory buildings, structures and uses.

§ 235-46. Animal waste storage facilities.

All proposals for installation and/or modification of animal waste storage facilities shall be designed, constructed and maintained in accordance with the standards promulgated by the USDA Natural Resources Conservation Service (NRCS), submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or United States Natural Resources Conservation Service (NRCS) for its review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

AGRICULTURAL WORKER HOUSING

The Planning Board may issue a special use permit for the construction and maintenance of housing to support an individual agricultural operation within the AR Agricultural-Residential District provided that the following standards and conditions are maintained:

- A. The maximum number of housing units allowed for an individual agricultural operation shall be based on justification of need for the number of dwelling units requested. This justification is to be based on, among other items, full time employment by one or more persons living as a family in the dwelling unit and deriving their principal income from the individual agricultural operation for which this special use permit is requested.

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- B. No housing unit shall be used, leased or rented to another person if that person does not have a legal interest established with the individual agricultural operation. The landowner shall certify, on an annual basis, that the farm housing is used for farm labor. All housing units shall be located on a parcel that is under the same ownership as the individual agricultural operation.
- C. All housing units shall comply with the Standards of the Codes of New York.
- D. All housing units shall have a septic system approved by the New York State Department of Health, or an approved connection to a public sewer system.
- E. All housing units shall have adequate access to a public highway. To the extent possible, this access shall be combined with the primary agricultural operation and any other driveways for all other housing units associated with said agricultural operation.
- F. All housing units shall have a designated area for parking of at least one (1) vehicle per housing unit. This parking area shall be located adjacent to, or within 100 feet from, the main entrance to each temporary housing unit. All such parking area(s) shall be adequately screened or buffered from existing dwelling units or adjacent residential zoned land.
- G. All housing units shall be anchored to a concrete pad or attached to a building foundation.
- H. All housing units shall be located on that portion of an actively farmed site which the Planning Board determines would cause the least disruption to continued farming operations. The basis for this determination will include an overall site plan identifying the land needed for production and the land needed in support of said production.
- I. All housing units, regardless of the zone district, shall be subject to the front, side and rear setback standards specified for principal buildings in the AR District.