

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, November 23, 2020, 7:00 p.m.

MINUTES—APPROVED

The minutes are written as a summary of the main points that were made and are the official and permanent record of the actions taken by the Town of Farmington Zoning Board of Appeals. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions. An audio recording of the meeting is made in accordance with the Zoning Board of Appeals adopted Rules of Procedure. The audio recording is retained for four months.

Board Members Present: Jeremy Marshall, *Chairperson*
Jill Attardi
Tod Ruthven
Aaron Sweeney

Board Member Excused: Thomas Yourch

Staff Present:
Ronald L. Brand, Town of Farmington Director of Development and Planning
August Gordner, Town of Farmington Code Enforcement Officer
John Weidenborner, Town of Farmington Zoning Officer

Applicant Present:
John Larson, 5733 Dalton Drive, Farmington, N.Y. 14425\

Others Present:
None

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. by Mr. Marshall.

The Pledge of Allegiance was recited.

Mr. Marshall said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on February 23, 2020, as amended above.

This meeting was held in person at the Farmington Town Hall. The safety measures were implemented in accordance with the Governor's relevant Executive Orders regarding the COVID-19 pandemic. Board members, Town staff and residents who were in attendance at the Town Hall remained at separated distances of at least six feet and used facemasks at distances of less than six feet. A sign-in sheet was not used to avoid contact with pens, pencils and papers. The names of those attending tonight's meeting is available for public tracing should it be deemed necessary. Temperature checks were conducted by Town staff at the entrance to the Town Hall. Hand sanitizers were available throughout the building. Guidelines and safety measures were posted on the meeting room door and in the lobby of the Town Hall. Separate entrance and exit locations were used. Public access was restricted to the lobby, the main meeting room and the public restrooms.

2. **APPROVAL OF MINUTES OF OCTOBER 26, 2020**

■ A motion was made by MR. SWEENEY, seconded by MS. ATTARDI, that the minutes of the October 26, 2020, meeting be approved.

Motion carried by voice vote.

3. **LEGAL NOTICE**

The following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper on Sunday, November 15, 2020:

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that Public Hearings will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 23rd day of November 2020 commencing at 7:00 p.m., Eastern Daylight Savings Time, at the Farmington Town Hall, 1000 County Road 8, in the Town of Farmington, Ontario County, New York 14425 to consider the following applications:

ZB #1101-20: JOHN LARSON, 5733 DALTON DRIVE, FARMINGTON, N.Y. 14425: Request an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant wishes to keep a 50-square-foot accessory structure (a plastic shed) he erected in the side yard portion of his lot. The Town Code requires all accessory structures, in any district, to be located in the rear yard portion of the lot. The property is located at 5733 Dalton Drive and is zoned R-7.2 Planned Subdivision.

SAID BOARD OF APPEALS WILL MEET at said time and place to hear all persons in support of, or having objections to, such matters.

By order of:
Jeremy Marshall, Chairperson
Zoning Board of Appeals

4. NEW PUBLIC HEARING

ZB #1101-20 **John Larson** **Area Variance**
5733 Dalton Drive
Farmington, N.Y. 14425

The applicant is requesting an Area Variance in accordance with Chapter 165, Article V, Section 58 of the Farmington Town Code. The applicant wishes to keep a 50-square-foot accessory structure (a plastic shed) he erected in the side yard portion of his lot. The Town Code requires all accessory structures, in any district, to be located in the rear yard portion of the lot. The property is located at 5733 Dalton Drive and is zoned R-7.2 Planned Sub-division.

Mr. Marshall opened the Public Hearing on this application.

Mr. Larson presented this application.

He said that he would like to keep a 7-foot x 7-foot plastic shed in the side yard portion of his lot. Mr. Larson said that with the shed being plastic that he did not think that he needed a permit when he put it up in March. He said that the shed was already up when he applied for the permit. He said that he would like to know if he could keep the shed in its present location.

Mr. Brand said that two draft resolutions have been submitted for the board's consideration this evening, i.e., the State Environmental Quality Review (SEQR) classification (Type II Action) and the Area Variance Findings and Decision.

Mr. Weidenborner said that this application is similar to a recent application (ZB #0801-20, August 24, 2020) for a property in Mr. Larson's subdivision in which the applicant also requested an Area Variance to erect an accessory structure (a shed) in the side yard portion of his lot (5757 Wishing Well Lane). Mr. Weidenborner said that the Zoning Board of Appeals denied that application (*see* Zoning Board of Appeals minutes, August 24, 2020, pp. 3–19).

Mr. Larson displayed a drawing of his property which depicted the location of the existing shed. Mr. Marshall asked about another shed in Mr. Larson's backyard. Mr. Larson said that the 7-foot x 7-foot plastic shed could not be placed near this shed because of the location of the deck.

Mr. Marshall asked if anyone in attendance wished to speak for or against this application, or to ask questions.

There were no comments or questions from the Town staff. There were no other residents in attendance.

Mr. Marshall then closed the Public Hearing on this application.

5. BOARD BUSINESS—DELIBERATIONS AND DECISION

ZB #1101-20 John Larson Area Variance
5733 Dalton Drive
Farmington, N.Y. 14425

■ A motion was made by MR. SWEENEY, seconded by MR. RUTHVEN, that the reading of the following State Environmental Quality Review (SEQR) resolution be waived and that the resolution be approved as submitted by the Town staff:

FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
SEQR RESOLUTION—TYPE II ACTION

ZB #1101-20

APPLICANT: John Larson
5733 Dalton Drive
Farmington, N.Y. 14425

ACTION: Area Variance to erect a 50- square-foot accessory structure (a plastic shed) in the side yard of the lot.

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has reviewed the criteria, under Part 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations, for determining the Classification associated with the above referenced Action; and,

NOW, THEREFORE, BE IT RESOLVED THAT the Board finds that the Action is classified a Type II Action under Part 617.5 (c) of the SEQR Regulations.

BE IT FURTHER RESOLVED THAT Type II Actions are not subject to further review under Part 617.

NOW, THEREFORE, BE IT RESOLVED THAT the Board in making this Classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the Town file upon this Action.

Jill Attardi Aye
Tod Ruthven Aye
Jeremy Marshall Aye

Aaron Sweeney	Aye
Thomas Yourch	Excused

Motion carried.

■ A motion was made by MS. ATTARDI, seconded by MR. RUTHVEN, that the reading of the complete Area Variance Findings and Decision resolution be waived and that the Chairperson read aloud the Determination of the Zoning Board of Appeals.

Motion carried by voice vote.

The Chairperson then read aloud the Determination of the Zoning Board of Appeals from the following complete resolution:

**TOWN OF FARMINGTON
 ZONING BOARD OF APPEALS
 AREA VARIANCE FINDINGS AND DECISION**

APPLICANT: John Larson	File: ZB #1101-20
5733 Dalton Drive	Zoning District: R-7.2 Planned Subdivision
Farmington, N.Y. 14425	Published Legal Notice on: Nov. 15, 2020
	County Planning Action on: N/A
	County Referral #: N/A
	Public Hearing held on: Nov. 23, 2020

Property Location: 5733 Dalton Drive, Farmington, New York 14425.

Applicable Section of Town Code: Chapter 165, Article V, Section 58.

Requirement for Which Variance is Requested: The applicant has erected a 50- square-foot accessory structure (a plastic shed) in the side yard portion of his lot. The Town Code requires all accessory structures, in any district, to be located in the rear yard portion of the lot.

State Environmental Quality Review Determination: The granting of an Area Variance for an a 50-square-foot accessory structure is classified as a Type II Action under Part 617.5 (15) of the State Environmental Quality Review (SEQR) Regulations. Type II Actions have been determined, under the SEQR Regulations, not to have a substantial adverse impact upon the environment or are otherwise precluded from further environmental review under Environmental Conservation Law, Article 8.

County Planning Referral Recommendation: N/A. Exempt Action by Ontario County Planning Board Bylaws.

FACTORS CONSIDERED AND BOARD FINDINGS

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance.

Yes No

Reasons: The Zoning Board of Appeals (hereinafter referred to as Board) finds the neighboring properties are all zoned R-7.2 Planned Subdivision District. The Board further finds that these properties have been developed as single-family dwellings on 7,200-square-foot lots. The Board further finds that the majority of these properties have been developed within the long established zoning district requirements; and without the need for area variances being granted which, had they been granted, would have reduced the minimum required open space portions of these small sized lots. The Board further finds the cumulative effect of such practice would have resulted in a major change to the character of the neighborhood as it was originally intended and as it has been used for many decades.

The Board further finds, that in this instance, the property owner already has one accessory structure placed within the rear yard portion of the lot. The Board further finds that other available locations do exist in the rear yard portion of the lot, or that the applicant can replace the two smaller structures with one larger structure without having the need for the requested Area Variance being granted.

The Board further finds that it is a requirement of New York State Town Law (Section 267. B. (c) to grant the minimum relief (a variance) deemed necessary and adequate; and at the same time preserve and protect the character of the neighborhood. The Board, based upon these findings, determines that the applicant has failed to prove the existence of any practical difficulty in complying with the zoning district requirements. The Board further finds that the majority of the sites within this long-established neighborhood exist without overcrowding of their individual sites with accessory structures. The Board, based upon these findings concludes that, in this instance, the granting of an area variance without substantial proof of any practical difficulty would likely create an adverse effect on the character of the neighborhood; and would become a detriment to nearby properties.

2. Whether the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance. Yes No

Reasons: The Board finds, that the property provides other locations for this accessory structure (a plastic shed) to be placed while meeting the zoning requirements of the Town of Farmington Town Code. The Board based upon this finding determines that the benefit sought by the applicant can be achieved by a feasible alternative to the requested variance.

3. Whether the requested variance is substantial. Yes No

Reasons: The Board finds that the requested placement of the accessory structure in the side yard setback portion of the lot would require granting a 100% variance to what is otherwise required by Town Code. The Board has consistently found that a variance involving fifty percent (50%) or more is a substantial variance

4. Whether the proposed variance will have an adverse effect or impact upon the physical environmental conditions in the neighborhood or district. Yes No

Reasons: The Board has given consideration to the criteria for determining significance, as set forth in Section 617.7 of the SEQR Regulations. The Board finds that the proposed Action is classified as a Type II Action under Section 617.5 (c) of the New York State Environmental Conservation Law (ECL), Article 8. The Board finds that Type II Actions have been determined not to have a significant adverse impact upon the environment and has thereby satisfied the procedural requirements of the ECL.

5. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the Area Variance. Yes No

Reasons: The Board finds that the alleged difficulty is self-created due to the applicant installing the accessory structure first, and then requesting an area variance to enable the accessory structure to remain in the side yard portion of his property. The board finds that by relocating the accessory structure to the rear yard area of the property the requested area variance will not be necessary.

DETERMINATION OF THE ZONING BOARD OF APPEALS BASED UPON THE ABOVE FACTORS

The Zoning Board of Appeals, after reviewing the above five proofs, finds:

The benefit to the applicant does not outweigh the detriment to the community or neighborhood; and, therefore, the requested area variance to allow an Accessory Structure (shed) to remain in the applicant's side yard is denied.

NOW, THEREFORE, BE IT RESOLVED that the Applicant is directed to remove the accessory structure from the side yard portion of the lot within thirty (30) days from today.

BE IT FURTHER RESOLVED that the Board in making this Determination has satisfied the procedural requirements under New York State Town Law and the Town of Farmington Town Code.

BE IT FINALLY RESOLVED that the Board directs this Resolution be placed in the public file upon this Action and that a copy hereof be provided to the applicant.

■ A motion was made by MR. SWEENEY, seconded by MR. RUTHVEN, that the preceding resolution be approved.

Jill Attardi	Aye
Tod Ruthven	Aye
Jeremy Marshall	Aye
Aaron Sweeney	Aye
Thomas Yourch	Excused

Motion carried.

6. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

Mr. Larson presented several photographs to Mr. Weidenborner. Mr. Marshall requested that Mr. Larson contact the Development Office tomorrow regarding his application.

7. DIRECTOR OF PLANNING AND DEVELOPMENT UPDATE

Mr. Brand discussed the following topics:

- He reported that the Concerned Citizens of Farmington group (James Falanga, Nancy Falanga, Daniel Geer and James Redmond) have filed a second Article 78 concerning proceeding in New York State Supreme Court (Ontario County, Index #126079-2019) concerning the Delaware River Solar project proposed for property at the southwest corner of Yellow Mills Road and Fox Road. The proceeding seeks:
 - a. Annuling and vacating the Planning Board's August 7, 2019, Negative Declaration of Environmental Significance and resolution pursuant to Article 78;
 - b. Annuling and vacating the Planning Board's December 18, 2019, Negative Declaration of Environmental Significance and resolution pursuant to Article 78;
 - c. Annuling and vacating the Special Use Permit granted October 7, 2020.
 - d. Annuling and vacating Preliminary Site Plan approval granted November 4, 2020.
 - e. A preliminary injunction prohibiting respondent DRS from commencing any site work at the project site.
 - f. A permanent injunction prohibiting DRS from commencing any site at the project site; and

- g. Attorneys' fees and costs and disbursements; together with other and further relief as the Court deems just and proper.

The proceeding is scheduled to be heard on December 14, 2020, at 10:00 a.m.

The Planning Board is now considering the contents of a revised thorough and detailed Decommissioning Plan for the Delaware River Solar project. Mr. Brand said that the Planning Board will need to make a recommendation upon this revised draft and then refer it to the Town Board for their action. This acceptance of a Decommissioning Plan is a condition of the Special Use Permit that was approved on October 7, 2020.

- Mr. Brand reported that he has begun working on amendments to Chapter 165 of the Farmington Town Code—the Town's solar law.
- The Town has received a revised application for the GLN Farmington Realty project (LeFrois Development Corporation) on the south side of State Route 96 east of the Farmington Market Center and west of the Farmington Commons Plaza. Approval was granted for the clearing of brush and trees from a portion of the site, upon which four buildings are proposed, i.e., a bank with a drive-through window, a fast-food restaurant with a drive-through window, and two commercial buildings. A new Town-dedicated is proposed on the applicant's property off State Route 96 to serve the four proposed buildings. The road would be located approximately across from the former Griffith Building. Mr. Brand said that the applicant's original plan to have car wash adjacent to the Farmington Commons Plaza has been withdrawn.
- A meeting was held with the owners of the Farmington Commons Plaza (located at the southwest corner of State Route 332 and State Route 96) regarding their plans to develop several outparcels on their property and to redesign the plaza entrance off State Route 96. The owners will discuss their plans with John LeFrois (who is developing the adjacent GLN Farmington Realty project) for possible coordination. Mr. Brand said that this coordination may provide for a more timely completion of the segment connection of Mercier Boulevard from its current endpoint at Farmington Gardens Apartments to the proposed extension to the south of the GLN Farmington Realty project.
- A distribution center is proposed for the Union Crossing Development on an approximately 33.6-acre site on the northwest corner of County Road 41 and County Road 8 on Lot #2-R of the Blackwood Industrial Park Subdivision. The distribution center would be comprised of two buildings each approximately 208,000 square feet in size with the potential for one of them to be expanded to 258,000 square feet.

- The owner of Victor Chevrolet on State Route 96 in Victor, N.Y., has purchased a former gravel pit on Loomis road and proposes creation of a 10-lot subdivision and an industrial park with a Town-dedicated looped road to serve the lots.
- Mr. Brand said that he and the Town staff met with engineers from Buffalo, N.Y., regarding the Farmington Volunteer Fire Association plans to construct a new fire station on the northeast corner of State Route 96 and Hook Road. He said that the Zoning Board of Appeals should expect several Area Variance applications on this project.
- The Comprehensive Plan Update Committee met on November 17, 2020, to discuss strategies for the presentation of the draft Plan to the public and to determine a meaningful manner for the public to provide comments during the pandemic. Mr. Brand said that the draft of the Plan is expected to be ready for public review in January 2021. He said that the Town Board will have 90 days to schedule a formal Public Hearing following receipt of the draft Plan referral from the Update Committee. The tentative schedule that was developed by the Committee is:

December 2020: Complete draft document to Committee members for review and comment.

January 2021: Schedule announced for reach-out to the public.

March/April 2021: Referral of the Plan to the Town Board.

May 2021: Formal Public Hearing by the Town Board; adoption by the Town Board

Mr. Brand said that the Comprehensive Plan Update Committee reviewed recent Ontario County property tax data which indicates that the Town tax base has increased 123 percent during the period 2003 to 2020, and now exceeds \$1 billion, i.e.:

	2020		2003	
	# parcels	Assessed Value	# of parcels	Assessed Value
Agricultural	188	\$33.5 million	201	\$22.0 million
Residential	3,661	\$669.3 million	2,809	\$291.7 million
Residential (RS8)	4	\$630,700	2	\$218,400
Vacant	715	\$32.9 million	717	\$20.1 million
Commercial	119	\$195.3 million	93	\$79.2 million
Recreational	5	\$36.3 million	5	\$8.8 million
Comm. Services	26	\$20.5 million	25	\$14.9 million
Industrial	17	\$22.2 million	15	\$15.6 million
Public Service	85	\$62.8 million	72	\$27.7 million
Park and Forest	8	\$1.2 million	5	\$32,000
Totals:	4,828	\$1.0 billion	3,944	\$481 million

- The Planning Board approved the Final Site Plan application of Joyce Pimm to permit the keeping of chickens that are being used as emotional support animals on her property at 501 Hook Road. The Zoning Board of Appeals approved with conditions Ms. Pimm's Temporary Use Permit on July 27, 2020, which was contingent upon Final Site Plan approval by the Planning Board. Mr. Weidenborner said that a considerable amount of clean-up has been done on Ms. Pimm's property. Mr. Sweeney asked if neighbors attended the Planning Board Public Hearings and meetings on this application. Mr. Brand said that a formal Public Hearing was advertised and held, but that no residents attended to speak for or against either the Preliminary Site Plan or the Final Site Plan applications.
- Frank DiFelice (DiFelice Development Corporation) has proposed a commercial building on a vacant lot which he owns on the corner of State Route 96 and Corporate Drive for a beauty shop and an ice-cream store.
- The consultants from Bergmann Associates met with State DOT, County Planning, and representatives from Farmington and Canandaigua regarding the State Route 332/State Route 96 Corridor Sub-Area Study that is now in progress. The consultants seek the identification of areas of concern to be addressed to sustain the ability of State Route 332 which now has been open as a four-lane highway from the New York State Thruway to the City of Canandaigua boundary since approximately 1999.
- The owner of the Farmington Market Center (Tops Supermarket Plaza) on State Route 96 has withdrawn his Incentive Zoning application.
- On behalf of the Zoning Board of Appeals members, Mr. Brand expressed the board's and his appreciation to John Robortella, the Clerk of the board, for his many years of excellent service to this board and his commitment to the Town of Farmington. Noting his retirement as Clerk of the Zoning Board of Appeals, John will be sorely missed.

8. ZONING OFFICER UPDATE

Mr. Weidenborner reported that no applications for the December 2020 meeting of the Zoning Board of Appeals had been received by today's deadline. He said that the next meeting of the ZBA will be on Monday, January 25, 2021, at 7:00 p.m.

9. TRAINING OPPORTUNITIES

■ American Planning Association:

<https://www.youtube.com/user/PlanningWebcast/videos>

■ **NYS Department of State Local Government Training Calendar posted here:**

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

December 8, 2020

Subdivision Review

5:00 p.m.–7:00 p.m.

<http://www.dos.ny.gov/lg/lut/index.html>

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

December 15, 2020

Floodplain Regulation

5:00 p.m.–7:00 p.m.

<http://www.dos.ny.gov/lg/lut/index.html>

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

December 22, 2020

Skills That Make Great Board Members

5:00 p.m.–7:00 p.m.

<http://www.dos.ny.gov/lg/lut/index.html>

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

January 5, 2021

Planning Board Overview

5:00 p.m.–7:00 p.m.

<http://www.dos.ny.gov/lg/lut/index.html>

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

January 12, 2021

Zoning Board of Appeals Overview

5:00 p.m.–7:00 p.m.

<http://www.dos.ny.gov/lg/lut/index.html>

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

■ **General Code e-Code**

Daily drop-in lunchtime training Q&A sessions plus webinars in several categories.

Information:

<https://www.generalcode.com/training/>

■ **Future Training Opportunities Online:**

Ontario County Planning Department website now lists upcoming training:

<https://www.co.ontario.ny.us/192/Training>

10. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will be held on Monday, January 25, 2021, at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8.

11. ADJOURNMENT

■ A motion was made by MR. RUTHVEN, seconded by MS. ATTARDI, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 7:20 p.m.

Respectfully submitted,

John M. Robortella L.S.
Clerk of the Zoning Board of Appeals